

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Appeal No.1603 of 2010

Between:

Maskoori Srinivas.

...Appellant/Accused No.1

And

The State of A.P.
Rep by its Public Prosecutor,
High Court of A.P, Hyderabad.

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 21.04.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**
AND

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! Counsel for Appellant : Smt. C. Vasundhara Reddy

^ Counsel for Respondent : Public Prosecutor (Telangana)

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> Head Note:

? Cases referred:

- 1) (2014) 2 SCC Pg.1
- 2) 1993 CriLJ 3684 (SC)
- 3) 2010(1) ALD CrI. Pg.699 (AP)
- 4) (2004) 13 SCC 165
- 5) 2017(1) ALT (CrI.) 48 (AP) = 2017(1) ALD (CrI.) 265 (AP)
- 6) 1994(2) SCC Pg.685
- 7) 2009 CriLJ 4655(SC)
- 8) (1995) 4 SCC 392
- 9) (2004) 13 SCC 165

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

CRIMINAL APPEAL No.1603 of 2010

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The challenge in this Criminal Appeal, at the instance of Appellant/A1, is the conviction and sentence recorded by the learned VI Additional District and Sessions Judge, Medak at Siddipet in his Judgment dt.28.09.2010 in S.C.No.154/2009 whereby and whereunder the learned Judge while acquitting A2, found A1 guilty of the charges under Sections 302, 379, 498-A of Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act (for short "D.P.Act") and sentenced him to suffer imprisonment for LIFE and other sentences as mentioned in the judgment.

2) The facts which led A1 to file the instant Criminal Appeal briefly are that the deceased is the wife of A.1 and since after the birth of a male child namely Nootan, A.1 started harassing the deceased for additional dowry and inspite of her parents paying amounts to him from time to time, he was not satisfied and he used to harass her physically and mentally for additional dowry. Besides he was addicted to vices like playing cards and consuming alcohol. The deceased refused to have sexual intercourse with him on the apprehension that he was suffering with HIV disease. A.1 misunderstood her refusal as her having some extra marital affairs and decided to kill her ultimately. On the intervening night of 12/13.09.2008, A1 brutally killed her by hacking with an axe in their

rented house situated at Ganesh Nagar, Siddipet. After investigation, the I.O laid charge sheet against the accused.

- a) On appearance of accused, the trial Court framed charges against A1 and A2 for the offences under Sections 302, 379, 498-A of IPC and Sections 3 and 4 of D.P.Act, for which, the accused pleaded not guilty and claimed to be tried.
- b) During the trial, PWs.1 to 15 were examined and Exs.P1 to P14 were marked and MOs.1 to 14 were exhibited on behalf of the prosecution. No defence evidence was adduced on behalf of the accused, but Exs.D1 and D2 were marked from the portions of the Section 161 Cr.P.C., statements of PWs-3 and 6 respectively.
- c) The defence of the accused is one of total denial of the offence.
- d) The trial Court on appreciation of the evidence, found A1 guilty for the charges framed against him and accordingly convicted and sentenced him as stated supra, however acquitted A2.

Hence, the Criminal Appeal by A1.

- 3) Heard arguments of Smt. C.Vasundhara Reddy, learned counsel for appellant/A1 and learned Public Prosecutor for the State (Telangana).

4 a) Severely fulminating the Judgment, learned counsel for the appellant/A1 firstly argued that it is a case based purely on '*circumstantial evidence*', as admittedly, there were no eye-witnesses for the offence allegedly committed by A1 but the trial Court erroneously

convicted the accused even though the prosecution failed to establish the suspicious circumstances projected against him. Hence, the conviction and sentences are legally not tenable and liable to be set aside. Inexpatiation, learned counsel would submit that PWs.1 to 4, 7 and 8 were highly interested witnesses and the trial Court placed implicit reliance on their evidence without any corroboration and came to a wrong conclusion as if A1 demanded additional dowry and harassed the deceased and even murdered her. No independent witnesses were examined to establish the guilt of the accused.

b) Secondly, she argued, there was absolutely no reliable evidence to hold that A1 and the deceased were last seen together and in that regard the evidence of PWs.5 and 6 was highly doubtful and unbelievable and therefore, the Trial Court ought to have rejected their evidence as unnatural and improbable.

c) Thirdly, learned counsel would argue that the entire prosecution case is unbelievable and liable to be discarded for the main reason that in this case most of the investigation such as inspection of scene of offence, recovery of dead body, examination of the main witnesses etc., were completed long prior to the registration of FIR and hence the FIR is hit by Sec.162 Cr.P.C. Learned counsel argued that on receiving information, the police must at first register FIR and then commence the investigation which is the trite law but the reverse procedure is followed in this case obviously to manipulate the FIR to suit their case. Learned counsel relied

upon the following decisions to argue the necessity to register the FIR on receipt of information:

1) *Lalitha Kumari vs. Government of Uttar Pradesh and others*¹

2) *State of Andhra Pradesh vs. Punati Ramulu and others*²

d) Fourthly, she argued that the alleged confession of A1 and the consequent recovery of blood stained cloths and Axe were all fertile manipulation by the police and thus ought to have been discarded. Learned counsel thus prayed to allow the appeal and set-aside the conviction and sentences.

e) Alternatively she argued, even if prosecution case is believed to be true, the charge under Sec.302 IPC is not maintainable for the reason that the facts would reveal that the motive for accused to kill his wife was due to the fact that on the night of incident she did not permit him to have intercourse with her. If that is true, the accused might have committed the offence in a fit of anger and he had no intention to kill her. Further, the evidence of post-mortem doctor would show that the fatal injuries found on the dead body could be caused with the reverse portion of MO12—Axe which indicate that the accused had no intention to kill the deceased as otherwise he would have chopped her body with the sharp edge of the axe. Hence, she would argue, the case may be treated as a culpable homicide not amounting to murder and consequently the punishment may be converted from Sec.302 IPC to 304 Part II IPC. She relied upon the

¹ (2014) 2 SCC Pg.1

² 1993 CriLJ 3684 (SC)

decision reported in *Kandi Venkata Suneel Kumar Reddy S/o Subba Reddy vs. The State of Andhra Pradesh rep. by its Public Prosecutor High Court of A.P.*³ to buttress her argument.

5) Per contra, while supporting the judgment learned Public Prosecutor argued that the prosecution by cogent evidence of PWs.1 to 4 and 7 to 8, established the strained relation between A.1 and deceased due to his harassing her for additional dowry. He argued that PWs.1 to 4 being the close relations of the deceased were the best persons to speak of dowry harassment meted out by the accused and hence their evidence cannot be discarded on the sole ground that they are relations of the deceased. He further argued, their evidence would reveal that few days prior to the incident, the accused took a house on rent in Siddipet. He setup his family with deceased and on the night of incident, he was with the deceased as spoken by PWs.5 and 6 and on the early morning of next day, the dead body was found in his house. Therefore, the accused being the husband of the deceased and inmate of the house where murder took place, owes a responsibility to offer an explanation about the cause of death of deceased under Sec.106 of Indian Evidence Act, as the said fact was especially within his knowledge. Since the accused disappeared from the very next day of incident and did not offer any explanation and he was arrested by the police few days after the incident and most importantly, upon his confession and revelation, police recovered MOs.4, 12, 13 and 14, all the suspicious circumstances which were established by the

³ 2010(1) ALD CrI. Pg.699 (AP)

prosecution unerringly proved the guilt of the accused. Therefore, the trial Court rightly recorded conviction against him and thus there are no merits in the appeal. He further argued that the FIR was not hit by Sec.162 Cr.P.C as argued by the appellant because, PW.13 emphatically stated that the police commenced investigation only after registration of FIR and not before. He alternatively argued that even assuming that on cryptic information by some person about their finding dead body in the house of A.1, the police went to the scene of offence to ascertain the truth of the said fact, that act of the police itself would not amount to commencement of the investigation. Accordingly, the FIR registered subsequently would not be hit by Sec.162 Cr.P.C. On this aspect, he relied upon the following decisions:

- 1) *State of Rajasthan vs. Maharaj Singh and another*⁴
- 2) *S.K.Dawood vs. The State of A.P. rep.by its Public Prosecutor*⁵

He thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the points that arise for determination are:

- i) *Whether the prosecution could establish all the suspicious circumstances projected against the appellant/A.1 and whether such proven circumstances unerringly establish his guilt?"*
- ii) *Whether the judgment of the trial Court is factually and legally sustainable?"*

⁴ (2004) 13 SCC 165

⁵ 2017(1) ALT (Crl.) 48 (AP) = 2017(1) ALD (Crl.) 265 (AP)

7) **POINT No.1:** It is a case based on circumstantial evidence. Admittedly A.1 and deceased were husband and wife and she was murdered in his house. Hence the prosecution is expected to establish the following incriminating circumstances:

- i) A.1 used to harass the deceased for additional dowry and on other family issues;
- ii) Both of them lived in rented house of PW.5 since few days before the incident.
- iii) On the night of incident, A.1 and the deceased were together in the rented premises.
- iv) A.1 absconded since the night of incident and did not offer explanation either for the death of his wife or his abscondance.
- v) Recovery of incriminating material objects on the disclosure of A.1
- vi) Motive.

The prosecution sought to prove most of the above circumstances through the evidence of PWs.1 to 8. PW.1 is the mother; PW.3 is the brother and PWs.2 and 4 are maternal uncles of the deceased; PW.5 is the owner of the rented house of A.1 at Siddipet and PW.6 is the co-tenant; PW.7 is the mediator who arranged the marriage of deceased with A.1; and PW.8 is the master of PW.3 under whom PW.3 worked as driver. Hence we gave our anxious consideration to the above evidence.

8) The evidence of PW.1 is to the effect that the marriage of deceased—Renuka, who was her eldest daughter and A.1 was held about 8 years prior to her evidence; during marriage, they gave dowry of

Rs.1,30,000/- gold and other paraphernalia; about 2 years back, they begot a son by name Nootan, aged about 6 years; after the birth of son, A.1, A.2 and their other relations started harassing the deceased to bring additional dowry; A.1 used to beat her daughter severely and send her to parental home demanding additional dowry of Rs.50,000/-; PW.1 used to pay amounts to A.1 through their daughter and it so happened four or five times; Once A.1 poured Kerosene on her and threatened to kill her and her daughter escaped and ran to the house of PW.7 to save herself and on knowing it, PW.1 and her relations went to Deepayampally village where A.1 resides and raised galata and at that time, A.1 promised that he would not ill-treat the deceased; however, sometime thereafter again A.1 beat her daughter and sent her away; 3 days thereafter A.1 came to their house informing that he took a rented house in Ganesh Nagar area of Siddipet (belonging to PW.5) and he would live amicably with deceased and requested to send her and on his repeated requests, they persuaded and sent the deceased with A.1 to Siddipet which is at a distance of 3 kms from the village of PW.1 i.e, Ensanpally; PW.1 used to vend milk at Siddipet everyday and she used to go to the house of deceased also to give milk to her daughter; As usual, a day before incident when she went to give milk to her daughter, her grandson wanted to come to their village and so she sent her son Ramesh, who brought the boy to their village; On the date of incident as usual at 7:00 or 7:30am, PW.1 supplied milk in some houses at Siddipet and went to rented house of A.1 and found the doors locked from outside; So she handed over milk to PW.6, the co-tenant and requested to handover it to her daughter when she returned

home; At about 9:00 or 9:30am her grandson insisted to return back to Siddipet to her mother's house from Ensanpally and so PW.2 took him to Siddipet and found the house of A.1 locked, hence he brought back the boy to the house of PW.1 and informed the said fact; Later, when PW.2 gave a ring to A.1 through his cell phone, A.1 abused him and abruptly disconnected the call; on suspicion PW.1, PW.2 and others went to the house of A.1 and found the doors were still locked; PW.2 climbed the roof and peeped through the sunglass and found the dead body of Renuka in supine position on the floor of the second room with hands and legs tied with pieces of a bed sheet cloth, injuries on the head and a white cloth tied around the neck and the tongue protruded; On intimation by somebody, the police came and opened the doors and saw the dead body in the conditions mentioned above; PW.1 gave Ex.P.1—report to police complaining that A.1 and relations murdered her daughter; PW.1 identified Exs.P.2 to P.5—photographs of the deceased, MOs.1 to 3—clothes and MO.4—pair of gold pusthelathadu of the deceased.

9) The evidence of PWs.2 to 4 is more or less in similar lines. Their evidence mainly project how the A.1 used to harass and torture the deceased repeatedly for additional dowry inspite of PW.1 paying him amounts periodically to the best of her ability. Their evidence would also reveal that few months prior to the incident, once A.1 poured Kerosene on deceased and threatened to set her ablaze and she could save herself by running to the house of PW.7, who was the mediator for their marriage. Their evidence would further reveal that about few days prior to the

incident, A.1 approached PW.1 and took his wife and son on the promise that he would look after them well and setup his family at Ganesh Nagar, Siddipet in the rented premises of PW.5. Since then they hardly lived together for a week or so before the deceased was brutally murdered in that house. Their evidence would further demonstrate the crucial fact that on the previous day of incident A.1 and deceased resided in the rented premises.

a) Coming to the probative value of their evidence, PWs.1 to 4 were extensively cross-examined but it must be said that their evidence touching the aforementioned crucial facts could not be shattered. On the other hand, their evidence contained a ring of truth and corroborated by other independent witnesses like PWs.5 to 8.

10) PW.5 deposed that he resides at Ganesh Nagar, Siddipet; he knows A.1 and in the month of September, 2008 he leased out one of the three portions of his house to A.1 on a monthly rent of Rs.500/-; PW.6 is also his tenant; after taking the premises on lease A.1 brought his wife and son within three days; he hardly lived in the said house for one week and within that period incident (death of deceased) took place; on the fateful night he saw the deceased—Renuka talking with PW.6 in her house by rolling beedies till 9:00pm and thereafter he did not know what happened; he woke up early in the morning at about 4:00am and found the premises of A.1 locked and the common main door for all the four portions was also opened and on seeing it he thought that A.1 and his wife have gone out by locking their house; PW.1 came in the morning at about 7:00am

and handed over milk to PW.6 to give it to deceased after her returning home; he left the house at 6:00am and returned at 12:00 noon and found number of persons and police gathered at the house of accused and all of them noticed the dead body of Renuka.

a) In the cross-examination PW.5 admitted that there was no written lease deed between him and A.1. Except that nothing specific could be elicited to belie the evidence of PW.5. Most importantly no specific suggestion was given to the effect that A.1 never resided along with deceased in his house as tenant. PW.5 is an independent witness and no enmity was brought-forth between A.1 and him. Therefore, the entire evidence of PW.5 can be accepted to be true.

11) Then PW.6 one of the co-tenants deposed that she knows A.1, who took the premises of PW.5 on lease about 10 days prior to the incident; his premises is opposite to her portion and each portion consists of two rooms; the incident took place on the night of 12.09.2008 and on that night she along with the deceased rolled beedies in her portion till 9:30pm and thereafter the deceased went to her portion to go to bed; A.1 was present in the house on the fateful night; A.1's son was not in the house as the younger brother of deceased took the boy to Ensanpally village on that day evening at about 5:00pm; she woke up at 6:30am on 13.09.2008 and found the house of A.1 locked and she thought that the deceased and A.1 might have left the house in the early morning; she found the chappals of the deceased lying in front of the house; at about 7:00am PW.1 came and enquired about her daughter and this witness expressed her ignorance and

then PW.1 handed over milk to her with a request to give it to her daughter; about an hour thereafter PW.1 again came and enquired about her daughter and PW.6 replied that she had not returned yet; thereafter PWs.1 and 2 and others came again and the male person climbed on the roof of the house of A.1 and found the dead body of Renuka lying in the house and thereafter police came to the scene and the door of A.1 was opened and she also went and found the dead body of the deceased in the second room of A.1's portion; the legs and hands of the deceased were tied with bed sheet pieces and a towel was tied around her neck and the deceased was strangled; tongue was protruded, injuries were also there on the head of the deceased.

a) This witness was also cross-examined at length but her evidence could not be impeached. No doubt Ex.D2 was marked from her 161 Cr.P.C statement wherein she stated as if PW.1 climbed the roof top and saw the dead body which she denied in her evidence. As rightly observed by the trial Court, the question of an aged lady like PW.1 climbing on the top of roof is most unlikely. This contradiction is not a material one to impeach the credibility of PW.6. Like PW.5, she is also an independent witness and having no enmity with A.1 to speak ill of him. Thus the evidence of PWs.5 and 6 amply support the evidence of PWs.1 to 4 to the effect that A.1 and deceased resided in the house of PW.5 as tenants since few days prior to the incident and most importantly, both of them were seen together in their rented portion on the previous night of the incident.

12) PW.7 is a resident of Deepayampally village where A.1 and A.2 were living. He was the mediator for the marriage between A.1 and deceased as he happens to be the distant relation of PWs.1 to 4. He deposed that for two years after marriage A.1 and deceased lived amicably and begot a son. As the boy was prematurely born, he had health problems and A.1 and deceased spent money for his treatment and so A.1 claimed that he spent Rs.30,000/- and demanded his in-laws to reimburse Rs.30,000/- spent by him. PW.7 stated that in that regard disputes arose between A.1 and deceased and therefore, PWs.1 to 4 came to the house of A.1 and this witness also went there twice or thrice and advised them to live amicably. He further stated that after the birth of the son, A.1 was addicted to vices like liquor and playing cards and was living wayward life. He further stated that on knowing about the death of deceased, he went to the rented house of A.1 at Siddipet and saw the dead body. Ofcourse this witness did not speak about earlier A.1 pouring Kerosene on the deceased and threatening to kill her. The said fact was spoken by PW.8.

13) Coming to PW.8, he owns a Tata sumo vehicle and PW.3 worked under him as a driver for 4 years. During that period, once PW.3 informed him that A.1 poured Kerosene on his sister and attempted to kill her and requested this witness to come along with him to the house of accused at Deepayampally. PWs.7 and 8 were also cross-examined but the basic fabric in their evidence to the effect that A.1 used to harass his wife for

money and once he threatened her to kill by pouring Kerosene, as spoken by the aforesaid witnesses could not be shattered.

14) Then Exs.P.2 to P.5—photos and Ex.P.12—post-mortem report coupled with the evidence of PW.12—post-mortem doctor which are not controverted would cumulatively show that the deceased was found with the following external ante-mortem injuries:

- 1) *An “U” shaped ligature mark present over the anterior neck. An “U” shaped ligature mark placed over the adoms apple. The free ends were forwarding both sides of neck horizontally and tapering posterior neck. Dimensions of injury Ligature marks is ¼" to ½" floor: brownish and parched. Edges of ecchymosed. Underneath the ligature mark neck structure not bruised.*
- 2) *A massive contusion over the right fronto parietal area of the scalp. Underneath the said contusion there is linear compound fracture of fronto parietal bone (compound fracture). Underneath the fracture subdural and external dural hematoma present.*
- 3) *A massive contusion over the left parieto-occipital region. Underneath the contusion a fracture of 3" giving rise to extra dural and sub dural hematoma.*

The Doctor opined that the cause of death of deceased was due to head injury and injuries 2 and 3 were fatal and sufficient to cause death in the ordinary course of nature.

15) Then PW.11 speaks of the confession of A.1 leading to recovery of MOs.4 and 12 to 14. He deposed that on 26.09.2008 he along with one B.Narender went to Siddipet town Circle where the police interrogated A.1 in their presence and the A.1 admitted his guilt under Ex.P.10 which

is the admissible portion of his confessional statement. Thereafter, A.1 led the police and the panchayatdars to his rented house situated in Ganesh Nagar area and he led them to the bed room and pointed out the upper shelf where he has hidden a bag containing MO12—(Axe) and MOs.13 and 14—(his blood stained clothes) and the police recovered the same under Ex.P.12—seizure panchanama.

a) The I.O sent material objects to FSL and Ex.P.14—FSL report would show that human blood was detected on Items 1 to 6. Item No.5 among them is the blood stained axe (MO12). PW.11 is an independent witness, who is a resident of Siddipet Town and he was a tailor by profession. Ofcourse he admitted that he stitched clothes for Police Constables but he categorically stated that he never acted as a witness for police. Having regard to it, the evidence of PW.11 can be safely believed.

16) Thus on a conspectus of the above material evidence discussed supra, it must be said that the prosecution by cogent evidence could establish all the incriminating circumstances which are like individual links in a chain. If all these individual links are fastened together, in our opinion, they form into a complete chain unerringly pointing out the guilt of A.1, for, they would manifestly depict that A.1 and deceased were the couple; A.1 started harassing the deceased for additional dowry since after the birth of his son; several times he bet and drove her away to her parental home; PW.1 and her husband used to pay him amounts to their mite but he did not mend his way and on the other hand once he threatened her to kill by pouring kerosene and the deceased could save

herself by rescuing to PW.7; few days prior to the incident, A.1 by persuading the family members of the deceased took the deceased with him to his rented house of PW.5 at Siddipet and started living with her and on the previous night of the incident he was very much there with deceased in his house as spoken by PWs.5 and 6 and on the next day morning, the deceased was found lying murdered in her portion and A.1 found absconded. Since A.1 was the husband and an inmate of the house along with the deceased, the facts relating to her death and the reason for his abscondance were especially within his knowledge and therefore, he owe a responsibility under Sec.106 of Evidence Act to divulge them which he failed. Considering all these, the trial Court rightly found him guilty of the charges under Sections 302, 379, 498-A of IPC and Sec.3 and 4 of D.P.Act.

17) Coming to the arguments advanced on behalf of appellant, it was firstly argued that as if the prosecution failed to prove all the incriminating circumstances projected against him. However this argument does not carry any conviction in view of the above discussion to the effect that the prosecution could prove all the suspicious circumstances and able to complete the chain.

18) Secondly it was argued that the prosecution failed to establish that the deceased and A.1 lived together for the last time before her death. This argument also does not hold water in view of the rocklike evidence of PWs.5 and 6, who are independent witnesses.

19) Thirdly, it was argued that the FIR was hit by Sec.162 Cr.P.C inasmuch as material part of investigation was completed long before registration of FIR.

a) It is trite law that soon the information relating to commission of a cognizable offence is received, the police shall register the FIR and start the investigation. The reverse process of registering FIR either in the midway or after completion of investigation will deflate the credibility of FIR. The reason is not far to seek. FIR is expected to be registered at the earliest point of time so that the facts narrated therein are supposed to be true and intrinsic but not embellished or varnished. The true facts narrated in FIR will help police investigate in correct lines. On the other hand, despite receiving information, police without registering FIR, if proceed with investigation at first and later register the FIR, such FIR loses its credibility for the reason that the contents in FIR might be manipulated to suit the prosecution case and its investigation. Hence, FIR shall precede the investigation is the generally accepted rule. However, sometimes the police may receive only a cryptic or an incomplete information regarding the commission of a cognizable offence, basing on which duty minded officer may proceed to the scene of offence to ascertain the truth in that information, or if necessary to save the victims or protect the scene of offence etc. After completing the aforesaid preliminary exercise, he may register FIR on the basis of information given by somebody and embark on the full-fledged investigation thereafter. In such an event, can it be said, since he already visited the scene and performed certain acts, the late

registration of FIR was hit by Sec.162 Cr.P.C? The law on this aspect is no more *res integra*.

i) In ***Ramsing Bavaji Jadeja vs. State of Gujarat***⁶, the Apex Court observed thus:

“Para 7: *From time to time, controversy has been raised, as to at what stage the investigation commences. That has to be considered and examined on the facts of each case, especially, when the information of a cognizable offence has been given on telephone. If the telephonic message is cryptic in nature and the officer in charge, proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be first information report. The object and purpose of giving such telephonic message is not to lodge the first information report, but to request the officer in charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on the basis of that information, the officer in charge, is prima facie satisfied about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including details about the participants, shall be deemed to be a statement made by a person to the police officer “in the course of an investigation”, covered by Section 162 of the Code. That statement cannot be treated as first information report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as first information report. This can be illustrated. In a busy market place, a murder is committed. Any person in the market, including one of the shop-owners,*

⁶ 1994(2) SCC Pg.685

telephones to the nearest police station, informing the officer in charge, about the murder, without knowing the details of the murder, the accused or the victim. On the basis of that information, the officer in charge, reaches the place where the offence is alleged to have been committed. Can it be said that before leaving the police station, he has recorded the first information report? In some cases the information given may be that a person has been shot at or stabbed. It cannot be said that in such a situation, the moment the officer in charge leaves the police station, the investigation has commenced. In normal course, he has first to find out the person who can give the details of the offence, before such officer is expected to collect the evidence in respect of the said offence.”

ii) In ***Satish Narayan Sawat vs. State of Goa***⁷, the police on the cryptic information and without any further details about the incident, proceeded to the place of occurrence to make some survey and later registered FIR. It was held by the Apex Court that such act of Police Officer going to the scene to make survey does not amount to proceeding with investigation and therefore, recording of FIR later was not hit by Sec.162 Cr.P.C.

iii) In ***State of Rajasthan vs. Maharaj Singh and another***⁸, cited by the learned Public Prosecutor, the facts were that the deceased in injured condition admitted in hospital and the duty doctor sent intimation to police station pursuant to which the SHO came to Hospital but could not record statement of deceased as he was not in a fit condition. Thereafter the police did not take action on that day but the police swung into action

⁷ 2009 CriLJ 4655(SC)

⁸ (2004) 13 SCC 165

only when a written complaint was lodged in the police station next day at about 10:30am. Delay in registering FIR was held not fatal.

b) From the above, it is clear that every information more-so a cryptic information of commission of a cognizable offence though first in point of time, need not be registered as FIR and in such an event, the police may rush to the spot to ascertain the truth and if need be, to save the victims by referring them to the hospital or to safeguard the crime scene and do some other preliminary works. Doing these acts cannot be termed as investigation, for, the meaning of investigation as envisaged in Sec.2(h) of Cr.P.C is the collection of evidence and preliminary works done by police was not collection of evidence. In such an event, the registration of FIR at a later stage will not be hit by Sec.162 Cr.P.C.

20) In the instant case, Ex.P.13—FIR was registered at 14:00 hours on 13.09.2008. PW.13, who registered FIR has emphatically stated that no police personnel from Siddipet I town PS visited the scene of offence prior to the registration of FIR. PW.1 also at one stage stated as if after her giving Ex.P.1—report, the police came to the scene of offence and opened the doors. Basing on the aforesaid evidence the trial Court opined that Ex.P.1 was not hit by Sec.161 Cr.P.C.

a) However, basing on the admission of PW.1 at a different stage that the police came and opened the door at 10:00 or 10:30am, it was argued by the counsel for appellant that the police visited the scene much prior to the registration of FIR and conducted the investigation and therefore,

Ex.P.1 was hit by Sec.162 Cr.P.C. In our considered view, even if the said admission of PW.1 is taken into consideration, the FIR would not be hit by Sec.162 Cr.P.C for the reason that in this case, the acts performed by the police after reaching the spot cannot be regarded as part of investigation. PW.2 deposed that after he saw the dead body from the top of the roof, he telephoned to Siddipet I town P.S and informed about the lying of dead body in the house of A.1 and thereafter police came to the scene of offence and after observing the dead body in the house of A.1 and after staying at the scene of offence for sometime, the police went back to PS and subsequently PW.1 drafted Ex.P.1—complaint and went to the Police Station and presented. So as per PW.2 the police only visited the scene and stayed there for sometime and returned back, which shows the police visited the scene to ascertain the truth of the information and nothing more. Their preliminary act of visiting the scene cannot be regarded as part of investigation. Hence the argument of appellant cannot be accepted and consequently the decisions cited have no application. Thus the prosecution could establish the guilt of A.1 beyond all reasonable doubts. This point is answered accordingly.

21) **POINT No.2:** In view of the findings in point No.1, the judgment of the trial Court can be held to be factually and legally sustainable.

Accordingly this Criminal Appeal is dismissed by confirming the conviction and sentences passed against A.1 by the trial Court.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 21.04.2017

scs

