

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Crl.A.Nos.77 and 964 of 2011

12.02.2018

Crl.A.No.77 of 2011:

Between:

Shaik Ibraheem ..Appellant/ Accused No.2
and
The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Andhra Pradesh, Hyderabad ..Respondent

Counsel for the appellant/accused No.2: Mr.Akula Anil
Srinivas, for Mr.Raj Kumar Rudra

Counsel for the respondent: Public Prosecutor (T.S.)

Crl.A.No.964 of 2011:

Between:

Abdul Hameed @ Ablu ..Appellant/ Accused No.1
and

The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Andhra Pradesh, Hyderabad ..Respondent

Counsel for the appellant/accused No.1: Mrs.C.Vasundhara
Reddy

Counsel for the respondent: Public Prosecutor (T.S.)

The Court made the following:

Common Judgment:

These cases involve gruesome murder of an innocent pregnant woman and consequently, foeticide as well, and an attempt to screen the evidence.

2. The case of the prosecution as set out in the charge sheet is as under.

(a) On 14.01.2008, at 10.00 hours, P.W.12 received a complaint from P.W.1, wherein she stated as follows.

She has three daughters and a son. The marriage of her elder daughter *viz.*, Irfana Begum @ Sana Irfana (hereinafter referred to as 'the deceased') was performed with Mohammed Ghose of Sreeramnagar Colony on 27.08.2007. During the marriage, they gave four tulas of gold, 20 tulas of silver and net cash of Rs.20,000/- towards dowry. The couple lead conjugal life happily for two months. Thereafter, her son-in-law left for Saudi Arabia. Later, accused Nos.1 and 5 to 9 i.e., the mother-in-law and other family members of the husband of the deceased tortured her mentally and physically, by demanding an additional dowry of Rs.30,000/-. When this was informed to her by the deceased, P.W.1 asked to wait for one month. On 14.01.2008, at about 01.00 hours, all the above accused tortured

the deceased and accused No.1 raped and murdered her. To screen away the evidence, accused No.1 shifted her dead body into Maruti Omni van bearing No.AP 25/M 2859 with the help of the driver and proceeded towards Hyderabad. When they stopped at Pondurthi Petrol bunk in Narsannapally limits for the purpose of petrol, the person, who was working in the petrol bunk, saw the dead body and started enquiring the matter, upon which, accused No.1 and the driver left the van and the dead body and fled away. As such, P.W.1 requested the Police for taking necessary action into the incident. Based on the said report, P.W.12 registered a case in crime No.9 of 2008 under Sections 498-A, 376, 302 and 201 I.P.C., which was investigated into by P.Ws.13, 14 and 15.

(b) During the course of the investigation, P.W.12 recorded the statement of the complainant – P.W.1. On receipt of information, P.W.13 visited HP petrol bunk, where the dead body of the deceased was abandoned in a Maruti Omni van, inspected the dead body, examined the witnesses – P.Ws.1 and 2 and L.Ws.2 to 4 *viz.*, Tajoddin, Sameer Hussain and Sk.Akber, recorded their statements, took the photographs of the dead body with the help of P.W.3 and also examined him and recorded and his statement. On requisition by

P.W.13, P.W.11 – the Deputy Mandal Revenue Officer, Kamareddy visited the scene, examined the witnesses – P.Ws.1 and 2 and L.Ws.2 to 4 and conducted inquest over the dead body of the deceased, which was lying in the Maruti Omni van in the presence of P.Ws.5 to 7 and the dead body was referred to the Government Hospital, Kamareddy for autopsy. P.W.13 seized Maruti Omni van bearing No.AP 25/M 2859 in the presence of P.Ws.5 and 7. P.W.10 and L.W.13 - Dr.G.Sujatha, conducted autopsy over the dead body of the deceased and sent the vaginal smears to the Andhra Pradesh Forensic Science Laboratory (FSL), Hyderabad.

(c) On 15.01.2008, at 13.00 hours, P.W.13 apprehended accused Nos.1 to 4 at Railway Station, Kamareddy, duly explaining them the grounds for their apprehension. On interrogation, they all confessed to have committed the offences. As such, P.W.13 recorded their confessional statements in the presence of P.Ws.8 and 9 separately. In pursuance of the confession, accused No.1 lead the Police and the mediators to his house where the offence had occurred and a piece of cloth of his shirt pocket, SINOSTAR wrist watch and broken bangle pieces of the deceased were seized from the bedroom under the cover of separate recovery panchanama.

P.W.13 brought the above accused to the Police Station (P.S.) at 16.00 hours, effected their arrest by issuing arrest memos, complied with Section 50 Cr.P.C. and referred accused No.1 to the Government Area Hospital, Kamareddy, for conducting potency test and treating the injuries sustained by him and also for issuance of the medical certificate. L.W.14 – B.Ramchander Rao - the Civil Assistant Surgeon, who conducted potency test over accused No.1, opined that there was nothing to suggest that the male examined by him was not capable of sexual act. L.W.14 also preserved the semen and pubic hair of accused No.1 for sending it to F.S.L. and issued medical certificate regarding the injuries on accused No.1 to the effect that they are simple in nature. Accused No.1 was produced in the Court for judicial remand on the next day. On 15.01.2008 itself, as per the instructions of P.W.13, P.W.12 transferred the C.D. file to Kamareddy P.S. on the point of jurisdiction. On receipt of the C.D. file, P.W.14 re-registered the case as crime No.19 of 2008 under the same Section of law.

(d) On 23.01.2008, at 12.35 hours, P.W.15 apprehended accused No.8 at Bhavani road and on interrogation, she voluntarily confessed to have committed the offences along with accused Nos.1 to 7 and 9. As such, P.W.15 brought her

to the P.S. at 13.15 hours, effected her arrest by issuing arrest memo, complied with Section 50 Cr.P.C. and produced her in the Court for judicial remand. On 14.02.2008, accused No.6 was arrested at Nizamsagar crossroads by P.W.15 at 7.15 hours duly explaining him the grounds for his apprehension and on interrogation, he voluntarily confessed to have committed the offences along with accused Nos.1 to 5 and 7 to 9. P.W.15 brought him to the P.S. at 8.30 hours, effected his arrest by issuing arrest memo, complied with Section 50 Cr.P.C. and produced him in the Court for judicial remand. On 19.03.2008, at 10.15 hours, accused No.9 came to the office of P.W.15 and surrendered herself by voluntarily confessing the commission of the offences along accused Nos.1 to 8. As such, P.W.15 effected her arrest by issuing arrest memo, complied with Section 50 Cr.P.C. and produced her in the Court for judicial remand. On 04.05.2008, at 07.30 hours, accused No.7 was apprehended at Borabanda by P.W.15 and brought to the office of P.W.15 at 10.15 hours. On interrogation, accused No.7 confessed to have committed the offences along with accused Nos.1 to 6 and 8 and 9. As such, P.W.15 effected her arrest by issuing arrest memo, complied with Section 50 Cr.P.C. and got her produced in the Court for judicial remand.

On 03.06.2008, at 08.35 hours, accused No.5 surrendered before P.W.15. On interrogation, she confessed to have committed the offence in the company of accused Nos.1 to 4 and 6 and 9. As such, P.W.15 effected her arrest by issuing arrest memo, complied with Section 50 Cr.P.C. and got her produced in the Court for judicial remand. After receiving the F.S.L. report, P.W.10 and L.W.13 – the team of Doctors, opined that the cause of death of the deceased was Asphyxia due to throttling. The material objects seized by the Investigating Officer during the course of the investigation and the medical certificates were forwarded to A.P.F.S.L., which in turn, issued the analysis report.

3. Based on the charge sheet and the material collected during the investigation, the trial Court framed the following charges.

“Firstly:-

That you Abdul Hameed @ Ablu A-1, Smt.Gousiya Begum A-5, Abdul Moize A-6, Smt. Naseema A-7, Shehnaz Begam A-8, Smt.Irfana A-9 on or about 27.08.2007 being the mother in law and brother and sisters in law of Smt.Sana @ Sana Irfana Begum subjected her to cruelty by way of torture both mentally and physically demanding for dowry and that you thereby committed an offence punishable under Section 498-A I.P.C. and within my cognizance.

Secondly:-

That you Abdul Hameed @ Ablu A-1 on or about 14.01.2008 at about mid night committed rape on Smt.Sana

@ Sana Irfana Begum who is your brother's wife and thereby committed an offence punishable under Section 3.7.6. IPC and within my cognizance.

Thirdly:-

That you Abdul Hameed @ Ablu A-1 on or about 14.01.2008 at about mid night committed murder intentionally by raping, chocking the mouth and nose and throttling and causing the death of Smt.Sana @ Sana @ Sana Irfana Begum and thereby committed an offence punishable under Section 302 I.P.C. and within my cognizance.

Fourthly:-

That you Abdul Hameed @ Ablu A-1 Shaik Ibraheem A-2, Abdul Majeed A-3, Abdul Nayeem A-4 on or about 14.01.2008 at about mid night having reason to believe that the offence namely rape and murder punishment with imprisonment for life has been committed by A-1 Abdul Hameed caused certain evidence connected with the said offence namely burning the body and taking it to unknown place to remove the body from the place of offence with an intention to screen the offender i.e., A-1 amongst you from legal punishment and thereby you have committed an offence punishable under Section 201 IPC and within my cognizance."

4. As the plea of the accused is one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 15 got Exs.P-1 to P-27 marked and produced M.Os.1 to 5. On behalf of the accused, no evidence was adduced.

5. On appreciation of the oral and documentary evidence, the Court below, *vide* its judgment, dated 25.01.2011, has acquitted accused Nos.1 and 5 to 9 of the charge for the offence punishable under Section 498-A I.P.C. and also accused

No.1 of the charge for the offence punishable under Section 376 I.P.C. The Court below also acquitted accused Nos.3 and 4 of the charge for the offence punishable under Section 201 I.P.C. It has, however, convicted accused No.1 for the offence punishable under Section 302 I.P.C. and sentenced him to undergo life imprisonment and also to pay a fine of Rs.10,000/- and in default of such payment, to undergo simple imprisonment for a period of four months. Accused Nos.1 and 2 were found guilty of the offence punishable under Section 201 I.P.C. and were sentenced to undergo rigorous imprisonment for a period of three years each on the said count and to pay a fine of Rs.5,000/- each and in default of such payment, to undergo simple imprisonment for a period of four months each. Both the sentences were directed to run concurrently, with the further direction that the remand period of accused No.2 shall be given set off. Feeling aggrieved by his conviction and sentencing, accused No.1 has filed Crl.A.No.964 of 2011 and against his conviction and sentencing, accused No.2 has filed Crl.A.No.77 of 2011.

6. For convenience, the appellants are hereinafter referred to as they are arraigned in Sessions Case No.402 of 2008 before the Court below.

7. Smt.C.Vasundhara Reddy, learned counsel for accused No.1, has submitted that the Court below has committed a serious error in convicting accused No.1 for the offences punishable under Sections 302 and 201 I.P.C. in the absence of evidence connecting him to the killing of the deceased. She has further submitted that in the absence of the eyewitnesses, the burden lies on the prosecution to establish all the links in the chain of circumstances and it failed to discharge its burden. She has also submitted that when accused Nos.5 to 9 i.e., mother-in-law, brother-in-law, two sisters-in-law and one co-sister were present along with accused No.1 and the deceased in the house, singling out accused No.1 and holding him guilty for the murder cannot be sustained as the prosecution failed to put-forth any evidence proving the involvement of accused No.1 in the murder. She has taken us through the oral and documentary evidence and submitted that the crucial witness *viz.*, P.W.2, who allegedly saw accused Nos.1 and 2 at the petrol bunk along with the dead body of the deceased, having turned hostile and not supported the prosecution case, the Court below has fallen into a serious error in finding accused No.1 guilty of the offences punishable under Sections 301 and 201 I.P.C. She has further submitted that if the incriminating points

are not put to the accused during their examination under Section 313 Cr.P.C., the same cannot be relied upon in the evidence and that the alleged recoveries having not been put to accused No.1, they cannot be held proved, without which the prosecution failed to establish all the links in the chain of circumstances. She has also submitted that the Court below, having disbelieved the case of the prosecution that accused No.1 committed rape of the deceased, ought not to have believed the version of the prosecution that he committed murder of the deceased. In support of her submissions, the learned counsel has placed reliance on the judgments in **Gaddegudem Vadenna vs. State of Andhra Pradesh¹** and **Sujit Biswas vs. State of Assam²**.

8. Mr.Akula Anil Srinivas, learned counsel representing Mr.Raj Kumar Rudra, learned counsel for accused No.2, has submitted that when the prosecution failed to adduce any evidence to show the involvement of accused No.2 in causing disappearance of the evidence, merely because the dead body was found in the van belonging to accused No.2, it cannot be presumed that he had the intention of causing disappearance of the evidence and that the Court below on mere suspicion, has

¹ 2011 (1) ALT (Crl) 291 = 2011 (1) ALD (Crl.) 759 (AP)

² (2013) 12 SCC 406

unjustly convicted accused No.2 for the offence punishable under Section 201 I.P.C. In support of his submission, the learned counsel has placed reliance on the judgment in **Suresh Sakharam Nangare vs. State of Maharashtra**³. The learned counsel has alternatively submitted that in the absence of any direct evidence to show that accused No.2 had actively collaborated with accused No.1 in causing disappearance of the evidence, the sentence of three years is quite disproportionate to the offence alleged against him.

9. Opposing the above submissions, the learned Public Prosecutor (T.S.) has submitted that the circumstances brought out on record by the prosecution clearly proved the guilt of accused No.1 for the offence of murder punishable under Section 302 I.P.C. and that of accused Nos.1 and 2 for the offence punishable under Section 201 I.P.C. He has further submitted that in the absence of any dispute about the death of the deceased being homicidal, the place of the death being the house of accused No.1, in the light of the recoveries of M.Os.3 to 5, which included the torn piece of accused No.1's shirt pocket, and the absence of any explanation from accused No.1 as to any other manner the deceased might have been killed and

³ (2012) 9 SCC 249

by somebody else, the Court below has rightly convicted accused No.1 for the offence punishable under Section 302 I.P.C. He has also submitted that even if accused No.1 was acquitted of the charge for the offence punishable under Section 498-A I.P.C. that by itself would not absolve him of the charge for the offence punishable under Section 302 I.P.C. when the existence of strong circumstances pointing to his guilt was established by the prosecution. He has further submitted that accused No.1 cannot be allowed to get away with the barbarious act perpetrated on an innocent pregnant woman. As regards the conviction and sentencing for the offence punishable under Section 201 I.P.C., he has sought to justify the same.

10. We have carefully considered the submissions of the learned counsel for both the parties with reference to the record.

11. P.W.1 is the mother of the deceased. Based on Ex.P-1 report given by her, the Police registered the F.I.R. She, *inter alia*, stated in the report that she gave some gold and silver and money as dowry at the time of marriage of her elder daughter (the deceased) with Md. Ghouse – the brother of accused No.1 and that her son-in-law went to Saudi Arabia two months after

the marriage. She also referred to accused Nos.5, 1 and 6 to 9, who are the mother-in-law, two brothers-in-law, two sisters-in-law and co-sister respectively of the deceased, demanding additional dowry and harassing the deceased, both physically and mentally. After narrating the above background, she alleged that accused No.1 raped the deceased and killed her by throttling and that to cause disappearance of the dead body, accused No.1 has taken the dead body in an Omni van bearing No.AP 25/M 2859 on NH-7 road towards Hyderabad and when P.W.2 – the worker in the petrol bunk, noticed the dead body in the van and questioned accused No.1, he left the dead body and fled away at around 2.15 a.m. on 14.01.2008. She further stated that P.W.2 informed the above facts to her, based on which she gave the report. P.W.1 reiterated the contents of Ex.P-1 in her evidence, in particular, in the chief examination. In her cross-examination, she however, admitted that accused Nos.6 and 9 – the brother-in-law of the deceased and his wife are living separately and that similarly, accused No.8 one of the sisters-in-law of the deceased, is also living separately. It is, thus, evident from the evidence of P.W.1 that the deceased, accused Nos.1, 5 and 7 were living in the house together at the time of the occurrence. Significantly, no suggestion was put to

P.W.1 that accused No.1 was not at home when the offence has taken place or that the offence has not taken place at his house. No suggestion probablising the death of the deceased in any manner other than the manner as alleged by the prosecution was put to P.W.1.

12. P.W.2 is the worker in the petrol bunk at Pondurthy, where Maruti Omni van bearing registration No.AP 25/M 2859 belonging to accused No.2 along with the dead body of the deceased therein, was found. As happens in many criminal cases, the defence appeared to have cleverly managed him to turn hostile. As usual, like in any other hostile witness, he feigned ignorance of his seeing accused Nos.1 and 2 in the petrol bunk along with Maruti Omni van and the dead body therein and his even giving the statement to the Police. P.W.3 is a photographer who took photographs of the van with a dead woman lying therein. He was not cross-examined on behalf of any of the accused. P.W.4 is an employee of NCSF and brother of P.W.1 and he deposed that he came to know that the brother-in-law of the deceased (identified as accused No.1) killed the deceased and that while he was taking the body in order to dispose of the same he was caught. He has also deposed that he came to know later through Police that all the

accused were involved in the killing of the deceased and accused No.5 (mother of accused No.1) called for a press conference and informed them that the deceased eloped with a person taking away the gold and money. As the evidence of P.W.4 is hearsay, it has no evidentiary value.

13. P.W.5, cited as panchayatdar for Ex.P.8 – inquest panchanama, Ex.P.9 – seizure panchanama and Ex.P.10 – rough sketch, turned hostile and did not support the case of the prosecution. P.W.6, cited as panchayatdar for Ex.P.8 - inquest panchanama also turned hostile. Both P.Ws.5 and 6 stated that their signatures have been obtained on the respective documents. In relation to this, P.W.6 stated that he does not know the contents of Exs.P.8 as he is an illiterate. P.W.7, another purported witness to Exs.P.8 to P.10 also turned hostile. He stated that when he went to the Police Station to collect the chicken bill, the Police have obtained his signatures. P.W.8, the alleged attester to Ex.P.17, confession panchanama, also turned hostile. Similarly, P.W.9, the alleged attester to Exs.P.19 to 21, confessional statements of accused Nos.2 to 4, also turned hostile. P.W.10 – the Doctor, who conducted the autopsy over the dead body of the deceased and issued Ex.P.23

– post-mortem report, submitted that he found the following anti-mortem injuries on the body of the deceased.

- “1. A contusion on the front portion of the throat measuring 7 x 3 cms.
2. A contusion on the left cheek of 5 x 3 cms.
3. An abrasion on the right posterior aspect of the elbow of 3 x 3 cms.”

He further stated that he found fracture of the hyoid bone on the left side, muscle contusions and blood clots. That when the abdomen of the deceased was opened, he found that her uterus was enlarged with a pregnancy of 3 to 4 months and a male foetus was present in the same. He collected the vaginal smears for chemical analysis and got the same sent for chemical analysis. That later he received Ex.P.22 - FSL report and that on the basis of the autopsy and the FSL report, he opined that the death was due to asphyxia due to throttling and therefore he has issued Ex.P.23 – to that effect. He also referred to Ex.P.24 shown to him and issued by Dr. Ramachander Rao, whose signature was identified, and stated that in the said document the doctor opined that accused No.1 was capable of sexual acts. The only aspect on which P.W.10 was cross-examined was regarding Ex.P.25, the alleged consent letter of accused No.1, for conducting medical test on him. All other aspects regarding the injuries on the body of the deceased and

the cause of death in the evidence of P.W.10 remained uncontroverted.

14. P.W.11 was the Deputy Mandal Revenue Officer at Kamareddy, and a witness to the inquest. P.W.12, who was Sub-Inspector of Police of Devanpally Police Station, and who registered the FIR deposed about his receiving Ex.P.1 - Police report from P.W.1 and his registering Crime No.9 of 2008 under Sections 498A, 376, and 201 IPC under Ex.P.26 – FIR. He further deposed that he has recorded the statement of P.W.1 and handed over the case file along with the property seized by him to the Sub-Inspector of Police, Kamareddy on point of jurisdiction. In his cross-examination, P.W.12 admitted that P.W.1 did not state before him that she has taken her daughter, i.e., the deceased to the hospital on 10.1.2007 and that later her daughter informed her on the phone that the accused harassed her for want of money of Rs.50,000/- and gold of 3 tolas was sent to her by her husband. He also admitted that P.W.1 did not state before him that the Police have informed her that accused Nos.5 to 9 caught hold of the deceased while accused No.1 raped her.

15. P.W.13 – the Circle Inspector of Police, Bhiknoor deposed that he has received a phone call from P.W.12

regarding registration of Crime No.9 of 2008, that being the in-charge Circle Inspector of Kamareddy, he proceeded to the scene of offence located at Narsannapalli Petrol Bunk, at the said place he found a Omni Van bearing No.AP 25M 2859 with a dead body of a woman, recorded the statements of P.Ws.2, 4, and L.Ws.2 and 3, and that later P.W.11 held inquest panchanama over the body of the deceased in the presence of P.Ws.5 to 7. He further deposed about his sending the body for post-mortem examination and seizure of the Omni Van under a panchanama in the presence of P.Ws.5, 7 and 8. That he got the scene of offence and the dead body photographed prior to the body being sent for post-mortem examination through P.W.3. He further deposed that on 15.1.2008 at about 1.00 p.m., he apprehended accused Nos.1 to 4 at the Railway Station, Kamareddy, and interrogated them and they confessed about the offence. That he recorded Exs.P.17, and 19 to 21 – confessional statements in the presence of P.Ws.8 and 9 and seized M.O.2 – red and white stripes shirt of accused No.1 which was torn in the commission of the offence, at his instance, under the same panchanama. That accused No.1 led the Police and panchayatdars to his house and produced M.O.5 - torn piece of the pocket of his shirt, which is M.O. 2, M.O.3 -

broken bangles of the deceased, and M.O.4 – Sinostar make watch seized under ExP.18 - scene of offence panchanama, drew Ex.P.10 - rough sketch of the scene of offence, brought accused Nos.1 to 4 to the Police Station, effected their arrest and sent them for judicial remand, after sending accused No.1 for medical examination. In the cross-examination by the counsel for accused Nos.1, and 3 to 5, P.W.13 admitted that P.W.4 did not state before him that accused No.1 killed the deceased for the money sent by her husband. He has denied the suggestion that he has not visited the scene of offence and did not hold any panchanama and that he has not seized any material object from the said place. He has also denied the suggestion that accused Nos.A.1 to A.4 did not confess about the offence and that he has falsely implicated them. In the cross-examination by the counsel for accused No.2, P.W.13 denied the suggestion that no Omni Van was used in the commission of the offence and he has not seized the same and that he has falsely implicated accused No.2 in this case though he is not the driver of the Omni Van.

16. P.W.15 – who was the Circle Inspector of Police, Kamareddy and who conducted the later part of investigation and apprehended one of the accused, i.e., accused No.8,

referred to sending the material objects on 05.02.2008 to the FSL for examination. He further deposed that he collected Ex.P.22 – FSL report and Ex.P.23 – post-mortem report and filed the charge sheet. P.W.15 was not subjected to specific cross-examination about the FSL and post-mortem reports. For the first time, a suggestion was put on behalf of accused No.2 to this witness that accused No.2 is neither the owner nor the driver of the Maruti Van.

17. From the aforementioned discussion, the following admitted facts emerge.

- a. The death of the deceased is homicidal.
- b. The death took place in the house of accused No.1.
- c. Accused No.1 has not put-forth any defence that he was not at home when the offence took place, and
- d. Neither accused No.1 nor any other inmate has informed the Police about the death of the deceased.

18. The primordium of the case of accused No.1 is that when there were more than one accused in the house when the alleged offence has taken place, it is not possible to hold accused No.1 guilty of murder. As noted herein before, there were not more than three persons apart from the deceased, in the house. As it is the case of the defence that the brother-in-

law of the deceased - accused No.6 and his wife - accused No.9 and sister-in-law of the deceased – accused No.8 are living separately and therefore accused No.7, another sister-in-law must have been in the house apart from accused Nos.1 and 5. It is specifically urged by the prosecution that accused No.1 being un-married, had an evil eye on the deceased. Though the post-mortem examination report shows only three injuries, namely, (i) a contusion on the front portion of the throat; (ii) a contusion on the left cheek; and (iii) an abrasion on the right posterior aspect of the elbow, Ex.P.3 – photographs, the authenticity of which was not disputed, show many injuries commencing from right cheek down to the neck. These injuries clearly show that they must have been sustained by the deceased in the struggle. Added to this, one of the photographs shows that the naked body of the deceased was covered upto shoulders with a nighty and an apparel like pyjama was placed on the nighty. The defence has not come out with any suggestion probabalising the causing of such injuries by any other person. Non-denial of accused No.1's presence in the house and his failure to report to the Police about the death also support the case of the prosecution that he is responsible for the causing of the death. Accused No.1 being

unmarried and his brother having left the deceased two months after the marriage also lends strength to the case of the prosecution that no one else has any reason to attack the deceased during the dead of the night. Neither the Police nor the Court have charged anyone other than accused No.1 with the offence of sexual assault and also murder of the deceased. Accused Nos.5 and 7 being women the question of sexual assault on the deceased by them does not arise. Added to this, the evidence of P.W.13 clearly demonstrates that at the time of the arrest of accused No.1 the former has seized M.O.2 - red and white stripes shirt and on being led by accused No.1, the Police have also seized M.O.5 - torn piece of the pocket of the shirt of accused No.1.

19. No doubt, P.Ws.5 to 7, the alleged mediators to the seizure panchanamas, turned hostile. But, however, the evidence of P.W.13 could not be shaken by the defence. Except the suggestion that he has not visited the scene of offence and did not hold any panchanama and seize any material objects from the said place, nothing could be elicited to falsify the testimony of P.W.13. The law is well settled that even when the panch witnesses turned hostile, the evidence of

the Investigating Officer, if otherwise credible, can be made the basis to believe the seizure.

20. In **State of Kerala v. M.M. Mathew**⁴, the Supreme Court held “...*prima facie* public servants must be presumed to act honestly and conscientiously and their evidence has to be assessed on its intrinsic worth and cannot be discarded merely on the ground that being public servants they are interested in the success of their case.” This view was reiterated by the Supreme Court in **State of U.P. v. Krishna Gopal**⁵.

21. In **Modan Singh v. State of Rajasthan**⁶ the Supreme Court observed that where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version. This view was reiterated in **Mohd. Aslam v. State of Maharashtra**⁷. In **Anter Singh v. State of Rajasthan**⁸ the Apex Court held that “even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated”. In

⁴ (1978) 4 SCC 65

⁵ (1988) 4 SCC 302

⁶ (1978) 4 SCC 435

⁷ (2001) 9 SCC 362

⁸ (2004) 10 SCC 657

Rameshbhai Mohanbhai Koli v. State of Gujarat⁹ the

Supreme Court held:

“This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt. [Vide **Modan Singh** case (6 supra) and **Anter Singh** case (8 supra)].”

22. In the light of the case law referred to above and considering the intrinsic value of the evidence of P.W.13, which as observed above could not be shaken by the defence as regards the seizure, we are inclined to hold that the prosecution was able to prove the seizure of M.Os.2 to 5.

23. With reference to the submission of the learned counsel that when no suggestion was put to the accused under Section 313 CrPC examination about the incriminating material, the same cannot be relied upon, the learned counsel relied upon the judgment in **Sujit Biswas** (2 supra). The facts in the said case reveal that the bloodstains found on the underwear of the accused matched the blood group of the deceased. However, the said circumstance was not put to the accused while he was being examined under Section 313 CrPC by the trial Court. The Supreme Court held that the said circumstance

⁹ (2011) 11 SCC 111

cannot be taken into consideration as the accused was not given an opportunity of explaining the said incriminating circumstance. In the instant case, question No.9 put to the accused under Section 313 CrPC examination, reads as under:

“Q.9: P.W.12 – Y. Sayanna stated that while he worked as SI of Police, PS Devanpally, he received a complaint from PW1 vide Ex.P.1 on 14-1-2008, hence registered Cr.No.9/08, U/ss.498-A, 376, 201 IPC and sent the FIR to the Court apart from recording the statement of PW1 and then handed over the case file to the CI of Police along with the property seized. What do you say?”

24. Though specific reference to M.Os.3 to 5 has not been made to accused No.1 in the absence of the defence taking the stand in the cross-examination of P.W.13 that even if seizure has taken place M.O.2 – shirt does not belong to accused No.1 or M.O.5 – the torn piece of the shirt pocket did not match M.O.2, the submission of the counsel that it cannot be relied upon, cannot be sustained. Apart from the struggle marks, the torn pocket piece of the shirt belonging to accused No.1 would clearly prove that it is only accused No.1 who attacked the deceased with a view to sexually assault her and in the process he throttled her to death.

25. In **State of Punjab v. Naib Din**¹⁰ the Supreme Court held that if any appellate or revisional court comes across a vital question not being put to the accused, such omission should

¹⁰ (2001) 8 SCC 578

not result in setting aside the conviction and that the Court should consider the impact of such question. The Supreme Court further held that if the remaining evidence is sufficient to bring home the guilt of the accused the lapse does not matter much and it would be justifiable.

26. While the accused has a right to be silent during his examination, the Court can draw adverse inference if he fails to explain incriminating circumstances put to him. In **Phula Singh v. State of Himachal Pradesh**¹¹ the Apex Court held that accused has the right to maintain silence during examination or even remain in complete denial when his statement under Section 313 CrPC is being recorded. But, in such an event adverse inference could be drawn against him. In **Ram Naresh v. State of Chattisgarh**¹², **Munish Mubar v. State of Haryana**¹³ and **Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan**¹⁴ the Supreme Court held that the accused has a duty to furnish an explanation in his statements under Section 313 Cr.P.C. regarding any incriminating material that has been produced against him and that if he has been given the freedom to remain silent during the investigation as

¹¹ AIR 2014 SC 1256

¹² AIR 2012 SC 1357

¹³ AIR 2013 SC 912

¹⁴ AIR 2013 SC 3150

well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 Cr.P.C. is being recorded, but, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law.

27. Significantly, in Section 313 CrPC examination except denying all the questions either as wrong (*Galat*) or no, accused No.1 has not come up with any explanation whatsoever. His deafening silence in the facts and circumstances of the case can only be understood as he has no explanation whatsoever to offer regarding the incriminating material pointing his involvement in the gruesome murder and hence adverse inference requires to be drawn against him.

28. As regards the submission of the learned counsel for accused No.1 that when the case of the prosecution regarding rape was found false, it is not safe to accept its case regarding the murder, we are afraid, we cannot accept the same. In the first place, we find from Ex.P.22- FSL report, in item No.6 dry brownish substance, human semen and spermatozoa were found present. P.W.10 in his evidence stated that he has collected and sent vaginal smears for chemical analysis. Item

No.6 is one such item received by the FSL. The husband of the deceased being abroad, ordinarily there was no possibility of spermatozoa being present either on the body of or on the clothes worn by the deceased. This raises a strong presumption that accused No.1 might have sexually assaulted the deceased. But, unfortunately, we find from the post-mortem report that no special attention was shown by the Doctor as to whether any signs of rape were present though in Ex.P.23 – post-mortem report, in second un-numbered paragraph, P.W.10 stated as under:

“Human semen and spermatozoa are detected in item No.6, but its blood group could not be detected.”

29. Even the lower Court while not ruling out the possibility of rape, however, could not hold accused No.1 guilty of the offence under Section 376 IPC in the absence of specific findings in the medical record, such as post-mortem examination report and FSL report, while observing that in order to establish the offence of rape, the presence of semen and spermatozoa either on the private parts, or on the clothes of the deceased is not required and mere penetration of a male genital organ is sufficient to conclude that the offence of rape is committed. Be that as it may, even assuming that accused No.1 could not accomplish the act of rape, the prosecution case

regarding the murder cannot be thrown out applying the legal principle *falsus in uno, falsus in omnibus* (False in one thing is false in everything) which is not applied to the criminal jurisprudence in India. When there is credible evidence pointing to the guilt of the accused beyond all reasonable doubt, failure of the prosecution to prove its case regarding one offence will not lead to acquittal of the accused of the remaining offences, if proper evidence is available on record to prove the guilt of the accused regarding those offences.

30. Under Section 106 of the Indian Evidence Act, 1872, the burden of proving a fact is on the person when such fact is especially within his knowledge. When accused No.1 along with his mother and one sister were in the same house in which the deceased was done to death, the fact as to the cause of the death is exclusively in their knowledge. Accused No.1, who is charged with the offence of murder, has failed to discharge the burden. The learned counsel for the appellant, however, relied upon the judgment in **Gaddegudem Vadenna** (1 supra) in order to derive support to her two-fold submission, namely, (i) that when accused Nos.5 and 7 were living with accused No.1 and when benefit of doubt was given to accused Nos.2 and 3, accused No.1 is also entitled to the benefit; and (ii) that merely

because accused No.1 was living in the same house along with the deceased, no presumption under Section 106 of the Evidence Act can be drawn.

31. We have carefully gone through the judgment in **Gaddegudem Vadenna** (1 supra). In that case, the deceased was wife of accused No.1, and accused Nos.2 and 3 are mother and sister of accused No.1 respectively. While accused Nos.1 to 3 were charged for the offence under Section 498-A IPC, accused No.1 was also charged for the offence of murder. On appreciation of the evidence, this Court observed that it was not in dispute that accused No.1 was having Acs.6.00 of land in the outskirts of Village Koilkonda, that he used to do agriculture and his leaving the house in the early hours of the day cannot be ruled out. It is thus evident that accused No.1 in that case has pleaded that he was not at the home when the offence has taken place. But, in this case, as discussed above, not even a suggestion was given to the prosecution witnesses that accused No.1 was not in the house when the offence took place. Indeed, the Division Bench in **Gaddegudem Vadenna** (1 supra) observed as under:

“...If there is any evidence to show that A.1 and the deceased were alone present in the house on the fateful day of incident, certainly presumption that the accused alone is the perpetrator of the crime can be presumed.”

The absence of the stand taken by accused No.1 that he was not at home, distinguishes the present case on hand with that in **Gaddegudem Vadenna** (1 supra) as regards the application or otherwise of Section 106 of the Evidence Act.

32. As for the second limb of the counsel's submission, namely, that when benefit of doubt was given to accused Nos.2 and 3, such benefit should have been given to accused No.1 also, if the circumstantial evidence did not point to the guilt of accused No.1 he would be certainly entitled to the benefit of doubt. M.Os.2 and 5 clearly speak of accused No.1's involvement without any doubt. Apart from this, the way the dead body was positioned initially in a naked position (only kurti/nighty being placed on the body to cover the struggle marks on the face was seen), presence of human semen (in item No.6 of FSL report) collected from the deceased and the fact that the dead body was found in Maruti Van admittedly owned by accused No.2, a friend of accused No.1, shatter all the reasonable doubts about the involvement of accused No.1. Therefore, these features which are absent in **Gaddegudem Vadenna** (1 supra) makes the present case stand apart.

33. The judgment of the Supreme Court in **Jamnadas and others v. State of Madhya Pradesh**¹⁵ applies in all fours to this case. That was also a case based on the circumstantial evidence and the Supreme Court took into consideration the following links in the chain of circumstances to hold the accused guilty.

- (i) It is established that Bhoomi alias Richa (deceased) was living in the house of the appellants, after her marriage on 16-9-2006 with appellant Manoj.
- (ii) It is also established beyond reasonable doubt that death of the deceased was homicidal in nature which occurred on 16-9-2006.
- (iii) It is also established that the deceased was murdered in the house of the appellants where bloodstains were found.
- (iv) It is also conclusively established that after commission of murder, the body of the deceased was cut into two pieces.
- (v) It is further proved that the dead body was thrown in the park by Dhanwantari (mother-in-law of deceased) who was seen doing so by PW 1 to PW 5.
- (vi) Perusal of the number of ante-mortem and post-mortem injuries mentioned in autopsy report read with the statement of PW 15 Dr N.M. Unda establish beyond reasonable doubt that the crime could not have been committed by one person alone.
- (vii) There were in all five members in the family excluding the deceased — three male members (Jamnadas, father-in-law; Manoj, husband and Vishal, brother-in-law of the deceased) and two female members (Dhanwantari, mother-in-law and Heena alias Madhuri, minor sister-in-law).
- (viii) PW 32 Heena alias Madhuri (minor daughter of Appellant No.1) was too young. She was a student of Class VIII when her statement was recorded during trial and she has stated that she had gone to school on the day of incident and after her return she slept. (This witness was declared hostile as she did not fully support the prosecution case). It is nobody's case that she had any role in commission of the crime. This leaves four accused named in the charge-sheet, out of whom Vishal, brother-in-law, was acquitted by the trial court (rather discharged in respect of offence of

¹⁵ (2016) 13 SCC 12 = 2016 (2) ALD (Crl) 50 (SC)

murder). His acquittal is upheld by the High Court, and nobody has challenged the same. The remaining three in the field are Dhanwantari (mother-in-law) and the appellants.

- (ix) The appellants have failed to disclose as to how deceased has died which was especially within their knowledge.
- (x) It is nobody's case that any outsider came in the house.
- (xi) There is no report lodged to the police by the appellants regarding homicidal death of the deceased who was wife of appellant Manoj and daughter-in-law of appellant Jamnadas as discussed above.
- (xii) False explanation has been given by the appellants in their statements under Section 313 CrPC that the deceased had gone to her relative's place and that she was missing which is an additional link on the record against them, in the chain of circumstances.”

Links (ii), (iii), (ix), (x) and (xi) are identical to the present case.

On a holistic consideration of the case in its entirety, we have no reason to doubt that accused No.1, who had an evil eye on the deceased, who is no other than his own brother's wife, has done the deceased to death.

34. The learned counsel for the appellant alternatively submitted that the conviction may be altered to Section 304 Part I or Part II IPC. We are afraid, we cannot accept her submission. Here is a case where accused No.1 has taken advantage of his dominant position in the family and helplessness of a pregnant woman, mindlessly left by her husband to her fate within two months of her marriage, obviously in pursuit of his career. Accused No.1 did not have any qualm of conscience to develop evil intentions against her

own sister-in-law, who as per Indian culture is revered as “Mother”. In disregard of the fact that the deceased was pregnant, accused No.1 has resorted to heinous act of sexual exploitation of the deceased and in the process took away her life. The beastly act done by accused No.1 shocks judicial conscience. The offence committed by him does not fall in any of the five exceptions to Section 300 IPC. Therefore, his conviction cannot be brought under Section 304 IPC which deals with the offences falling under any of the exceptions enumerated under Section 300 IPC.

35. Coming to the charge under Section 201 IPC, the learned counsel for accused Nos.1 and 2 submitted that there is no evidence to show that the accused tried to cause disappearance of the body. No doubt, P.W.2, the cashier at the Petrol Pump, who allegedly saw the accused at the petrol pump along with Maruti Omni Van with the dead body being carried therein, has turned hostile. Though the presence of accused Nos.1 and 2 was not spoken to by P.W.2 in his chief examination, he has however admitted that the Police have shown him a Maruti Omni van and a woman lying on the seat of the van. Accused No.2 has not suggested to any of the prosecution witnesses examined upto P.W.14 that he is not the owner of the car. On

the contrary, in the cross-examination of P.W.1, he has suggested to P.W.1 that he has not mentioned in Ex.P.1 or in his statement to the Police that accused No.2 is a friend of accused No.1 and that accused No.2 is not connected to accused No.1 or the offence and he was not the driver of the Omni van. The suggestions given to P.W.13, the Circle Inspector of Police, Bhiknoor, who seized the Maruti Omni Van, are significant which read as under:

“It is not true to suggest that no Omni Van was used in the commission of the offence and I have not seized the same. It is not true to suggest that I have falsely implicated the A2 in this case though he is not the driver of the Omni Van.”

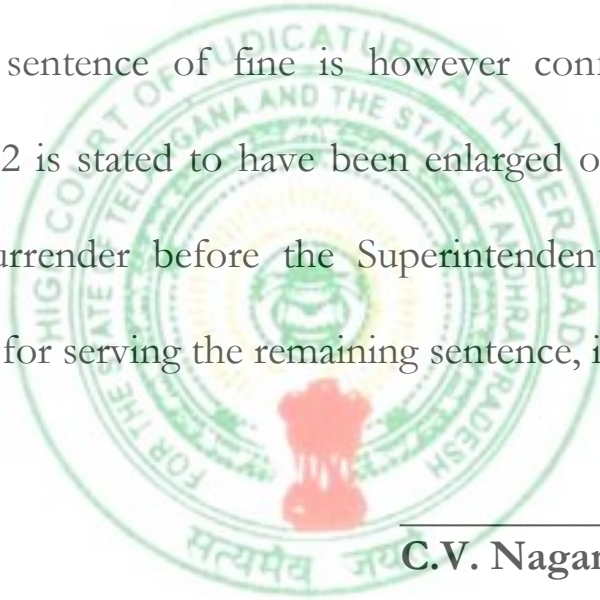
For the first time a suggestion was made to P.W.15, who filed the charge sheet that accused No.2 is neither the owner nor the driver of the Maruti Van. This suggestion, in our opinion, is a pure after thought and contradicts the suggestion given to other witnesses as discussed above impliedly admitting accused No.2's ownership of the van, but his denial of driving the Omni Van. Even with regard to his friendship with accused No.1, except a vague suggestion to P.W.1 that he is not connected with accused No.1, no specific stand was taken that accused No.2 is not a friend of accused No.1. It is thus proved that the Maruti Van in which the body of the deceased was found belonged to accused No.2, who also happened to be a

friend of accused No.1. When the body was found in the Van belonging to accused No.2, Section 106 of the Indian Evidence Act places burden on him to explain as to how his Van was used for carrying the body. As far as accused No.1 is concerned, as he was found guilty of murder, it is reasonable to presume that he wanted to cause disappearance of the body by taking it outside the town through the vehicle belonging to accused No.2 and in the process he used the latter's Van.

36. As regards the alternative submission of the learned counsel for accused No.2 regarding sentence, there is no allegation that accused No.2 had any complicity in the murder of the deceased. Evidently, being a friend, he could not have refused the request of accused No.1 to help him in disposing of the body. As a responsible citizen, a duty is cast on him not to oblige his friend in perpetrating the crime. However, in the facts and circumstances of the case, we feel that ends of justice would be met if the sentence imposed upon him is reduced to one year, while confirming the sentence of fine imposed on him.

37. In the result, the Criminal Appeal No.77 of 2011 is partly allowed and Criminal Appeal No.964 of 2011 is dismissed. The conviction and sentencing of the appellant in Criminal Appeal

No.964 of 2011, for the offences under Sections 302 IPC and 201 IPC are confirmed. Since he is stated to have been enlarged on bail, he shall forthwith surrender before the Superintendent, District Jail, Nizamabad, for serving the remainder of the sentence. The conviction of the appellant in Criminal Appeal No.77 of 2011 – accused No.2 for the offence under Section 201 IPC is confirmed, but the sentence of imprisonment imposed against him for three years, is reduced to that of one year. The sentence of fine is however confirmed. Since accused No.2 is stated to have been enlarged on bail, he shall forthwith surrender before the Superintendent, District Jail, Nizamabad, for serving the remaining sentence, if any.



C.V. Nagarjuna Reddy, J

Kongara Vijaya Lakshmi, J

12.2.2018

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Note: LR copies to be marked.

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