

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No.636 of 2012

JUDGMENT : (per the Hon'ble Sri Justice N.Balayogi)

The sole accused preferred this appeal being aggrieved by the judgment dated 22.3.2012 in Sessions Case No.767 of 2011 on the file of the IV Additional District & Sessions Judge, (FTC) Mahabubnagar. He was tried for the offences punishable under Sections 302 and 201 IPC for causing death of one, Shabana Begum and Najma and also for screening away the evidence. By its judgment dated 22.03.2012, the Sessions Judge convicted the accused and sentenced him to undergo 'imprisonment for life' and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for a period of one month for causing death of deceased No.1 Shabana Begum for the offence punishable under Section 302 I.P.C. He was further convicted and sentenced to undergo 'imprisonment for life' and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for a period of one month for causing death of deceased No.2 Najma for the offence punishable under Section 302 I.P.C. He was further convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for a period of one month for the offence punishable

under Section 201 I.P.C. All the sentences were directed to run concurrently.

2. The brief facts leading to this appeal as discerned from the prosecution case are as under :

On 30.7.2009 at 10.00 AM P.W.1 Mohd. Tayyab lodged Ex.P1 - complaint before S.H.O., Kothur Police Station, stating that the marriage between deceased Shabana Begum and the accused Mohd. Khadeer was performed about 9 years ago and they were blessed with daughter deceased Nazma, 5 years old and a son Sameer of 2 years old. The accused used to eke out livelihood as a rikshaw puller. He gave up the rikshaw pulling profession and started doing cultivation and long back addicted to liquor and by suspecting fidelity of the deceased and also that Nazma was not born to him, he used to beat Shabana Begum.

3. While so, on 30.7.2009 the appellant made a phone call and informed that Shabana Begum and Nazma were died and so saying simply put the phone. Then, P.W.1 – brother and P.W.2 – sister of the deceased came to the village of the accused/appellant and saw the dead body of Shabana Begum with head injury and saw the dead body of Nazma, who died due to strangulation.

4. P.W.2, sister of P.W.1 and also deceased, speaks the same facts that the accused, suspecting the fidelity of the deceased Shabana Begum, used to pick up quarrel and used to beat her sister Shabana Begum. Since Nazma, daughter of the accused and the deceased

Shabana Begum, witnessed while accused killed his wife Shabana Begum, he also killed Nazma.

5. P.W.3 in his evidence stated that he saw the dead body of the Shabana Begum with head injury, but he did not observe any injury on the dead body of the Nazma. In the early hours at about 7.00 AM the accused came and informed that his wife died due to injuries on her head.

6. P.W.4 is distantly related to the accused. He stated that one day prior to death, Shabana Begum informed him that her husband forcibly took away her silver leg chains for the purpose of consuming alcohol. At about 4 or 5 PM on that day the accused returned to his house with toddy packets. On the next day morning at 5.30 am accused came to his house and informed that his wife died, then he accompanied the accused to his house and saw the dead body of Shabana Begum with head injury and also dead body of Nazma. The accused/appellant is responsible for the death of his wife and daughter.

7. Similarly, P.W.5 stated that one day morning while villagers are proceedings towards the house of the accused, he also went there and saw the dead bodies of Shabana Begum and Najma. He noticed injury on the head of the Shabana Begum. Then, himself and other villagers came to conclusion that except the accused, there is no chance to any body to kill Shabana Begum.

8. P.W.6 stated that he saw the dead body of Shabana Begum with head injury and also dead body of Najma. No injuries were found on the dead body of the Najma. He further stated that accused used to consume alcohol and also used to quarrel with his wife. He stated before the Police that accused might have killed his wife and daughter as there was no chance of any body entering the house of the deceased during that night.

9. P.W.7 took photographs under Exs.P2 to P6 over the dead bodies.

10. P.W.8 was mediator for inquest under Ex.P7 and P8.

11. P.W.9 is the mediator before whom the accused confessed the offence and stated that he kept the axe at his house. In pursuance of the confession, he went to the house of the accused along with him wherein the accused shown M.O.1 which was kept in a roof (chooru). Then, the accused led the party to water pit (kunta) whereunder he thrown the blood stained clothes of his wife. Accused picked up blood stained clothes M.Os.2 and 3 and they were seized under Ex.P11 in pursuance of Ex.P10 confession. Basing on Ex.P1 - complaint, P.W.10 – Head Constable registered a case and forwarded Ex.P1 along with Ex.P12 - F.I.R. to the Court.

12. P.W.11 is the Doctor who conducted PME and issued PME Report - Ex.P13 and she opined that external injuries noted in Ex.P13 – autopsy report are possible with M.O.1 – axe. On the same

day, she also conducted autopsy over the dead body of Najma and issued PME report - Ex.P14 and she opined that the cause of death was asphyxia due to smothering.

13. P.W.12 is the Investigating Officer who took up investigation on 30.7.2009 from P.W.10. He got photographed the scene of offence under Exs.P2 to P6, observed the scene of offence and prepared rough sketch under Ex.P9 – crime detail form. He got conducted inquest over the dead bodies in the presence of mediators and Exs.P7 and P8 are inquest reports of Shabana and Najma respectively. He collected blood stains on the clothes of Shabana.

14. On 2.8.2009, on credible information, P.W.10 apprehended the accused at RTC bus stand, Kothur and brought him to Kothur Police Station and informed the same to P.W.12. Then, he immediately visited Kothur Police Station, secured P.W.9 and recorded the confession and recovery of M.Os.1 to 7. After completion of the investigation, charge-sheet is laid.

15. After filing the charge-sheet, the learned Magistrate took the case on file for the offence punishable under Section 302 I.P.C. After appearance of the accused, all copies of documents furnished to him as required under Section 208 Cr.P.C.

16. On hearing and consideration of the entire material, the Sessions Court framed charges under Sections 302 and 201 I.P.C. read

over and explained to the accused for which he pleaded not guilty and claimed to be tried.

17. In support of the prosecution case, P.Ws.1 to 12 were examined and Exs.P1 to P15 and M.Os.1 to 7 were got marked. For defence, none were examined and no documents was marked.

18. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining incriminating circumstances appearing against him and he denied the same and claims to be tried.

19. The learned counsel for the appellant contended that the discrepancy with regard to very submission of F.I.R. coupled with the delay in submitting the F.I.R. is fatal to the prosecution case.

20. On the other hand, learned Public Prosecutor contended that there is no delay at all and the discrepancy if any with regard to timings is insignificant.

21. P.Ws.1 and 2 are the brother and sister, where as P.Ws.3 to 6 are neighbours of the accused. The relationship between P.Ws.1 and 2 with the accused and deceased is not in dispute. P.Ws.1 and 2 in one word stated that one day about three years back the accused over telephone informed that Shabana Begum and her daughter Nazma are died. P.W.1 further deposed that while he was at Hyderabad, they received a message from the village of the accused that the accused killed his sister Shabana Begum and daughter Nazma.

22. The consistent evidence of P.Ws.1 and 2 is that after receiving message about the death of Shabana Begum and Nazma, P.Ws.1 and 2, their father Mohd.Akber, brother Taher came to the village of the accused at about 8 AM or 9 AM and they found the dead body of Shabana Begum with head injury and no injuries were found on Nazma and P.W.1 preferred Ex.P1 – report to the Police. During cross-examination, P.W.1 stated that he got prepared Ex.P1 – report through one Secunder and presented in the Police Station.

23. In the case of *Middela Parvaiah v. State of A.P.*¹ a Division Bench of this Court observed that no explanation is forthcoming from the prosecution for the corrections in the time mentioned in Exhibit P1, report, and Exhibit P7, FIR, which are fatal to the case of the prosecution, having regard to the facts and circumstances of the case. The record makes it manifest that the crime was registered after deliberations by implanting PW3 and another as eye witnesses and that the material documents forming part of the case record were manipulated to show that there is no delay in either lodging the report or registering the crime and that the investigation commenced after the registration of the crime. Suffice to say that the prosecution version that PW3 is an eyewitness to the incident does not inspire confidence and the circumstances brought about from the material on record cast a solemn and reasonable doubt about the presence of P.W.3 and other witness M.Sailu at the scene at the time of occurrence.

¹ 2016 (3) ALT (CrI.) 373 (DB)(AP)

24. In the case of *State of Rajasthan v. Maharaj Singh*² the Apex Court held as under :

“The finding of the learned Single Judge that the delay in lodging the FI statement is not explained is incorrect. On the date of the incident, deceased Ram Swaroop was taken to Karoli Hospital and he was admitted there. PW6 Dr.M.L.Kawant, attached to the hospital at Karoli deposed that he sent Ext.P-11 report to the police station and the SHO came to the hospital, but Ram Swaroop was not in a fit condition to make any statement. On the back of Ext.P-11 report, the SHO made an entry to the effect that he visited the hospital and made Ext.P-13 report wherein PW6 noted that the patient was not fit for making any statement. Strangely enough, the police did not take any action thereafter and they swung into action only when Ext.P-1 report was made by PW 2 on 7.10.1992 at 10.30 am. The delay in registering the case was due to the ignorance and negligence on the part of the police. The police officer who visited the hospital at Karoli could have registered the case based on the information that may be volunteered by any of the bystanders to the patient. The delay in lodging the report before the police has not caused any serious prejudice to the accused nor did it cast any doubt on the prosecution case. The fact that the incident happened on 5.10.1992 and Ram Swaroop sustained fatal injuries and was admitted in the hospital and as to how the incident happened, is spoken of by a series of witnesses. Delay in lodging the FIIR would be material when there is a doubt regarding the prosecution case. There is no allegation that the accused were roped in and a false case was foisted upon them. It is also material to point out that the defence of the accused was that deceased Ram Swaroop sustained injuries as he was attacked by a mad camel. No evidence was let in to substantiate this contention. No suggestions were put to the doctor who conducted the post-mortem examination or P.W.6 who first medically examined deceased Ram Swaroop. P.W.6 deposed that injuries were caused on the head of the deceased by hitting. The nature of injuries would also show that they were caused by beating with “*lathis*”.

² (2004) 13 SCC 165

25. In the instant case, the evidence of P.W.1 is that P.Ws.1 and 2 and their father and other brother Taher came out to the accused village and found dead bodies of their sister Shabana Begum and sister's daughter Nazma, who died due to strangulation. They also found head injury to Shabana Begum. During cross-examination, P.W.1 stated that they reached the village of the accused at about 7 AM morning, got drafted the report through Secunder and presented Ex.P1. On cross-examination, P.W.2's evidence is that they reached the village of the accused at about 8 AM or 9 AM. The defence counsel could elicit during the cross-examination that *"I signed in the complaint underneath a tree at about 1.00 PM. Police came to accused village and obtained Ex.P1-complaint. After that I have not visited the police station."*

26. P.Ws.3 to 6 are neighbours to the accused and deceased. According to the evidence of P.W.3, the accused, deceased and himself are neighbours. P.W.5's evidence is that his house is situated on the back side of the house of the accused. P.W.6's evidence is that his house is on the western side of the house of the accused intervened by a road. Houses of P.Ws.3 and 4 are also nearer to the house of the accused. Accordingly, P.Ws.3 to 6 are of the same locality where the accused and deceased residing and they are neighbours.

27. P.W.3's evidence shows that at about 7 AM in the early morning the accused came to him and informed that his wife died due

to head injury. During cross-examination he stated that the Police enquired him at about 8 AM or 9 AM.

28. Similarly P.W.4 during cross-examination stated that on the date of death of Shabana Begum, Police came to their village and enquired at about 7 AM or 8 AM in the morning. Similarly, P.W.5 stated that the police examined him at about 9 AM on the date of death of Shabana Begum and Nazma. P.W.6 similarly during cross-examination stated that Police enquired him at about 7 AM on that day. Then coming to the evidence of P.W.7 – photographer, during cross-examination he stated that at about 8.30 AM Police called him to take photographs and accordingly he went and took photographs of the dead body at 9 AM. P.W.8 is the inquestdar under Ex.P7 on the dead body of Shabana Begum and Ex.P8 on the dead body of Nazma. During cross-examination P.W.8 stated that Police visited the house of the accused at about 8 or 9 AM and he was at the house of the accused up to 2 PM. The Police also observed the scene of offence, prepared rough sketch and the crime detail form with rough sketch is marked as Ex.P9.

29. P.W.10 is the crucial witness who alleged to have received Ex.P1 from P.W.1 and registered the same as a case in crime No.161 of 2009. His evidence is that on 30.7.2009 at about 11.30 AM P.W.1 came to the Police Station, Kothur and preferred a complaint with regard to death of his sister Shabana Begum and her daughter Nazma. He submitted Exs.P1 and P12 to the court and copies to the concerned.

During the cross-examination P.W.10 stated that at about 10 AM P.W.1 preferred the complaint which was written in Telugu and till then they have to knowledge about the offence. The Inspector of Police visited the scene of offence within one hour of preferring Ex.P1 complaint.

30. The evidence of P.W.12 is that on 30.7.2009 he received telephone message from the Head Constable – P.W.10 about the registration of F.I.R. and he took up investigation and visited the scene of offence, which is situated at the house of the accused at Devuni Mamidipally Village and got photographed the scene of offence which are marked as Ex.P2 to P6 through P.W.7 and also drafted crime detail form and rough sketch under Ex.P9 in the presence of mediator – P.W.8. He conducted inquest over the dead bodies and Ex.P7 and P8 are inquest reports of Shabana Begum and Nazma respectively. During cross-examination, he stated that he received information about the offence at 10.05 AM, whereas P.W.10's evidence is that on 30.7.2009 at about 11.30 AM P.W.1 came to the Police Station and presented Ex.P1. If that is so, when complaint is received at 11.30 AM, the question of P.W.12 receiving information at 10.05 AM does not arise. More so, P.Ws.1 to 6 deposed that the Police visited the scene of offence between 8 AM and 9 AM. There is discrepancy in the evidence with regard to time of submitting the F.I.R.

31. As per the endorsement on Ex.P1 and P12, P.W.10 received Ex.P1 – report at 10.00 AM on 30.7.2009 and registered the

same as case in crime No.161 of 2009 for the offence punishable under Section 302 I.P.C. and took up the investigation.

32. P.W.11 is the Civil Assistant Surgeon, Government Hospital, Shadnagar, whose evidence is that on 30.7.2009, she received a requisition from S.H.O., Kothur, to conduct autopsy over the dead body of the Shabana Begum, wife of Khadeer and accordingly conducted the same at 4.30 PM in the evening. Ex.P13 is the PME report of Shabana Begum. She opined that approximate time of death of Shabana Begum is 14 to 16 hours prior to autopsy. She also received requisition to conduct autopsy over the dead body of Nazma at 5.30 PM and she conducted autopsy over the dead body of Nazma and issued Ex.P14 PME report. She opined that approximate time of death of Shabana Begum is 16 to 18 hours prior to autopsy. According to P.W.11 she conducted autopsy over the dead body of Shabana Begum at 4.30 PM and on the dead body of Nazma later on, according to requisition received at 5.30 PM.

33. A perusal of the inquest reports under Ex.P7 and Ex.P8 go to suggest that the inquest was conducted on the body of Shabana Begum on 30.7.2009 at 12.30 hours and on the dead body of Nazma at 14.35 hours.

34. The evidence of P.Ws.1 and 2 is consistent and corroborative. It is the evidence of P.Ws.1 to 6 that the accused is not doing any work. The accused was addicted to vices and completely depending upon the income of his wife. He was in the habit of

forcefully taking away money from his wife Shabana Begum to consume alcohol and return home, abuse and beat her suspecting her character unnecessarily. Not only P.Ws.1 and 2 spoke those facts, but also P.Ws.3 to 6 corroborate with the evidence of P.Ws.1 and 2 and stated that the accused used to quarrel with his wife Shabana Begum in drunken state and he was not doing any work and it is the accused at about 7 AM informed all the said people about the death of Shabana Begum and his daughter Nazma. He also telephoned and informed to P.W.1 of the same fact of death of Shabana Begum and Nazma. The motive is clearly explained by P.W.4 that the accused and his wife deceased Shabana used to visit his hotel at Devuni Mamidipally Village. One day before the death Shabana Begum in the evening came out to his hotel and was talking to his wife, at that time he returned to the hotel after attending his work. The deceased Shabana Begum used to leave whenever he returns to the house, but on that day Shabana Begum informed P.W.4 that the accused has forcibly taken away her silver anklets (leg chains) for the purpose of consuming alcohol.

35. P.W.6 in the chief itself stated that on the night of death of Shabana Begum and Nazma as usual the accused, his wife Shabana Begum and children were there in the house of the accused. P.Ws.3 to 6 went to the house of the accused and saw the dead bodies. Body of the Shabana Begum was found with head injury, whereas there are no injuries on the body of Nazma.

36. The Doctor – P.W.11 who conducted autopsy over the dead body of Shabana Begum found the following external injuries :

1. A laceration over right side of the scalp measuring 5 x 2 x 1 cm right side temporal bone, fractured, which is measuring 3 x 1 x ½ cm.
2. A laceration over left parieto frontal region, which is measuring 3 x 3 x 5 cms depth. Left side parital region brain matter laceration extending with a depth of 3 cms.

37. P.W.11 opined that the cause of death of Shabana Begum was due to severe head injury and the approximate time of death was 14 to 16 hours prior to autopsy. She conducted autopsy over the dead body of Shabana Begum at 4.30 PM, whereas Shabana Begum and Nazma were found dead in the house on the night of 29/30.7.2009. Similarly, she conducted autopsy over the dead body of Nazma and opined that cause of death to the best of her knowledge was asphyxia due to smothering and approximate time of death was 16 to 18 hours prior to autopsy. The autopsy over the dead body of Shabana Begum was conducted at 4.30 PM, where as on the dead body of Nazma was conducted after receiving requisition at 5.30 PM, so the time of death falls around mid night of 29/30.7.2009.

38. The inquestdars under Ex.P7 also opined that on 29.7.2009 the accused suspecting the character of Shabana Begum and Nazma was not born through him, he was waiting for an opportunity to kill them. While so, on 29.7.2009 the accused quarrelled with Shabana Begum, beat her and forcibly took away the anklets (leg chains). He sold away the anklets, fully consumed alcohol, returned to home,

picked up quarrel and taken sharp weapon and gave blow on the head of Shabana Begum and as Nazma witnessed the incident, to screen the evidence, closed the mouth and nose of Nazma and killed her. The ocular evidence of P.Ws.1 to 6 is that the accused killed Shabana Begum and to screen the evidence, he also killed Nazma by closing the mouth and nose. The medical evidence corroborates the evidence of ocular evidence of P.Ws.1 to 6 and inquestdars also opined that the accused killed deceased.

39. Though there is a suggestion to P.Ws.1 and 2 that the deceased during coolie work picked up a quarrel with some other co-workers and they might have killed her. There is no supporting evidence produced by the accused.

40. In view of the clear discussion of evidence above, there is no substance in the contention of the defence counsel that there is delay in lodging the F.I.R. and there are corrections in the F.I.R. P.W.1 clearly deposed that he submitted the report in the Police Station immediately after visiting the village of the accused. P.Ws.1 to 6 deposed that the police visited the village around 8 am or 9 am, examined and recorded their statements. The evidence of P.W.1 corroborates with the evidence of P.W.10 and though there is some discrepancy in the oral evidence of P.W.10 with regard to timing that P.W.10 received Ex.P1 on 30.7.2009 at 11.30 AM and in the cross-examination he stated that P.W.1 preferred Ex.P1 at 10 AM, the entries on Ex.P1 and Ex.P12 are that P.W.1 presented Ex.P1 in the Police

Station at 10.00 hours before P.W.10 who registered the same. It is the evidence of P.W.12 – Investigating Officer that he received the intimation over phone from P.W.10 at 10.05 AM and took up the investigation. The discrepancy in the evidence of P.W.10 is only due to ignorance and negligence on the part of P.W.10. Such discrepancy has not caused any serious prejudice to the accused nor did it caste any doubt on the prosecution case. The fact is that the incident happened on the night of 29/30.7.2009 and at about 7 AM the accused himself intimated the death to his neighbours P.Ws.3 to 6 and over phone to P.W.1 and immediately P.Ws.1 and 2 along with their father and another brother reached to the village of the accused and thereafter presented the report at 10 AM. The Doctor - P.W.11, who conducted autopsy over the dead body of Shabana Begum, opined under Ex.P13 that the death is due to severe head injury and on the Nazma under Ex.P14 opined that the death is asphyxia due to smothering.

41. The witnesses clearly deposed and inquestdars also opined that on the evening of 29.7.2009 the accused forcibly took away the anklets of Shabana Begum, returned to home in drunken condition, picked up quarrel and beat her, because he is having suspicion about her character. He picked up the axe and hacked on the head of Shabana Begum, which caused her death. As Nazma has witnessed the incident, to screen the evidence, he also by smothering killed his own daughter Nazma. During the course of investigation, P.W.12 visited the scene of offence i.e., the house of the accused, got photographed

the scene of offence Exs.P2 to P6 through P.W.7 – photographer at 9 AM. He also secured P.W.8 – mediator and conducted inquest over the dead bodies under Ex.P7 on the dead body of Shabana Begum and under Ex.P8 on the dead body of Nazma. He also observed scene of offence and prepared crime detail form and rough sketch under Ex.P9. At the time of observation of scene of offence, P.W.12 seized one plastic cover and controlled earth. Further, the evidence of P.W.12 corroborated with P.W.9 is that on 2.8.2009 on credible information P.W.10 apprehended the accused at RTC bus stand, Kothur and brought into Police Station and intimated the same to P.W.12. Immediately, P.W.12 visited the Police Station and secured the presence of P.W.9 and another and in their presence recorded the confessional statement of the accused. The relevant portion which leads to recovery of material object is admissible in evidence under Section 27 of the Indian Evidence Act. It is the clinching evidence that the accused led the party to his house at Devuni Mamidipally Village and produced an axe which he used for commission of offence, then the accused also led P.Ws.9, 12 and another to the water pit wherein he has thrown the blood stained clothes of his wife. The accused picked up blood stained clothes from the pit and the police seized the same. M.O.2 is the blood stained pillow. M.O.3 is the blood stained bed sheet. M.Os.1 to 3 were seized in pursuance of Exs.P10 and P11. M.O.5 is plastic cover. M.O.6 is blood stained kurtha of Shabana Begum and M.O.7 is bloodstained salwar. The material objects were

sent to RFSL through SDPO for examination and received Ex.P15 – FSL report.

42. The analyst opined that blood is detected on items 1 to 6 which are as follows :

1. A torned pink colour polyester kurtha with embroidery design marked as item No.1.
2. A torned pink colour polyester pyjama with dark brown stains marked as item No.2.
3. An axe with bamboo handle head measuring 19 x 8 cms with PC marked as item No.3.
4. A blue colour pillow with dark brown stains marked as item No.4.
5. A cream and black colour flower design cotton bed sheet with dark brown stains marked as item No.5.
6. A while colour plastic bag with dark brown stains marked as item No.6.

43. The origin of bloodstains on items 1, 2, 4, 5, 6 is of human and of 'A' group. Therefore, the items contain human blood of 'A' group which belongs to Shabana Begum.

44. The circumstantial evidence is continuous and complete as spoken by the witnesses P.Ws.1 to 6.

45. The discrepancy with regard to time of lodging F.I.R. would be material when there is a doubt regarding prosecution case. There is no allegation that a false case is foisted upon him. The consistent ocular evidence supported by medical evidence PME report and inquest report and FSL report clinchingly prove that the accused is

the person who killed his wife and daughter. When he was present in the house on that night and at an early hours in 7 AM when he informed P.Ws.3 to 6 about the death, an obligation castes on him to say as to how they died, but there is no explanation. The decision of the Apex Court in *State v. Saravanan*³ is relied.

46. It is also material to point out that the defence of the accused was that the deceased Shabana Begum quarrelled with co-workers and they might have killed the deceased. No evidence was let in to substantiate this contention. No suggestions were put to the Doctor P.W.11 who conducted autopsy over the dead body of Shabana Begum and also Nazma and issued Exs.P13 and P14 PME reports. P.W.11 clearly stated that the cause of death to the best of her knowledge and belief is severe head injury and similarly the cause of death of Nazma is asphyxia due to smothering. All the witnesses deposed that there are no injuries found on Nazma, whereas Shabana Begum was found with head injury which the accused hacked with an axe. To suppress the material evidence, he also killed his own daughter Nazma who witnessed the incident. It is also during cross-examination P.W.11 admitted that Police have supplied two inquest reports to her and she mentioned the name and age of both deceased in Exs.P13 and P14 based on the information received in inquest reports of the deceased. She also stated in the cross-examination that if injury with an axe is caused with heavy force on head, there is a possibility of head parting into two pieces. The injuries mentioned in Ex.P13 autopsy

³ (2008) 17 SCC 587

report are also possible with any other metal with sharp edge. So, the head injury on Shabana Begum was caused with sharp edged weapon. Therefore, the nature of injuries found on Shabana Begum were caused by the accused with axe – M.O.1.

47. In fact, there is no delay in the present case. The F.I.R. is not the result of any embellishment which has the root in any kind of afterthought. Having considered the totality of the circumstances, we are of the opinion that the submission of the learned counsel for the appellant pertaining to delay in lodging of the FIR, being totally unacceptable, is hereby rejected, relying on the judgment of the Apex Court in *Om Prakash v. State of Haryana*⁴.

48. The trial Court, having considered the evidence of prosecution witnesses, which well established that there are no eyewitnesses to the incident and the case of the prosecution rests on the circumstantial evidence. On the date of incident, it is evident from the evidence of P.Ws.2 and 4 that the accused forcibly taken away anklets, sold away the anklets, consumed alcohol, returned to home at 4 or 5 PM with toddy packets and on the next day morning the accused himself informed P.Ws.3 and 4 and also over phone to P.W.1 about the death of Shabana Begum and Nazma. The evidence on record well established that the accused is in the habit of returning home consuming alcohol, picking up quarrel and beating his wife. The prosecution proved homicidal death of Shabana Begum and Nazma.

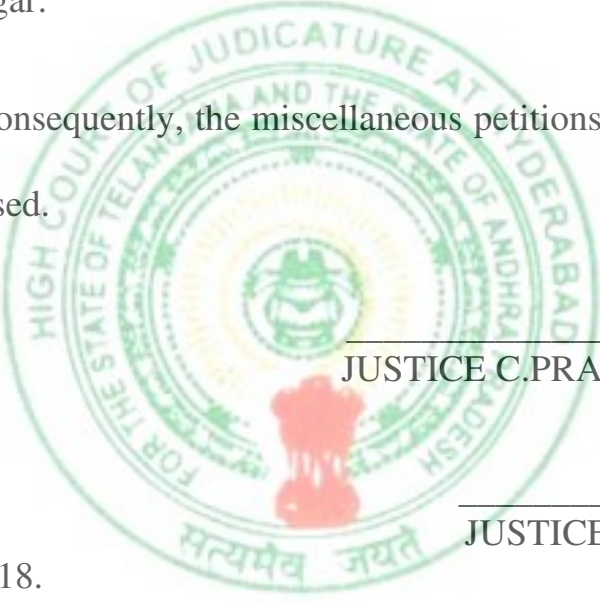
⁴(2014) 5 SCC 753

On the night of death of Shabana Begum and Nazma, the accused was in the house, hence once prosecution proved that the death of deceased was not natural, but due to homicidal violence, burden is on the appellant, who is present in the house. The accused also did not explain how his wife Shabana Begum and Nazma were died on that fateful day even during 313 Cr.P.C. examination. As already discussed above, the only suggestion to P.Ws. 1 to 4 is that Shabana Begum quarrelled with co-worker at her work place and due to that they killed her, but there is no substantive piece of evidence and all the witnesses also denied the same. The circumstantial evidence of P.Ws.1 to 6 corroborated the medical evidence of Doctor – P.W.11 who conducted autopsy over dead bodies and seizure of material objects in the presence of P.W.9 at the instance of the accused would clinchingly prove that the accused committed murder of his wife and as their daughter Nazma witnessed the incident, to screen the evidence, he also killed her by smothering, which is supported by the medical evidence. P.W.11 – Doctor deposed that the cause of death was asphyxia due to smothering and issued Ex.P14. The FSL report – Ex.P15 supports the prosecution case wherein it was stated that the origin of bloodstains on items 1, 2, 4, 5, 6 is of human and of ‘A’ group. The blood is also found on item-3 which is axe – M.O.1 herein, but the origin of blood could not be determined. M.O.1 is seized at the instance of accused and in the presence of P.W.9 by P.W.12 – Investigating Officer. Therefore, all those facts connect the accused with the offence. There is continuous and complete chain of circumstances which proved the

guilt of the accused beyond all reasonable doubt for the offence punishable under Sections 302 and 201 I.P.C. The findings of the trial court and conviction thereon are legal, valid and do not suffer from any legal infirmities warranting interference.

49. Accordingly, the Criminal Appeal fails and is dismissed confirming the conviction and sentence imposed against the appellant/accused vide judgment dated 22.3.2012 in S.C.No.767 of 2011 on the file of the IV Additional District & Sessions Judge (FTC) at Mahabubnagar.

50. Consequently, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

4th January, 2018.
skmr