

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
AND
HON'BLE JUSTICE M. GANGA RAO
+ CRIMINAL APPEAL No.758 OF 2013

% Dated 06.10.2018

Boppuri Sekhar S/o.Rangaiah

....Appellant

VERSUS

\$ The State of A.P.

... Respondent

! Counsel for Appellant : Miss R.V. Indira Kumari,
Legal Aid Counsel

^ Counsel for Respondent : Special Assistant Public
Prosecutor

< GIST:

> HEAD NOTE:

? CITATIONS:

1. AIR 1984 SC 452
2. AIR 1963 SC 2000
3. (2004) 2 ALD CrI.916 SC
4. 2016 (4) R.C.R. (Criminal) 753
5. 1999 (5) SCC 96
6. 2003 (11) SCC 271 para 12
7. APLJ 1984 (1) (HC)
8. (1914) AC 545
9. (1879) 14 Cox CC 341
10. 1995 1 ACJ (CrI.) 504
11. AIR 1976 SC 483
12. AIR 1956 SC 316
13. 1995 (1) ALT (CrI.) 510
14. 2018 (2) ALD (CrI.) 505
15. AIR 1978 SC 350

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

AND

HON'BLE JUSTICE M. GANGA RAO

CRIMINAL APPEAL No.758 OF 2013

JUDGMENT : (*Per Hon'ble Dr. Justice B. Siva Sankara Rao*)

This criminal appeal is filed by the sole accused, by name, Boppuri Sekhar, aged about 42 years against the conviction judgment of the trial Court (learned VI Additional District and Sessions Judge (Fast Track Court), Markapur, Prakasam District), dated 17.12.2012, in Sessions Case No.200 of 2011 in finding the accused guilty on the sole charge under Section 302 IPC and convicted and sentenced him to undergo life imprisonment with fine of Rs.2,000/- with default sentence of six months simple imprisonment.

2. The Sessions Case arisen out of Crime No.85 of 2010 of Dornal Police Station of Prakasham District, registered for the offence punishable under Section 302 IPC, dated 14.12.2010.

3. The sum and substance of the accusation from the report of the *de facto* complainant in registration of the crime was that she is wife of one G.John and only daughter of the accused and deceased and she is resident of Sunkesula Village and her parents are residing in the fields by raising a thatched hut at 4 kms. away to the main village Kadaparajupalli. On the previous day 13.12.2010 she came along with her husband to her parents' house to sort out the differences between them and discussed with them regarding their differences and

on the next day morning i.e., on the date of report 14.12.2010 at about 7.30 a.m. she attended to the fields for calls of nature and also her husband towards vaagu side and in the meantime on hearing cries of her mother from her mother and father were in the thatched house, she rushed there and found her father quarrelling and attacking her mother with stick and for the cries her husband also came there and intervened and accused having beat from the deceased fell down fled away and her husband on noticing the pulse declared died, they informed the same to the near relatives. It is also mentioned that the accused/father of her and husband of the deceased had motive even earlier to do away the deceased with electrocution an year back, for the differences between them for her not consenting to his marrying again to have a male child. Hence to take action.

4. It is therefrom the police having investigated by citing as many as 19 witnesses including the Three Investigating Officers of whom PW.11/LW.17 is the S.I. of police, who registered the said report as F.I.R. and the other investigation conducted by PW.12/LW.18 and LW.19, the Inspectors of Police, of whom LW.19 simply filed the charge sheet and the other witnesses examined including the *de facto* complainant who set the law in motion referred supra PW.1 as LW.1 and her husband PW.2 as LW.2 and the two sisters of the deceased PWs.3 and 4 as LWs.3 and 4, the brothers of the accused PW.5 and PW.8 as LWs.5 and 6, two brothers of the deceased PWs.6 and 7 as LWs.7 and 8, the co-sister of the deceased PW.9 as LW.9 and wife of

PW.6 besides the photographer, who photographed the scene PW.10/LW.11 along with LW.12-the mediators to the scene observation (Ex.P.8) and inquest panchanamas (Ex.P.9) and also subsequent apprehension of the accused and his discovery and seizure (Exs.P.10 and P.11) leading to discovery of M.O.1 stick identified as weapon of offence in the attack covered by M.O.1 pursuant to Ex.P.12-F.I.R. covered by Ex.P.1-signature of PW.1 in the Ex.P.13-statement of her and cause conducted by referring the dead body to autopsy through PW.13/LW.14/Dr. B.V. Subbareddy, Civil Assistant Surgeon, who issued Ex.P.19-Postmortem Report and the material objects with incriminating material sent to the R.F.S.L. and received the reports covered by Exs.P.15 to P.18 through LWs.15 and 16 including of the hyoid bone preserved. It is from that evidence and from the police final report filed, taken cognizance by the learned Committal Magistrate by allotting P.R.C.No.17 of 2011 in committing the case to the Court of Sessions, where the learned Sessions Judge pursuant to which taken cognizance under Section 193 Cr.P.C. and after securing the presence of the accused, supplied copies and after examination having taken cognizance for the offence under Section 302 IPC supra and after hearing framed the sole charge for the offence under Section 302 IPC and when read over and explained to the accused on 13.06.2012, he denied truth of said accusation and pleaded innocence and claims to be tried, therefrom put to trial. In the course of trial from the material on record covered by the police final report

supra, the witnesses were examined, of whom PW.1 did not support her version in the report given by her to the police, but for her signature/Ex.P.1 in Ex.P.13 for its registration as Ex.P.12-F.I.R. by PW.11, but for proved from the evidence of PW.11 and among other witnesses, the investigation statements confronted to PWs.1 to 3, 6, 7 and 9 are marked as Exs.P.2 to P.7. PWs.11 and 12 in their evidence proved about the scene observation and preparing of the rough sketch at the scene of offence covered by Exs.P.14 and Ex.P.8 respectively. It is from the said evidence brought on record the learned Sessions Judge having discussed the same answered the charge in finding the accused under Section 235(2) Cr.P.C. as guilty for the offence with which he was charged and sentenced to undergo imprisonment with fine and default sentence referred supra.

5. Same is now attack in the present appeal by the accused with the contentions in the grounds of appeal, dated 10.09.2013, vis-à-vis the oral submissions of the learned counsel for the appellant during course of hearing the appeal that the trial Court's conviction judgment is contrary to law, weight of evidence, probabilities of the case, trial Court failed to take note that there is no eye witness to the allegation that the accused/appellant committed the alleged murder of his wife/deceased and the trial Court failed to observe that the accused never admitted of committed any offence and in fact he pleaded not guilty and the prosecution from the evidence placed on record miserably failed to bring home the guilt of the accused beyond

reasonable doubt and the trial Court thereby erred in its conclusion of the prosecution could prove the case beyond reasonable doubt in finding him guilty for the alleged offence and thereby erred in convicting and sentenced to undergo imprisonment supra even there is no proof of the very report given by PW.1, but for her signature in her saying the police obtained her signature and she did not present the report and her father and mother were cordial and it is also defence of the accused that the deceased was having accustomed to loose life and somebody might have been killed and thereby sought for setting aside the said conviction judgment by allowing the appeal acquitting the accused, as the links in the chain from the case vested on circumstantial evidence unerringly not established by the prosecution.

6. Whereas the learned Public Prosecutor supported the trial Court's judgment by substantiating with reference to the evidence brought on record in correlating to the findings arrived by the trial Court in saying it is a well-considered judgment and once the trial Court came to a conclusion in the absence of showing any perversity or unsustainability that too having opportunity of recording evidence with fresh of facts in mind, the appellate Court cannot for any minor discrepancies reverse the conviction judgment to acquit the accused and sought for dismissal of the appeal.

7. Heard both sides at length and perused the entire material on record.

8. Before discussing the facts, this Court is conscious of the legal position as well laid down by the Three Judge Bench judgment of the Apex Court in **Abdul Razaq v. Nanhey and others**¹ that once the conviction and sentence imposed by the trial Court holding the witnesses deposed not interested and there is nothing to show any motive for false implication, setting aside the conviction by the High Court by sitting against by pointing out minor discrepancies is not proper. However, the Court cannot ignore the factum from the settled law that being the Court sitting against the conviction judgment in the first appeal entire material is at large and duty bound for re-appreciation of the entire facts afresh in arriving an independent conclusion in then comparing to the conclusions arrived by the trial Court are sustainable or not either to uphold or modify, as the case may be, with cogent reasons.

9. Before proceeding further on factual matrix, coming to the other settled legal position, the Constitution Bench of the Apex Court in **M.G.Agarwal Vs. State**² referring to Sections 3 & 60 of the Indian Evidence Act, particularly at Para 18 held that it is the well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made basis for an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent with the innocence of

¹ AIR 1984 SC 452

² AIR 1963 SC 2000

the accused, then the accused is entitled to the benefit of doubt. But in applying this principle, it is necessary to distinguish between facts, which may be called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts, there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not, and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved fact is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

10. It is also held in para 32 of the Apex Court expression in **Usman Main Vs. State of Bihar**³ that where a case is rested wholly on circumstances from which an inference of guilt is sought to be drawn it must be on the circumstances taken cumulatively, complete a chain with no escape from the conclusion and within all human probabilities of the crime was committed by the accused and none else.

³ (2004) 2 ALD CrI.916 SC

11. So far as the proof in a criminal case concerned, it is proof beyond reasonable doubt and not proof beyond doubt is well settled from the expression of the apex Court in **Yogesh Singh vs Mahabeer Singh**⁴ particularly from para 15 to 18 that the cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts.

12. So far as the benefit of doubt to apply concerned, the Apex Court in **State of Haryana Vs. Bhagirath**⁵ at paras 7 and 8 observed that the benefit of doubt giving to accused as a mater of abundant caution is not proper. The rule of proof beyond reasonable doubt is nothing but moral certainty of Judge...Benefit of doubt is not a legal dosage, to be administered at every segment or every portion of evidence or of each witness, but an advantage is to be afforded to accused at the fag end after consideration of the entire evidence, if the Judge conscientiously and reasonably entertains doubt regarding the guilt of accused. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the ranges of a reasonable doubt, of course, the expression “reasonable doubt” is incapable of definition. Modern thinking is in favour of the view that proof

⁴ 2016(4) R.C.R. (Criminal) 753

⁵ 1999 [5] SCC-96

beyond a reasonable doubt is the same as proof which affords moral certainty of the Judge. There is also caution time and again giving by the Apex Court including from the expression in **State of Punjab Vs. Karnail Singh**⁶, that exaggerated devotion to the rule of benefits of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escapes than to punish an innocent. Letting guilty escape is not doing justice according to law.

13. Taking consideration of these principles, in re-appreciation of the factual matrix in deciding the correctness or otherwise of the findings of the Court below by this Court in appeal against it, now the points that arise for consideration are:

1. Whether the death of the deceased is homicidal?
2. If so, whether the deceased died in the hands of the accused as held by the trial Court?
3. Whether the findings of the trial Court so arrived are unsustainable and requires interference by this Court either to set aside by reversing the same or to modify and with what observations?
4. To what relief?

14. All the points can be dealt with by common discussion to avoid repetition of facts with reference to law.

⁶ 2003 (11) SCC 271 para 12

15. No doubt, the report of PW.1 proved from the evidence of PW.11 covered by Ex.P.13 in registering Ex.P.12 shows she is an eye witness to the occurrence of her father attacked and killed the deceased/her mother. However, she did not support the prosecution case in her evidence including the contents of the report and its giving, but for admitted about her signature. In fact, the statement was endorsed as recorded by PW.11 and he deposed in his evidence about he recorded the said statement covered by Ex.P.13 in registration of the crime and issuing Ex.P.12-F.I.R. Though he stated about it, what the witness PW.1 stated in her evidence is on a written contents paper her signature obtained, which is admitted as Ex.P.1 and stated no knowledge of the contents about to it in the two pages. In the cross-examination by learned Spl. Assistant Public Prosecutor, but for a stray suggestion nothing could be brought from the evidence of PW.1 including with reference to her statement during investigation marked as Ex.P.2. From this, but for to say the law is set in motion under Ex.P.12 covered by Ex.P.13 with signature in the statement of PW.1 covered by Ex.P.1 the contents not proved through the evidence of PW.1. PW.2-husband of PW.1 also did not support the said prosecution version and nothing even elicited from his previous statement during investigation marked as Ex.P.3. What all if at all relevant from the said evidence of PWs.1 and 2 is, the deceased died or met with death, as the case may be, in the shed, which is in the agricultural field of the accused and deceased, while they were

residing together on morning 14.12.2000. They deposed that they are residents of Sunkesula Village, where as the deceased and accused residents in the field lie at Kadaparajupalli within some distance and it is also deposed the field where the residential shed lies is 4km. away to the main village Kadaparajupalli. Not only that what PWs.1 and 2 deposed is the relationship between deceased and accused was cordial with no disputes. No doubt, as pointed out by learned Special Assistant Public Prosecutor contrary to the very report and very prosecution case, PWs.1 and 2 in their evidence deposed about they saw the dead body in the said field having rushed on came to know of the death and saw the dead body. PW.2, no doubt, deposed further that the accused and deceased used to look after the garden. It is on death intimation they came to the garden where the hut there, which is the place of death, and saw the dead body in the agricultural field. They deposed about they do not know the cause of the death.

16. From that evidence it is not established as to deceased met with natural death or homicidal death even much less any motive if at all against accused nor anything adverse against the deceased much less of any loose life for there is no any suggestion much less by any cross-examination in this regard by the accused, but for what is brought in the cross-examination of PW.1 of accused is suffering from Asthama an anemic, particularly in winter season.

17. PWs.3 and 4, the two sisters of the deceased, of whom statement during investigation of PW.3 marked as Ex.P.4, what PW.3

deposed is the deceased is her younger sister, on death intimation of the deceased given by the accused (husband of the deceased) she rushed to Kadaparajupalli and by then the body was brought from agricultural fields to the village. She no doubt deposed categorically of the deceased was killed by somebody and she noticed injuries on her, though she did not enquire further. She further deposed that the deceased and accused used to quarrel among themselves now and then. It is for the reason the accused was insisting the deceased to give consent to had second marriage to have sons and for that reason he was usually beating her, though she does not know what happened on the date of death of the deceased supra. In the cross examination by accused, a strange suggestion is given, which is not even put to PWs.1 and 2 as to character of the deceased not good and because of that disputes between the accused and the deceased arose only on that score. She no doubt denied the said suggestion. From that suggestion even accused says there are disputes between the deceased and the accused prior to her death in his suspecting her character for not even suggested as to with whom she got any loose life if at all any basis, leave about whether it is a false defence as contended by the learned Special Assistant Public Prosecutor or otherwise, a matter of discussion here after later. She deposed that she did not hold any panchayath for the disputes between accused and deceased for any amicable settlement. Nothing more brought from her cross-examination by accused and it is not even suggested of the dead body

is with no injuries and it is not even suggested of no quarrels between accused and deceased, what more put to her mouth in the evidence is accused is an Asthama patient, though she cannot say since how long he so suffers.

18. PW.4 another sister of the deceased deposed that the accused and deceased while living in the agricultural fields were not cordial as accused was harassing the deceased by insisting for consent to undergo second marriage to have sons and the deceased was appraising her including three months back to the date of death of deceased about those disputes between the couple. She also deposed about accused planned to kill the deceased earlier by electrocution, which she could escape from the failure of power supply and what she deposed is the accused killed the deceased, which is no doubt hearsay for not an eye witness for such any enquiries come within the purview of hearsay not to give any credence of her positive assertion of accused killed the deceased, but for the motive for the accused and the deceased met with homicidal death. In the cross-examination by accused of PW.4 it is brought on record that the accused is suffering from Asthama. The deceased never visited the house of PW.4 complaining against the accused, but PW.4 was visiting the deceased now and then for the past two years and the deceased was telling about the accused even tried to kill her by electrocution earlier. It is brought unerringly from the cross-examination of PW.4 by the accused of the deceased and accused are living together till death of

the deceased. This is suffice to say even from the accused, who is no other than the husband of the deceased, brought on record in the evidence of PW.4 of the accused was in the company of the deceased till last she breathed. There is no alibi set up by him, leave about he confirmed the factum of the deceased and accused lived together till she breathed last. It is for the accused being the husband of the deceased to explain how the deceased died if not in his hands having so admitted by specifically brought in the cross-examination besides the motive is there from his suspecting her fidelity in earlier, for not even a suggestion anywhere put to PW.4 of if at all she got loose life with whom and with what basis for his suspicion. It is also suggested to PW.4 of it is because of her loose character there were disputes between them and not because of his demands for second marriage to give consent by her. She denied the suggestion.

19. Before going into further discussion, above evidence on record establishes the deceased met with homicidal death and the deceased and accused were last seen together by residing together in the same house in their field till the deceased breathed the last and there are disputes between them by suspecting her fidelity and from her refusal of consent to his undergoing a second marriage to have male issues. Even what PW.3 deposed is it is the accused that intimated of deceased met with death even PW.3 deposed the same it is not even suggested of who else he suspected of killed the deceased.

20. Coming further the evidence on record, PW.5 is the one of the brothers of the deceased along with PW.6, by name Nagaiah, deposed that on 14.12.2010 his sister Kamamma died (date of the death of the deceased) at Kadaparajupalli in the hut put up by the accused where they are staying, which is in the fields. He deposed that accused beaten her to death in the early hours on that day with axe and accused used to harass the deceased every day with a demand to allow him to go for second marriage for having male child. One month prior to that the accused tried to electrocute the deceased in their house to do away her, which she could escape from the power supply failure. He further deposed that on the date of death at about 1.00 p.m. he learnt about the death news of the deceased in the hands of accused through PW.1. It is therefrom he reached by 4.00 p.m. and saw the dead body which was lying at the hut. This witness is cross-examined by the accused in bringing on record that after marriage between the accused and deceased taken place 30 years ago PW.1 born in their wedlock 5 or 6 years later and she is now aged 26 years. It is positively brought on record of he noticed the injuries over the neck of the deceased though did not closely observe the other injuries over the entire body. He denied the suggestion of the accused is suffering from Asthama. He did not hold any panchayath for the accused harassing the deceased earlier in her lifetime. Though he visited the house of the deceased and accused after the attempt made by accused to electrocute her, but for admonished the accused, thereby

not even chosen to give report to the police against the accused. What further brought on record from his cross-examination is the character of the deceased is not good and accused was questioning her illegal activities. It is further suggested of thereby they bore grudge against the accused and deposing falsehood or accused neither harassed the deceased nor attempted to kill at any time or he is nothing to do with death of the deceased or he is falsely implicated to extract money which the accused failed to oblige thereby bore grudge.

21. From the evidence of PW.5, it is further brought on record of after birth of PW.1 in the wedlock of accused and deceased she did not conceive later and it also substantiates the deceased met with homicidal death. It was also establishes in corroboration to the evidence of in the house where the accused and deceased living together the deceased at the house met with homicidal death within their field. It is PW.1 according to him that stated about the accused killed the deceased. It is at about 1.00 p.m. PW.1 informed him on that day. Ex.P.12-F.I.R. was at 2.00 p.m. of the occurrence at 7.30 a.m. on 14.12.2010. It clearly shows before PW.1's reporting to the police by Ex.P.1 signature so-called Ex.P.13 report covered by Ex.P.12-F.I.R., she passed on the information to PW.5/brother of the deceased about accused killed her mother.

22. The expression of Division Bench of this Court in **Bandela Nagaraju and others v. State of A.P.**⁷ speaks with reference to illustration (a) of Section 6 of the Evidence Act that a declaration made by a witness subsequent to the occurrence is admissible under Section 6 of the Act provided it can be validly assumed that the existing influence continued. While examining whether the declaration is connected with the fact in issue so as to form part of the same transaction, all the surrounding circumstances obtaining in each case have to be taken into consideration. In that case it was observed that the conduct of D in not immediately rushing to the Police Station does not give room for the assumption that his declaration was not contemporaneous or that the interval was such as to allow fabrication. The conditions for admissibility of such a statement relevant are the proximity of time and the proximity of the police station and continuity of action. The statement contained in Ex.P.1 thereby held satisfies the requirements of Section 6 of the Evidence Act and it is admissible, for that conclusion referred to **Rex v. Christie**⁸, where it is laid down categorically that there cannot be any fixed limit of time and each case must depend upon its own facts and circumstances and a circumstance subsequent to the act may be admissible if it is a part of it and not a mere report of the past occurrence. The expression in Christie supra referred the earlier expression of House of Lords in

⁷ APLJ 1984 (1) (HC)

⁸ (1914) AC 545

Bedingfield⁹ case that was referred in **Wigmore's Treatise's** in 3rd edition Volume VI page 1756 and also **Sarkar's** evidence 13th edition page 69. The same was reiterated and confirmed the conclusion though differed on facts by another Division Bench judgment in **Daravath Kishen v. The State**¹⁰ particularly para 10.

23. Here there is some force in what the learned Special Assistant Public Prosecutor says with reference to it of PW.1's statement comes within the purview of Section 6 of the Evidence Act not only in the report but also what she stated to PW.5 of the occurrence, leave about the accused himself stated PW.3 about the deceased met with homicidal death even before.

24. PW.8, another brother of the deceased, by name Chilaka Pedda Kashaiah, deposed that after birth of PW.1, there was a tumor formed in the stomach (uterus) of the deceased and the same was removed by operation and doctors told by then itself of no possibility to conceive further by the deceased, on that account and since then the accused started harassing the deceased and forcing her to give consent for second marriage to have male children and the deceased did not agree, therefrom he was beating and ill-treating many a time and he also conducted a panchayath and it is ultimately accused killed the deceased in his hut at their field at Kadaparajupalli. He deposed that it is on the telephonic message of PW.1, he rushed to Kadaparajupalli

⁹ (1879) 14 Cox CC 341

¹⁰ 1995 1 ACJ (Crl.) 504

and saw the dead body in the hut of the accused and deceased. So far as this aspect concerned, PW.1 not only informed PW.5, but also PW.8, the two brothers of the deceased, about accused killed the deceased, for their rushing there and in so stating. His evidence also says accused and deceased lived together till the deceased died in the hut in their filed at Kadaparajupally. He further stated incorroboration to what is the cross-examination evidence of PW.5 brought by accused of after birth of PW.1 no children born further in the wedlock of the accused and deceased and the reason what PW.8 deposed is a tumor was formed and it was removed from the stomach. The Postmortem report of PW.3-Doctor clearly says the uterus of the deceased was already removed and not there. It co-relates and substantiates from the evidence of the witnesses discussed supra of the motive for the accused right from removal of the uterus of the deceased for formation of tumor 25 years back from his insisting to permit by deceased for his undergoing a second marriage under the guise of having male children and from her refusal in altercating and beating. There is a motive to the accused substantiated therefrom. It is further substantiated in corroboration to the other evidence discussed supra from what PW.8 further deposed of accused earlier tried to electrocute the deceased, but for saved by power cut. In his cross-examination by accused what he deposed is he was visiting the house of the accused and deceased and enquiring about the welfare of the deceased even earlier and earlier he did not notice any external

injuries on the deceased prior to the occurrence. For the earlier harassment by accused he did not give any police report what he stated is it is at request of the deceased he did not choose to report to police as she stated she can take care of herself in the hands of the accused. He could not give the details where the deceased underwent operation for tumor, however the fact is proved medically from the postmortem report discussed supra to substantiate his evidence and nothing to belie therefrom his credibility. He denied the suggestion of the deceased was hale and healthy till her death with no such operation or the version of not possible to conceive second time. He also denied the suggestion of accused suffering from Asthama since long time. He also denied the suggestion of deceased's character was not good or therefrom some body might have killed from out of her intimacies or he is nothing to do with her death or the alleged motive of he eliminated to have second marriage or she is deposing falsehood or his brothers and sisters and himself colluded even such a suggestion of there is collusion is in correct from what is discussed supra from the tenor of evidence of PWs.3 to 6 for PWs.3 and 4 not even supported the prosecution version, but of accused had there been any collusion it could otherwise be. There by the witnesses versions are credible particularly of PWs.5 and 8 in all respects for nothing could be discredited.

25. Now coming to the evidence of PWs.6 and 7, the two brothers of the accused and PW.9 one of the brother's wife of the accused,

what PW.9 stated is she was not even in the Kadparajupalli on the date of death of the deceased. Nothing could be brought in the cross-examination by Public Prosecutor or by the accused either in favour of the prosecution or accused and among PWs.6 and 7 even PW.6 deposed accused and deceased staying in the hut in their agricultural field what he deposed is they lived happily and he does not know any reason for her death and how taken place and nothing could be brought in his cross-examination in either way so also from PW.7, but for marking the statement of PW.9, 6 and 7 recorded during investigation as Exs.P.7, 5 and 6.

26. From this evidence so far the chain of circumstances concerned at the cost of repetition of what is the evidence discussed supra, the accused and deceased lived together and it is not even the case of the accused he was not in the house and deceased was killed in the house and the dead body was at the hut that is proved with injuries to say she met with homicidal death and once it is not the alibi of accused of he was not in the house and he has to explain how his wife in his company met with death. Even to his suggestions strangely and inconsistently referred supra of deceased was having a loose life and somebody might have killed what prevented him to report to the police immediately after the occurrence at 7.30 a.m. If at all she was killed by somebody in his house either in his presence or when he went to calls of nature or otherwise and as to whom he suspects if at all. It clearly shows it is his false plea set up as if the deceased was

having a loose life, though there is a motive established to him to eliminate the deceased or to harm the deceased because he was planning since long time to have second marriage from the factum of deceased's uterus was removed by operation 25 years back and there is no possibility of her conceiving or in cooperating to his free sexual life. Once this evidence clearly establishes from the chain of circumstances unerringly of accused alone and none else, for the burden is on the accused not only under Section 105 of the Indian Evidence Act, but also under Section 106 of the Indian Evidence Act of facts exclusively within his knowledge as to how while the deceased was living in his company met with death in the hands of any third person, for which there is no even a basis with any stray suggestion to improbabilise his complicity, the only conclusion that can be drawn from the unerring circumstances pointed supra is that accused killed the deceased, coupled with there is evidence of scene observation with rough sketch referred supra confirmed from the evidence of PW.11 as part of investigation of the place of the dead body and its location, which is at the house of the accused and deceased, the deceased met with death and further there is a disclosure statement of accused about his concealment of the stick he stated used in the occurrence, though the other facts are not admissible the state of mind is relevant as a fact discovered under Section 27 of the Evidence Act as laid down by the Apex Court in **Mohmed Inayatullah vs The**

State of Maharashtra¹¹ where it is laid down that four conditions are necessary viz., discovery of a relevant fact in consequence of the information received from accused, the discovery must be deposed to, at the time of receipt of information accused must be in police custody and only 'so much of the information' as relates distinctly to the fact discovered is admissible and rest is inadmissible.

27. Here undisputedly at the time of his disclosure he was in police custody having been apprehended in the presence of the two mediators LW.12 and PW.10 deposed by PW.10 covered by the arrest panchanama and disclosure-cum-discovery panchanama of the stick in question which is within his exclusive knowledge as to where he concealed. No doubt, as can be seen from Ex.P.17 to P.19 of the F.S.L. report, leave about hyoid bone not fractured from one of the opinions received, the other is regarding blood stains. The M.O.1 is the said stick seized from the disclosure made by accused where he concealed as a fact discovered from his handing over by picking out not contained blood stains.

28. A perusal of the record shows including from the P.M.E. report, the deceased died mainly of strangulation with injuries on the neck and the possibility even from the cross-examination by accused deposed by PW.13 of use of the stick M.O.1 is possible if pressed with it on the neck those injuries and the death from asphyxia out of said strangulation. Once that possibility is there, it need not contain

¹¹ AIR 1976 SC 483

any blood stains, thereby what is the contention of the learned counsel for the accused of M.O.1 does not contain blood stains from the F.S.L. report in the factual matrix is insignificant and academic.

29. Having regard to the above, once the prosecution evidence unerringly shows it is the accused alone and none else that killed the deceased while she was in his company, being the husband, there is nothing to interfere with the finding of the trial Court of the accused is guilty on the sole charge of he killed the deceased. As in similar facts rightly concluded by a Division Bench of Karnataka High Court referring to several expressions of the Apex Court including **Eradu and others v. State of Hyderabad**¹² and **Ramesh v. State of Karanataka**¹³ of where the deceased and accused last seen and accused failed to explain and on their converse raised a false defence as if some other persons might have murdered the deceased when the circumstances brought on record lead to only conclusion that accused alone committed the murder of the deceased and attempted to cause disappearance of evidence by setting fire to body of deceased confirmed the conviction.

30. Now coming to the contention of the learned counsel for the accused/appellant on the finding for the offence under Section 302 IPC and the alternatively saying at best it attracts the offence under Section 304 Part-I (intention) or Part-II (knowledge) of the culpable

¹² AIR 1956 SC 316

¹³ 1995 (1) ALT (Crl.) 510

homicide has not amounting to murder within the meaning of Section 300 IPC to attract Section 302 IPC, but falls under the exceptions coupled with Sections 299 and 304 IPC.

31. There is no doubt some force in the contention including from the evidence on record more particularly from the submission of the learned counsel for the accused that for the past 25 years the deceased not conceived her uterus was removed from the evidence on record, accused consciously knows that she cannot conceive, he was pestering to undergo second marriage for her consent to his undergoing she was refusing and he was beating and ill-treating, however although he did not choose to kill. It might not be his brutal premeditated murder, but for if at all even considering the statement of PW.1 covered by Ex.P.13 in registration of Ex.P.12 from her signature under Ex.P.1 says on the previous night she and her husband came to settle scores between the accused and deceased and they discussed with them and went in sleep on the previous night 13.12.2010 and after morning she and her husband went to different places one to the field and her husband towards a water creek to the calls of nature and in between there are cries heard from the deceased and she rushed where she saw accused attacking with stick the deceased and her husband also there and the accused attacked and fled away. It shows a sudden fight not out of any act out of grave and sudden provocation but a sudden fight within the exception No.4 of Section 300 I.P.C.. That conclusion can be possible even from the latest Two Judge Bench expression of the

Apex Court in **Gurwinder Singh @ Sonu v. State of Punjab and another**¹⁴, which refers to other expressions in this regard so also from the settled expression on the scope of Section 300 I.P.C. Exception (4) of the Apex Court in **State of Andhra Pradesh v. Wazeer Chand**¹⁵ Taking into consideration of these facts, the conviction judgment of the trial Court while modifying the sentence under Section 302 IPC to 304-I I.P.C. read with 300 exception (4) I.P.C., by sentencing life imprisonment with fine of Rs.2,000/- with default sentence of six months simple imprisonment to imprisonment for 10 years and by confirming the said fine with default sentence.

32. Accordingly and in the result, the criminal appeal is allowed in part.

Miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

M. GANGA RAO, J

6th October 2018.

mar

L.R. copy to be marked – Yes.

¹⁴ 2018 (2) ALD (Crl.) 505

¹⁵ AIR 1978 SC 350