

THE HONOURABLE SRI JUSTICE M. SEETHARAMA MURTI

AND

THE HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU

Criminal Appeal no.471 of 2013

JUDGMENT

(per Hon'ble Sri Justice M. Seetharama Murti)

In this appeal under Section 374(2) CrPC, the appellant/sole accused impugned the judgment, dated 08.02.2013, of the learned XI Additional Sessions Judge (Fast Track Court), Guntur, Tenali, passed in S.C.No.268 of 2012. By the said judgment, the learned Additional Sessions Judge found the accused guilty of the offences punishable under Sections 302 and 201 IPC and sentenced him to undergo imprisonment for life for the offence punishable under Section 302 IPC and simple imprisonment for three years for the offence punishable under Section 201 IPC and pay fines respectively of Rs.1,000/- and Rs.500/- and undergo simple imprisonments for three months and one month respectively in default thereof. The learned Judge of the trial Court directed that the substantive sentences and default sentences under the said two counts shall run concurrently & consecutively and had also extended the benefit of set off to the accused under Section 428 of CrPC.

2. We have heard the submissions of Ms. Hema Jaiswal, learned counsel on legal aid, appearing for the appellant-accused, and Sri R. Chandra Reddy, learned Additional Public Prosecutor appearing for the respondent/ State. We have perused the material on record.

3. The learned Additional Sessions Judge framed the following charges against the accused:

'FIRSTLY: that you on 21.10.2011 in the turmeric fields of Yepuri Sddahaih (LW13) at a distance of ½ furlong from CCL factory killed Hiramani Bisoi @Geetha Mohanthi, your wife by stabbing with a knife on below of throat, over her face and temporal region and strangled

her with the tape of the petty coat till her death had committed murder knowingly or intentionally causing the death of Hiramani Bisoi @ Geetha Mohanthi and there thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.

SECONDLY: that on the same day, on the same place mentioned in charge No.1 you committed murder of your wife Hiramani Bisoi @ Geetha Mohanthi and removed the clothes of the Hiramani Bisoi (deceased) and keep the dead body in the canal and secreted the clothes of Hiramani Bisoi (deceased) and knife in the bushes located at the culvert at Western side of Railway crossing at Manchikalapudi village, knowing or having reason to believe that the offence of murder punishable with death or the imprisonment has been committed, caused certain evidence connected with the said offence with intention in order to screen the evidence from legal punishment and thereby committed an offence punishable under Section 201 of Indian Penal Code and within my cognizance.”

[Reproduced verbatim]

Accused pleaded not guilty and claimed to be tried.

4. At trial, the prosecution examined PWs 1 to 17 and exhibited P1 to P11 and marked MOs 1 to 17. No oral evidence was adduced on the side of the defence. However, exhibits D1 & D2 were marked.

5. The case of the prosecution and gist of the evidence, which was adduced to bring home the guilt of the accused, which need a detailed examination, are as follows:

At the behest of the police and PW14 - the VRO of the village, PW7 – P. Kiran Kumar, who is working as Revenue Assistant from the year 1994 and is a resident of Duggirala village, went to the South of CCL factory, on 23.10.2011, at about 03:00 PM or 04:00 PM. By that time one Namburi Raja Rao – LW8 was also present there. During that night, he and the said Raja Rao guarded the dead body that was noticed in the irrigation canal. PW1 – Kola Appa Rao, who is resident of Manchikalapudi village, Duggirala Mandal, is

working as a casual labourer in CCL factory for the last two years prior to his testimony before the trial Court on 18.10.2012. He knows the accused – Jith Mohanti, his wife - Heeramani Bisoi @ Geetha Mohanti, the deceased, and their daughter – Barsa Mohanti – PW4, who also worked in the said CCL factory. He also knows LW2 – Nakka Ramana, PW2 – Masthan Khan @ Khan, PW3 – Yarlagadda Malleswari and Lokam Nageswaramma - PW5, who are all working in the said factory. About one year prior to his testimony before the trial Court, that is, on 24.10.2011, the accused informed him and LW2 – Nakka Ramana that his wife, the deceased, was missing. On that, he, the accused and LW2 – Nakka Ramana went in search of the deceased. When they reached a place near the irrigation canal by the side of turmeric fields, they sensed foul smell and also noticed that the field at that place was trampled upon. They further found a single chappal – MO1, which was identified by the accused as belonging to his wife. He has also seen the upper arm of a body in the drain/ canal. He (PW1) then questioned the accused as to how the deceased's chappal came to be there. Then the accused told him and LW2-Nakka Ramana that the dead body is that of his wife, the deceased. The people present in the neighbouring fields gathered at that place. On PW1 severely questioning the accused, he confessed to PW1 that he had committed murder of his wife. On further questioning by PW1 about the cause for the murder, the accused told PW1 that there was a love affair between his daughter – PW4 and one Chakravarthi and that the same was not to the liking of his wife, the deceased, though he (the accused) and his said daughter are in favour of the love affair. The accused further informed PW1 that he killed his wife two days prior to that date, while returning from Duggirala. On seeing the police coming to that place, the accused escaped from the scene. PW9, the police constable, who was by then working in Tenali Taluku police station, also came to the turmeric field of Yepuri Sddhaiah – PW11. PW9 drafted the report – exhibit P1, incorporating the facts that occurred on that day as furnished and narrated by PW1. The said

exhibit P1 was signed by PW1 and was attested by LW2 –Nakka Ramana. In the meanwhile, PW17, the then Inspector of Police rushed to the scene, which is located in the fields, situate to the Southern side of the CCL factory, after having been informed on telephone, on 24.10.2011, by the Sub-Inspector of Duggirala Police station that a dead body was traced in the canal by the side of the fields. PW17 informed the said fact to his superiors and clues team. He obtained exhibit P1-report from PW1 and endorsed the same to the SHO, Duggirala Police Station. At about 11:00 AM, on 24.10.2011, that is, the same day, PW1 went to Duggirala police station and gave the said exhibit P1-report to PW16, the then Sub-Inspector of Police of that police station. Based on the said report, PW16 registered the case in Crime no.158 of 2011 for the offences punishable under Sections 302 & 201 IPC and issued exhibit P8 – FIR and forwarded the report and the FIR to the Court of the learned Additional Judicial Magistrate of First Class, Tenali. After the registration of the crime, a copy of the FIR was sent to PW17, who arrived at the scene, for investigation. By that time, the police party, VRO –PW14, LW8 –Namburi Raja Rao and others were present at the scene. Thereafter, PW7 and LW8 – Namburi Raja Rao pulled out the body of the deceased from out of the irrigation canal. The dead body was partly putrefied. PW1 and others found a belt of petticoat tied around the neck of the dead body and also injuries on its neck & face and that there are no clothes over the dead body. Workers from CCL factory came and examined the dead body of the deceased. PW4 –the daughter of the accused & the deceased also worked in the CCL factory. PW4 and her parents, that is, the accused and the deceased, used to stay in a rented house of PW6 –Lokam Purnachandra Rao. One Chakravarthy also worked in the said factory. The accused favoured the marriage of his daughter-PW4, with the said Chakravarthy as they are having a love affair; but the deceased, who is the mother of PW4, was not interested in her marriage with the said Chakravarthy; prior to the incident, the said Chakravarthy visited house of the accused on two or three

occasions; the family of the accused and Chakravarthy once went to Tirupathi. On 21.10.2011, she (PW4) went to attend duty. On that day, her mother-the deceased, was not doing well. There was a quarrel between the deceased and the accused. PW4 returned from duty at 10:30 PM. She questioned LW2 – Nakka Ramana and others about the absence of her mother. Her father, the accused, informed her that he killed her mother. Later, she went to the scene of offence and identified MO1 at the time of her examination by the police. On 24.10.2011, during the course of investigation, PW17 secured the presence of PW14 – VRO, LW19 – Gudibandi Raja Rami Reddy and observed the scene of offence in their presence and prepared exhibit P9 – the scene of offence observation report. He also secured the presence of PW8 – the photographer and got the scene and the dead body photographed and videographed vide exhibit P2 – bunch of photographs and CD. He further prepared rough sketch of scene of offence, the carbon copy of which is exhibit P10. In the presence of the said witnesses, he seized MO12 – blood stained earth, MO11 – control earth, MO14 – blood stained turmeric leaves, MO13 – control turmeric leaves, MO10 – black colour hair, MO8 – broken golden bangle pieces, MO9 – gold colour ear hanging, MO17 – blouse hook & safety pin, MO16 – blood stained Rs.20/- note, MO15 – two shirt buttons, MO7 – one pair of male chappals, MO1 – rose colour PU sole chappal, under the cover of exhibit P4 – mediator's report, which was signed by the said witnesses. Afterwards, he observed the dead body which was lifted from the canal with the help of LW8 – Raja Rao and PW7 – P. Kiran Kumar and found one cut injury below throat, one injury above the said injury, one cut injury below left temple, one cut injury measuring $\frac{1}{4}$ inch on the left side of forehead, one cut injury measuring $\frac{3}{4}$ inch at the left eyebrow, one small cut injury over forehead, one cut injury measuring $\frac{1}{2}$ inch between nose and right eyebrow, three small cut injuries over the right side of forehead, a cut injury measuring $\frac{1}{4} \times 1$ inch over right eyebrow, a cut injury over back side of left elbow and also a tape of petticoat tied around the neck of the dead

body of the deceased. He noted that there are no clothes on the dead body and that there was one gold colour ear ring present on the right ear besides two toe rings on both the toes on the dead body. He held inquest over the dead body of the deceased between 12:30 PM and 02:30 PM in the presence of PW14 – VRO, LW18 – Lam Chinnari, LW19 – G. Raja Rami Reddy and prepared exhibit P6 – inquest report and obtained the signatures of the inquest panchas on the said report. At that time he examined PWs 1 to 4 and LW2 – Ramana and recorded their statements. Statement of PW4 was also recorded by him with the help of PW1 and on his translation of the statement of PW4 given in Oriya to Telugu. After completion of inquest, he requisitioned the District Hospital, Tenali, to conduct post mortem examination of the dead body at the spot. PW15 – Civil Assistant Surgeon, Tenali, accordingly conducted post mortem examination over the dead body of the deceased, on 24.10.2011 between 04:00 PM and 06:00 PM, in the fields near CCL factory, Duggirala, and furnished exhibit P7 – post mortem examination report with the following observations:

“The female dead body was lying on its back. Arms were close to the chest. Mouth partially opened. Tongue was between the teeth. The body was well built and well nourished. Rigor mortis had passed off in all four limbs. The body was decomposing.

Following Ante mortem injuries found on external examination:

1. A ligature mark 20 cm x 10 cm extending from left mastoid bone to front of neck and extending upto right mastoid bone.
2. An incised injury of 1 ½ cm / ½ cm / muscle deep, below injury number 1.
3. An incised injury of 1 ½ cm x ½ cm muscle deep, on sternal notch.
4. An incised injury of 3 cm x 1 cm bone deep on left side of forehead.
5. An incised injury of 1 cm x ¼ cm x skin deep on left side of nose.
6. Punctured injuries 5 in number on right side of forehead.
7. An incised injury of 1 cm x ½ cm / muscle deep on right side of nose.
8. An incised of 2 cm x 2 cm on left temporal region.
9. An incised injury of 1 cm x ½ cm bone deep on right elbow.
10. An incised injury of 2 cm x 1 cm muscle deep on left side of chest.

11. A contusion of 2 cm x 2 cm on right side of occipital region.

Injuries found on internal examination: Neck muscles contused. Hyoid bone: fractured on left side. Brain: Liquified; Skull bone: No fractures seen. Chest: No evidence of fracture of ribs. Both lungs were congested. Heart: Normal, chambers empty. Abdomen: Stomach contained 400 ml of partially digested food particles in water. All the abdominal organs were congested. Genital organs: Normal. Spinal cord is intact.”

In the said PME report, PW15 opined that the cause of death was – ‘shock due to multiple injuries and asphyxia due to strangulation’ and stated that the deceased died within three to four days prior to post mortem examination. During the course of further investigation, PW17 examined LW8 – N. Raja Rao, PWs5 to 9 and recorded their statements. On 27.10.2011, on receipt of information, PW17 secured the presence of PW14 – VRO, LW19 – G. Raja Rami Reddy and PW10 – Nimmana Yadava Rao and proceeded along with them and his staff to Kantamraju Konduru. When they reached a place between Manchikalapudi and Kantamraju Konduru, the accused was identified; he was interrogated; on his confessional statement in the presence of mediators, which was translated by PW10 from Oriya language to Telugu, he seized MO2 – shirt without two buttons from the person of the accused under the cover of exhibit P3, which is a portion of the confessional statement. PW17 arrested the accused at about 08:30 AM; the accused pursuant to his confession, lead the PW17 and others present to a culvert nearer to Manchikalapudi Railway gate; having showed the bushes at that place, the accused produced blood stained blue colour cotton blouse without two hooks – MO4, faded yellow colour petticoat stained with blood – MO5, blood stained blue colour sarree – MO6 and a knife – MO3. The same were seized by PW17 under the cover of exhibit P4 – mediators’ report. He took the accused to the police station at about 10:00 AM and sent him to the Court concerned for obtaining orders of judicial remand. He examined PW10 at the police station and PW1, on 17.11.2011, and PWs12, 13 and LW16 – Sddaiah Naidu, on 18.11.2011, after securing their presence and

recorded their statements. He filed a requisition before the Court of the learned Magistrate (committal Court) for recording the statement of PW4 under Section 164 CrPC. He forwarded the material objects to Regional Forensic Science Laboratory, Guntur. Exhibit P11 report was furnished by the RFSL stating that blood was detected on items 1,3,6,7,8,9 and 10 and that blood stains on items 1,6,7,8,9, and 10 are of human origin and that the origin of the blood stain on item 3 could not be determined and that blood is not detected on items 2,4 & 5. He filed the charge sheet before the Court of the learned Judicial Magistrate of First Class after receiving the RFSL report – exhibit P11 and PME report – exhibit P7.

6. To complete the narration of the evidence, it is necessary to now make a passing reference to the other and further evidence on record.

PW2 – Mastan Khan @Khan, a labour contractor for CCL factory, deposed that two days prior to the incident, he was informed by the accused that his wife-the deceased, was not doing well and that subsequently, that is, two or three days thereafter, he came to know about the death of the deceased and that he was present at the time of inquest. PW3 – Y. Malleswari, who worked as a casual labourer in CCL factory for one week, deposed that she accosted the deceased at the railway gate while the accused was talking to PW2; three days thereafter, she came to know that the deceased was missing and subsequently about the death of the deceased. PW5 is the owner of the house in which the accused and his family resided as tenants about two months prior to the incident of death of the deceased. According to his version, on 21.10.2011, the accused, his wife and daughter went to the factory for work; the accused and his wife returned home at about 03:00 or 04:00 PM; they took bath, washed their clothes and later went out; PW4, the daughter of the accused, and LW2 – Ramana questioned him about the missing of the deceased and he told them about the above said facts; his son went along with them in

search of the deceased, who was missing; subsequently, he came to know that her dead body was found. PW6 is the son of PW5. According to his version, the accused, his wife and his daughter –PW4 resided in their house as tenants; they all worked in CCL factory; the accused questioned his daughter about the missing of his wife; the accused stated that after duty he went to Tenali and enquired as to whether his wife returned or not; they searched at the railway station, bus stand and other places for the wife of the accused; but, could not find her; subsequently he came to know about the death of the deceased and saw the dead body. PW9 is a constable who, as already noted, scribed the exhibit P1 report to the narration of PW1; and, he later assisted the Inspector of Police in the course of investigation. PW10 was a casual labourer in CCL factory. According to his version, he was summoned on 27.10.2011 at about 07:00 AM by the police; he along with VRO-PW14 and others accompanied the police and identified the accused and figured as a mediator at the time of apprehension of the accused and seizure of material objects under the cover of exhibit P3 and the recovery of MOs 3 to 6 under the cover of exhibit P4- mediators' report after the arrest of the accused and pursuant to the confessional/ disclosure statement made by the accused. PW11 is the owner of the agricultural lands with turmeric crop near the irrigation canal with wild growth where the dead body of the deceased person was noticed. PW12 is the Time Officer of CCL factory. According to him, he knows the accused and the deceased, who worked as casual labourers in the CCL factory and also one Chakravarthy, who also worked as casual labourer, who was having acquaintance with PW4, the daughter of the deceased & the accused. He deposed that Chakravarthy left the job in the factory after the incident. PW13, who is also a worker in CCL factory, was a co-tenant of the said Chakravarthy in a house portion besides State Bank of India, Duggirala. According to his version, he knows the accused, the deceased, and their daughter-PW4, who all worked in CCL factory. He did not support the case of

the prosecution. PW14-VRO deposed that, on the request of PW17-the Investigating Officer, he acted as a panch witness at the time of inquest on the dead body of the deceased and the seizure of MOs 7 to 17 at the scene of offence by the investigating officer under the cover of exhibit P6-inquest report. He further deposed that he figured as a mediator at the time of apprehension of the accused and seizure of the material objects under exhibit P3 and at the time of the recovery of the material objects and the seizure of same under P4-mediators' report after the arrest of the accused and pursuant to the confessional/ disclosure statement made by the accused.

7. Placing reliance on the evidence that was brought on record, learned Addl., Public Prosecutor contended that the above evidence brought on record proved the guilt of the accused to the hilt and beyond reasonable doubt for the offences with which he was charged.

8. However, learned counsel for the accused contended that there are admittedly no eye witnesses to the alleged incident of murder and that none of the witnesses saw the accused committing any overt acts linked to the alleged murder and that there is no evidence much less incriminating evidence against the accused and that the prosecution miserably failed to prove the guilt of the accused as required under law and hence, the Accused is entitled to a clean acquittal and that even otherwise, in the facts and circumstances of the case, the accused is entitled to a reasonable benefit of doubt and is, therefore, entitled to be acquitted.

9. To begin with, it is to be first seen as to whether there is sufficient evidence to find that the deceased met with a homicidal death. In deed, the defence is not disputing that the deceased met with a homicidal death. The only submission of the accused is that he is not the person responsible for the death of the deceased. The contents of the post mortem report-exhibit P7, the opinion of the Civil Assistant Surgeon-PW15 in his said report and his evidence

coupled with the evidence adverted supra lay bare that the death of the deceased is unnatural and that the cause of death is shock due to multiple injuries and asphyxia due to strangulation. Therefore, it can safely be concluded that the deceased met with a homicidal death.

10. The next question is - 'whether the accused was responsible for the homicidal death of the deceased? And, if so, whether the accused committed her murder?

11. Before proceeding further, it is necessary to sum up the evidence on which the prosecution relies upon to prove the guilt of the accused.

The accused and the deceased are man and wife. PW4 is their daughter. They all worked as casual labourers in CCL factory. PW4 had a love affair with one Chakravarthy, who also worked in the said factory. Her father was in favour of her marriage with the said Chakravarthy, however, the deceased was against her daughter's marriage with the said Chakravarthy. The deceased was missing since after the evening hours of 21.10.2011. On 23.10.2011, a dead body was noticed in the irrigation canal filled with wild growth, near the turmeric fields. At the instance of the police and VRO, PW7 and LW8 – Raja Rao guarded the dead body on that night. On 24.10.2011, the accused approached PW1, who was also working in the CCL factory, & LW2 – Ramana and informed them that his wife, the deceased, was missing. All the three of them went in search of the deceased. On reaching the canal by the side of turmeric fields they sensed foul smell. They also noticed that the field at that place was trampled upon. They found a single chappal-MO1 at that place; it was identified by the accused as that of his wife-the deceased. PW1 also found an upper arm of a body in the drain/canal. On that PW1 questioned the accused as to how the deceased's chappal came to be there. Then the accused told them that the dead body is that of his wife. On severe questioning by PW1, the accused confessed to PW1 that he committed the murder of his wife

for the reason that she was against the love affair between his daughter-PW4 and Chakravarthy. PW9-the police constable, who came to the scene, drafted exhibit P1 report on the information furnished by PW1. PW17-the Inspector of Police came to the scene on receiving telephonic information from the Sub-inspector that a dead body was found in the irrigation canal. PW1 took exhibit P1 report to Duggirala police station and gave it to PW16-the SHO of the said Police Station. On its basis, a crime was registered and exhibit P8-FIR was issued. A copy of the FIR was sent to PW17 by the SHO. Since the accused escaped from the scene on seeing the police, the investigating officer having taken up investigation secured the presence of PW14-VRO and others and prepared exhibit P9-scene of offence observation report; got taken photographs and got video-graphed the scene vide exhibit P2 –photographs and CD, through PW8; he also prepared the rough sketch of scene of offence under the original of exhibit P10 and seized the material objects-MO1, MOs 7 to 17, under the cover of exhibit P4-mediators' report; having got taken out the dead body from the canal, he conducted inquest over the dead body of the deceased and prepared exhibit P6-inquest panchanama in the presence of PW8 and other inquestdars; he noted therein, the details of injuries found on the dead body; on his requisition, PW15 conducted PM examination and furnished exhibit P7-Post Mortem Examination report showing the details of injuries and opining that the cause of death was –‘shock, due to multiple injuries and asphyxia due to strangulation and that the deceased died three to four days prior to PM examination’. Later, PW17 apprehended the accused, on 27.10.2011, in the presence of PW14, PW10 and others; and, seized shirt without two buttons – MO2 from the person of the accused under cover of exhibit P3 and then effected the arrest of the accused; PW17 also seized MO3 –knife and other MOs 4 to 6 under the cover of exhibit P4-mediators' report pursuant to the confessional/ disclosure statement of the accused and on the accused producing the same from a culvert near Manchikalapudi railway gate after leading the

police party to the said culvert. On receiving exhibit P11 report from the FSL and exhibit P7-Post Mortem Examination report from PW15 and on completion of investigation, PW17 laid the charge sheet with his opinion.

12. Now the question is as to whether the above evidence brought on record sufficiently and beyond reasonable doubt established the guilt of the accused for the offences with which he was charged? And, if so, the accused is liable to be punished for the offences with which he was charged? It is also to be examined as to whether, in the light of the following contentions urged by the accused, the accused is entitled to a clean acquittal or alternatively for extension of a reasonable benefit of doubt and sequential acquittal.

13. Hence, it is necessary to now deal with the contentions of the accused and examine other relevant aspects.

Firstly: The first line of defence is as under: "There are no eyewitnesses to the incident of murder. The evidence does not reflect even sufficient circumstantial evidence establishing the complicity of the accused. The accused did not make any confession to PW1. Further, the version related to recoveries including recovery of MO3-knife was introduced to falsely implicate the accused in the case." Dealing with these contentions, it is to be noted that as rightly contended, there is no direct evidence for the incident of murder. The case is based on the extra judicial confessions said to have been made by the accused to PW1 and his daughter-PW4. The relevant evidence of PW1 is already adverted to supra while culling out the entire evidence adduced by the prosecution. Nonetheless, since the said evidence assumes importance, it is necessary to restate the same as follows: - 'PW1 deposed that, on 24.10.2011, the accused informed him and LW2 – Nakka Ramana that the deceased, that is, the wife of the accused, was missing. On that, he, the accused and Nakka Ramana went in search of the deceased; when they reached a place near the canal by the side of turmeric fields, they sensed foul smell; they also found

that the field at that place was trampled upon; they found a single chappal – MO1 at that place; the same was identified by the accused as that of his wife; PW1 also found an upper arm of a body in the drain/ canal; on that, he (PW1) questioned the accused as to how MO1-the deceased's chappal came to be there; then the accused told them that the dead body is that of his wife; the people present in the neighbouring fields gathered at that place; PW1 severely questioned the accused; on that he confessed to PW1 that he had committed murder of his wife; on further questioning about the cause for the murder, the accused told PW1 that there was a love affair between his daughter – PW4 and one Chakravarthi and that the same was not liked by the deceased though he (the accused) and his said daughter are in favour of the love affair; the accused further informed PW1 that he killed his wife two days prior to that date, while returning from Duggirala.' This witness aged 40 years is a colleague casual labourer of the accused, the deceased and their daughter. He has no reason to speak against the accused. In-fact, in his cross examination, no motive was attributed to him. By the time the dead body was first noticed in the canal, only an arm/ hand of the body was visible. According to the evidence on record and the version of PW1, the dead body was facing downwards in the drain/ canal filled with wild growth; and PW1 did not identify the dead body in the first instance; but, the accused told him, even without seeing the face of the dead body, that it is of his wife and also identified MO1- chappal, found at the scene, as that of his wife. PW1 categorically deposed that to his dictation, a constable drafted exhibit P1 report and the facts that occurred on that day were narrated in his said report. Exhibit P1 report sufficiently corroborates the version of PW1. No important points are gained in the cross examination of this witness to discredit him. When it was suggested to him that the accused did not identify MO1-chappal as belonging to his wife and that he also did not identify the dead body of his wife and that he (PW1) is deposing falsehood at the instance of police, he denied the said suggestions as 'not true'. No specific

suggestion was even put to him that the accused did not make a confession. As noted, no motive is attributed to him for speaking against the accused. Further, PW4, the daughter of the accused, also stated that her father informed her that he killed her mother. When a suggestion to the contra was given in the cross examination, she denied the said suggestion and also the further suggestion that she deposed falsely at the instance of the police. There is no reason for the daughter for speaking against her own father. The evidence of PW1 is amply corroborated by the evidence of PW4, who is no other than the daughter of the accused and the deceased. A careful scrutiny of the evidence of PW1 reflects that the accused voluntarily made a confession (extra judicial) to PW1 about the commission of the murder of his wife by him and also about the motive for the same. The said evidence coupled with the undisputed evidence that the deceased met with a homicidal death and that the cause of death is asphyxia due to strangulation, is by all means sufficient by any standards to hold that the prosecution sufficiently and beyond reasonable doubt established the guilt of the accused for the offence of murder punishable under Section 302 IPC.

Secondly: With regard to seizure of MO2-shirt from the person of the accused it is contended as follows: - "The alleged recovery of MO2, the shirt, without two buttons, of the accused, on 27.10.2011, from the person of the accused at the time of alleged apprehension of the accused by the police, is farfetched and does not stand the test of scrutiny. Even according to the prosecution, the murder was committed two to four days prior to 24.10.2011 and that the dead body of the deceased was first noticed on that day and that the accused, on seeing the police, slipped away from the scene of offence on that day and became scarce and that later MO2-shirt (without two buttons) was seized from the person of the accused on his apprehension, on 27.10.2011. Since the accused is very much available in the village from 21.10.2011 to 24.10.2011, there is every chance for him to change his clothes. Therefore,

the said version of the prosecution is highly unbelievable as no person like the accused, who according to the prosecution escaped from the scene of offence, on 24.10.2011, would continue to wear the same shirt, which he was wearing at the time of commission of offence, knowing that the same would incriminate him. This very circumstance is enough to show that the recovery evidence which is highly improbable and unbelievable is a manipulation of the police to somehow link the accused with the offence of murder.” No doubt, there is some acceptable force in this contention of defence. Be that as it may. Even if this piece of evidence of recovery of MO2-shirt from the accused is kept out of consideration, yet the extra judicial confession of the accused is by itself sufficient to prove the complicity of the accused. This version of the prosecution, even if it is to be discarded as unbelievable, it will not undermine the veracity of the evidence of PWs 1 and 4, which is trustworthy.

Thirdly: It is also contended as follows: - “Accused did not make any confession on his alleged apprehension/arrest. No material objects were recovered at his instance and pursuant to his alleged confessional/ disclosure statement. The evidence of the alleged mediator and that of the police officer-PW17 with regard to alleged recovery of MO3 - Knife, MO4-Blue colour cotton blouse, MO5 –petticoat, MO6 –Blue colour silk sarree, under the cover of exhibit P4-recovery panchanama, pursuant to the alleged confessional/ disclosure statement of the accused and on the accused leading the police party to the alleged place of recovery is all a concoction of the investigation agency. Even otherwise, the said recovery evidence, which is a weak piece of evidence, is by no means sufficient to convict the accused more particularly when there is no other evidence except the alleged recoveries, which are a manipulation of the investigating agency.” Placing reliance on the decisions in *Indra Dalal v. State of Haryana* [(2015)11 SCC 31] and *Akhilesh Hajam v. State of Bihar* [1995 SCR (3) 864] it is contended that mere recovery of a weapon used in the crime or other objects pursuant to the alleged disclosure statement

of the accused does not conclusively lead to an irresistible conclusion that the accused is alone the perpetrator of the crime and hence, the said recoveries by no means can be considered as incriminating circumstances. In Indra dalal's case (supra), on facts, it was held that the confessional statements are not proved against the accused, who were charged for offences of conspiracy and murder etcetera. In Akhilesh Hajam's case, a witness deposed that the seized iron angle was not found concealed beneath fuel wood in the room, but, it was found in a varandah, which is an open and accessible place; therefore, it was held that such a seizure from an open and accessible place can hardly be said to be a recovery on the basis of disclosure statement. Therefore, the above cited cases are distinguishable on facts. It is to be noted that in the case on hand, PW14-VRO deposed about the arrest of the accused, interrogation of the accused by the police in his presence, the translation of his version in Oriya into Telugu by PW10, the confessional disclosure statement made by the accused and about the accused leading the police party including him to the platform near railway level crossing near Manchikalapudi, and the accused picking up MO3-knife from the canal and producing the same and also the sarree and other objects and the seizure of the same by the police officer under the cover of exhibit P4. When it was suggested to this witness that he was not present at the time of preparation of exhibit P4, he denied the said suggestion. In view of his said evidence coupled with that of the police officer, the contention of the accused that no recoveries were made pursuant to the confessional/ disclosure statement of the accused cannot be countenanced. For the confession of the accused to be admissible under Section 27 of the Indian Evidence Act, it is necessary that such part of the confession should lead to a discovery of fact referred to by the accused in the confession. In the instant case, the prosecution proved that the information given by the accused lead to the discovery of the knife, which according to the evidence of PW14 was picked up by the accused from a canal along with the sarree. Thus, the evidence

reflects that the information furnished by the accused lead to the discovery/recovery of MO3-knife and other material objects and that such discovery is the direct outcome of the information furnished by the accused and that the said information furnished by the accused is distinctly connected with the discovery of a fact and such discovery of a fact related to the commission of the offence. The said evidence related to the discovery of facts is relevant and admissible as the police have not previously learnt about the said facts from other sources and as the knowledge of the police is solely attributable to the information received from the accused. Hence, we consider it safe to accept that the recoveries made pursuant to the confessional/ disclosure statement of the accused as one more assured piece of evidence showing the complicity of the accused.

Fourthly: On the aspect of the alleged motive and its alleged weak & unbelievable nature, it is contended on behalf of the accused as follows: - “If the accused is in favour of the love affair, which his daughter-PW4 had with one Chakravarthy and if he was interested in performing her marriage with the said person, there is no need for the accused to kill his wife, who was said to be against such affair and her daughter’s marriage with the said person. The motive alleged, therefore, is unbelievable. The non examination of Chakravarthy, the person with whom PW4 had love affair, by the investigating officer and his failure to cite him as a witness in the case is fatal to the prosecution.” In the case on hand, there is direct evidence viz., the extra judicial confession of the accused, which, in the facts and circumstances of the case, inspires confidence of the Court when considered in harmony with the evidence related to recoveries made under Section 27 of the Indian Evidence Act. The said evidence is sufficient to bring home the guilt of the accused. When there is such evidence, the proof of motive for the accused to commit the murder of his wife may not be necessary. Even otherwise, the motive is established. As noted, there is no need for the daughter to speak of a false

motive for her father to commit the murder of her own mother. Coming to the non examination of Chakravarthy, since PW4 stated about her love affair with the said Chakravarthy; and, as her evidence is reliable, the non examination of Chakravarthy does not dent the case of the prosecution. Moreover, the evidence, which is otherwise reliable, cannot be discarded on a mere assumption that the motive is of a weak nature.

Fifthly: On the aspect of last seen theory, it is contended as follows: - “PW5, the owner of the house, deposed that, on 21.10.2011, the accused, the deceased and their daughter went to attend work and that around 03:00 PM or 04:00 PM the accused and his wife returned and that later they both went out after attending to some chores in the house and that he later came to know about the presence of the dead body in the canal. His evidence does not in any manner support the ‘last seen theory’ as there is no proximity of time between the said date and the date, 23.10.2011, on which the dead body was first noticed. The last seen theory does not advance the case of the prosecution as the irrigation canal where the dead body is noticed is in the midst of the turmeric fields and is accessible to all the ryots, who are having fields around the canal, and as the said canal is not an isolated and secluded place.” In-fact, the prosecution did not place much reliance on this aspect of ‘last seen theory’ before this Court as there is other evidence on record which was adverted to supra.

Sixthly: It is next contended as follows: - “Though MO3-knife is allegedly recovered, it is not elicited by the prosecution from PW15, the Civil Assistant Surgeon, that the ante-mortem injuries found on the dead body are possible by the said knife; it is also not elicited from the said witness as to whether the strangulation was manual strangulation or with a tape of the petticoat found around the neck of the dead body.” Decision In Ilam Singh and others v. State

of UP¹ was relied upon to contend that the prosecution as well as the Presiding Officer of the trial Court failed in their duty to elicit from the medical witness his opinion as to whether or not certain of the ante-mortem injuries found on the dead body of deceased could have been caused with MO3-knife, and whether the strangulation injury could have been caused with the tape of the petticoat found around the neck of the dead body of the deceased. No doubt, the learned Addl.Public Prosecutor or the learned trial Judge ought to have elicited the said information from the said witness. Nevertheless, in the cited decision, it is held that failure to do so may sometimes cause aberration in course of justice. In the case on hand, it is possible to say from the evidence on record that some of the injuries mentioned in the PME report, which are already extracted supra, are possible by a knife. Further, in the cross examination of PW15, it was elicited that there is no ligature mark behind the neck of the dead body. Therefore, such lapse on the part of the prosecution and as well as the Presiding Officer of the trial Court, is not fatal to the case of the prosecution, more particularly, as the accused is not disputing the homicidal death of the deceased; but, is only contending that he is not the culprit.

Seventhly: It is also contended as follows: - “The police are aware of the presence of the dead body in the canal even before exhibit P1 report was lodged by PW1. Admittedly, PW7 and LW8-Raja Rao guarded the dead body on the intervening night of 23/ 24.10.2011, at the instance of the police and the VRO. Therefore, even before the crime was registered, the police, who are aware of the presence of the dead body in the canal, entered the scene and posted PW7 and another on guard duty to guard the unidentified dead body found in the canal. Further, PW1 stated that after PW9 drafted exhibit P1 report, he went to the police station and gave it to the SHO. However, PW17, the IO stated that on telephonic information from the Sub-Inspector about the

¹ AIR 1976 SC 2423

presence of a dead body in a canal, he rushed to the scene and obtained the report from PW1 and sent it to police station and that after the crime was registered a copy of exhibit P8-FIR was sent to him for investigation. This discrepancy in evidence coupled with the above circumstances would show that the investigation is vitiated and that the accused is framed. Therefore, the accused is entitled to a reasonable benefit of doubt.” These contentions require a mention only to be rejected. It is to be noted that as rightly contended by the learned Addl. Public Prosecutor, after reaching the scene, PW17-IO having obtained from PW1, the exhibit P1 report that was drafted by PW9, might have directed PW1 to go to the police station and lodge it to facilitate registration of the crime and forwarding of a copy of the FIR to him for taking up investigation into the crime. Therefore, it appears that there is no material discrepancy as being contended by the defence. Further, as rightly contended by the learned Addl. Public Prosecutor, by the time the dead body was first noticed at about 03:00 or 04:00 PM, on 23.10.2011, the parts of the dead body, viz., parts of the arm and leg were only visible from the canal and that by that time no report was lodged and the dead body was not identified. Further, PW17 commenced investigation only after the registration of exhibit P1 report, which set the criminal law in motion. Further, even if it is to be assumed for a moment that the investigation commenced with the posting of two persons to guard the unidentified body found in a canal, yet the law is well settled that registration of a crime on the basis of the report/first information received by the police is not a condition precedent to the setting in motion of a criminal investigation. (See: *Apren Joseph alias Current Kunjukunju and others v. The State of Kerala* [1973(3) SCC 114]). Therefore, the last set of contentions does not advance the defence any further.

Eight hly: Placing reliance on the decision in *Prabhu Babaji Navle v. State of Bombay* [AIR 1956 SC 51], learned counsel for the accused contended that though the material objects were sent to the chemical examiner, the FSL

report –exhibit P11 furnished by the chemical examiner does not indicate that the blood stains, if any, found on the material objects are of a particular blood group. He would also submit that the prosecution failed to prove that the blood stains either are that of the deceased or of the accused and that, therefore, the investigation is perfunctory. However, the aspect that the chemical examiner did not state in his report the groups of the blood of the stains found on the material objects is not going to weaken the credit of the prosecution evidence, which is otherwise worthy of acceptance.

Lastly: On the aspect of PW4 and the accused not knowing Telugu language, the contentions urged are as under: “PW4 and the accused only know Oriya language. They do not know Telugu language is an undisputed fact. The Investigating Officer also stated that the statement of PW4 was recorded by him with the help of PW1 and that PW1 translated her statement into Telugu. It is also borne out by record that the confessional/ disclosure statement of the accused was recorded with the help of PW10. However, the deposition of PW4 and the examination of the accused conducted under Section 313 of the Code do not show that the learned Judge of the trial Court availed the services of a translator while recording the testimony of PW4 and the examination of the accused. Hence, the testimony of PW4 recorded by the Court of Session and the examination of the accused under Section 313 of the Code are shrouded in suspicion.” Nevertheless, it is to be noted that the deposition of PW4 reflects that she signed her deposition in English. Merely on the ground that the record does not disclose as to the manner or method adopted by the learned Sessions Judge for recording either the deposition of PW4 or the examination of the accused under Section 313 of the Code, the same cannot be discarded on such a frail contention raised for the first time before this Court more particularly in the absence of any further material as to the capacity of PW4 to depose in English language and the manner in which her deposition and the examination of the accused were recorded by the trial Court.

13. In conclusion and on careful appreciation and evaluation of evidence, it is apposite to note that the extra judicial confession, which the accused voluntarily made to PW1 on the next day of noticing of the dead body by the villagers & the police in the canal, which finds sufficient corroboration from the evidence of PW4 and which inspires confidence when considered in conjunction with the recovery/ discovery of material objects at the instance of the accused and pursuant to his disclosure statement cumulatively are sufficient to act upon and convict the accused. This view of this Court finds support from the decision of the Supreme Court in Ram Lal v. State of Himachal Pradesh [Manu SC1119/2018] wherein the Supreme Court having referred to the decisions in Madan Gopal Kakkad v. Naval Dubey and Another (1992) 3 SCC 204, and Piara Singh and Others v. State of Punjab (1977) 4 SCC 452 noted that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated and that the rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated and held that it is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. On the reliability of the extra judicial confession, learned Addl. Public Prosecutor relied upon the decision in Tukaram v. State of Chattisgarh [(2015) 12 SCC 786] wherein the Supreme Court, having noted the fact that after the commission of the offence, the accused gave information to the members of family of his in-laws' and the further fact that after the information, the members of the family of the deceased immediately saw the deceased, held that the said facts confirm the extra judicial confession in the absence of anything on record from which it can be said that the extra judicial confession was made after a considerable lapse of time. Having placed reliance on this decision, he contended that in the case on hand, the information by means of extra judicial confession was given by the accused to

PW1 immediately after the noticing of a dead body embedded in the canal waters filled with wild growth and that the fact that the accused identified the dead body in the presence of PW1 even before it was taken out from the muddy waters of the canal confirms the confession of the accused. He further submitted that since the confession was made immediately on noticing the dead body, it can be said that the confession was made in close proximity and that on the other hand, there was nothing on the record to say that the said confession was made after a considerable lapse of time. He thus contended that the evidence brought on record is clinching enough to hold the accused guilty and it passes the required tests. Having regard to the facts and evidence, we find that the ratios in the decisions of the Supreme Court squarely apply to the facts of the case. Therefore, the evidence discussed supra is sufficient to hold that the prosecution adduced sufficient evidence to bring home the guilt of the accused for the offence punishable under Section 302 IPC.

14. The evidence brought on record also shows that after causing the death of the deceased, the dead body was discarded in the irrigation canal filled with wild growth and that the weapon (MO3 - knife), which was used in the commission of offence, and other material objects were concealed at the bushes located at the culvert at Western side of Railway crossing at Manchikalapudi village by the accused. The said aspects of the matter considered in juxtaposition with the other evidence brought on record and the reasoning supra are sufficient to uphold the conviction of the accused for the offence punishable under Section 201 IPC.

15. In deed, a careful analysis of the evidence brought on record, which is trustworthy, unfalteringly reveals that the instant case is a clear case of murder and that the accused is the culprit and that, therefore, he is liable to be punished for the offences with which he is charged. As a sequel, we find

that the contention of the accused that he is entitled to a clean acquittal or in the alternative for extension of a reasonable benefit of doubt and a sequential acquittal need no countenance being devoid of merit. To sum up in one sentence, there is a ring of truth in the evidence brought on record to bring home the guilt of the accused.

16. In the light of the detailed discussion supra and for all the afore-stated reasons, we are satisfied that the evidence brought on record is of the required standard to safely hold that the prosecution sufficiently and beyond reasonable doubt brought home the guilt of the accused for the offences with which he is charged and that there are no grounds calling for interference with the judgment of the Court of Session.

17. In the result, the Criminal Appeal is dismissed confirming in all respects the judgment in S.C.No.268 of 2012 on the file of the Court of the learned XI Additional Sessions Judge (Fast Track Court), Guntur at Tenali.



JUSTICE M. SEETHARAMA MURTI

JUSTICE D.V.S.S. SOMAYAJULU

24.12.2018
Vjl