

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
and
THE HON'BLE SRI JUSTICE M.GANGA RAO

Criminal Appeal No.768 of 2013

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

Aggrieved by the conviction judgment in S.C.No.457 of 2012 dated 10.05.2013 passed by the learned IV Additional District & Sessions Judge (FTC) at Mahabubnagar in convicting and sentencing the appellant-accused for the offences punishable under Sections 302 & 404 IPC respectively to undergo rigorous imprisonment for life with fine of Rs.10,000/-, in default to suffer simple imprisonment for a period of six months, and rigorous imprisonment for a period of three years with fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of three months respectively by giving set off of the period of remand and to run both the sentences concurrently, the present appeal is filed.

2. The contentions in the grounds of appeal vis-à-vis the oral and written submissions of the learned counsel for the appellant-accused are that the judgment of the trial Court supra is contrary to law, weight of evidence and probabilities of the case, that the trial Court failed to see that there are no direct witnesses to the occurrence and the case entirely rests on the circumstantial evidence, that the circumstances relied on by the prosecution no way proves the guilt of the accused beyond reasonable doubt are insufficient to pass a conviction, that the learned Judge of the trial Court erred in relying upon the interested testimony of PWs 1, 2, 4

& 6, which evidence is also not substantive, that the trial Judge failed to see that the last seen theory and recovery are no way sufficient to pass a conviction, more particularly when there is a long time gap to the occurrence and last seen theory while the deceased was alive in the company of the accused alleged for possibility of any person other than the accused being author of crime cannot be over ruled, that the learned trial Judge also failed to see that PWs 4 and 6 last saw the deceased in the company of accused according to them on 21.01.2012 and the dead body was traced two days later i.e., on 23.01.2012, that the identity of accused was also not proved for PW6 is a stranger to the accused and her identification of the accused in Court after seven years is with no value without conducting test identification parade earlier, that the so-called articles M.Os 1 to 4 as belongs to the deceased recovered allegedly from the accused are of common use and available in open market and that the recovery is nothing but bogus by its planting with the theory as if recovered at the instance of the accused from the so-called house of the accused where he resides with his wife and children. The trial Court failed to consider the material contradictions and omissions including Ex.D1. It is also contended that the evidence of PW3 also no way consistent with other evidence supra. The evidence of PWs 9 and 11 investigation is to be made by use of PW5, PW7 & PW8 as respective mediators. It is also contended that the trial Court's conviction judgment for the offence under Section 302 IPC even otherwise unsustainable so also for the offence under Section 404 IPC and sought for acquittal of the

accused by setting aside the trial Court's conviction judgment. The counsel for the accused placed reliance on the Apex Court expressions in support of above contentions referred in the written arguments viz., (i) **Ganpat Singh v. State of Madhya Pradesh** [2018 (1) ALD (Crl.) 35 (SC) (ii) **Rambraksh @ Jalim v. State of Chhattisgarh** [2016 (12) SCC 251 (iii) **Jaharlal Das v. State of Orissa** [AIR 1991 SC 1388] (iv) **Kanhaiya Lal v. State of Rajasthan** [2014 (4) SCC 715] (v) **Mousam Singha Roy v. State of West Bengal** [(2003) 12 SCC 377] (vi) **Vijay Thakur v. State of Himachal Pradesh** [(2014) 14 SCC 609 and (vii) **Navanathakrishnan v. State** [2018 (1) ALD (Crl.) 1020 (SC)].

3. The learned Public Prosecutor opposed the same by supporting the trial Court's conviction judgment and the quantum of sentence of imprisonment with fine with default sentence in all respects in saying the trial Court having recorded the evidence afresh in mind of the facts in its appreciation in coming to the right conclusion from the evidence of PWs 1 to 11 and exhibits P1 to P13 and M.Os 1 to 4 and Ex.D.1 is only Section 161 Cr.P.C. statement of PW2, which is no way a contradiction worth much less material to shatter or destroy or ply the edifice of the prosecution case and thereby, sought for dismissal of the appeal.

4. Heard both the sides and perused the entire material on record and the propositions place reliance.

5. The sum and substance of the case of the prosecution as also referred in the written arguments of appellant and covered by Crime No.8

of 2012 of Kosgi Police Station dated 23.01.2012 with final report from investigation is that the *de facto* complainant E.Narasaiah of Pothireddypally, Kosgi Mandal, presented Ex.P.1 at about 19.00 hours which reads that on 19.01.2012 (Thursday) at about 1.00 A.M. his wife Savitramma went to Hyderabad to drop their second daughter Narasamma and while returning on 21.01.2012 (Saturday) at about 1.00 P.M. his son-in-law Ramulu and his daughter supra followed his wife to board the bus to come to Kosgi and informed the same over phone to him after she boarded the bus, however his wife did not return to his house and he enquired including all relatives and could not know the whereabouts and while so on 23.01.2012 at about 5.00 P.M. E.Venkataiah (PW3) informed him over phone that the dead body of his wife Savitramma is lying in the agricultural fields of Putti Narsimulu and he went there with others and found the dead body and there was no wearing apparel on the person viz., gold balls, chain, ear studs, pustelathadu and silver leg chains (anklets), however, the main anklets are to the legs and some person might have killed and looted the jewelry of her which is about 3 tulas of gold and 10 tulas of silver and thereby, to take action. From which, the police having registered the crime taken up investigation and in the course of investigation examined the *de facto* complainant (husband of deceased), their son PW1-Mallaiah, their daughter M.Narasamma supra (PW2) as circumstantial witnesses in proof of the above facts, E.Venkataiah (PW3) who saw the dead body, E.Galamma (PW6) who saw the deceased lastly alive, PW4-Mogili

Venkataiah another circumstantial witness, LW7 Valepalli Chandrappa another circumstantial witness and conducted the scene observation Panchanama and inquest over the dead body covered by Ex.P7 and also cause photographed the dead body and scene of offence covered by Exs.P2 to P6 photographs in the presence of the mediators LW8-Yedula Bichappa, LW9-Yedula Padmamma (PW5) and in the course of investigation after inquest referred the dead body to the Post Mortem examination conducted by PW10-Dr. A.S.Basava Raju covered by Ex.P13 Post Mortem examination report and from the apprehension of the accused and arrest and from his disclosure leading to discovery of the material objects belong to the deceased found in his possession which he produced pursuant to the disclosure by lead them proved through evidence of LW10-Pokala Laxmaiah, PW7-K.Balaraju and the property identification also conducted covered by Ex.P11 for the M.Os 1 to 4 that was seized from the accused under Exs.P9 & P10 arrest disclosure and recovery Panchanamas in the presence of PW8-Y.Buddaiah and LW13-G.Kistaiah, it is from the investigation covered by Ex.P1 report of LW1-E.Narsaiah in registration of the crime and issuance of Ex.P12-FIR by PW9-S.I. of Police, Kosgi N.Chandra Babu, the Inspector PW11-D.Vijaya Lala conducted the investigation and his successor K.Rama Rao (LW17) filed the charge sheet.

6. It is from said evidence the trial Court concluded that the deceased was as per the prosecution case including from the Post Mortem report and the evidence of PW10-Dr. A.S.Basava Raju besides other oral

evidence found met with homicidal death found throttled to die and there was fracture of right and left cornea of hyoid bone from the throttling and there is fracture of ribs 1 to 6 at costo chondrial junction and there was theft of the jewelry on the person of the deceased by the person, who committed the murder for gain, and taken the jewelry on the deceased and as per the prosecution case there is motive for the offence besides discovery of the jewelry of the deceased with the accused from his disclosure leading to recovery and the deceased and accused were last seen together from the evidence on record from which it proves beyond reasonable doubt from the chain of circumstances of the accused alone and none else that committed the murder of deceased for gain and thereby liable for the conviction for the offences under Sections 302 & 404 IPC. The same is impugned in the appeal referred supra.

7. Now, the points that arise for consideration in deciding the appeal are as under:

- (1) Whether the deceased met with homicidal death?
- (2) Whether the deceased was having wearing apparel prior to her death and the same were looted from the person of deceased either before or after death?
- (3) If so, whether the prosecution could bring home the guilty of the accused from the chain of circumstances as to it is the accused that committed the murder of deceased for gain and looted the jewelry (wearing apparel) from the person of the deceased from the prosecution evidence of the accused and deceased last seen some time after the accused got down at

Kosgi Bus Stand having boarded the bus at Hyderabad in return to Kosgi? If not, the trial Court's conviction judgment for the said offences of the accused-appellant is unsustainable?

(4) Whether this Court while sitting in appeal to what extent can interfere with the trial Court's conviction judgment from the above and with what observations?

(5) To what result?

8. As all the points arise for consideration supra, to avoid repetition of the factual evidence in the course of discussion can be conveniently dealt with together the same is taken up together for one is interlinked to the other in the course of discussion from the common evidence. Ex.P13 Post Mortem examination report of the Post Mortem examination conducted by PW10-Doctor by name A.S.Basava Raju, Duty Medical Officer, shows Post Mortem No.4/2012 in Crime No.8 of 2012 of Kosgi Police Station and conducted on 24.01.2012 having received the requisition at 3.00 P.M., from 3.15 P.M. onwards and the body of E.Savitramma (deceased) aged about 48 years having found the body under decomposed state with tongue protruded out and from the Post Mortem examination found the injuries viz., fracture of right and left cornea of hyoid bone by throttling, fracture of right ribs 1 to 6 at cisto chondrial junction, fracture of 1 to 6 left ribs and opined that the cause of death was due to Asphyxia and from the fracture of cornea of hyoid bone and fracture of the ribs and from the shock and hemorrhage. In his evidence, he deposed all these facts including as to the Post Mortem

examination concluded by 5.00 P.M. from 3.15 P.M. He opined that the fractures of ribs are possible by hit with a blunt object. In his cross-examination by the accused, he deposed that if any person suffers from skin allergy if she gets itching, there is a possibility of redness in skin in case scratched with nails, and if any person fallen on ground accidentally, there is a possibility of sustaining simple injuries, and if any person under fully intoxication fallen in a ditch having water and to a sharp edged stone, there is a possibility of fracture of ribs and injuries on head. There is nothing even by any probable suggestion in this regard from evidence of PWs 1 to 6 for any such possibilities.

9. There is no dispute on the correctness of Post Mortem report. The Doctor no doubt did not mention the time of death either in the Post Mortem report or in his evidence in chief or cross-examination. It clearly shows from the above that the death of the deceased is not natural. To consider whether there is any possibility of what the accused suggested to PW10-Doctor for sustaining injuries from any fall, so far as the fractures are concerned, the scene of offence is not in a ditch much less with water with sharp stones therein. In fact, there is fracture of hyoid bone that is also main cause of death from throttling and death due to Asphyxia, that is not disputed by the accused in PW10 cross-examination that clearly shows the deceased met with homicidal death to say somebody killed the deceased and it is not an accidental death by her fall.

10. From this, coming to the evidence of PW1, who is son of the deceased and *de facto* complainant, he deposed that the accused is his brother-in-law no other than the husband of his another sister Narasamma (LW3=PW2). His mother Savitramma died ten months back. He deposed that ten months back his mother Savitramma went along with his sister Narasamma to Hyderabad to the house of accused in dropping his sister Narasamma along with the child of Narasamma and accused. After the deceased left Narasamma (PW2) at the house of accused (husband of Narasamma), Savitramma did not reach home at Kosgi from Hyderabad. He contacted his sister Narasamma over phone and she informed that Savitramma boarded the bus at Langar House area of Hyderabad and the accused taken her wherefrom she boarded the bus and Savitramma their mother did not return home, again PW1 contacted his sister Narasamma (PW2) over phone and she informed the same and on the next day E.Venkataiah (PW3) informed him that he found the dead body of their mother at the agricultural fields at Kosgi village, then he and his father *de facto* complainant Narasaiah went there and noticed the dead body with swelling on throat. The wearing apparel viz., gold ear tops, gold beads chain with Pustelu, silver leg chains on the person of the deceased were found missing. He deposed that there is suspicion against the accused Ramulu (husband of PW2) of he murdered her for gain. He deposed that the *de facto* complainant his father later died. In his lifetime through Court they received the interim custody of said recovered articles M.Os 1 to 4 and after death of his father he was in possession of those jewelry,

which he produced before the Court and identified the same including Ex.P1 report bears the signature of his late father. In the cross-examination, he deposed that after their mother taken their sister Narasamma to the Hyderabad to the house of accused, their mother stayed there for one day at the house of accused and he does not know when in return journey their mother boarded the bus at Hyderabad. His sister did not inform him over phone as to at what time she boarded the bus and he does not remember at what time he telephoned to his sister in enquiry about his mother whether left Hyderabad or not. He deposed that E.Venkataiah (PW3) is his brother-in-law by courtesy to say his wife's brother. He denied the suggestion of his mother and father were quarreling frequently. He does not remember the date on which his father reported the occurrence to the police. The police enquired him and recorded his statement at the Government Hospital, Kosgi where he stated about an unknown person killed his mother and committed theft of her jewelry. He deposed that M.Os 1 to 4 can be available in open market. He denied the suggestion of his mother was in the habit of consuming toddy. He also denied the suggestion of his father was having kept mistress and due to that he killed her. He also denied the suggestion of his mother did not go with Narasamma (PW2) to Hyderabad and not stayed at the house of accused and not boarded the bus at Hyderabad to return and he is deposing falsehood that the accused has nothing to do with death of their mother. He has identified Exs.P2 to P6 photos and M.Os 1 to 4. There is no more cross-examination. The tenor of cross-

examination of PW1 by the accused is as if the deceased was killed by PW1's father (husband of deceased). There is nothing suggested as to what happened to the jewelry of her. From his version if at all there is any basis for that suggestion that too with what need to kill at some other place in the fields of somebody at Kosgi, that too when he is a resident of Hyderabad how he came to know. However, the fact remains from the evidence of PW1 with reference to Exs.P1 to P6 and M.Os 1 to 4 do not show any role of accused to the cause of death of the deceased or recovery of M.Os 1 to 4 from the accused, though in his chief examination he positively deposed of suspicion against the accused. From what he deposed in the cross-examination of some unknown person killed her.

11. PW2 is wife of the accused and sister of PW1 and daughter of deceased and *de facto* complainant. She deposed that PW1 is her elder brother and the accused is her husband and in their wedlock they got a daughter aged more than one year by the time of her evidence in saying the child borne at Pothireddypally village at her parents house and her mother's name is Savitramma and her father since died is by name Narasaiah, that her mother died ten months back. She deposed regarding the occurrence and previous facts that prior to birth of the child she and her husband were residing at Hyderabad by doing coolie work and she came to her parents village for delivery and after birth of the child her mother came along with her to drop her with the child at her husband at Hyderabad, from Pothireddypally village they left at about 12.00 noon

and reached Hyderabad and on next day at about 10.00 A.M. her mother left their house at Hyderabad to reach back Pothireddypally. Her husband Ramulu (accused) accompanied her mother (deceased) to drop at bus stop at Langar House area to give send off. Her husband returned to their house on the next day morning only and he informed her that he went along with her mother to give send off to her and therefrom gone to some work and the accused informed her when she contacted over phone of went to some work after given send off to her mother and on next day when her brother PW1 telephoned to her to enquire about her mother boarded the bus or not, for which she informed of her mother boarded the bus and the accused taken her to board the bus from their house. On the next day, again PW1 when telephoned to her and informed of their mother did not reach home and again on the next day her brother PW1 telephoned to her and informed of the dead body of her mother found in the agricultural field near Kosgi then she left Hyderabad and went to the Government Hospital, Kosgi to see the dead body. She deposed that her mother left the house along with her husband Ramulu who has taken her from house to board the bus at Hyderabad from her going to Pothireddypally and she was wearing M.Os 1 to 4 gold and silver ornaments and those ornaments were missing from the person of her mother on the dead body at the Government Hospital when she saw and she stated the facts before the police. She deposed that the accused killed their mother for the gold and silver ornaments. In the cross-examination of PW2 by the accused, she deposed that their marriage taken place nine

years back and her husband is native of Akkampally village and after the marriage they resided at Akkampally for some time and later shifted to Hyderabad only two years back and she resided with the husband for one year at Hyderabad which is at Narsingh area where he was doing masonry work in different places. She came for first delivery to her parents place where she was for about two months at Pothireddypally and after delivery along with her mother they went to Kosgi and there boarded the bus and reached Hyderabad, which is on Thursday, and her mother left Hyderabad on Saturday after her stay for one day. On Saturday, her brother Mallaiah (PW1) telephoned and enquired as to at what time their mother boarded the bus which is at about 12.00 noon and again in the evening. She has no disputes with the accused prior to death of her mother. She denied the suggestion of her parents used to quarrel each other. She deposed that on Sunday morning, which is the next day of Saturday supra, her husband returned home and she did not observe the time. She denied the suggestion of she stated about the unknown person killed her mother for sake of her ornaments as in Ex.D1 and she is deposing falsehood contra to it implicating the accused. She deposed that her mother was in the habit of consuming toddy. She deposed that the articles like M.Os 1 to 4 are available in open market. She denied the suggestion of her father got illicit relationship with another woman and for that they used to quarrel and from that her father killed her mother and they foisted the false case against her husband. She denied the suggestion of their mother did not accompany her to Hyderabad along

with the child and her mother did not stay at Hyderabad for one day and her husband did not accompany her mother from their house to board the bus at Hyderabad and it is a created story by false implication of the accused.

12. PW3-Venkataiah deposed that it is about 10 months back on one fateful day in the afternoon while he was returning to home at Pothireddypally from his agricultural fields having come to know of one female dead body was lying in the fields by the road side leading from Pothireddypally to Kosgi, he went there and saw the dead body and identified as that of Savitramma (mother of PWs 1 & 2) with swelling on the throat of dead body and he immediately informed her husband and son PW1 over phone and her husband Narasaiah and son PW1 and other villagers came there and saw the dead body lying and they noticed only silver anklets on the body of the deceased without any gold ornaments over the body of deceased. In the cross-examination, he deposed that he cannot say the date. He deposed that he stated before the police about some unknown persons might have killed Savitramma for her gold and silver ornaments. He worked as Upa-Sarpanch of Pothireddypally village. He denied the suggestion of the husband of Savitramma was having illegal intimacy with other lady and therefrom he killed Savitramma and at the instigation of PW1 and himself, the false case is foisted against the accused. He denied the suggestion of he cause prepared Ex.P1 report and foisted the false case against the accused,

though the accused has nothing to do with the cause of death of Savitramma.

13. Coming to the important circumstantial evidence, PW4-Mogili Venkataiah deposed that about 10 months back on one Saturday at about 5.00 P.M. he saw the deceased Savitramma and accused Ramulu at Kosgi as at that time he was standing at Auto Stand of Kosgi to go to Pothireddypally and when he saw them the deceased Savitramma and accused Ramulu were proceeding towards toddy shop situated at Kosgi by the road side leading to Pothireddypally and the police enquired and recorded his statement. In the cross-examination, he deposed that on that Saturday he went to the Hospital at Kosgi. The R.T.C. bus stand at Kosgi is situated at a distance of one kilometer from Auto Stand where he was standing. The toddy shop at Kosgi is situated at a distance of one furlong away from that. He noticed two plastic covers in the hands of the deceased Savitramma though he does not remember the colour of those plastic covers, but he saw the accused and deceased together which is at a distance of 10 feet as they passed through in front of him and he does not remember the colour of Saree of Savitramma at that time. He did not observe whether she was wearing the gold and silver ornaments. The accused was wearing pant and shirt. He denied the suggestion of he never saw the accused and deceased together on Saturday at Kosgi and deposing falsehood.

14. PW5-Edula Padmamma, wife of PW3 (E.Venkataiah) deposed that she saw the dead body of Savitramma with injuries on throat and on left elbow and with silver kadiyam to her right leg having dent mark with a stone. The police noted the injuries on the body of the deceased in her presence while conducting inquest and Putti Narsimhulu also present at that time and the police also prepared the scene observation and crime details at that time including by preparation of rough sketch which are covered by exhibits P7 & P8. In the cross-examination by the accused, she deposed that the dead body was lying in the agricultural fields by the side of the road on left side when proceeding to Pothireddypally from Kosgi. The dead body was lying in the field of Putti Narsimhulu though she cannot say the survey number of it and denied the suggestion of no inquest or scene observation panchanama conducted in her presence as Exs.P7 & P8, but for she signed at police station and deposing falsehood.

15. PW6-E.Galemma of Pothireddypally deposed that she saw the deceased Savitramma proceeding towards village by foot (walk) at Kosgi with a male person when she went to Kosgi to purchase fertilizers and noticed in the hands of Savitramma two plastic covers when they come across. Said male person is the accused in the dock as identified by her and after that she did not see Savitramma alive. In the cross examination by the accused, she deposed that by the time she saw the deceased with the male person it was 4.00 P.M. in the evening and later she did not see the male person. She deposed that Savitramma was carrying sari covers at that time. She denied the suggestion of she saw the accused for the

first time in Court and never saw him previously. She deposed that she does not know the name of the accused and thereby not informed the name of the accused to the police. She deposed that she noticed the gold chain and other ornaments on the body of Savitramma when she saw her with that male person on that day. She denied the suggestion of she did not see Savitramma at Kosgi on that day much less with accused or deposing falsehood or the husband of Savitramma by name Narasaiah was having illegal intimacy with another lady.

16. PW7-K.Balaraju of Pothireddypally deposed that Savitramma died about eleven months back to the time of her evidence and five or six days after death of Savitramma the police called him to the house of Narasaiah (husband of Savitramma) when they were at the village chavadi, the other person is P.Laxmaiah, they went to the house of Narasaiah and at that time the accused was in the custody of police and when they enquired the accused, he made a disclosure regarding the occurrence and he lead them to Hyderabad where he produced the gold ornaments of Savitramma and the same were recovered under the Panchanama which are M.Os 1 to 4 which he identified as recovered at the instance of accused. The said arrest and disclosure Panchanama and seizural panchanama are covered by Exs.P9 & P10 admissible portion. In the cross-examination by the accused, he deposed that the police when called it was 10.00 A.M. and by the time they visited the house of accused at Hyderabad it was 2.00 P.M. He does not know the door number of the house of the accused at Hyderabad. When they were

standing outside the house of the accused, the accused brought from inside the M.Os 1 to 4 and handed over and at that time the wife of accused was not there. He denied the suggestion of he used to visit police station as Telugu Desam Party worker and deposing falsehood at the instance of PW1 for money without even any recovery and seizure of M.Os 1 to 4 from accused much less any disclosure by accused.

17. PW8-Y.Buddaiah of Pothireddypally deposed that the *de facto* complainant identified the ornaments as belongs to his wife under the cover of Ex.P11 identification panchanama conducted by the Tahsildar which are M.Os 1 to 4. In the cross-examination, he deposed that he did not visit the Tahsildar Office, Kosgi and there was no identification of M.Os 1 to 4 by the *de facto* complainant in his presence.

18. PW9, the S.I. of police by then who registered the crime based on Ex.P1 report of Narasaiah (LW1) deposed about the registration of crime and issuing of F.I.R. and in the cross-examination he deposed that as per Ex.P1 the deceased went to Hyderabad with Narasamma (PW2) on 18.01.2012 and on 21.01.2012 (Saturday) the deceased has boarded a bus at Hyderabad with the help of accused to reach Kosgi and Narasamma was informed over phone the same. It is also mentioned in Ex.P1 of some unknown offender killed the wife of *de facto* complainant for theft of the ornaments on the person of the deceased. He denied the suggestion of at the instance of political leaders of TDP he registered a false case though the accused is nothing to do with the death of deceased.

19. Coming to the evidence of PW11, the Inspector, who conducted investigation, he deposed regarding receiving of the copy of F.I.R. and conducting of the scene observation and inquest and referring dead body out for Post Mortem examination, examined the witnesses and subsequently on the apprehension of accused and at his instance and from his disclosure and from his taking to Hyderabad, seized M.Os 1 to 4 from accused at Hyderabad under cover of disclosure and seizure Panchanamas and after the property identification conducted his successor filed the charge sheet. In the cross-examination, he deposed that PW1 stated of some unknown offenders murdered his mother and committed the theft of her ornaments. PW2 stated that on 19.01.2012 her mother Savitramma and herself left the village to Hyderabad to join her husband and not stated of it was at 12.00 noon. PW2 stated that some unknown offender killed her mother and committed theft of ornaments as in Ex.D1. PW3 also stated so. PW4 not stated of he saw Savitramma and accused at 5.00 P.M. at Kosgi, but what he stated is at 6.00 P.M. PW6 did not state Savitramma was seen by her at 4.00 P.M., but for at 5.30 P.M. and not stated she was with another male person. He deposed that on 21.01.2012 at about 12.30 P.M. they proceeded from Pothireddypally to Hyderabad and by the time they visited the house of accused his wife was present. In Ex.P8 crime details it is marked in red ink the place of dead body in the field. Survey number not mentioned and surrounding land owners were not examined. He denied the suggestion of the *de facto* complainant killed his wife Savitramma under

the instigation of PW3 (Edula Venkataiah). The case is foisted and the accused nothing to do with the deceased. He deposed that he did not the obtain thumb impressions or toe impressions of the accused to compare with any available impression near the dead body.

20. This is the sum and substance of the evidence of prosecution. From the prosecution including from the admissions in the cross-examination by accused of the witnesses PW2, daughter of the *de facto* complainant and deceased and sister of PW1, went to Hyderabad from Pothireddypally to drop PW2 by the deceased along with new born child of PW2 on 19.01.2012 (Thursday) and the deceased stayed there for one day and on 21.01.2012 (Saturday) noon time the accused along with deceased started from the house of accused and PW2 at Hyderabad to drop her, the deceased boarded the bus at Hyderabad. That is what PW2 saw the deceased last alive in the company of accused. The evidence also establishes the accused did not return home on that day (Saturday), but on the next day saying he went on some other work to some where. The evidence shows the information passed on about boarding of bus to PW1 and also father of PW1, husband of the deceased supra. The other evidence shows the deceased was found at Kosgi near Auto Stand while proceeding with a male person and it is that male person the accused as identified in Court with no earlier test identification parade. There are no omissions to say any material omissions amount to contradiction brought in this regard from the witnesses particularly of PW6-Galemma of seeing the deceased with a male person on the evening and in the absence of any

such omission brought in her evidence any suggestion to Investigating Officer or putting any questions to Investigating Officer is of no avail. It is no doubt suggested to PW5 of she never saw the deceased with accused on that day. It is not suggested of she did not state before police and it is an omission, to ask the same by any question to the Investigating Officer (PW11) to give any credence to that. So far as the contradiction of PW2 statement brought in and put to the Investigating Officer (PW11) concerned as referred supra is regarding what PW2 stated of some unknown person killed her mother Savitramma. In the course of investigation, PW2 might not have known who killed and from that it shows PW2 had no knowledge by then to suspect the accused that too no other than her husband; so also for PW1 or the *de facto* complainant to mention in Ex.P1 report, that what brought in the evidence of PW9-S.I. of Police, who registered the crime from Ex.P1 report of not stated that the accused is responsible for the death of the deceased.

21. Coming to the discovery from disclosure made by the accused of M.Os 1 to 4 the ornaments on the person of the deceased from accused brought from his house having concealed and having lead them to that house and handed over, that was deposed by the witnesses referred supra. To that extent it is admissible under Section 27 of the Evidence Act as the fact discovered of recovery within few days after death of the deceased the wearing apparel of the deceased from the custody of the accused within his exclusive knowledge to draw the inference of the accused is either receiver of the stolen property from the person of the

deceased or he is the murderer for purpose of gain in looting the property after her death. That evidence is not conclusive but for the other circumstances showing from the evidence of PW6, PW4 and PW2 in saying what PW5 deposed of the accused and deceased found together on that day i.e., on 21.01.2012 evening while proceeding near Auto Stand, Kosgi, and that is corroborated by the evidence of PW4 of he also saw the accused and deceased at Kosgi near Auto Stand while they both were proceeding towards toddy shop which is by the road side leading to Pothireddypally. The deceased was carrying two plastic covers that is also deposed by PW6 and this is corroborating to what PW2 deposed of the accused and deceased together left the house on that day after 10.00 A.M. or so for his dropping her to board the bus at Hyderabad to go to Kosgi by bus and therefrom to the village Pothireddypally. So far as the last seen theory to the time of noticing of the dead body is concerned, the dead body was found lying in the fields by PW3 and he informed to PW1 and his father they came there and saw. The evidence clearly speaks about the injuries on the person and missing of the gold jewelry wearing apparel of the deceased. It clearly establishes the murder for gain and the report of *de facto* complainant (husband of deceased) was on 23.01.2012 after PW3 informed of finding the dead body at the field on that day when he noticed. The deceased and accused were last seen together at Kosgi near the place of the dead body lying at the fields on 21.02.2012 evening. From the Post Mortem examination conducted by PW9 on 24.01.2012, already the dead body was in highly decomposed condition

and tongue protruded out, that is co-relating to the date of death even not mentioned, for more than 48 hours before the conducting of the Post Mortem. In all these circumstances, it is cumulatively established though the last seen theory itself as sole ground is not sufficient to find the accused as killed the deceased there from from a case rested on the circumstantial evidence and when it is a murder for gain motive for the accused to kill the deceased being her son-in-law need not be proved any more. Coming to the defence version of deceased and her husband were having disputes or her husband got extra marital relation with another woman to say there from her husband might have killed the deceased, he being the son-in-law of the deceased and her husband could say who is that person if at all of his father-in-law got extra marital relation with that and what are the disputes and when he had any occasion to intervene or came to know and even taken true what made to kill the deceased wife by him for not a specific case of she objected for that and any of details not even cursorily given to probablise any of his defence version for nothing established in line from any of the witnesses to give any real credence to such said vague contention of him which is nothing but a false version. Coupled with it when the articles on the person of the deceased were found with the accused and recovered from his disclosure within his exclusive possession which he unexplained when admissible under Section 27 of the Evidence Act. Leave it apart, PW2 (wife of the accused and daughter of the deceased) categorically deposed of the accused and deceased together left from the house from his say of to

board her in a bus at Hyderabad to go to Kosgi and therefrom to Pothireddypally village and he did not turn up neither immediately on that day nor even by that night, but for returned only on the next day that is also a circumstance against him coupled with the last seen theory with no much time gap to the time of last seen to the time of death of the deceased apart from the recovery of the ornaments on the person of the deceased from the accused from his exclusive knowledge and its disclosure.

22. No doubt, it is one of the written arguments contentions particularly from Paragraph No.10 clause (2) in saying on the last seen theory evidence of PWs.4 & 6 cannot be relied upon as there is no proximity between the last seen and dead body traced and placed reliance on the expressions of the Apex Court in **Ganpat Singh v. State of Madhya Pradesh**¹, **Rambraksh @ Jalim Vs. State of Chattisgarh**² and **Jaharlal Das v. State of Orissa**³. In **Ganpat Singh**'s case (supra 1), the Apex Court observed in paragraphs 9 to 13 read as follows:

“9. There are no eye-witnesses to the crime. In a case which rests on circumstantial evidence, the law postulates a twofold requirement. First, every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt. Second, all the circumstances must be consistent only with the guilt of the accused. The principle has been consistently formulated thus:

¹ 2018 (1) ALD (Crl.) 35 (SC)

² 2016 (12) SCC 251

³ AIR 1991 SC 1388

“The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence”. See **Sharad Birdhichand Sarda v. State of Maharashtra**, (1984) 4 SCC 116; **Ramreddy Rajeshkhanna Reddy v. State of Andhra Pradesh**, (2006) 10 SCC 172; **Trimukh Maroti Kirkan v. State of Maharashtra**, (2006) 10 SCC 681; **Venkatesan v. State of Tamil Nadu**, (2008) 8 SCC 456; **Sanjay Kumar Jain v. State of Delhi**, (2011) 11 SCC 733; **Madhu v. State of Kerala**, (2012) 2 SCC 399; **Munna Kumar Upadhyaya @ Munna Upadhyaya v. State of Andhra Pradesh**, (2012) 6 SCC 174; **Vivek Kalra v. State of Rajasthan**, (2014) 12 SCC 439.”

10. Evidence that the accused was last seen in the company of the deceased assumes significance when the lapse of time between the point when the accused and the deceased were seen together and when the deceased is found dead is so minimal as to exclude the possibility of a supervening event involving the death at the hands of another. The settled formulation of law is as follows:

“The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases”. See **Bodh Raj @ Bodha v. State of Jammu and Kashmir**, (2002) 8 SCC 45; **Jaswant Gir v. State of Punjab**, (2005) 12 SCC 438; **Tipparam Prabhakar v. State of Andhra Pradesh**, (2009) 13 SCC 534; **Rishi Pal v. State of Uttarakhand**, (2013) 12 SCC 551; **Krishnan v. State of Tamil Nadu**, (2014) 12 SCC 279; **Kiriti Pal v. State of West Bengal**, (2015) 11 SCC 178; **State of Karnataka v. Chand Basha**, (2016) 1 SCC 501; **Rambraksh v. State of Chhattisgarh**, (2016) 12 SCC 251; **Anjan Kumar Sharma v. State of Assam**, 2017 (6) SCALE 556.”

11. The case of the prosecution is riddled with unexplained contradictions, PW1-Kamlabai and PW2-Dhankunwarbai were crucial to the case of the prosecution for establishing that the deceased had visited them and that they had lent her silver ornaments ostensibly because she intended to arrange the engagement of her son Rakesh-PW4. Admittedly, neither PW1 nor PW2 were called upon to identify the jewellery alleged to have been recovered

from the house of the Appellant. PW1 stated that the jewellery which she had lent weighed more than half a Kg. PW2 deposed that the ornaments which she had lent weighed about 1.25 Kgs. In the course of her cross-examination, PW1 stated that it was true that the ornaments which she had lent were commonly worn by women in the villages. PW2 also admitted that there were no identification marks on the ornaments and they were of a nature that is commonly used. PW5-Rekha, the daughter of the deceased, had (as the High Court observed) no opportunity to observe the ornaments on the person of the deceased. The ornaments had no special marks of identification. PW5 materially improved upon her version during the course of the examination. On this state of the evidence, the recovery of the silver ornaments (which was an important link in the chain of circumstances relied upon by the Additional Sessions Judge) has been correctly disbelieved by the High Court.

12. An important circumstance which weighed with the High Court was that the body of the deceased was recovered at the behest of the Appellant. There is a manifest error on the part of the High Court in arriving at this conclusion since the record would indicate that the body of the deceased was recovered several months before the arrest of the Appellant. The mere circumstance that the appellant was last seen with the deceased is an unsafe hypothesis to found a conviction on a charge of murder in this case. The lapse of time between the point when the appellant was last seen with the deceased and the time of death is not minimal. The time of death was estimated to be between two to four weeks prior to the recovery of the body.

13. We must also place in balance the testimony of PW4 that when he enquired regarding whereabouts of his mother, the appellant informed him that she had stayed back at the house of her sister. This, coupled with the fact that the appellant had absconded after the date of the incident is a pointer to a strong suspicion that the appellant was responsible for the death of *Shantabai*. However, a strong suspicion in itself is not sufficient to lead to the conclusion that the guilt of the appellant stands established beyond reasonable doubt. There are material contradictions in the case of the prosecution. These have been noticed in the earlier part of its judgment and are sufficient in our view to entitle the appellant to the benefit of doubt. The prosecution failed to establish a complete chain of circumstances and to exclude every hypothesis other than the guilt of the appellant.”

23. The substance of the principle laid down from said paragraphs is of the two fold requirement of case purely rested on circumstantial evidence viz., every link in chain of circumstances necessary to establish the guilt of the accused by the prosecution beyond reasonable doubt and secondly the circumstances must be consistent only with the guilt of the accused. Coming to **Ganpat Singh's** case supra on facts there was no identification of the jewelry alleged to have been recovered from the house of the accused by PWs 4 & 2, when prosecution case says the deceased visited PWs 1 & 2 where they lent the silver ornaments intended to arrange engagement of her son Rakesh when the items can be available in the open market for commonly worn by women in villages and the items recovered from the accused not put to identification to the witnesses that was observed by the Apex Court of High Court missed one of the important links in the chain of circumstances relied by the Sessions Judge. Here it is not such case. Because the *de facto* complainant identified the jewelry of the deceased/wife of him in the identification proceedings under Ex.P11 conducted by the Tahsildar in the presence of the mediators including PW.8. PW.7 is one of the mediators deposed about the disclosure and recovery panchanama Exs.P9 & P10 of the accused where from he led them to his house and brought from the house M.Os 1 to 4, the ornaments of the deceased that were seized and that was deposed by the I.O in corroboration to that discussed supra. Besides that PW.1 son of the *de facto* complainant (since died) and of the deceased, in his evidence also deposed about the M.Os 1 to 4 belong to his deceased

mother. He also deposed about the interim custody of M.Os 1 to 4 taken by his father since died and after that in his custody which he produced before the Court. The accused did not dispute about the giving of interim custody even. PW.2 no other than wife of the accused and daughter of the deceased and the *de facto* complainant and sister of PW.1 also in her evidence deposed about the M.Os 1 to 4 belong to her late mother though what she stated in the cross examination like PW.1 of similar items available in open market.

24. Further in **Ganpat Singh**'s case (supra 1) coming to the other facts that the F.I.R. registered from report received on 08.07.1996 and dead body found in a dry well and missing report registered from report lodged by Rakesh who alleged appellant used to visit frequently the house where Shantabai resided and had started to live there and few days earlier appellant came to the house and left on the next morning with his mother for Sihore and on next day appellant alone returned and when Rakesh enquired the whereabouts of his mother (deceased) appellant alleged of she stayed back at the home of Rakesh's maternal aunt. From the Post Mortem conducted on the dead body recovered from dry well after identified as that of mother of Rakesh i.e., Shantabai which was under decomposed condition and time of death is 2 to 4 weeks prior to the recovery and appellant found in abscondence after the incident and was arrested only on 12.12.1997. In that scenario, in **Ganpat Singh** supra observed that from the time of last seen with accused of the deceased to the time of the recovery of dead body, the gap is about more

than 2 to 4 weeks. Whereas in the case on hand as discussed supra including from the evidence of wife of accused-PW.2 and her brother PW.1, children of deceased, the Post Mortem was conducted on 24.01.2012 and the death from the fracture of hyoid bone, fracture of right and left ribs 1 to 6. PW.10-Doctor no doubt in Ex.P13 Post Mortem report mentioned the time of death; the evidence of PWs.1 & 2 supra was deceased and PW.2 from the house of her parents, the deceased mother and *de facto* complainant father and PW.1-brother at Kosigi proceeded with the just born kid of PW.2 with Saree saman to the house of the accused at Hyderabad on Thursday and the deceased stayed in the house of accused and PW.2 couple at Hyderabad till Saturday and it is the accused from the house of him and PW.2 to drop deceased to cause board in a bus the deceased from Hyderabad to Pothireddypally and they left at 12.00 noon when PW.2 was at house and accused even did not return immediately after sometime or even by night but only on the next day. PW.2 responded to the phone calls of PW.1 and *de facto* complainant of accused dropped her at bus stand and she boarded the bus and could reach for their anxiety for not reached and on next day when accused came house PW.2 enquired, he stated he cause her boarded in a bus at the bus stop Langar house area having given send off and went on some other work and could not return till next day. It is on that day from the evidence of PWs.4 & 6, PW.4 saw the deceased Savitamma alive in the company of the accused at about 5 P.M. on Saturday at Kosigi when he was standing at the Auto Stand to board auto to go to Pothireddypally

when accused and deceased were proceeding towards toddy shop situated nearby at the road side and he saw them from a distance of 10 feet as they passed through in front of him and what PW.6 in corroboration to PW.4 stated of on that day she saw Savitramma (deceased) with a male person at Kosigi when she went to Kosigi from Pothireddypalli to purchase fertilizers and she identified said male person as the accused in the dock during trial and when she was giving evidence. She is illiterate and what she stated about 4 P.M. or so, whereas PW.4 stated about 5 P.M. or so to say they saw the deceased on Saturday evening in the company of accused and what accused stated to PW.2-his wife having come on next day only as if deceased alone boarded the bus at Hyderabad Langar house area to go to Pothireddypalli via Kosigi is a false statement of accused to his wife that is also one of the important circumstance against the accused that is different to **Ganpat Singh's** case supra on facts apart from the fact of accused having dropped by taken from the house the deceased, did not come home either immediately or even on the night, but only on the next day that too having been seen him in the company of deceased by PWs.4 & 6 on the evening of the very day when they boarded at 12.00 noon or so, the bus reached the Kosigi and when they were proceeding towards toddy shop or otherwise and that Saturday was 21.01.2012 and that Thursday was 18.01.2012 and the Post Mortem examination conducted from the Ex.P13-Post Mortem report and evidence of PW.10 was on 24.01.2012 to say the proximity between the last seen the deceased in the company of the accused on 21.01.2012

evening by PW.2 at Hyderabad and at Kosigi by PWs.4 & 6 and the dead body found on 24.01.2012 by PW.3 and informed to PW.1's father i.e., *de facto* complainant and husband of deceased from which they proceeded and found at the agricultural field at Kosigi from which report presented shows the proximity is only within 72 hours. The fact of the body at the time of Post Mortem from the evidence of Doctor and Post Mortem report referred supra co-relates as dead body under decomposed condition with injuries. Thus the facts on hand are different to the case in **Ganpat Singh's** case supra. Needless to say there will be no precedents on facts particularly in criminal law for no facts are similar, but for what is the principle culled out from any expression placed reliance on its presidential value to apply to the case on hand.

25. Coming to the expression in **Rambraksh's** case (supra 2), there deceased went to the accused on 07.10.1992 and did not return and on 14.10.1992 clothes and shoes of deceased found in field and skeleton remains found and wife of deceased named appellant and another last seen with deceased taking him away is very doubtful from the belated F.I.R. long after the last seen theory. Here the facts are entirely different as discussed supra of the case on hand.

26. Even coming to **Jaharlal Das's** case (supra 3), there what was observed is from the circumstantial evidence the prosecution could not even prove accused and deceased were last seen together beyond reasonable doubt and the so-called recovery of the dead body of the

deceased at the instance of accused to admit under Section 27 of the Evidence Act propounded by the prosecution not even proved therefrom acquitted. Here the facts are entirely different.

27. Coming to other expression of the Apex Court in **Kanhaiya Lal Vs. State of Rajasthan**⁴, what was observed was proof of last seen theory by itself does not lead to the conclusion from the circumstantial evidence of any inference of accused along and none else that committed the murder of the deceased and even non-explanation of accused of seen together in the company of deceased by itself thereby not sufficient in the absence of other evidence. Here the facts are entirely different as discussed supra.

28. Coming to the other expression in **Mousam Singha Roy v. State of West Bengal**⁵, what was observed that even the highly artificial evidence of only witness through whom propounded the last seen theory of accused with deceased not believed for alleged altercation between them and he not even chosen to interfere for the murder of two boys alleged by accused for the incident on 01.12.1998 and report given only on 05.12.1998 that too while altercating if at all seen for not even reported to police for not traced thereafter. The facts on hand are entirely different thereby.

⁴ (2014) 4 SCC 715

⁵ (2003) 12 SCC 377

29. Coming to the another expression in **Vijay Thakur v. State of Himachal Pradesh**⁶, what was observed is the recovery based on disclosure statement of accused on facts highly doubtful and same is even insufficient evidence to convict the accused for suspicion shall not take place of proof and even coming to another expression in **Navaneethakrishnan Vs. State**⁷, so far as recovery from the alleged disclosure by accused in the absence of any other connecting link in the chain of circumstances not sufficient to convict.

30. Here as referred supra besides the false plea of accused besides murdered for gain with motive to snatch the valuables on the person of the deceased by accused having followed the deceased from Hyderabad to Kosigi and taken to toddy shop therefrom towards fields and later she was killed and he was in abscondence that too he did not drop back in boarding her at Bus Stand at Hyderabad, but though so pretended to his wife and therefrom went on some work followed the deceased that was seen by PWs.4 & 6 and it is on that day the deceased was killed that points out from the medical evidence as discussed supra coupled with it after his arrest while in abscondence, he made a disclosure leading to discovery of ornaments of the deceased which he concealed that was deposited by the I.O. and the mediators to the panchanama referred supra of accused taken them to Hyderabad went inside and brought the ornaments and shown that were in the test identification of the property

⁶ (2014) 14 SCC 609

⁷ 2018 (1) ALD (Crl.) 1020 (SC)

identified by husband of the deceased as proved that also identified the children of the deceased i.e., PWs.1 & 2 as proved. All the chain of circumstances unerringly pointing out that accused alone and none else that killed the deceased to the inference.

31. From that evidence discussed supra, when the trial Court came to the conclusion of all links in chain established beyond reasonable doubt, for this Court while sitting in appeal, when there is no perversity or unsustainability or inconsistency with the said finding of the guilt of the accused as laid down in **Abdul Rajaq v. Nanhey** [AIR 1984 SC 452], but for to say it is not a brutal killing with premeditation, but mainly to snatch the ornaments and for that in his attacking from any stone there and by pressing the neck and remove the ornaments on the person after breathed last.

32. Accordingly and in the result, this Criminal Appeal is partly allowed by taking into consideration of all the facts and from the main aim of accused is to loot the property and for that he attacked even not with any preplan and premeditation by keeping any weapon but with nearly by available stone piece and throttled, it is a case under Section 304 Part I IPC that made out and not under Section 302 IPC as per the recent expression of the Apex Court in **Gurwinder Singh @ Sonu v. State of Punjab** [2018 (2) ALD (Crl.) 505] and thereby altering the sentence imposed by the trial Court under Section 302 IPC with life imprisonment and fine to offence under Section 304 Part I IPC with

sentence of ten years rigorous imprisonment by confirming the fine and equally confirming the sentence of imprisonment with fine for the other offence under Section 404 IPC to run concurrently with benefit of set off of the period undergone.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

M.GANGA RAO, J

23.11.2018
MVA

