

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

AND

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL APPEAL No.1243 OF 2011

JUDGMENT: [Per Hon'ble Sri Justice A. Shankar Narayana]

The sole appellant herein, aggrieved over the conviction recorded under Section 235 (2) of the Code of Criminal Procedure, 1973, for the charge under Section 302 of Indian Penal Code, 1860, and the sentence of Imprisonment for Life and fine of Rs.3,000/- with default sentence to undergo Simple Imprisonment for three (3) months, preferred the present Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'Code').

2. The aforesaid sentence was inflicted by the learned Principal Sessions Judge, Nellore Division, Nellore, by the judgment dated 03.10.2011 in S.C. No.60 of 2011 arising out of Crime No.22 of 2009 of Krishnapatnam Port Police Station.

3. We have heard Sri Kadaru Prabhakar Rao, learned counsel for the appellant - accused, and the learned Public Prosecutor for the State of Andhra Pradesh, and perused the judgment under challenge including the material on record.

4. We intend to advert to the contentions raised by the learned counsel for both sides, a little later.

5. Certain important facts require advertence in arriving at whether the prosecution could prove the guilt of the accused for the aforesaid charge beyond all reasonable doubt and whether the learned trial Judge did properly appreciate the evidence on record and arrive at the correct finding.

(a) It is not in dispute that the deceased, Smt. Shanthamma, is the wife of the accused. Their marriage took place twenty (20) years prior to the date of incident. Out of their wedlock, a daughter and two sons were born and they were examined as PWs.4 to 6.

(b) The accused, somehow, addicted to consumption of alcohol and started suspecting the fidelity of his wife. That was the reason for constantly abusing and beating his wife. On one occasion, the accused having beaten his wife, even drove her away, on which, she took shelter at her parental home. The said incident occurred three (3) months prior to the date of incident in the present case that took place on 01.10.2009.

(c) The accused, a month after driving her away from the house, again went to his parents-in-law's house and promising that he would not ill treat her and would look after her cordially, requested them to send her with him. Upon such request made by him, PW.1, mother of the deceased, along with her husband PW.2, went to Nakkalamitta, where the accused and the deceased put up the family, approached PWs.8 and 9 belonging to Nakkalamitta, considered to be

elders of the village, and took their help. They alleged to have admonished the accused and advised him to look after his wife properly and thus, Smt. Shanthamma joined the house of the accused. But, things did not change. The harassment continued and stood unabated. The accused, since entertained strong suspicion about the fidelity of his wife, Shanthamma, bent upon doing away with her life. Therefore, according to prosecution, on 01.10.2009, in the morning hours, he sent away his sons, who were examined as PWs.5 and 6, to the house of their sister, PW.4, who was married by then and put up family at Purini village. Then, he picked up quarrel with his wife, beat her and left the house. Shanthamma, apprehending danger to her life in the hands of the accused, conveyed the same to PW.1, on which, at about 10.00 a.m., she reached the house of Shanthamma, during which time the accused was away from the house.

(d) At 7.00 p.m. that night, the accused returned home and started quarrelling with his wife and in order to execute the plan, he dragged her from the house by holding her tuft and attempted to hack her with a knife brought with him. When she tried to ward it off by raising her left hand, the blow landed on her left wrist and she sustained bleeding injury. When PW.1 rushed to the rescue of her daughter, Shanthamma, accused even pushed her away and then hacked the deceased with the knife over her left side of neck and below the left ear and caused bleeding injuries. The result being, his

wife, Shanthamma collapsed on the ground in front of their house and suffered instantaneous death.

(e) The accused, then, left the house carrying the knife with him. On the way, PWs.10 and 11 found him while returning from fields at 7.15 p.m. on 01.10.2009, hurriedly moving towards south of the village with a knife. In fact, the prosecution projected PW.10 as an eyewitness being the neighbour, having witnessed the occurrence and PW.11 as circumstantial witness finding the accused just immediately after the incident moving away from the village hurriedly with the knife.

(f) PW.11 went to the house of the accused and the deceased and found the deceased with injuries on her person. PW.1 gave a report to Krishnapatnam Port Police Station.

(g) PW.17 registered the case in Crime No.22 of 2009 under Section 302 IPC and handed over the C.D. file to the Inspector of Police, PW.16, who conducted scene of offence panchanama, seized blood stained earth and control earth, under a cover of observation report, held inquest over the body of the deceased in the presence of mediators and blood relations of the deceased and referred the body for post-mortem examination.

(h) PW.15, Dr. Kiran Kumar, conducted post-mortem examination and issued report.

(i) During the course of investigation, the statements of all relevant witnesses were recorded. Having received information, PW.16 along with his team and mediators, rushed to the house of the accused which is under construction at Muthukur, at about 7.00 a.m., on 06.10.2009, where they found the accused and he was apprehended and he alleged to have confessed commission of offence in the presence of mediators which proceedings were recorded under a panchanama and in consequence thereof, the accused led them to southern side of Nakkalamitta village and he brought a knife from the bushes and produced the same which was seized under a cover of Mahazarnama in the presence of the same mediators.

(j) Even the statements of PWs.1, 4, 5, 9 and 10 were recorded under Section 164 of the Code by the learned IV Additional Judicial Magistrate of First Class, Nellore, at the requisition of PW.16.

(k) The medical officer, who held post-mortem examination, arrived at the opinion that the deceased died due to shock and haemorrhage due to multiple injuries.

(l) After completion of investigation, charge sheet was laid for the offence punishable under Section 302 of Indian Penal Code, 1860 (for short 'IPC') against the accused.

6. The learned Principal Sessions Judge examined the accused on 03.06.2011, with reference to the charge under Section 302 of IPC. The accused since pleaded not guilty, the learned Judge proceeded with trial.

7. In order to bring the guilt of the accused to his home, the prosecution altogether examined (17) witnesses and exhibited (20) documents besides Material Objects 1 to 7.

8. Amongst the witnesses examined by the prosecution, PWs.1 and 2 are the parents of the deceased, PW.3 is the brother of the deceased, PWs.4 to 6 are daughter and sons, respectively, of the deceased and the accused, PW.7 is the sister of the deceased. PWs.8 and 9 are the mediators, who, in fact, sent the deceased to the house of the accused that occurred two months prior to the date of incident and one month after the accused drove her away from his house and she took asylum at her parents' house. They were intended to speak to the motive for the accused to kill the deceased.

9. PWs.10 and 11 are circumstantial witnesses, who alleged to have found the accused hurriedly leaving the village near the fields of one Mallika Ramanaiah.

10. PW.12 is the photographer and bunch of photographs are marked as Ex.P-7, which may assume significance in the context of contrary version on record through the evidence of PW.1 and PW.9. It was elicited in the cross-examination of PW.1 that the accused left

the knife at the place of occurrence and went away from there. The denial of suggestion by PW.9 shows he stated in his statement recorded under Section 161 of the Code that PW.1 informed him that the accused left the knife at the place of occurrence and left that place. Positive photographs under Ex.P-7 would show a knife at the place of occurrence.

11. PW.17 is the Village Revenue Officer in whose presence the scene of offence panchanama was conducted and even arrest of accused was shown along with confessional statements said to have been made and recovery of weapon of offence Ex.MO.3.

12. PW.14 is mediator for the inquest held over the dead body of the deceased.

13. PW.15 is the Doctor, who conducted autopsy over the deceased.

14. PWs.16 and 17 are the investigating officers. PW.17 was the Station House Officer. He received the complaint from PW.1 exhibited as Ex.P-1 at 11.00 p.m. on the date of incident that was on 01.10.2009 and registered a case in crime No.22 of 2009 for the offence punishable under Section 302 of IPC and issued an express First Information Report (FIR) under Ex.P-13 and handed-over the Case Diary file to PW.16. The learned Magistrate received FIR under Ex.P-13 at wee hours i.e., at 02.00 a.m. on 02.10.2009.

15. Reverting to the submissions made by the learned counsel for the accused and the learned Public Prosecutor, the learned counsel for the accused would make fourfold submission.

16. According to the learned counsel for the accused, the very presence of PW.1 at the time and place of occurrence is highly suspicious as the evidence on record definitely rules out her presence. In the said context, he relied on the testimony of PWs.4 to 6 commenting the conduct of PW.1 in not raising shouts, when she alleged to have found the accused hacking the deceased.

17. Second submission is that no other direct witnesses were present even according to the prosecution case. Incidentally, it is his submission that though, the offence alleged to have taken place between 7-00 and 7.30 p.m., though, there are huts in and around the place of occurrence, it is highly improbable that there would be none to witness the occurrence and, thus, it creates any amount of doubt in the case of prosecution which cannot be lightly brushed aside.

18. Third relates to recovery of weapon of offence marked as MO.3 knife. It is his submission that PW.1's admission in her cross-examination would in unmistakable terms reflect that the weapon was thrown away at the place of occurrence soon after he alleged to have hacked the deceased while leaving the place of occurrence. It is also his submission that even one of the positive photographs of the scene of occurrence taken by PW.12 would show availability of a weapon at

the place of occurrence. Whereas, the prosecution story is that on 06.10.2009, when the accused was arrested in the presence of Village Revenue Officer - PW.13, he (accused) alleged to have confessed commission of offence and in consequence thereof, led them to bushes nearby the village Muthukur, where he was constructing a house and brought MO.1 from the bushes and handed it over under recovery Mahazarnama. It is, therefore, his submission that MO.3 has been planted and its very recovery, as projected by the prosecution creates an enormous doubt to which the accused is invariably entitled.

19. Fourth, the evidence of PWs.10 and 11 is untrustworthy, for the reason that there was no occasion for them to find the accused when they were returning home and the contradiction elicited in the cross-examination of PW.10 marked as Ex.D-1 would also make their evidence untrustworthy. Yet another main submission made by the learned counsel for the accused relates to 'plea of *alibi*'. According to the learned counsel for the accused, the evidence on record would show that the accused having received compensation for acquisition of his lands, investing that amount in the construction of house at Muthukur village, which is located at a distance of one mile from Nakkalamitta village, where the incident occurred, and he was staying at Nakkalamitta due to differences between himself and the deceased and even the evidence of PWs.4 to 6, who are daughter and sons of the deceased, would show that information they received was that their mother was killed by someone. Thus, the defence sought to put-

forth the plea of *alibi* and even suggested to PW.8 that he borrowed a sum of Rs.1,00,000/- (Rupees one lakh only) from the accused and could repay only Rs.70,000/- and he was instrumental in implicating the accused in the present offence so as to get rid of payment of outstanding amount and, thus, intended to condemn the evidence of PW.8, who was examined as a motive witness.

20. The learned Public Prosecutor would submit that the presence of PW.1 at the time and the place of occurrence cannot at all be doubted. In fact, the evidence of PWs.2, 3 and 7 would positively prove the presence of PW.1 as they directly received information from her. Even PW.4, who is one of the sons of the deceased and the accused, though, turned hostile, in chief-examination, asserts that they received message from PW.1 at 9.00 p.m. night. Therefore, it is according to him that the presence of PW.1 at the time and the place of occurrence cannot at all be doubted.

21. Further circumstances from which inference can be drawn are also insisted by the learned Public Prosecutor asserting that by 11.00 p.m. that night Ex.P-1 was lodged by no other than PW.1 and FIR was issued naming the accused as the person who killed the deceased, that within three (3) hours, Magistrate received FIR as per the endorsement made by him, would further lend support to the prosecution case as to the complicity of the accused. Even the circumstances, that scene of offence *panchanama* and inquest were held immediately on the next day itself would all give irresistible

inference ruling out the defence theory that some others killed the deceased, but not the accused.

22. The learned Public Prosecutor would submit that the plea of *alibi* put forth by the defence is without any merit as the onus cast on the accused to prove it, was not discharged by leading evidence at all. Therefore, the presence of the accused at the scene of occurrence cannot be disbelieved and consequently his complicity in the commission of offence.

23. The learned Public Prosecutor as an answer to the submission made by the learned counsel for the accused in regard to recovery of MO.3, would submit that evidence of PW.13, one of the mediators, being the Village Revenue Officer, would clinch the issue and the recovery of MO.3 at the instance of the accused cannot be disbelieved. The admission made by PW.1 and the denial of suggestion by PW.9 cannot be viewed to hold that the accused had thrown away the weapon of offence near the scene of occurrence while leaving. Incidentally, his submission is that even if recovery part of the prosecution is doubted, still, the testimony of PW.1 cannot at all be discredited as her witnessing the occurrence is corroborated through the evidence of other witnesses and the evidence of PWs.10 and 11 would positively prove finding the accused leaving the scene of offence when they were returning from their fields at the field of Mallika Ramanaiah, though, there is minor inconsistency as they did not state before the police that the accused was hurriedly leaving, but

finding the accused coming opposite to them was spoken to by them in their statements recorded by the police under Section 161(3) of the Code. Thus, these circumstances cannot be erased from record and they do definitely indicate the guilt of the accused, and, therefore, the finding recorded by the trial Judge leading to recording conviction for the charge under Section 302 of IPC does not suffer from any legal infirmity.

24. Since this Court being the Court of appeal, is obligated with the duty to analyse the evidence on record in arriving at whether or not the prosecution could prove the charge of murder against the accused beyond all reasonable doubt. Therefore, we are inclined to examine the submissions made by the learned counsel for the accused and the learned Public Prosecutor on the anvil of the evidence let in by the prosecution.

25. Based on the submissions made by the learned counsel for the accused and the learned Public Prosecutor, the following points would emerge for determination:

1. Whether the motive alleged by the prosecution is proved?
2. Whether the overt-acts attributed to the accused are proved?
3. Whether the recovery of weapon of offence as alleged by the prosecution is proved?

4. Whether the prosecution could bring the guilt of the accused beyond all reasonable doubt for the charge under Section 302 of IPC?
5. Whether the conviction recorded and sentence of Life Imprisonment and fine inflicted can be sustained?

POINT Nos.1 to 4:

26. PW.1 testifies that the accused having addicted to consumption of alcohol since the beginning of the marriage, used to ill-treat the deceased physically and mentally and the said harassment continued even after PWs.4 to 6 were born and even after performing the marriage of their daughter - PW.4. She asserts that on 01.10.2009, two months prior to her deposition before the Court, the deceased called her on phone in the morning and informed her that the accused was quarrelling with her and harassing her and, therefore, asked her to go over to their house immediately, on which, she rushed to their house located at Nakkalamitta and found that the accused was absent and on her enquiry, her daughter, the deceased, told her that the accused went outside asking her to stay at home and, thus, expressed fear due to attitude of her husband. The sons of the deceased have gone to their elder sister's (PW.4) house at Purini village and, thus, they were also not present at the house. In relation to the actual incident, she would assert that at 6.00 p.m. that evening, the accused came home, at which time, her daughter, Shanthamma was taking

meals, the accused held her tuft, dragged her out of the house and when the accused was attempting to hack her with a knife, her daughter, raised her left hand to ward it off, in the process, received bleeding injury to her left wrist. Then the accused pushed her down and hacked her on the left side of the neck. She would assert that on receipt of bleeding injury, she died instantly. She would also assert that the accused left the scene of offence and went away, and the neighbours gathered. She would further assert that on telephonic information, her husband came there in the early hours at 5.00 a.m. on the next day. She went to the police station and gave complaint Ex.P-1 at 11.00 p.m. on the same night, but her husband came to the scene of offence at 5.00 a.m. on the next morning. This has been the testimony of PW.1 which requires an intrinsic examination in the light of the answers given by her in the cross-examination and the evidence of other witnesses.

27. When she was cross-examined, she answered that the house of the accused is located in a residential area. The houses of the elder and younger brothers of the accused are situated around the house of the accused. The elder and younger brothers of the accused are good people and they have no disputes with them and that she did not inform them that she came to the house of the accused on receipt of phone call from her daughter and that there are no disputes between the brother of the accused and the deceased and she did not try to bring the deceased to her house in spite of fear expressed by the

deceased and all the children of the deceased were affectionate with her mother.

28. She admits that the accused was constructing a house at Muthukur by the time of death of the deceased which place is located at a distance of 10 KMs. She would assert that the accused did not talk to her when he came there to the house at 6.00 p.m. and she did not enquire anything with the accused at that time. She was also sitting in the house when her daughter was taking meals. The accused was in the house for half-an-hour and during that half-an-hour, neither herself nor the deceased, Shantamma did talk to the accused. By the time, the accused came to the house, he was armed with a knife, that there was no possibility of viewing from the surrounding huts as to happenings at the hut of the deceased and the accused.

29. She admits that the huts of Patra Yedukondalu and Thandra Sudhakar are situate towards east of the hut of the deceased and the accused, but she volunteered that nothing will be visible form their huts as to what was taking place at the scene of offence. She admits that the hut of Patra Yedukondalu is adjoining the hut of the accused and the deceased. She also admits that there was an R.M.P. doctor in Nakkalamitta and she did not take her daughter to any doctor. She volunteered that there was no possibility of taking the deceased to the doctor since the deceased died instantly with the injuries sustained by her. She answers to a question, when she raised huge cries, the

neighbours gathered there and they told her that the deceased had already died and there was no scope to take her to the hospital.

30. She answers to a question that she did not try to come out and did not try to raise hue and cry when the accused was attacking the deceased outside the house and her daughter, Shantamma did not try to raise hue and cry when she was dragged by the accused.

31. She admits that she stated before the learned Magistrate that the accused thrown the knife there itself and went away though, initially she denied it. She admits that Venkata Krishnaiah and Menati Subbaiah, amongst whom, Venkata Krishnaiah is examined as PW.8, belong to the said village and Venkata Krishnaiah borrowed Rs.1,00,000/- from the accused and that except Rs.30,000/-, Venkata Krishnaiah discharged the debt to the accused. At one stage, she admits that there were no talking terms between them and the accused. She admits that the accused received money from the Government for land acquisition. She admits that the children of the accused are with the accused even now and the accused performed the marriage of their daughter even prior to the death of the deceased. The other suggestions made to her that her daughter did not call her on 01.10.2009 in the morning and that she did not visit her daughter, that she was not present at the house of the deceased and the accused and that she did not witness any incident were all bluntly denied by her. She denied the suggestions that the accused used to reside at Muthukur in the nights and he never came to Nakkalamitta in the

nights except coming in the morning and bringing provisions for the family while the suggestion made and the answer given by her touching the defence theory reads thus:

“It is not true to suggest that the incident was happened by unknown offenders tried to act some indecent act against the deceased Santhamma for which she resisted and on that the said unknown offenders attacked her and killed her during night hours and on that the false case foisted by us against the accused because of the disputes in between us and that the accused is no way connected to the murder of the deceased”

32. This portion from the cross-examination of PW.1 is extracted as it is relevant to assess the motive for the accused to kill the deceased as projected by the prosecution.

33. Now, the question that arises for consideration is whether the evidence of PW.1 is implicitly reliable or inherently improbable?

34. PW.2, who is the father of the deceased, would assert that whenever the accused used to beat her having addicted to consumption of alcohol and when she was severely beaten, she used to come back to their house and they used to send her through the intervention of elders viz., Menati Subbaiah and Nellore Venkata Krishnaiah, who were examined as PWs.9 and 8 respectively. He asserts that on 01.10.2009, when PW.1 received phone call from the deceased, she went to the house of the deceased, of course, he asserts

in the chief-examination that he was not present at that time as he went to Koduru village of T.P. Gudur Mandalm, and, at about 11.p.m. that night, he received phone call from his wife, PW.1, he reached Nakkalamitta on the next day morning at 5.00 a.m. and found the dead body of the deceased with bleeding injuries on her neck and on her left hand and lying at their house.

35. No doubt, this witness was cross-examined by the learned counsel for the accused, but, nothing is brought out in his cross-examination to discredit his testimony. His testimony proves a vital circumstance that being at about 11.00 p.m. that night itself, he received phone call from PW.1 and learnt about taking place of incident. Thus, this portion probablises the evidence of PW.1 that she was at the house of the deceased and the accused on 01.10.2009.

36. PW.3 is the son of PWs.1 and 2 and younger brother of the deceased. This witness asserts that three (3) months prior to the date of incident, the deceased visited their house since she was severely beaten and driven out by the accused. A month later, the accused visited their house and pleading that he would treat her well, asked them to send the deceased with him, on which, they took the deceased and went to Nakkalamitta village and called PWs.8 and 9 and another person, and they sent the deceased to the house of the accused. This part of his testimony is corroborated through the evidence of PWs.8 and 9. Thus, the prosecution intended to prove the motive for the accused to kill the deceased through the evidence of this witness and

through PWs.1, 2 and 7, more particularly, the evidence of PWs.8 and 9. In the direction of proving the presence of PW.1 at the house of the deceased and the accused on 01.10.2009, the evidence of this witness becomes material. His evidence shows that on 01.10.2009, the deceased telephoned to him and asked him to give the telephone to PW.1, Vanamma, and then spoke with her mother and immediately after receipt of the said phone call from the deceased, their mother left the house and went to the house of the deceased at Nakkalamitta. Yet another circumstance, which is significantly important in the very same context, is their mother calling him on phone at about 8.00 p.m. that night and informing him that his brother-in-law killed his sister. On receipt of the same, he reached the house of the deceased at 8.30 p.m. and found her dead body with injuries on her neck and on her left hand. Their mother went to Krishnapatnam Port Police Station to give report. Though searching out cross-examination was done, there is nothing to disbelieve the motive part spoken to by this witness receiving phone call from the deceased that morning at 8.00 a.m. and communication from his mother at 8.00 p.m. on the same night that the accused killed the deceased.

37. PW.7 being the younger sister of the deceased who resides at Thallapudi village at her in-law's house, also asserts that at 8.00 p.m. on the date of incident, her mother PW.1 telephoned her informing the accused killing the deceased, the same night she reached Nakkalamitta by catching 10'O clock bus and found her elder

sister, Shantamma with injuries on her neck and on her left hand. In fact, this witness was treated as hostile at some stage by the learned Public Prosecutor and with the permission of the Court and cross-examined her. Of course, she supported the case of the prosecution to the extent of accused addicting to consumption of alcohol. Thus, the evidence of this witness becomes relevant to prove the presence of PW.1 at the house of the accused and the deceased on the date of incident.

38. PW.5, who is the grandson of PW.1 and son of the deceased and the accused, in fact, turned hostile. So also PW.6, yet another son of the deceased and the accused, and PW.4, their daughter, turned hostile. But, in assessing, whether their testimony points out the presence of PW.1 at the house of the deceased and the accused on the date of incident and whether there was occasion for PW.1 to witness the occurrence, the evidence of PW.5, in his chief-examination, becomes relevant. He asserts in his chief-examination that at about 8.30 p.m. on the same night, they received phone call through their mother's mother, Smt. Vanamma - PW.1, stating that their mother died. Thus, receipt of phone call at 8.30 p.m. that night from PW.1 would strongly probablise the presence of PW.1 at the house of the accused and the deceased. In the entire evidence of PWs.1, 2, 3 and 7, nothing is either suggested or elicited that on receipt of information from the villagers of Nakkalamitta, PW.1 travelled to Nakkalamitta that night since the said village is located

one mile from the village of PWs.1 and 2. Even otherwise, the evidence let in by the prosecution as discussed hereinbefore, would clinchingly establish that PW.1 received phone call from the deceased that morning at about 8.00 a.m. and the deceased expressing threat to her life in the hands of the accused, on which alone, PW.1 had to hurry to the house of the deceased and the accused immediately and staying at their house and witnessing the accused attacking the deceased with knife and killing her.

39. The learned counsel for the defence, no doubt, attempted to disprove the presence of PW.1 at the house of the deceased and the accused through the evidence of PWs.4 to 6 since PWs.5 and 6 stated in their chief-examination that in the evening at 6.00 p.m., they went to the house of PW.4 at Purini village situated at a distance of 10 KMs. from Nakkalamitta village. Thus, he would contend that the evidence of PWs.4 to 6 condemn the case of the prosecution, and, therefore, to disbelieve the presence of PW.1 at Nakkalamitta on that day. But, however, PW.5's assertion cannot be brushed aside that PW.1 calling them on phone at 8.30 p.m. that night itself from Nakkalamitta.

40. It is no doubt true, PW.4's version is that on 1.10.2009, she received a phone call through her junior paternal uncle's wife at about 9.00 p.m. in the night, that somebody killed her mother and even the version of PW.6 is to the effect that at about 9.00 p.m. in the night, their neighbours telephoned to PW.4 and on the next day morning,

they reached their village Nakkalamitta in an auto-rickshaw along with PW.4 and her husband found the dead body of their mother with injuries on her neck and on her left hand, but we would like to observe even at this stage that nothing is elicited in the cross-examination of any of the witnesses to probablise the defence theory that the accused was absent in the village on that night. Though, there is varied versions amongst PWs.4 to 6, it cannot be lost sight off that all these witnesses were interested to favour their father. The answers given by them in their cross-examination, when the learned Public Prosecutor cross-examined them would make it abundantly clear that they were bent upon to see that their father would gets out of present situation. They did answer in emphatic terms that their father has been taking their care and they are in the custody of their father even on the date when they deposed before the Court as witnesses. Thus, the natural instinct would be to save their father as they had already lost their mother. That has been the reason, they were gained over and rightly, the learned Public Prosecutor treated them as hostile and cross-examined them. Therefore, whatever they spoke to demolish the case of the prosecution cannot be taken into consideration to discredit the testimony of PW.1. Thus, we have no hesitation to exclude their evidence.

41. In the direction of motive, even the evidence of PWs.8 and 9 would positively prove as they assert that PW.1 came to their house and both of them chided the accused and asked him to look after the

deceased properly telling him that their son also came to tenth class and their future career would be spoiled, on which, the accused assured them that he will look after his wife and sons properly. Both these witnesses were cross-examined, but again there is nothing useful to support the defence theory. Certain omissions were elicited in their cross-examination, but they do not touch the core issue and only touches the side issue.

42. Hence, unhesitatingly, we hold that the prosecution could able to prove the motive for the accused to kill the deceased. We would also like to state at this stage itself that presence of PW.1 at the house of the accused and the deceased at the time when the incident took place cannot be disbelieved as there is positive evidence on record to prove the same as discussed hereinabove.

43. Now we would like to advert to the controversy in regard to recovery of weapon of offence M.O.3.

44. The prosecution has come up with the story that on 06.01.2009, on credible information received by PW.16, he collected PW.13 and another, and reached the house of the accused at Muthukur, where he was constructing a new house and found him there, and, on seeing them, he tried to flee away but he was prevented and apprehended by him. The accused alleged to have made confession in their presence as in Ex.P-9 and recovery of MO.3 at his instance under Ex.P-10 Mahazarnama, but, however, PW.1, in her

cross-examination, admitted to a question that she stated before the learned Magistrate that the accused thrown the knife there itself and went away. Likewise, PW.9 also answers to a question in his cross-examination that he did not observe the knife near the place of dead body and did not state before the learned Magistrate that he heard through Vanamma, PW.1, that the accused thrown the knife at the scene of offence and went away.

45. We have also indicated in the above that one of the positive photographs would clearly show that sickle type knife and PW.16, Inspector of Police, answers thus:

“... I seized M.O.3 knife on 6.10.2009. Ex. P 7 photos were taken on 2.10.2009. It is true that similar knife of M.O.3 is visible in Ex. P 7. The witness adds that he cannot say whether M.O.3 is that of the knife shown in Ex.P 7 photos, as suggested. ...”

Thus, as rightly contended by the learned counsel for the accused, it certainly creates a doubt with regard to recovery of MO.3 as projected by the investigating agency. The learned Public Prosecutor would come up with the submission that even discarding the recovery of MO.3, still, the evidence of PW.1 cannot be disbelieved as there is definite evidence on record to indicate that she was present at the place of occurrence having visited the house of the accused and the

deceased in the morning hours on receipt of telephonic information from the deceased and witnessing the incident.

46. We have seen the positive photographs where the weapon, a knife in sickle shape with slight curve, is photographed by PW.12. When a weapon is found at the place of occurrence, where we come across certain answers like the one given by PW.1 by way of admission and denial by PW.9 of having stated before the learned Magistrate in his statement recorded under Section 164 of the Code that PW.1 told him that the accused thrown away the knife and left the scene, a duty is cast on the prosecution to offer satisfactory explanation to reconcile the divergent views that would crop up. In which direction, the prosecution failed, but, again the question is whether the failure to prove the recovery as projected by the prosecution would create an enormous doubt so as to discredit the testimony of PW.1 and to reject the entire case of the prosecution. In our considered view, it is difficult to hold that failure of the prosecution in establishing recovery of weapon of offence satisfactorily and non-explanation of presence of weapon at the place of occurrence would cut at the root of the prosecution case, so as to view the very genesis of the prosecution with suspicion when the testimony of PW.1 is so cogent, convincing and beyond reproach, for the reasons we assigned, while analysing the evidence of PWs.1 to 9 and corroborated through the circumstantial witnesses.

47. We found corroboration from the evidence of PWs.10 and 11 in the direction of complicity of the accused in the commission of offence alleged against him. The evidence of PWs.10 and 11 would show that when they were returning home, that evening, they found PW.1 hurriedly proceeding from his house towards western side in running manner. When they were pursued in their cross-examination, PW.10 would answer that he did not state before the police that himself and Nellore Subrahmanyam i.e., PW.11, while were returning from their fields, observed that the accused was proceeding from his house in running manner towards western side of the fields.

48. So far as evidence of PW.11 is concerned, he asserts in his chief-examination that while they were reaching their village entrance, they found the accused coming in the opposite direction in running manner from the village and when he questioned, why he was running, he did not answer him and went away. In his cross-examination, he states that to reach his house from the fields, he has to cross the house of the accused and his house is on the southern side of the house of the accused at a distance of half furlong. He answers to a pertinent question that accused came opposite to them in running manner, while they reached Dibba field, dry land, of Mallika Ramanaiah at about 7.30 or 8.00 p.m. in the night. Of course, he answers to yet another question that there was no electricity at that place. But, however, the said assertion of PW.11 neither constitutes omission nor contradiction. There is nothing in his cross-examination

to disbelieve that aspect of the case. The circumstance that both these witnesses finding the accused coming from the house and proceeding away would prove the presence of the accused at the village and scene of offence that evening around 7.00 p.m. Thus, the evidence of PWs.10 and 11 stands un-tilted, which accounts for a strong probability adverse to the case of the defence and favourable to the case of the prosecution corroborating the evidence of PW.1 as regards complicity of the accused.

49. Besides corroboration through the evidence of PWs.10 and 11, when intrinsically examined the sequence of events, there was no delay in lodging the complaint. The offence took place at 7.00 or 7.30 p.m. on 01.10.2009. PW.1 with the aid of PWs.8 and 9 reached the police station which is at a distance of 10 K.Ms. and lodged a written complaint and PW.17 registered it and issued express FIR and FIR reached the learned Magistrate within three hours i.e. by 2.00 p.m., according to the endorsement made by him and the very next day itself, in the morning hours, inquest was held and, thereafter, post-mortem examination was conducted, contextually referring to the blood relations, who are witnesses herein including the presence of PW.1, would all give rise to an irresistible inference that what has been projected by the prosecution so far as presence of PW.1 at the house of the accused and the deceased from 10.00 a.m. onwards till the offence took place on 01.10.2009 cannot at all be disbelieved.

50. The medical evidence on record through PW.15 would also prove the injuries sustained by the deceased and these injuries on the person of the deceased spoken to by the doctor as ante-mortem would completely corroborate the description of injuries spoken to by PW.1 and other witnesses, more particularly, the accused dealing the sickle blows on the deceased and, further, more significantly, the deceased sustaining injury on her left wrist or left hand that occasioned when she tried to ward off the sickle blow on her neck dealt by the accused in the first instance. All these details were spoken to by PW.1 meticulously. The learned defence counsel seeks to view the testimony of PW.1 with suspicion in not attempting to interfere and not raising any shouts would not gain precedence.

51. Thus, the ocular evidence, in our view, would completely outweigh the so called suspicion circumstances which have been pointed out by the learned counsel for the accused. Therefore, we have no hesitation in holding that the prosecution could prove the charge against the accused beyond all reasonable doubt. Accordingly, point Nos.1 to 4 are answered.

POINT No.5:

52. We have also examined the reasoning adopted by the learned trial Judge. Initially he dealt with certain basic well settled propositions that corroboration of evidence with mathematical niceties cannot be expected in criminal cases; trivial discrepancies ought not to obliterate otherwise acceptable evidence as held in **Leela Ram (D)**

through **Duli Chand v. State of Haryana** [2000 SAR (Crl.) 24] and then referred to the ruling in **State of U.P. v. M.K. Anthony** [AIR 1985 SC 48], where it was held that ocular account, though, may have given by the son and the brother-in-law, does not by itself lose its efficacy or its evidentiary value unless some other factor is brought on record to discredit the creditworthiness of the witnesses and the proposition that conviction based on the evidence of a sole witness, if worth credence, as held by the Hon'ble Apex Court in **Seeman @ Veeranam v. State, by Inspector of Police** [2005 (3) ALT (Crl.) 87], and, then proceeded with analysing the evidence of PW.1 and corroborative piece of evidence through PWs.2, 3, 7 and 5 with regard to presence of PW.1 at the house of the deceased and the accused on the date of incident and witnessing the occurrence and the circumstantial evidence of PWs.10 and 11 finding the accused coming in opposite direction from the village towards the fields holding that their evidence would strengthen the case of the prosecution that the accused left the scene of offence after commission of offence and also taking due note of the fact that even if the evidence of PW.13 does not support recovery of weapon, still, the sole testimony of PW.1 clearly inspires confidence and thereby recording the conviction for the charge under Section 302 IPC on the premise that the prosecution could prove the charge beyond all reasonable doubt and recording conviction and inflicting Imprisonment for Life, which, in our considered view, is the correct approach based on process of

reasoning on appreciation of available evidence on record in accordance with evidentiary rule.

53. Thus, the findings recorded by the learned trial Judge and the conclusion arrived in holding that the prosecution could bring the guilt of the accused to his home beyond reasonable doubt does not suffer from any legal infirmity and, therefore, we are not inclined to interfere with the said finding besides our conclusion based on independent appraisal of evidence on record as discussed hereinabove. Therefore, we find no merit in the present appeal.

54. Accordingly, the Criminal Appeal is dismissed confirming the judgment under challenge in all respects.

55. As a sequel thereto, Miscellaneous Applications, if any, pending in the present criminal appeal stand dismissed.

56. This Court, by the order dated 19.12.2016 in Criminal Appeal M.P. No.2117 of 2016, relying on the order dated 02.11.2016 in Criminal Appeal M.P. No.1687 of 2016 in Criminal Appeal No.607 of 2011 [**Batchu Rangarao v. State of A.P.**], released the accused on bail on his furnishing a personal bond for a sum of Rs.10,000/- with two sureties for a like sum each to the satisfaction of the trial Court. Therefore, we direct the accused to surrender before the learned Principal Sessions Judge, Nellore, by Twenty Fourth day of April Two Thousand and Eighteen (24.04.2018) to serve out the sentence of Imprisonment for Life inflicted on him. In case, he fails to surrender

as directed, the learned Sessions Judge shall secure his presence and put him in prison.

A. RAMALINGESWARA RAO, J

March 24, 2018.

A. SHANKAR NARAYANA, J

NOTE:

The Registry is directed to communicate a copy of the judgment to the trial Court forthwith.

(BO) PV

