

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.104 OF 2013

JUDGMENT: (*Per Hon'ble Justice T.Amarnath Goud*)

The sole accused in Sessions Case No.444 of 2012 on the file of the Court of Principal Sessions Judge, Warangal (for short, Court below), preferred this criminal appeal under Section 374(2) Cr.P.C., challenging the conviction and sentence passed in calendar and judgment dated 14.03.2012.

The facts of the case in nutshell are that the accused, Shanigaram Rajalingam, is the son of the deceased, Shanigaram Yellamma. The marriage of the accused was performed with Balavva about eight years ago. The accused and his wife led their marital life and blessed with one daughter and son. On 25.05.2011, wife of the accused committed suicide by pouring kerosene on her body and set ablaze and was succumbed to burn injuries on 31.05.2011, which is subject matter of Crime No.31/2011 of Maddur Police Station. After the death of his wife, the accused was roaming as a vagabond and used to harass the deceased, demanding her to give her pension amount. As the deceased was looking after the welfare of the children of the accused with the pension amount, she refused to pay pension amount to the accused.

About one week prior to the date of incident, the accused came to his house at Kamalayapally Village and started harassing the deceased demanding her to give pension amount. On the date

of incident i.e., on 09.01.2012 at about 4.30 am, the accused picked up quarrel with the deceased and demanded to give the pension amount. When the deceased refused to give the amount, the accused got furious upon the deceased, caught hold her, thrown her on to the ground and committed her murder, by cutting her throat with a plank kitchen knife and escaped from the scene of offence. At about 7.00 am., son of the accused, who was aged about two years, opened the doors and on seeing the deceased lying on the ground in a pool of blood, raised hue and cry, and on hearing his cries, P.W.2-Shanigaram Thirupathi, rushed there and found that the deceased was lying on the ground in a pool of blood and also observed cut injury on the throat of the deceased. Immediately, he informed the same to P.W.1, Tadakapally Laxmi, daughter of the deceased, who was residing at Arjunapatla Village of Maddur Mandal. On that, P.W.1 rushed to her mother's house and found her deceased mother with bleeding injury on her throat as her throat was cut and she was in a pool of blood in the rear side room of her house, she lodged the complaint (Ex.P.1).

P.W.13, Sub-Inspector of Police, Maddur Police Station, registered a case in Crime No.4/2012 for the offence punishable under Section 302 IPC, issued FIR. Investigation was then taken up by P.W.14, the Inspector of Police, Cherial. He went to the scene of the offence, prepared scene observation report in the presence of mediators/P.W.10-Vajroju Shankara Chary and L.W.8-Shanigaram Kankaiah, and seized bloodstained earth and control earth, under cover of crime details form and got photographed the

dead body of the deceased as well as scene of offence with the assistance of P.W.7-Thaduri Krishna, Photographer. Thereafter, he examined the witnesses/P.Ws.2 to 7 and 11 and recorded their statements. He also held inquest over the corpse of the deceased in the presence of mediators/L.W.8, P.Ws.7 and 10 and the corpse was referred to the Government Civil Hospital, Cherial, for conducting postmortem examination.

P.W.12, Civil Assistant Surgeon, Government Civil Hospital, Cherial, has conducted autopsy over the dead body of the deceased and opined that the cause of death of the deceased was 'due to deep laceration around neck due to cut of large blood vessel and oesophagus and trachea and hemorrhage shock'.

Upon receiving the postmortem report, P.W.14 arrested the accused at Panja Venkataiah's agricultural well, situated on the outskirts of Kamalayapally Village on 12.01.2012 at about 10.00 am., interrogated the accused in the presence of P.Ws.8 and 9. During the interrogation, the accused had voluntarily confessed to have committed the offence of matricide and his confessional statement was reduced into writing. The accused also stated that he will show the crime weapon which he used in commission of the offence if anybody accompany him. Accordingly, the accused led P.Ws.8, 9 and 14 to his house and showed crime weapon (M.O.1) which was kept in a corner of his house, and the same was recovered by P.W.14 under cover of seizure panchanama and brought the accused to Police Station and sent him to the Court for judicial remand. Later, P.W.14 forwarded the material objects to

the Regional Forensic Science Laboratory, Warangal, through Court, for chemical examination. L.W.14-Y.Neeraja, Scientific Officer, R.F.S.L. Unit, Warangal, examined the material objects and issued report dated 13.02.2012. On receipt of relevant reports and after completion of investigation, P.W.14 filed the charge sheet against the accused for the offence punishable under Section 302 IPC.

Upon committal, the Court below, upon hearing both sides and after considering the material available on record, framed a charge under Section 302 IPC against the accused, read over and explained to him in Telugu, he pleaded not guilty and claimed to be tried.

During trial, the prosecution has examined P.Ws.1 to 14 and got marked Exs.P.1 to P.8 and M.Os.1 to 5 to substantiate the case of the prosecution. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., explained the incriminating material that appeared against him in testimony of prosecution witness and he denied the same. When the accused was called upon to adduce the evidence, he reported no defence evidence.

Upon hearing argument of learned Additional Prosecutor and Defence Counsel, the Court below found the accused guilty for the offence punishable under Section 302 IPC, convicted and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.20,000/- with default sentence of Rigorous Imprisonment for six

months. Aggrieved by the conviction and sentence passed by the Court below in Sessions Case No.444 of 2012, the present appeal is preferred through legal-aid-counsel.

The gist of main grounds urged in the grounds of appeal is as follows:

- a) Except evidence of P.Ws.1 to 6, who are highly interested, no other independent corroborative evidence is available on record and even there are discrepancies and inconsistency in the testimony of P.Ws.1 to 6. But, the Court below, based on the testimony of P.Ws. 1 to 6 recorded conviction of the accused for the offence punishable under Section 302 IPC and committed an error in recording such finding.
- b) The Court below failed to consider that there is no circumstance to connect the accused/appellant with the crime and no recovery was affected at his instance.
- c) The Court below failed to consider the motive behind false implication of the accused/appellant for the grave offence punishable under Section 302 IPC and therefore, committed an error and prayed to allow the appeal, setting-aside the conviction and sentence passed by the Principal Sessions Judge, Warangal in Sessions Case No.444 of 2012, finding him not guilty for the offence punishable under Section 302 IPC.

During hearing, learned legal aid counsel Sri Pulla Rao Yellanki appearing for the accused/appellant would contend that the evidence of P.Ws. 1 to 6, though inconsistent, based on such testimony of such highly interested witness, recording conviction is illegal, added to that, it is contended that the Court below failed to accept such contention that the prosecution was unable to establish each and every linking circumstances to complete the chain of circumstances, without giving any scope for any other

hypothesis, thereby committed grave error in finding the accused/appellant guilty, prayed this Court to set-aside the findings recorded by the Court below and acquit the accused for the offence punishable under Section 302 IPC. He placed reliance on the decisions in **State of Rajasthan v. Ramanand¹**, **Jalli Radha Krishna v. State of A.P.²**, **Krishnegowda v. State of Karnataka³** and pleaded for acquittal as the case was not proved beyond reasonable doubt.

Whereas, the learned Public Prosecutor Sri Pratap Reddy for the State of Telangana would contend that, when the prosecution proved each and every circumstance of the case, more particularly, all the links in chain of circumstances, the Court can record conviction of the accused/appellant. That apart, P.Ws. 1 to 6 are independent witnesses and there was nothing to prove that they are interested witnesses.

Learned Public Prosecutor Sri Pratap Reddy for the State of Telangana placed reliance on the judgment of this Court in Criminal Appeal No.388 of 2011 dated 20.10.2017 and sought to dismiss the present appeal.

Learned Public Prosecutor contends that the theory of last seen the deceased in the company of accused, soon before his death is sufficient to find the accused/appellant guilty for the offence punishable under Section 302 IPC. Therefore, the proved

¹ 2018(1) ALT (CrI.) 155 (SC)

² 2018(1) ALT (CrI.) 129 (DB) (A.P)

³ 2017(2) ALT (CrI.) 292 (SC)

facts before the Court completed the links in the chain of circumstances and in such case, conviction of the accused for the offence punishable under Section 302 IPC cannot be faulted. Therefore, this Court cannot interfere with the fact findings recorded by the Court below, unless the findings are manifestly perverse or without any evidence by exercising power under Section 374(2) Cr.P.C and requested this Court to confirm the conviction and sentence imposed against the accused/appellant for the offence punishable under Section 302 IPC.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are:

1. ***“Whether the accused/appellant caused the death of Shanigaram Yellamma, the deceased. If so, whether the accused/appellant is liable for punishment for the offence punishable under Section 302 IPC, for causing death.***
2. ***Whether the conviction and sentence recorded by the Principal Sessions Judge, Warangal in Sessions Case No.444 of 2012, be sustained?”***

P O I N T N O . 1 :

Section 374 Cr.P.C conferred a substantive right of appeal on the accused who is convicted by the Court below and this Court while exercising power under Section 374(2) Cr.P.C is bound to re-appraise entire evidence to come to an independent conclusion, uninfluenced by the findings recorded by the Court below and decide the legality of conviction and sentence passed by the Sessions Court. Therefore, it is the duty of this Court to re-appraise entire evidence recorded by the Court below after giving an opportunity to both the parties, i.e., accused and the respondent,

unless the Court finds manifest perversity in the calendar and judgment or such findings were recorded without evidence, normally, this Court cannot interfere with such fact findings in appeal, while exercising jurisdiction under Section 374(2) Cr.P.C. It is the sacrosanct duty of the appellate Court, while sitting in appeal against the judgment of the Court below, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate Court to be undertaken and when that is not done, the cause of justice is not sub-served, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt (vide **Kamlesh Prabhudas Tanna & Anr v. State Of Gujarat**⁴). Keeping the scope of Section 374(2) Cr.P.C we would like to re-appreciate entire evidence on record to come to an independent conclusion, uninfluenced by the findings recorded by the Court below.

The case of prosecution is totally based on circumstantial evidence, since the incident allegedly took place in the house of the accused/appellant and it is never the case of the prosecution that the incident was witnessed by any witness. It is the obligation of prosecution to establish each and every circumstance to complete

⁴ (2013) 15 SCC 263

the chain of circumstances pointing out the guilt towards the accused/appellant and inconsistent with the innocence.

When the case is based on circumstantial evidence, burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent with hypothesis of guilt of accused and any circumstance consistent with innocence of accused, he is entitled to benefit of doubt. (vide **Kishore Chand v. State of Himachal Pradesh**⁵)

The Apex Court while discussing the scope of Section 3 of the Evidence Act, more particularly, circumstantial evidence held that, in a case of murder when the prosecution relying on circumstantial evidence, it is for the prosecution to prove all the incriminating facts and circumstances and the circumstances which are incompatible with innocence of the accused to draw inference of guilt and such evidence should be tested by touch-stone of law relating to circumstantial evidence laid down by Supreme Court (vide **Syed Hakkim & another v. State**⁶)

Similarly, in **G.Parshwanath v. State of Karnataka**⁷, the Supreme Court is of the view, when the case of the prosecution is based on proof of circumstantial evidence on the basis of which conclusion of guilt is drawn must be established fully, individual chain of circumstances must be complete pointing out the guilt of

⁵ AIR 1990 S.C. page 2140

⁶ 2009 Cr.L.J. page 1891

⁷ AIR 2010 S.C. page 2914

accused, all proved facts must lead to inference of guilt of the accused alone and court has to draw distinction between primary and basic facts while appreciating the circumstances and regard must be had to common course of natural events and human conduct and finally the facts established should be consistent only with hypothesis of guilt of accused and it does not mean that each and every hypothesis suggested by the accused must be excluded by proved facts. In **Rukia Begum Vs. State of Karnata with Issaq Sait and another v. State of Karnataka with Nasreen v. State of Karnataka**⁸; **Jagroop Singh Vs. State of Punjab, Inspector of Police, Tamil Nadu Vs. Balaprasanna**⁹ **Shaik Khadar Basha v. State of Andhra Pradesh**¹⁰, the same principle was reiterated.

The Supreme Court in **Trimukh Maloti Kikran v. State of Maharashtra**¹¹, wherein the Supreme Court held as follows:

“In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. 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.”

In view of the settled principle of law, the prosecution made a sincere attempt to prove each and every circumstance, pointing out the guilt of the accused that the offence punishable under Section 302 I.P.C by drawing inference from the proved facts and

⁸ AIR 2011 SC page 1585

⁹ 2009(1) ALD (CrL.) page 113

¹⁰ 2009(1) ALD (CrL.) page 859 (AP)

¹¹ (2006) 10 SCC 681

circumstances which are consistent only with hypothesis of guilt of accused before the Court below and inconsistent with innocence.

The prosecution in this case relied on the following circumstances:

- 1. The accused had motive for committing murder of the deceased;**
- 2. Shanigaram Yellamma (deceased) was lastly seen in the company of the accused;**
- 3. On his confession leading discovery of the plank kitchen knife M.O.1 from the house of the accused, at his instance; and**
- 4. The accused had absconded after the incident.**

As stated above, the case of the prosecution is totally based on circumstantial evidence. As the prosecution relied on circumstances which are enlisted above, we would like to decide the circumstances which the prosecution relied on, to find out whether the findings recorded by the Court below are based on the circumstantial evidence is supported by material and in accordance with law.

In view of the circumstances stated above, to connect the accused/appellant with the offence punishable under Section 302 IPC, we deal with the circumstances in the order of circumstances hereinafter.

P.W.1, in her cross examination, deposed that one week prior to the incident, the accused came back to the village and was quarreling with her deceased mother for payment of money as her mother was receiving old age pension amount; that on the earlier night, a quarrel took place between the accused and mother of P.W.1 regarding money; L.W.2 heard the quarrel who is a

neighbour as well as her brother's son; on the next day morning, i.e., at 7.30 am., she received a phone call from L.W.2 informing that the accused killed her mother and asked her to come immediately; that she rushed to the house of her mother; that she found her mother with bleeding injuries on her throat as her throat was cut and she was in a pool of blood in the back side room of her house; that children of the accused were also there and were sleeping and that she rushed to the police station and lodged a report. In her cross-examination, she denied the suggestion that on the date of accident, the accused was at Hyderabad and stated that the accused was in the house of the deceased.

P.W.2, in his cross examination, deposed that the accused was roaming as vagabond and he was not doing any work and addicted to alcohol; that the accused used to stay with the deceased; that the accused used to pick up quarrel with the deceased for payment of money; that there was a quarrel on the previous night of the incident for payment of money; that on the morning of 09.01.2012 at about 7.30 am., he heard the cries of the son of the accused; that on hearing the cries, he went to the house of the deceased, opened the door and found the deceased dead in a pool of blood; that he found one throat cut injury on the deceased; that the accused was not present in the house at that time and that he informed P.W.1 about the incident over phone. In his cross examination, P.W.2 denied the suggestion that no quarrel took place between the deceased and the accused on the previous night for the sake of money.

P.Ws.3 to 6 deposed in the same lines as that of P.W.2. P.W.12, the doctor who conducted postmortem examination over the dead body of the deceased, opined that the cause of death was due to “deplaceration over neck and cut the last blood vessels and oesphagus treachea and hemerrage and shock”.

Where the evidence of witness shows that the accused have motive to kill the deceased and where there is no possibilities of any other person committing murder, conviction of the accused to be confirmed.

It is the duty of the accused to explain the cause of injuries when the deceased was found in pool of blood in the house, which is exclusively in the possession of the accused and the deceased. It is not the case of the prosecution that the house was kept open accessible to anyone, when the accused himself allegedly was at Kamalayapally in the house along with his mother, deceased Yellamma. In normal case, when a person leaves the house and goes to another village, the house must be kept under lock and key. Keeping open the house, permitting access to everyone is improbable to the natural circumstances and conduct of human being. All the more, it is not his case that the house was kept open permitting access to anyone. Thus, in the absence of such plea, it is for the accused/appellant to explain as to how Shanigaram Yellamma (deceased) received injuries in his house. But, the accused/appellant did not explain the reason for finding the

deceased in such state in pool of blood in the house of the accused/appellant.

In respect of cases where the offence took place in privacy and if the accused alone was in the house, the burden is on him to explain under what circumstances the dead body was in his house. The observation of the Supreme Court in **Trimukh Maroti Kikran**⁹ is relevant in this regard.

"if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to place and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of s. 106 of the evidence act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer long explanation. In case of no explanation. In case if no explanation or false explanation from the accused, it would cause an additional link in chain of circumstances."

(emphasis supplied)

In view of the judgment of the Supreme Court in **Trimukh Maroti Kikran**⁹, if the offence takes place in the house of the accused, then, the burden is upon him to explain under what circumstances the offence has taken place in view of Section 106 of Indian Evidence Act, since it is within his exclusive knowledge. In the absence of any explanation, it can safely be concluded that the accused/appellant was responsible for commission of offence.

In the present facts of the case, the scene of offence is admittedly inside the house, the accused and the deceased were in exclusive possession and enjoyment of the same. The prosecution examined the Investigating Officer and Panchayatdar who was present at the time of observation of the scene of offence. P.Ws. 1 to 6 categorically testified that Shanigaram Yellamma (deceased) was found dead in pool of blood inside the house, with bleeding injuries. P.W.10 is panch witness present at the time of observation of scene of offence by Inspector of Police-P.W.14. In the evidence of P.W.10, nothing could be elicited to discredit his evidence, as to the presence at the time of observation of scene of offence and recording the crime details vide Ex.P-4. The Inspector of Police was examined as P.W.14, he categorically testified that he observed the scene of offence in the presence of P.W.10, Shanigaram Kanaiah (L.W.8), and prepared crime details form including rough sketch of the scene of offence, which is marked as Ex.P-4. Photographs and the compact disk of the photographs of the scene of offence were taken which are marked as Exs.P-5. In the cross-examination of P.W.14, no suggestion was put to him disputing the scene of offence. Moreover, in the entire cross-examination of P.Ws. 1 to 6, no suggestion was put to them disputing the scene of offence. Therefore, the consistent evidence on record clinchingly established that the scene of offence is inside the house of the accused. Apart from that, on examination of bloodstained plank kitchen knife that caused injuries to the deceased, blood stained earth, controlled earth, bloodstained blouse and saree of the deceased seized from the scene of offence which are marked as items 1 to 5 respectively.

The Forensic Science Laboratory in its report vide Ex.P-7, detected human blood on item Nos.1, 3 & 5. The samples of controlled earth and blood stained earth were seized from the scene of offence by the Investigating Agency and the said fact was spoken by P.W.14. In the cross-examination of P.W.14, no suggestion was put to him denying seizure of controlled earth and blood stained earth. Therefore, it is clear from the testimony of P.Ws. 1 to 14 that scene of offence is inside the house, which is in possession of the accused and deceased. In such circumstances, in the absence of any explanation by the accused, the Court can draw an inference that the accused is responsible for causing injuries on the body of Shanigaram Yellamma (deceased), in view of the law declared by the Courts consistently, referred supra. Thus, the prosecution proved the circumstances by cogent and satisfactory evidence.

The other circumstances relied on by the prosecution is the confession of the accused, which lead to the recovery of weapon used in commission of offence. In the present facts of the case, according to the prosecution, Inspector of Police-P.W-14 arrested the accused at his house and interrogated the accused/appellant in the presence of P.W.8 and 9. During interrogation, the accused stated that he will show the plank kitchen knife which he concealed, as it was used for causing injuries on the body of the deceased, if anybody accompany him. The same was reduced into writing. The accused/appellant led P.W.14 and the panchayatdars, P.Ws.8 and 9 to the house of the accused. In the presence of panchayatdars, P.Ws.8 & 9, and P.W.14-Inspector of Police, the

accused picked out M.O.1 and produced by mediators and P.W.14, P.W.14 seized the same under the cover of Ex.P-3, the admissible portion of panchanama on the basis of the confession leading to discovery. Immediately, identification slip was affixed to M.O.1 bearing signature of P.W.14, P.Ws.8 & 9. In the cross-examination of P.Ws.8 & 9, a suggestion was put to them that the accused never made any confession while denying seizure of M.O.1. Moreover, as discussed in the earlier paragraphs, putting a suggestion to the witness and getting denial by the witness is no evidence. The statement of fact recorded by the trial Judge as to what had happened is conclusive. Therefore, the suggestion put to the witnesses denying the factum of making confession leading to discovery and seizure of M.O.1 remained unrebutted. Though, in the examination of accused/appellant under Section 313 Cr.P.C, this specific fact was put to him, he denied the same flatly as usual. P.Ws.8 and 9 are panch witnesses in whose presence the confession leading to discovery was made and seized M.O.1, the evidence of P.Ws.8 & 9 is consistent with regard to interrogation, making confession leading to discovery and seizure of M.O.1. Thus, the evidence of P.Ws.8 & 9 corroborated the testimony of official witness P.W.14 on the material aspects of making confession leading to discovery and seizure of M.O.1. P.Ws.8 & 9 are natives of the same village of accused/appellant. Hence, P.Ws.8 & 9 are wholly reliable witnesses and corroborated the evidence of P.W.14 on material aspects. Therefore, the evidence on record established seizure of M.O.1 based on confession made by the accused, leading to discovery vide Ex.P-3.

Section 27 of the Indian Evidence Act is an exception to Sections 25 and 26. The conditions necessary for invoking the aid of the Section are as follows:

- a) there must be a discovery of a fact albeit relevant fact in pursuance of an information received from a person in police custody;*
- b) the discovery of such fact must be deposed to ;*
- c) at the time of giving information the accused must be in police custody;*

Then the effect is that so much of the information as relates distinctly to the fact thereby discovered is admissible. What is allowed to be proved is the information or such part thereof as related distinctly to the fact thereby discovered.

Discovery evidence is not substantive evidence (vide **Dinakar v. State**¹²).

Similarly, in **Inspector of Police, Tamil Nadu Vs. Balaprasanna**¹³, the Apex Court held as follows:

“Law is well settled that the prosecution while relying upon the confessional statement leading to discovery of articles under Section 27 of the Evidence Act, has to prove through cogent evidence that the statement has been made voluntarily and leads to discovery of the relevant facts. The scope and ambit of Section 27 of the Evidence Act had been stated and restated in several decisions of the Supreme Court. However, in almost all such decisions reference is made to the observations of the Privy Council in *Pulukuri Kotayya vs. Emperor*, AIR 1947 PC 67. At one time it was held that the expression 'fact discovered' in the second is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in *Pulukuri Kotayya's* case. The various requirements of the section can be summed up as follows:-

- 1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- 2) The fact must have been discovered.

¹² AIR 1970 Bombay page 438

¹³ 2009(1) ALD (Crl.)(SC) page 113

- 3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.
- 4) The person giving the information must be accused of any offence.
- 5) He must be in the custody of a police officer.
- 6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- 7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.”

In view of the principle laid down in the above decision, when a fact is discovered in pursuance of confession leading to discovery is only relevant piece of evidence, but it is not a substantive piece of evidence.

Even otherwise, in **Brijesh Mavi Vs. State of NCT of Delhi**¹⁴, the Apex Court, held that recovery evidence, when not sufficient to prove culpability of accused and no direct evidence connecting accused to murder. Recovery of weapon of offence at the instance of accused two years after incident is not believable. Mere recovery of weapon, therefore, not sufficient to convict the accused for the offence of murder under Section 302 of I.P.C.

In view of the law declared by the Apex Court in the judgments referred supra, the confession leading to discovery marked as Ex.P-3 and seizure of M.O.1 is another strong link in the chain of circumstances. Therefore, the Court below rightly appreciated the evidence of P.Ws.8, 9 & 14 with regard to proof of Ex.P-3 and seizure of M.O.1 and the conclusions arrived by the

¹⁴ 2012 (2) ALD (Cri.) page 865 (SC)

Court below cannot be interfered by this Court while exercising power under Section 374(2) Cr.P.C.

Ex.P-15 is the post-mortem report received by P.W.14 and P.W.12 is the doctor who held autopsy over the dead body of Shanigaram Yellamma (deceased). According to the evidence of P.W.12, who has been working as Civil Assistant Surgeon in Government Civil Hospital, Cherial, conducted autopsy on 09.01.2012 over the body of Shanigaram Yellamma (deceased), Female, Age 65 years, on requisition from Station House Officer, Cherial and found the following injuries:

1. Deep laceration over neck about 6 x 3 x 2 cm
2. Large blood veselles i.e., carotids cut on both sides
3. Cut oesophagus upper 1/3rd
4. cut trachea behind the neck.

P.W.12 opined that all the above injuries are anti-mortem injuries caused by a sharp edged weapon like plank kitchen knife and that the deceased appeared to have died due to 'deep laceration around neck, due to cut of large vessel and oesophagus and trachea and haemorrhagic shock', 18 to 20 hours prior to the post mortem examination. Ex.P-6 is the Post Mortem Examination Report of the deceased issued by P.W.12. These facts elicited are of no avail to prove that cause of death was otherwise, since it is not the case of defence at any stage of the case that the deceased died due to road accident or due to fall on sharp edged stone. Mere eliciting the fact that there could be a possibility of sustaining such injuries due to falling of a sharp edged weapon or otherwise, without suggesting anything to any of the witness is of no

assistance. If, really, the deceased sustained injuries due to falling of a sharp edged weapon, question of finding her in pool of blood inside the house of the accused does not arise. Therefore, the possibility of sustaining injuries due to contact with sharp edged stone or object is ruled out. As such, the prosecution could establish that the case of death was due to injuries found on the body of the deceased and the said fact is supported by the inquest panchayatdars. Therefore, the conclusion arrived by the Court below that the death of Shanigaram Yellamma (deceased) was homicidal, is based on satisfactory evidence and the same cannot be disturbed by this Court even after re-appreciation of entire evidence on record.

One of the circumstances relied by the prosecution is the motive. But, motive is not a substantive piece of evidence, it is only a corroborative piece of evidence to complete the links in the chain of circumstances. Even if, the prosecution failed to prove the motive part, it is not a strong circumstance to disbelieve the entire case of the prosecution, since motive is only a corroborative piece of evidence. Enmity may be one of the circumstances, but that itself is not a substitute for proof.

In **Anil Rai v. State of Bihar**¹⁵, the Apex Court held that the admitted position of law is that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of enimical witnesses, the Courts are required to scrutinize their testimony with anxious

¹⁵ 2001(2) ALD (Cri.) page 446

care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity held to be a double edged weapon may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eye-witnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eye-witnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime cannot be made a basis to discard or reject the testimony of the eye-witnesses, the deposition of whom is otherwise consistent and convincing.

From the principle laid down by the Hon'ble Apex Court, enmity by itself is not a ground to conclude that the accused is the person who perpetrated the murder. After developing enmity, the accused must develop motive to commit murder. However, motive by itself is not a ground to convict the accused and proof of motive is not the substitute for proof.

When the case of prosecution is depending upon circumstantial evidence, last seen together deposed by natural witness about 'last seen' only after 5 years in Court and made improvements makes his evidence unreliable without corroboration. Fact that one of accused did not like his sister's affair with deceased and, therefore, had motive, creates suspicion but cannot be substitute of proof. Thereby, the accused is entitled to be given benefit of doubt (**Sampath Kumar v. Inspector of Police, Krishnagiri**¹⁶)

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something mere establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim

¹⁶ AIR 2012 SC pg 1249

suffered the death or should own the liability for the homicide (In **Mohibur Rahman and Another v.. State of Assam**¹⁷⁾)

In view of the law declared, motive is not a substantive piece of evidence, it is only a corroborative piece of evidence. According to Section 8 of the Indian Evidence Act, motive is relevant fact and it is one of the circumstances to complete the chain of circumstances. Motive is double-edged weapon. It may be a ground for committing a crime and it may also be a ground for falsely implicating the accused. Proof of motive may lend additional support to the prosecution, but it cannot make good the deficiency of the prosecution case.

In **Suresh Chandra Bahri Vs. State of Bihar**¹⁸, the Apex Court held that, sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to

¹⁷ AIR 2002 SC page 3064

¹⁸ AIR 1994 S.C. page 2420

what circumstances prompted him to a certain course of action leading to the commission of offence.

The defence set up by the accused/appellant before the Court below is that, even though it is the admitted case that the accused and the deceased are son and mother, there is no evidence to show that on the date of occurrence, both the accused and the deceased were in the house together and that none of the witnesses were examined to prove the said fact.

Turning to the evidence on record, according to the evidence of P.Ws.2 to 6, one week prior to the occurrence of the incident, the accused came back to his house at Kamalayapally and staying with his deceased mother and he daily used to pick up quarrel with her, demanding her to give her pension amount and on 09.01.2012 at 4.30 a.m., he picked up a quarrel with the deceased, demanding her to give her pension amount, but she declined to give the same and therefore, the accused committed murder. Even in the examination of the accused/appellant under Section 313 Cr.P.C, he did not state anything about his absence, except denying the commission of offence. The Court below observed that P.Ws.2, 3 and 5 are the immediate neighbours of the deceased and P.Ws.2 to 6 are closely related to the deceased as well as the accused and their evidence cannot be considered to be improbable.

When the Court re-appreciated entire evidence and tested by touchstone of law relating to circumstantial evidence, we find no error in the finding recorded by Court below, we concur with the

finding recorded by Court below. Accordingly, the point is answered in favour of prosecution and against the accused/appellant.

P O I N T NO.2:

It is the consistent case from the beginning that the accused, after the death of his wife, was roaming as a vagabond and used to harass the deceased, demanding her to give her pension amount; that as the deceased was looking after the welfare of the children of the accused with the pension amount, she used to refuse pension amount to the accused; that about one week back to the date of incident, the accused came to his house at Kamalayapally Village and started harassing the deceased demanding her to give pension amount; that on the date of incident, the accused picked up quarrel with the deceased and demanded to give the pension amount; that when the deceased refused to give the amount, the accused got furious upon the deceased, caught hold her, thrown her on to the ground and committed her murder, by cutting her throat with a plank kitchen knife and escaped from the scene of offence. To constitute offence punishable under Section 302 IPC. The prosecution has to prove that the accused caused injury with an intention to kill him.

Section 300 IPC deals with 'Murder' and the following are the circumstances to constitute murder:-

Firstly Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing or-

Secondly- If it is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death of such injury as aforesaid.

There was no suggestion made and it was not pleaded in favour of the accused that the death has caused due to accidental fall of the deceased on the kitchen planked knife causing grievous injury leading to her death.

In the present case, the evidence of P.Ws.1 to 6 clearly established the conduct of the accused that the accused is a vagabond having no avocation. P.Ws.2 to 6 categorically deposed that one week prior to the incident, the accused came back to his house at Kamalayapally Village from Hyderabad and again started harassing the deceased and demanding her to give her pension amount and that on the date of incident also there was a quarrel between the accused and the deceased for the sake of money. Apart from the same, the intention of the accused can be gathered from the fact that he cut the throat of the deceased with M.O.1, a deadly weapon, so as to kill her and escaped from that place. Therefore, it can be inferred that accused with the clear intention to

kill the deceased, cut her throat. Such act would not attract any of the exceptions of Section 300 and liable to be punished, as the injuries are on vital part. In the circumstances, this Court finds no reason to interfere with the findings recorded by the Court below which formed the basis for the conviction and sentencing of the accused under Section 302 IPC. The Court below while sentencing the appellant to undergo imprisonment for life imposed fine with default sentence of six months rigorous imprisonment. When the Court below imposed default sentence of payment of fine, the default sentence must be only simple imprisonment. Therefore, imposing rigorous imprisonment is contrary to the provisions of IPC.

For the aforesaid reasons, the criminal appeal is dismissed confirming the judgment and sentence dated 11.12.2012 in S.C.No.444 of 2012 on the file of the Court of Principal Sessions Judge, Warangal by modifying the default sentence of rigorous imprisonment to simple imprisonment.

M.SATYANARAYANA MURTHY, J

T.AMARNATH GOUD, J

Date: 29.03.2018
TJMR