

THE HONOURABLE SRI JUSTICE M. SEETHARAMA MURTI

AND

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

Criminal Appeal no.732 of 2013

JUDGMENT

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

This criminal appeal, under Section 374(2) CrPC, is preferred by the sole accused – appellant against the judgment, dated 03.07.2013, of the learned III Additional Sessions Judge, Kurnool at Nandyal, passed in S.C.No.7 of 2013. By the said judgment, the learned Additional Sessions Judge found the accused guilty of the offences punishable under Sections 302, 307 and 326 IPC and convicted him under Section 235(2) CrPC and sentenced him to - (1) undergo imprisonment for life for the offence punishable under Section 302 IPC; (2) undergo rigorous imprisonment for ten years for the offence punishable under Section 307 IPC; (3) undergo rigorous imprisonment for ten years for the offence punishable under Section 326 IPC; and, (4) pay fines respectively of Rs.2,000/-, Rs.1,000/- and Rs.1,000/- and undergo simple imprisonments for two months, one month and one month respectively in default thereof.

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

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

'FIRSTLY': That the marriage of you and Gorantla Laxmi Narayanamma (LW5) was performed with you about 17 years back and after marriage Laxmi Narayanamma (LW5) joined with you and lived happily for 5 years and later she came to the house of her father Sane Narasimhudu, S/o.Ramaiah (deceased), who is her father as she was unable to bear your touch. On that you came to the house of Sane Narasimhudu (deceased) who is your

father-in-law and requested to send Gorantla Laxmi Narayanamma (LW5) along with you for which, he refused to send LW5 Gorantla Laxmi Narayanamma with you, but advised you to stay in their village and he will give sheep to you for your livelihood. But due to your bad vices, you sold the sheep which was given to you and on knowing the same the deceased Sane Narasimhudu took back the sheep and sold them out and while so on 09.04.2012 at about 23.30 hours, while the deceased Sane Narasimhudu, LW1 Uppari Sane Laxamma and LW5 Gorantla Laxmi Narayanamma were sleeping in front of their house near cattle hut, you armed with a stick in your hand and beat Sane Narasimhudu (deceased) on his head and caused injury and when LW1 Uppari Sane Laxamma intervened to rescue her husband, you beat her with a stick on her head and on her face and caused bleeding injury due to which she fell down and injured Sane Narasimhudu was taken to the Govt.General Hospital, Kurnool for treatment and died in the hospital on 11.4.2012 at 20.05 hours while undergoing treatment and thereby you committed an offence punishable under section 302 IPC and that within my cognizance.

Secondly: That the marriage of you and Gorantla Laxmi Narayanamma (LW5) was performed with you about 17 years back and after marriage Laxmi Narayanamma (LW5) joined with you and lived happily for 5 years and later she came to the house of her father Sane Narasimhudu, S/o. Ramaiah (deceased), who is her father as she was unable to bear your touch. ON that you came to the house of Sane Narasimhudu (deceased) who is your father-in-law and requested to send Gorantla Laxmi Narayanamma (LW5) along with you for which, he refused to send LW5 Gorantla Laxmi Narayanamma with you, but advised you to stay in their village and he will give sheep to you for your livelihood. But due to your bad vices, you sold the sheep which was given to you and on knowing the same the deceased Sane Narasimhudu took back the sheep and sold them out and while so on 09.04.2012 at about 23.30 hours, while the deceased Sane Narasimhudu, LW1 Uppari Sane Laxamma and LW5 Gorantla Laxmi Narayanamma were sleeping in front of their house near cattle hut, you armed with a stick in your hand and beat Sane Narasimhudu (deceased) on his head and caused injury and when LW1 Uppari Sane Laxamma intervened to rescue her husband, you beat her with an intention to kill her with the stick on her head and on her face and caused bleeding injury due to which she fell down and she sustained grievous injury and thereby you committed an offence punishable under Section 307 IPC and that within my cognizance.

Thirdly: That the marriage of you and Gorantla Laxmi Narayanamma (LW5) was performed with you about 17 years back and after marriage Laxmi Narayanamma (LW5) joined with you and lived happily for 5 years and later she came to the house of her father Sane Narasimhudu, S/o. Ramaiah (deceased), who is her father as she was unable to bear your touch. ON that you came to the house of Sane Narasimhudu (deceased) who is your

father-in-law and requested to send Gorantla Laxmi Narayanamma (LW5) along with you for which, he refused to send (LW5) Gorantla Laxmi Narayanamma with you, but advised you to stay in their village and he will give sheep to you for your livelihood. But due to your bad vices, you sold the sheep which was given to you and on knowing the same the deceased Sane Narasimhudu took back the sheep and sold them out and while so on 09.04.2012 at about 23.30 hours, while the deceased Sane Narasimhudu, LW1 Uppari Sane Laxmamma and LW5 Gorantla Laxmi Narayanamma were sleeping in front of their house near cattle hut, you armed with a stick in your hand and beat Sane Narasimhudu (deceased) on his head and caused injury and when LW1 Uppari Sane Laxmamma intervened to rescue her husband, you beat her and caused bleeding injury due to which she fell down and she sustained grievous injury and thereby you committed an offence punishable under Section 326 IPC and that within my cognizance.

[Reproduced verbatim]

Accused pleaded not guilty and claimed to be tried.

4. At trial, the prosecution examined PWs 1 to 11 and exhibited P1 to P10 and marked MO1 - pestle. No oral and documentary evidence was adduced on the side of the defence.

5. The case of the prosecution as is evident from the gist of evidence, which was adduced to bring home the guilt of the accused, is as follows:

5.1 PW1- Sane Lakshamma (the injured) is the wife of the deceased – Sane Narasimhudu. PW2 – N. Lakshmi Narasamma & PW4 – Gorantla Lakshmi are their daughters. The accused – G. Peddaiah is their son-in-law. He is the husband of PW4, the second daughter of PW1 & the deceased. PW3 – Sane Lakshmi Narasaiah is the second son of PW1 & the deceased. The accused is a resident of Nawabpeta. His marriage with PW4 was performed about 17 years prior to 01.04.2003, the date of testimony of PW1. PW4 joined the accused after her marriage. The accused looked after her with love and affection for about five years. Subsequently, he started harassing her (PW4). She used to inform about such harassment to PW1-her mother and her family members.

They used to pacify and advise her to lead marital life with the accused by adjusting with him. Despite the attempts of PW1 and her family members to convince PW4, she was unable to bear the harassment meted out to her by the accused. Hence, she came away to the house of PW1 and started staying with PW1, since one year prior to the subject incident of crime. Thereafter, the accused came to PW1 and her family members and requested them to send PW4 along with him. However, PW4 refused to go along with the accused; and, she asked the accused also to stay at Marrisipalle, the village of PW1. On the requests of PW1 and her family members, the accused also agreed to stay at Marrisipalle. About one year prior to April, 2013, PW1 and the deceased had dinner and slept on a cot laid in the cattle shed. During that night, PW3 heard sounds and came out of the house and found his mother-PW1 and his father-the deceased in a pool of blood and in unconscious states. PW3 and others shifted PW1 and the deceased to the Government Hospital, Allagadda, for treatment. The medical officer in-charge of the said hospital advised PW3 and others to shift PW1 and the deceased to Kurnool Hospital. Then, PW3 shifted them to Government General Hospital, Kurnool. The deceased, the father of PW3, died in the hospital on the next day, that is, 11.04.2012, while undergoing treatment and while he was in an unconscious state. PW3 gave exhibit P2 - report, on 12.04.2012, to the police stating therein that the wooden rafter of the cattle shed fell on PW1 and the deceased. On lodging of the said report, exhibit P2, with PW9, the then Head Constable of Allagadda Rural Police Station, on 12.04.2012, he registered a case in Crime no.24 of 2012 under Section 174 CrPC on the file of the said police station and issued exhibit P7-FIR. PW9 submitted copies of the same to all concerned. Thereafter, he proceeded to the mortuary room of the Government General Hospital, Kurnool, and secured the presence of LW10 –Syed Khaja Basha, PW6-Peddysetty Balaramudu and LW12-Uppari Narayana and held inquest over the dead body of the deceased in the presence of blood relatives of the deceased & others. He

prepared exhibit P3-inquest report, on 12.04.2012. He also examined and recorded the statements of PWs2 to 4, LW4-Sane Sekhar and LW6-Sane Bala Linganna. At the time of inquest, the inquest panchas opined that due to the fall of a rafter of the cattle shed on PW1 and the deceased, they both sustained head injuries and that while receiving treatment in the Hospital, the deceased died, on 11.04.2012 at 20.05 hours, on account of the head injuries sustained by him in the incident and that there are no other reasons for his death. After the death of the deceased, PW1 regained consciousness and stated to PW3 and her daughters that the accused beat her & also her husband, the deceased, with a pestle, while they were sleeping in the cattle shed, and that he caused bleeding injuries for the reason that the deceased did not send PW4 along with him to his village. Nonetheless, PW3 without knowing the facts and on imagination lodged exhibit P2 report leading to the registration of the crime under Section 174 CrPC. However, after PW1 regaining consciousness and disclosing the facts to her two sons & her daughters, she gave a statement accordingly to LW18- R. Eswaraiah, the then Sub-Inspector of Police. He recorded her said statement.

5.2 The version of PW1 in her testimony is as follows: - 'While PW1 and her husband were sleeping on a cot in the cattle shed, the accused came armed with a pestle and beat her husband, the deceased, on his head by saying that he was not sending PW4 to the matrimonial house and caused severe bleeding injuries to the deceased. When PW1 intervened and tried to rescue her husband, the accused also beat her with the same pestle on her head & her face and caused injuries on her forehead. She lost her teeth due to the blows given by the accused on her face. On account of the injuries caused by the accused, she and her husband fell down and lost their consciousness.'

5.3 Based on her said statement – exhibit P1, given, on 17.04.2012, to the said police officer, which virtually set the criminal law into motion against the

accused, the Section of law was altered from 174 CrPC to Sections 302 and 307 IPC and an altered FIR-exhibit P8, dated 17.04.2012, was issued and copies of the same were submitted to all the concerned. PW10 –the Inspector of Police having received the express FIR from LW18 took up further investigation. He examined and recorded the statements of PWs1 & 2 at Amrutha hospital, Kurnool. He secured the presence of PW3, LW4-Sane Sekhar, PW4, LW6-Bala Linganna, LW7-Uppari Panjugala Ramakrishnudu, LW9-S Subbamma and PW5 and recorded their statements at the scene of offence. On credible information received, on 29.05.2012, he apprehended the accused in the presence of PW7 and LW14-S Svaskhanariah. Pursuant to the confessional statement of the accused and at the instance of the accused, he seized a pestle from a place under a culvert in the outskirts of the village, in the presence of the said panch witnesses and under the cover of exhibit P5-seizure panchanama, on 29.05.2012. He prepared exhibit P9-rough sketch of scene of offence. He later brought the accused to the police station and forwarded him to the Court of the learned Magistrate for obtaining orders of judicial remand; and, he then submitted the body of the deceased for conducting post mortem examination. PW11-Dr.N. Prabahaka Rao, Professor & HoD, Kurnool Medical College, having received a requisition from the SHO, Allagadda Rural Police Station for conducting post mortem examination on the dead body of the deceased, conducted post mortem examination, on 12.04.2012, and gave exhibit P10-PME report with the details of the following injuries.

External injuries:

1. A sutured injury of 6 c.m is present across the fore head from right eye brow to left eye brow. Wound filled with blood clots.
2. Both eye bolls contused (black eyes)
3. An abrasion of 2 x 1 ½ cm, is present on left cheek, red in colour.
4. An abrasion of 2 x 1 cm is present right side of upper lip, red in colour.

Internal injuries:

5. A comminuted fracture is present on right side of frontal bone and roof of right orbit. Fractured bone edges blood stained.
6. A diffuse subdural and subarachnoid haemorrhages are present over both cerebral hemispheres of brain.

In the said report and in his evidence, PW11 stated that the cause of death is head injury which might have been caused by a blunt object or due to hit or impact. PW10 filed charge sheet after receiving exhibit P10-PME report.

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

PW2, the daughter of PW1 and the deceased, who is a resident of Vemulapadu village, having received information that her mother and father, having received injuries were unconscious and were taken to Government Hospital, Kurnool, rushed to the said hospital to visit her injured parents. On the next day of her visit, her father, who was in an unconscious state on account of the injuries sustained by him, died. On the third day after the incident, her mother regained consciousness and narrated about the attack by the accused against her and her husband, the deceased. PW4, who is the wife of the accused, and who is having matrimonial disputes with the accused deposed that she started residing in Marripalle village since two years prior to the incident of crime and that after four or five days, her mother regained consciousness and informed that the accused beat her and the deceased and caused severe bleeding injuries on the pretext that the deceased is not sending her (PW4) with the accused. PW5, who is a resident of Marripalle village, testified that he knows PWs1 to 4 and the accused, who is the husband of PW4. He further deposed about the marriage of PW4 with the accused about 17 years back and the stay of PW4 at Marripalle since more than one year due to differences with the accused and his knowledge about the death of the deceased while PW1 and the deceased were sleeping in the cattle shed, as per the information furnished by PW1 to him after regaining consciousness in

Government General Hospital, Kurnool, that is, after three or four days after the incident. PW6 is one of the inquest panch witnesses, who was said to have been present when inquest was held over the dead body of the deceased by PW9, the head constable. He opined at the time of inquest that the deceased died due to fall of a rafter of the cattle shed. PW7 is a panch witness in whose presence PW10, the Inspector of Police was said to have arrested the accused. He deposed that pursuant to the confession of the accused he accompanied the accused and others to a culvert which is situate at the old bus stop in Marripalle village and that a pestle was seized under the cover of exhibit P5, which was signed by him. In his evidence he identified the pestle-MO1 as the one that was seized.

7. Learned counsel for the accused contended as follows:

Admittedly, there are no eyewitnesses to the alleged incident. The prosecution version is this: - 'In the first instance, after alleged hearing of the sounds, PW3 went and saw PW1 and the deceased with bleeding injuries and in unconscious states. He shifted them allegedly to Government Hospital, Allagadda. On the advice of the medical officer of that hospital, PW3 shifted PW1 and his father, who by then were in unconscious states, to Government Hospital, Kurnool. The father of PW3 died in that Government Hospital on the next day while receiving treatment and while he was in an unconscious state. PW1 was also unconscious by that time. PW3 gave exhibit P2 report stating that his parents –PW1 & the deceased sustained injuries on account of fall of a rafter of the cattle shed. On his said report, the subject crime was registered under Section 174 CrPC by PW9. PW9, a Head Constable, conducted inquest on the dead body of the deceased in the presence of the relatives of the deceased including his sons and daughters & panch witnesses and prepared exhibit P3 inquest panchanama. At that time, all the inquestdars and others present unanimously opined that PW1 and the deceased sustained injuries due to fall of

a rafter of the cattle shed and that the deceased succumbed to the said injuries while receiving treatment in Kurnool Hospital.’ These are the true and real facts. However, the case facts were twisted to falsely implicate the accused, who is the son-in-law of PW1 and the deceased, as their daughter (PW4) was having matrimonial disputes with the accused. On an after thought and after deliberations, with a view to implicate the accused in the crime, a story was weaved to the effect that after the death of the deceased, PW1 regained consciousness and narrated to her children that the accused beat her and the deceased on that night with a pestle. Thereafter, the further prosecution story of arrest of the accused and recovery of MO1 at the instance of the accused is cooked up and the accused was falsely implicated. The accused was framed without conducting any investigation and without collecting any evidence worth the name showing the complicity of the accused. According to the prosecution case, LW18-the then Sub-Inspector of Police recorded the statement said to have been made by PW1 after she allegedly regained consciousness and that he altered the Section of law from Section 174 CrPC to Sections 302 and 307 IPC. Thus, he is a crucial witness as the story of the prosecution took a new turn with that statement of PW1, which was recorded by LW18. However, he was not examined. His non examination is fatal to the case of the prosecution as the said statement of PW1 –exhibit P1, which is a doubtful version, was not proved by examining him. No record from Amrutha Hospital was collected by the investigating officer, except exhibit P6-wound certificate of PW1. The doctor of the said hospital is also a crucial witness as it was alleged that he first treated PW1 and the deceased, while they were allegedly unconscious. His evidence is not supporting the case of the prosecution. According to one version of prosecution case, PW1 was admittedly unconscious when she was allegedly admitted into Amrutha hospital first and the Government Hospital, Kurnool, later. Whether she was unconscious at all, after the alleged incident and, if so, when she regained

consciousness are the crucial aspects, which the prosecution is required to establish beyond reasonable doubt. There is no evidence produced to establish that she was treated as an inpatient in any hospital and that she was unconscious at any time after the incident. Further, there is inconsistency in the evidence as to the day on which PW1 regained consciousness, even if it is to be presumed that she was unconscious from the inception. The case sheets of PW1 maintained by the two hospitals are not collected and produced by the investigating officer to show as to whether she was unconscious from the inception and as to on what date she regained consciousness. In view of the inconsistencies in the evidence and the absence of production of the record, which would have disclosed the true facts, if produced, there is any amount of doubt as to whether she was unconscious from the inception and if so when she regained consciousness and gave the alleged version to LW18, which lead to the framing of the accused in the subject crime. The accused was not arrested as alleged by the prosecution. In the report of PW3, on the basis of which the crime was registered, he stated that PW1 and the deceased sustained head injuries and became unconscious on account of the bleeding injuries sustained by them due to fall of a rafter of the cattle shed. Immediately after the said report and the registration of the crime based on that report, a police constable went to mortuary and held inquest on the dead body of the deceased; the inquestdars also opined that the cause of death is fall of rafter of the cattle shed on PW1 and her husband. Be that as it may, none of the police officers visited the scene of incident and noted as to whether a rafter has fallen from the roof of the cattle shed as stated in exhibit P2 report lodged by PW3 and they did not care to prepare the sketch of the cattle shed immediately after registration of crime, on 12.04.2012. There is no evidence worth the name to accept the version that PW1 was treated as an inpatient and that she was unconscious from the inception and during the period of her hospitalisation and till 17.04.2012, the day on which she allegedly gave the

statement to LW18-police officer. The alleged arrest of the accused and recovery of MO1-pestle at his instance from a place near a culvert at the outskirts of the village in the presence of witnesses including PW7 is all a concoction of the investigating officer. The investigation is perfunctory. There is no evidence much less reliable evidence of required standard to base a conviction or to sustain the conviction of the accused for the offences with which he was charged. The learned Additional Sessions Judge without properly examining the record and on assumptions & presumptions held that the prosecution brought home the guilt of the accused beyond reasonable doubt. The convictions for various counts were recorded by the trial Court without there being any evidence whatsoever showing the complicity of the accused in the subject crime. The accused is entitled to a clean acquittal. In any view of the matter, in view of the gaps in the prosecution case and as it is possible to come to a safe conclusion that the prosecution case is not true and is untrustworthy, the accused is entitled to a reasonable benefit of doubt.

8. Per contra, learned Additional Public Prosecutor contended that the evidence brought on record is sufficient to base a conviction and that the learned Additional Sessions Judge rightly convicted the accused for the offences with which he is charged. He placed reliance on the statement given by PW1 after regaining consciousness. The same was recorded by LW18-police officer. The said statement was the reason for the alteration of the penal provisions. Her statement clearly disclosed the complicity of the accused in the crime. He further placed reliance upon the evidence of PW1 and the recovery/ discovery of MO1-pestle in the presence of the mediators pursuant to the confessional disclosure statement made by the accused upon his arrest. He contended that the prosecution proved the guilt of the accused beyond reasonable doubt.

9. We have given earnest consideration to the facts and submissions.

10. Now the following questions fall for determination: 'Whether the evidence brought on record sufficiently and beyond reasonable doubt established the guilt of the accused for the offences with which he was charged? Whether the judgment of the trial Court is liable to be set aside and the accused is entitled to be acquitted in the facts and circumstances of the case?

11. To begin with, it is necessary to take note of the salient points in the evidence brought on record. The evidence reflects that the incident in which PW1 and the deceased sustained injuries occurred on the intervening night of 09/ 10.04.2012. It is also in evidence that on that night PW1 and the deceased had dinner and slept on a cot in the cattle shed; during that night, on hearing a sound, PW3, the son of PW1 & the deceased, went to the cattle shed in which his parents were sleeping on a cot; he noticed that they were in a pool of blood in unconscious states; he took them first to the Government Hospital, Allagadda; a medical officer of the said hospital advised him to shift his injured parents to Kurnool Hospital; on the said advise, he shifted them to Government General Hospital, Kurnool. The father of PW3, who was in an unconscious state, succumbed to the injuries, on 11.04.2012, while receiving treatment in the Government Hospital, Kurnool. PW3, then lodged exhibit P2 report, on 12.04.2012, with PW9, the Head Constable of Allagadda Rural Police Station. Based on his said report, the subject crime was registered under Section 174 of CrPC as in the said report he stated that his mother-PW1 and his father-the deceased sustained injuries and became unconscious due to the fall of a rafter on them, while they were sleeping on a cot in the cattle shed. PW9 held inquest on the dead body of the deceased, in the presence of relatives of the deceased including the sons & daughters of the deceased and others. Exhibit P3-inquest report reveals that all persons present including the inquest panchas unanimously opined that PW1 and the deceased sustained injuries due to fall of

a rafter upon them, while they were sleeping on a cot in the cattle shed and that the deceased died on account of the injuries sustained in the said incident and that the deceased was in an unconscious state till he breathed his last.

11.1 This is the first version of the prosecution, which according to the accused is the true and real version. As per the settled legal position and the language of Section 174 CrPC, the scope and purpose of inquest are confined to the ascertainment of the apparent cause of death. Inquest proceedings are concerned with discovering whether in a given case the death was accidental or suicidal or homicidal or caused by animal etcetera; and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. [Pedda Narayana and Ors. V/s State of Andhra Pradesh (1975) 4 SCC 15; Amar Singh V/s Balwinder Singh and Ors. (2003) 2 SCC 518; and, Radha Mohan Singh @Lal Saheb and Ors. V/s State of UP (2006) 2 SCC 450].

11.2 Nonetheless, a fundamental shift occurred in the case of the prosecution, on PW1 regaining consciousness, while receiving treatment in the hospital, and making a statement under exhibit P1, on 17.04.2012, to the police. Thus, till PW1 allegedly regained consciousness and later gave a statement, on 17.04.2012, with averments showing the complicity of the accused, nobody suspected the accused.

11.3 The vital version of PW1 in her statement under exhibit P1, showing the complicity of the accused, in brief, is to the following effect: "She regained consciousness on 17.04.2012. On regaining consciousness, she was informed by her children that her husband died, on 11.04.2012 at 08:05 PM. Thereupon, she informed her children that since they (PW1 and the deceased) refused to send their daughter-PW4 along with the accused for leading family life, the accused beat her and her husband. However, PW3, her son, not knowing the real facts informed the police and stated in the information given to the police that she and her husband sustained injuries on their heads due to

fall of a rafter of the cattle shed, though, in-fact, the accused, who is her son-in-law, beat them with a stick and caused injuries. She sustained injuries only at the hands of the accused.” She also stated in exhibit P1 that she gave the said statement when police made enquiries with her. As per the further prosecution case, based on the said statement - exhibit P1 given by her, on 17.04.2012, to LW18- the S I of police, Allagadda Rural Police Station, the sections 302 & 307 IPC are added to the crime and the FIR originally issued was altered and a fresh altered FIR - exhibit P8 was issued. Thus, as per the prosecution case, the said version of PW1 as narrated in exhibit P1 lead to the issuance of the altered FIR, and the said altered FIR virtually set the criminal law into motion against the accused.

11.4 In the wake of this twist in the prosecution case, the accused submits that on a post script and after deliberations, a story was weaved and on entwining such a story, he was falsely implicated in the case by PW1 and her family members, particularly PW1 and his estranged wife - PW4 as she is having matrimonial disputes with him and is not interested in joining him and leading marital life with him.

11.5 Since the prosecution case pointing a finger to the guilt of the accused hinges on the above said version of PW1 under exhibit P1 and the said version being decisive, if stands established, it is necessary to now carefully examine the evidence of PWs 1 to 4 and the other relevant evidence. Further, to find out whether there is a ring of truth in the prosecution evidence, it is essential to examine the following incidental questions: ‘What is the date/ day on which PW1 regained consciousness, if she really was unconscious from the inception? Whether she received inpatient treatment in any hospital till 17.04.2012, the date on which she gave her statement under exhibit P1 to LW18 –the S I of police? And, if so, in which Hospital?

12 Now we shall proceed to answer the above incidental questions to arrive at the truth.

12.1 Dealing with the oral evidence related to the conscious condition of PW1 and the date/ day on which she allegedly regained consciousness, it is necessary to examine the evidence of PW1 in the first instance. PW1 testified as follows: - '....Later, I was taken to the Hospital at Kurnool and I regained consciousness after three days.' In her cross examination also she stated that she regained consciousness three days after the incident. Admittedly and as borne out by the evidence, the incident occurred on the intervening night of 09/ 10.04.2012. If three days are to be counted from that date, it is possible to accept the contention of the defence that she regained consciousness on 13th or 14th, that is, well before 17.04.2012, on which date she gave exhibit P1 statement to LW18 –the SI of Police. If really she regained consciousness after three days after her admission into Government Hospital, Kurnool, why she did not give a statement earlier to 17.04.2012 and why her statement was not recorded by the police till 17.04.2012, remains unexplained. It is pertinent to note that though in her exhibit P1 statement, which she gave to the police on the police making enquiries with her, she stated that she regained consciousness on 17.04.2012, she did not support her said version in her testimony given before the trial Court. On the same aspect, PW2, the daughter of PW1, stated that on coming to know of the incident, she rushed to Kurnool Hospital to visit her injured parents and that on the next day of her visit her father, who was unconscious, died on account of the injuries sustained by him in the incident, and that on the third day after the incident, her mother regained consciousness and that her mother informed her about the incident of attack on them by the accused with a pestle. It is indisputable that the deceased died, on 11.04.2018 at 20:05 hours. The contents of exhibit P3-inquest report and exhibit P10-PME report bear evidence to the said fact. From

the version of this witness in her examination-in-chief, it is apparent that PW1 regained consciousness on the third day, that is, 12th of April, 2012. Further, her candid admission in her cross examination that her mother regained consciousness, on 12.04.2012, puts to rest any doubt as to the date on which her mother (PW1) regained consciousness. Thus the evidence of these two witnesses lays bare that PW1 regained consciousness, on 12.04.2012. But, admittedly, she did not give any statement to the police till 17.04.2012. PW2 in her cross examination stated to the effect that immediately after PW1 regained consciousness, she did not give any statement; but, after the police came to Hospital, she gave statement that the accused beat her & her husband with a pestle. Therefore, this delay raises any amount of doubt as to the veracity of the prosecution case as the contention of the accused is that after deliberations, after weaving a story, he was falsely implicated in the case. The doubt which arises due to the unexplained delay in recording the statement of PW1 by the Police gets fortified in view of the first version of the prosecution that PW1 and the deceased sustained injuries due to fall of a rafter of the cattle shed upon them while they were sleeping on a cot in the cattle shed. Be that as it may. In the evidence later adduced, PW3, testified, may be advisedly, on this aspect to the following effect: 'His parents, who were in unconscious states were shifted by him and others to the Government Hospital, Allagadda, for treatment and that a medical officer of the said hospital advised them to shift their parents to Kurnool Hospital and that on such an advise they shifted his parents to Government Hospital, Kurnool, and that his father died in the said Hospital on the next day (i.e., 11.04.2012), while undergoing treatment and while remaining in an unconscious state, and that PW1, his mother, regained consciousness 4 or 5 days after the death of his father.' From the said date, 11.04.2012, if four or five days are to be counted, the date on which PW1 regained consciousness would work out to 15th or 16th of April, 2012. Yet PW1 did not give any statement to the police either on 15th or 16th.

The next witness PW4 deposed that her parents were shifted to Government Hospital, Kurnool, for treatment and that her father, who was in an unconscious state, died, while he was undergoing treatment and that her mother informed them about the incident after regaining consciousness after 4 or 5 days. This improvised version of PW3 and 4 does not inspire confidence since PW1, who is the key witness, deposed to the effect that she regained consciousness by 12.04.2012. If her said version is to be considered along with the evidence of PW2, discussed supra, it is perceptible that PW1 regained consciousness on 12.04.2012. It is also pertinent to note that the case sheet of PW1, if any, maintained in the Government Hospital, Kurnool, which is supposed to contain the treatment given to PW1 and the date on which she regained consciousness, which is the best piece of evidence, is not produced by the prosecution. The fatal omission gives strength to the defence version that PW1 was not in an unconscious state till 12.04.2012 or 17.04.2012 and that the alleged version that she was unconscious is a deliberate lie. At any rate, the evidence reflects that PW1 regained consciousness well before 17.04.2012 as already noted. If that is so, it is for the prosecution to explain the delay and the reasons for PW1 not giving and the police not recording her statement till 17.04.2012. No explanation is forthcoming for this delay, which is vital in the facts and circumstances of the case, more particularly, in the light of the first version of the prosecution that PW1 and the deceased sustained injuries due to fall of a rafter of the cattle shed. Added to this, it is also pertinent to mention the following aspect: 'The evidence brought on record and discussed supra does not disclose that PW1 and her husband (the deceased) were ever treated in a private hospital. The evidence reflects that when they were in unconscious states they were shifted by PW3 and others to Government Hospital, Allagadda, for treatment, and that PW3 was advised by the medical officer of the said hospital to shift his parents to Kurnool Hospital and that on that advise he shifted his parents to Government Hospital, Kurnool. Yet the prosecution

examined PW8-Dr.E.Vishwanatha Reddy of Amrutha hospital and exhibited exhibit P6-wound certificate of PW1 said to have been issued by him. This Doctor in his evidence deposed that PW1 was unconscious for 10 days, that is, before 4 days prior to her discharge. Though this witness is not a reliable witness, since the prosecution has examined him, it is to be noted that if 10 days is to be counted from the date of the incident, 09/ 10.04.2012, it goes beyond 17.04.2012. Therefore, this evidence which prosecution adduced through PW8 also casts a serious doubt on the version of the prosecution.'

12.2 Notwithstanding our above finding and assuming for a moment that there is no delay or that the unexplained delay is not fatal, we now proceed to examine the other part of the prosecution case. It is to be next examined as to in which hospital, PW1 was allegedly receiving inpatient treatment when she allegedly regained consciousness. For answering this question, it is necessary to once again refer to the relevant evidence of PWs1 to 4 and the relevant exhibits. PW1 deposed that she was taken to the hospital at Kurnool and she regained consciousness after three days and then she came to know about the death of her husband, who was undergoing treatment in the same hospital. Admittedly deceased died in Government Hospital, Kurnool. PW2 deposed that she received information that her mother (PW1) and her father (the deceased) received injuries and were in unconscious states and that they were taken to Kurnool Government Hospital. At the cost of repetition, it is to be restated that the testimony of PW3 reflects that his injured parents were first taken by him and others to the Government Hospital, Allagadda; however, on the advice of a medical officer of the said hospital, he along with others shifted his injured parents, who were unconscious to the Government Hospital, Kurnool. His version makes it manifest that after the incident, his parents were admitted only into Government Hospital, Kurnool, and in no other hospital. The testimony of PW4 is silent on this aspect. Exhibit P2, which is

the first report lodged by PW3 with the police and which lead to the registration of the crime under Section 174 CrPC, replicates that the injured parents of PW3 were first taken to a private hospital. It also discloses that since no Doctor was available at that hospital, the injured parents of PW3 were shifted in a Jeep to a Government Hospital, Kurnool. Therefore, the above testimonies coupled with the contents of exhibit P2 disclose that neither PW1 nor the deceased were treated in any private hospital much less in Amrutha Hospital and that they were only taken to Government Hospital, Kurnool, and were admitted into the said hospital. In the light of the above evidence, if the prosecution version that PW1 regained consciousness while being treated in Government Hospital, Kurnool, were to be true, in the normal course of events, LW18, the SI of police, should have recorded her statement (exhibit P1) in the said Government Hospital and a Government Doctor of the said hospital should have certified about the mental condition of PW1 at the time of giving the said statement. In this setting, it is apt to refer to exhibit P1, the statement of PW1 on which the case of the prosecution rests. The same on a perusal shows that LW18- SI of police recorded the said statement of PW1 under exhibit P1 at Amrutha Hospital. Exhibit P1 also contains in the margin of page two, an endorsement of a Doctor, E. Vishwanath Reddy of Amrutha Hospital. By the said endorsement made on exhibit P1, the said doctor certified that PW1 is conscious while recording the statement by the authority. PW10, the Investigating Officer, also stated in his evidence that as per the record, LW18- the then SI of police recorded the statement (exhibit P1) of PW1 in Amrutha Hospital. When the entire evidence confirms and discloses that PW1 was admitted into Government Hospital, Kurnool, and in no other hospital, much less Amrutha Hospital, the version of the prosecution that PW1 gave exhibit P1 statement to LW18 – the SI of Police while she was in Amrutha Hospital is inconceivable and beyond belief. Therefore, the examination of LW18 - the SI of police, who recorded exhibit P1 statement of PW1 allegedly in Amrutha

Hospital, as a witness would have unfolded the truth. Nevertheless, the prosecution failed to examine this material witness. This omission is not only fatal to the prosecution case but also makes it unworthy of any credit. The facts and circumstances suggest that the examination of this witness was purposely withheld obviously for the reason that his evidence, if he were examined, would have spontaneously exposed the falsity of the prosecution story. Further, though the evidence without any doubt discloses that PW1 was not taken to any private hospital and that she was never treated in any private hospital, it is snoop to note that the prosecution examined PW8-Dr.E. Viswanatha Reddy, who is said to be a Consultant Neuro Surgeon in Amrutha Hospital, Kurnool, and exhibited exhibit P6-wound certificate said to be of PW1 issued by the said Doctor of Amrutha hospital; exhibit P6 reflects that PW1 was brought to the said hospital stating that certain injuries were caused to her at 11:30 PM on 09.04.2012. The description of the injury said to have been sustained by PW1 as noted in the said certificate reads as follows: - 'Head injury with @ right FP acute subdural haematoma'. The date and time of examination of PW1 are conspicuously absent in this wound certificate. However, it contains a date, 07.05.2012, at the bottom, which according to the prosecution might be the date of the issuance of the said certificate to the investigating officer. It is pertinent to note that it is not noted in the certificate that PW1 was unconscious. When the evidence of the material witnesses including that of PW3 shows that PW3 first shifted his injured parents allegedly to Government Hospital, Allagadda, and that on the advise of the Medical Officer of the said hospital, he shifted PW1 and his father (the deceased), who by then were in unconscious states, to the Government Hospital, Kurnool, how PW1 was treated in Amrutha Hospital by Dr.E.Viswanatha Reddy-PW8 and how exhibit P6-wound certificate came to be issued by the said Doctor, remains unexplained. Though the evidence does not disclose that PW1 was treated in Amrutha Hospital, PW8 curiously deposed that

he examined PW1 in Amrutha Hospital, on 12.04.2012 at 07:15 PM and that at that time she was unconscious and that on external examination he found that there was sutured wound on the right side of the head and that he issued exhibit P6 wound certificate of PW1. Strangely, he deposed that the patient was in unconscious state for ten days, that is, four days prior to her discharge though there is no evidence brought on record to show that she was treated as an inpatient in Amrutha Hospital at any time. In his cross examination, it was brought out that he did not bring the case sheet to the Court. A careful consideration of the evidence suggests that exhibit P6 wound certificate of PW1 said to have been issued by PW8 is a document brought into existence and that the evidence of PW8 is unreliable. The reasons for pressing into service the services of a private doctor and introducing exhibit P6 wound certificate of PW1 said to have been issued by the said private Doctor are not far to seek.

12.3 Notwithstanding the above observations of this Court, when the evidence of the prosecution itself exposes that the prosecution case is susceptible to doubt and that it is not trustworthy, it is for the prosecution to dispel the doubts. The best pieces of evidence, which the prosecution could have produced to steer clear the prosecution case from any of the doubts are the case sheets of PW1 maintained in the Amrutha Hospital and the Government Hospital, Kurnool. They assume importance as they are supposed to contain the date/ s of her admission into the said hospital/ s, her condition at that time, the inpatient treatment, if any, given to her, the period of inpatient treatment, the day on which she regained consciousness and the date of discharge. The said crucial documents, if any, are not produced by the prosecution. This fatal omission lends strength to the version of the defence that PW1 was not unconscious and that she was never treated in any hospital as an inpatient. Be that as it may. Even otherwise, as being rightly contended by the accused, this omission on the part of the prosecution is suggestive of an

inference that there is no medical record to support the prosecution story, as the same is far from truth. Alternatively, the said omission viz., non production of the case sheets of PW1, raises a presumption that the said important evidence, which could have been produced, was not produced, as it would have belied the prosecution case, if produced. Added to this defencelessness of the prosecution case, PW10, the investigating officer, deposed that exhibit P8 is the altered FIR and that he received the said express FIR and took up investigation and that he proceeded to Amrutha Hospital, Kurnool, and examined PWs1 & 2. As a sequel to the findings coupled with reasons supra we find that the evidence of PW10, the investigation officer, that he recorded the statement of PW1 in Amrutha Hospital makes the prosecution case all the more vulnerable and gives strength to the defence that the prosecution version linking the accused to the incident is a deliberate concoction. On the above analysis, we have no hesitation to hold that exhibit P1, which is the sheet anchor of the prosecution case, is a fabricated document and that the alleged version of PW1 therein is a deliberate concoction and that the said evidence is created to rope in the accused due to the disputes between him and his wife-PW4.

13. As a corollary to the findings supra that the prosecution story implicating the accused in the crime is a deliberate invention, we find that the evidence related to recovery/ discovery of MO1-pestle pursuant to the alleged confessional disclosure statement of the accused, being also a figment, is of no avail to the prosecution.

14. There is one more aspect, which may require a passing reference. As per the first prosecution version, PW3, the son of PW1 and the deceased, lodged exhibit P2 report with the police stating that his parents sustained injuries on the intervening night of 09/ 10.04.2012 due to fall of a rafter of the cattle shed while they were sleeping on a cot in the cattle shed and that they

were admitted into Government Hospital, Kurnool, and that his father died on the next day while receiving treatment in the said Hospital. Despite the serious nature of the contents of his report disclosing the death of a person, no police officer cared to go to the cattle shed to find out whether the incident resulting in injuries to the deceased and his death was on account of the fall of a rafter of the cattle shed. Had anyone of the police officers concerned visited the cattle shed immediately on receipt of exhibit P2 report from PW3 and noted as to whether or not the version of PW3 that a rafter of the cattle shed has fallen is true, the matter would have reached a quietus. Further, even after the alteration of the provisions of law and issuance of the altered FIR, the investigating officer, who prepared exhibit P9 - the rough sketch of scene of offence, did not make a mention either in the sketch or in his evidence about the condition of the cattle shed, at least on the date of his visit. These omissions add to the weakness of the prosecution case.

15. Before parting, it is to be noted that the prosecution could not even establish beyond reasonable doubt that the death of the deceased is a homicidal death and that PW1 received injuries at the hands of the accused. From exhibit P2 statement and the exhibit P7-FIR which was first issued based on the said exhibit P2 statement given by PW3, who is no other than the son of the deceased, it is evident that PW1 and the deceased sustained injuries due to an accidental fall of the rafter of the cattle shed while they were sleeping on a cot in the cattle shed. If that is so, PW3 and others who went to the cattle shed immediately after the incident and who shifted the injured parents of PW3 from the scene to the hospital, might have noted the presence of the fallen rafter on the bodies of the PW1 and the deceased or at least on the floor of the cattle shed. Therefore, the later theory that PW3 gave exhibit P2 report with the contents that his parents sustained injuries due to fall of a rafter only on imagination cannot be accepted. Even the inquestdars and the children of

the deceased who were present at the time of inquest held on the dead body of the deceased opined that the cause of death is 'accidental fall of the rafter of the cattle shed'. Further, the Doctor, who conducted autopsy on the dead body of the deceased and gave exhibit P10 - PME report opined that the deceased died in the Government Hospital, Kurnool, on 11.04.2012, at 08:05 PM due to head injury. The said Doctor (PW11) also deposed in his examination in chief that to the best of his knowledge the cause of death is head injury which might have been caused with blunt object or due to hit or impact. In his cross examination, he stated verbatim that 'such injury sustained by the deceased might be caused due to fall of a rafter from a considerable height because the skull portion of the deceased got multiple fractures'. Therefore, medical evidence also supports the first version of the prosecution that PW1 and the deceased sustained injuries due to fall of a rafter from the roof of the cattle shed. On such wholesome consideration of the evidence, this Court finds that the prosecution failed to prove by cogent, reliable and unfaltering evidence that the death of the deceased is homicidal.

16. We have gone through judgment impugned. For all the reasons afore-stated, in our view, the learned Additional Sessions Judge convicted the accused on evidence which is untrustworthy, insufficient and of doubtful nature by resorting to surmises and conjectures and in the absence of the evidence of required standard proving the guilt of the accused beyond reasonable doubt. Hence, we hold that the findings that are recorded by the learned Additional Sessions Judge without properly looking into and appreciating the vital aspects of the evidence, are liable to be over turned.

17. In the result, the appeal is allowed and the convictions of the appellant-accused in Sessions Case No.7 of 2013 on the file of the learned III Additional Sessions Judge, Kurnool at Nandyal, in relation to the charges framed against him and the sentences imposed in consequence of such

convictions are set aside. The accused is accordingly acquitted. Since the accused is on bail, his bail bonds shall stand cancelled. Fine amounts, if any, paid by him shall be refunded to him after the further appeal time is over.

JUSTICE M. SEETHARAMA MURTI

JUSTICE D.V.S.S. SOMAYAJULU

24.12.2018
vjI

