

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

CRIMINAL APPEAL No.141 OF 2013

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

The sole accused in Sessions Case No.485 of 2011 on the file of the Court of the Judge, Family Court-cum-Additional District & Sessions Judge, Nalgonda (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 18.01.2013.

The facts of the case in nutshell are that the accused and the deceased are husband and wife. On 17.06.2010 at 8.30 am., P.W.1 lodged a complaint before the Police Station, Shaligouraram stating that she performed the marriage of her third daughter, Jillepally Saidamma (deceased), with J.Venkanna (accused); that they led marital life for some time and blessed with one daughter and two sons; that on 07.06.2010, the accused, suspecting the fidelity of the deceased, picked up a quarrel, due to which, the deceased went to Nalgonda and stayed there for a week and returned to her house at Chandampally along with her daughter; that on the next day i.e., on 15.06.2010, the accused came to her house, beat the deceased and took 'pusthela thadu' from her neck; that on the same day, the deceased and her daughter went to Pangal to the house of her elder sister with an intention to do coolie work there; that on 16.06.2010 at 8.30 pm., the deceased went to the house of her elder sister at Gollagudem Village of Shaligouraram Mandal; that prior to the

arrival, already the accused reached there and picked up quarrel; that thereafter the deceased and the accused slept in a room while their daughters and elder sister of the deceased slept outside of the room; that in the morning, they did not see the accused in the room and Saidamma (deceased) found dead in a pool of blood and that on coming to know about the murder of Saidamma, P.W.1 came there and found Saidamma dead on 16/17/06/2010 i.e., intervening mid night at 1.00'o clock, the accused might be murdered the accused with a deadly weapon and flew away.

P.W.12, Sub-Inspector of Police, Shaligouraram Police Station, registered a case in Crime No.62/2010 under Section 302 IPC. Investigation was then taken up by P.W.14, the then Inspector of Police, Nakrekal. He visited the scene of the offence and took photograph and videograph of the scene of offence with the assistance of P.W.8, summoned the panch witnesses P.W.9 and Anumula Narsaiah (L.W.13), prepared rough sketch of scene, conducted scene of offence panchanama, collected blood in the cotton, seized the same under cover of scene of offence panchanama and recorded the statements of the witnesses/L.Ws.2 to 11. He also held inquest over the corpse of the deceased in the presence of mediators/Anumula Narsaiah (L.W.13), P.Ws.9 and 13 and the corpse was referred to the Government Civil Hospital, Nakrekal, for conducting postmortem examination.

P.W.13, Civil Assistant Surgeon, Government Civil Hospital, Nakrekal, has conducted autopsy over the dead body of the

deceased and opined that the cause of death of the deceased was due to 'intra cranial hemorrhage'.

Upon receiving the postmortem report, P.W.14 arrested the accused on 21.06.2010 at R.T.C. Bus Stand, Nakrekal and recorded the confessional statement of the accused in the presence of Akula Somanna (L.W.14) and P.W.10. Accordingly, the accused led the police to the scene of offence at Gollagudem village and picked out crime weapon viz., blood stain 9 x 8 width boulder from the hay stock situated by the side of scene of offence produced before the mediators and Inspector of Police seized under cover of seizure panchanama, brought the accused to Police Station after arrest and sent him to the Court for judicial remand. Later, P.W.14 forwarded the material objects to the Regional Forensic Science Laboratory, Hyderabad, through Court, for chemical examination. The said Laboratory examined the material objects and issued report dated 08.11.2010. After collection of evidence on 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 15 and got marked Exs.P.1 to P.24 and M.Os.1 to 6 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 did not let in any 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.1,000/- with default sentence of Simple Imprisonment for three months. Aggrieved by the conviction and sentence passed by the Court below in Sessions Case No.485 of 2011, the present appeal is preferred through legal-aid-counsel.

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

- a) The trial Court, based on the testimony of P.Ws.1 and 2, who are tutored and highly interested, recorded conviction of the accused for the offence punishable under Section 302 IPC and committed an error in recording such finding.
- b) The trial Court failed to consider the delay in lodging report with the police-Ex.P-1 and unexplained delay is fatal to the case.
- c) The trial Court failed to see that there is no direct evidence to prove that the accused committed the offence, and basing on presumptions and assumptions, the trial Court convicted the appellant.
- d) The trial Court also failed to consider that the medical evidence is not consistent with the ocular testimony produced by the

prosecution and should have acquitted the appellant on that ground.

Learned legal aid counsel for the appellant, during hearing, would contend that the evidence of P.Ws. 1 to 5, though inconsistent, based on such testimony of such highly interested witnesses, 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.

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 5 are independent witnesses and nothing is elicited to prove that they are interested witnesses.

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 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 and the material available on record, the point that arises for consideration is:

“Whether the accused caused the death of Saidamma (deceased) with an intention to kill her suspecting her fidelity and, if so, whether the evidence on record is sufficient to convict the accused/appellant for the offence punishable under Section 302 IPC and whether the conviction recorded by the Court below be sustained?”

P O I N T:

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 Gujarat¹**). 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 the chain of circumstances pointing out the guilt towards the accused/appellant and inconsistent with the innocence.

¹ (2013) 15 SCC 263

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**²)

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**³)

Similarly, in **G.Parshwanath v. State of Karnataka**⁴, 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 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

² AIR 1990 S.C. page 2140

³ 2009 Cr.L.J. page 1891

⁴ AIR 2010 S.C. page 2914

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 Karnataka⁵; Jagroop Singh Vs. State of Punjab, Inspector of Police, Tamil Nadu Vs. Balaprasanna⁶ Shaik Khadar Basha v. State of Andhra Pradesh⁷**, the same principle was reiterated.

The Supreme Court in **Trimukh Maloti Kikran v. State of Maharashtra⁸**, 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 circumstances which are consistent only with hypothesis of guilt of accused before the Court below and inconsistent with innocence.

⁵ AIR 2011 SC page 1585

⁶ 2009(1) ALD (Crl.) page 113

⁷ 2009(1) ALD (Crl.) page 859 (AP)

⁸ (2006) 10 SCC 681

The case of prosecution is totally based on circumstantial evidence as discussed in the earlier paras. The law is well settled that the prosecution has to establish each and every linking circumstance to complete the chain of circumstances. The prosecution relied on the following circumstances to establish the guilt of the appellant before the Court below.

- “(i) Motive to commit murder;
- (ii) Saidamma (deceased) was lastly seen together alive in the company of the accused/appellant;
- (iii) Confessional statement leading to discovery and recovery of boulder; and
- (iv) The accused was absconding after the incident.

In view of the circumstances referred above, we have to examine whether the circumstances are established by the prosecution? If so, whether the circumstances exclusively establish the guilt of the appellant without giving scope to any hypothesis, unerringly pointing out the complicity of accused.

The death of Saidamma is not in dispute and it was only due to murderous assault. Whether the appellant committed the murder of Saidamma is the only question to be decided. The plea of the appellant is total denial of offence. Therefore, in view of the total denial of prosecution case, it is the duty of the prosecution to prove each and every circumstance.

The first circumstance relied upon by the prosecution is the motive to commit the offence. It is the consistent case from the beginning that the appellant used to pick quarrel with Saidamma during her life time suspecting her character i.e., developing illicit contacts with some other persons. Few days prior to the incident,

the appellant allegedly snatched away gold mangala sutram from her neck, and when his son P.W.3 questioned him, he caused injuries on his body. To prove the prior quarrel between the deceased and the appellant, two witnesses were examined, who are neighbours of Saidamma in the village, but the evidence of P.W.3, son of the appellant and the deceased, is not believable, since it is an exaggerated version which will be discussed at later stage.

P.W.5 is the resident of Golla Gudem Village and is the neighbour to Nagamma. The witness testified specifically about the death of Saidamma stating that Saidamma came to the house of Nagamma along with P.W.2, the daughter of the deceased, and on the same day, the appellant came to the house of Nagamma at about 9.00 pm and picked up quarrel. In the cross-examination, a suggestion was put to the witness that the appellant did not visit the house of Nagamma prior to the death of Saidamma, but he denied the suggestion. Therefore, his evidence is not worthy of credence, as he is the adjacent owner of the house, but he did not testify anything about hearing of cries when his house is adjacent to the scene of offence. He would have heard the cries Saidamma when she received grave injury with a boulder, causing head injury. Therefore, his testimony, to establish the motive, is not sufficient.

P.W.2 also testified about the motive of the accused to do away with the life of Saidamma due to suspicion about her character. Even assuming for a moment that the motive is established by examining P.Ws.1, 2 and 4, the motive is only a corroborative circumstances and it is not a substantive evidence. When the

prosecution relied on the circumstantial evidence, if other evidence is available, the motive will become irrelevant and it will remain more or less academic issue. Therefore, failure to establish the motive alone is not the ground to disbelieve the case of the prosecution, since it is a double edged weapon and it may be a reason for foisting a false case against the appellant or it may be the reason for commission of offence for murder of Saidamma. Therefore, the motive alone is not a substantive evidence to record conviction on the appellant.

The second circumstance relied on by the prosecution is Saidamma was lastly seen together alive in the company of the accused. This is a crucial circumstance to decide the real controversy between the parties and it is the case of the prosecution from the beginning that the deceased Saidamma along with P.W.2 came to the house of Nagamma at Golla Gudem and that about 9.00 pm on the same day, the accused came there and had dinner served by Saidamma and later picked up quarrel and slept in a room and whereas P.Ws.2 and 3 slept in the veranda of the same house. At this juncture, it is relevant to advert to the rough sketch prepared by the Police to decide the real controversy between the parties and truth or otherwise in the allegations made against the appellant.

Ex.P.5 is the rough sketch of scene of offence prepared by the Inspector of Police, after visiting the scene of offence and observed the same in the presence of P.Ws.6 and 7. P.W.14 is the Investigating Officer, and according to his testimony, after he took

up investigation, he visited the scene of offence situated at Golla Gudem Village of Shaligouraram Mandal and prepared rough sketch of the scene of offence and photographed and videographed the scene of offence with the help of P.W.8 in the presence of P.W.9 and Anumula Narsaiah (L.W.13). P.W.9 is the resident of Kethepally Village of Shaligouraram Mandal and in his presence, P.W.14 observed the scene of offence, collected M.O.1 blood stained earth and controlled earth and prepared Ex.P.5 rough sketch.

To prove the truth or otherwise of the allegations made in the report, it is necessary to advert to the scene of offence, marked as Ex.P.5, and as seen from Ex.P.5, the house of Nagamma is only a single room with extension of roof to some extent. According to the evidence of P.W.3, the daughter of Nagamma, she is the resident of a different village i.e., Parada and she came to Golla Gudem of Shaligouraram Mandal only to see her mother as she was suffering from ill-health. According to her testimony, she along with P.W.2, the daughter of the deceased and the accused and her mother were sleeping in the varanda. When her mother Nagamma was suffering from ill-health P.W.3 came to Golla Gudem Village to see her, in the normal course, a person who is suffering from serious ill-health will not sleep outside the house i.e., in the varanda during the month of June. When they were sleeping in the varanda, when the accused allegedly caused such grievous injury with a big boulder, Saidamma ought to have raised cries to attract the attention of the neighbours at least to save her life. It is not the case of the prosecution that big boulder is available inside the room and at

least to get the big boulder, the accused might have opened the door to secure the big boulder to kill her, but none of the witnesses testified that the boulder was available inside the room or the accused opened the door and collected the boulder outside the room without disturbing the sleep of any of the witnesses i.e., P.Ws.2, 3 and mother of P.W.3. Even assuming for a moment that when such a injury is caused on the head of Saidamma, her cries can be heard by even the neighbours i.e., adjacent house owners. Not raising any such cries when she received injuries on the head is unnatural circumstance to disbelieve the case of the prosecution.

Apart from that, the boulder was allegedly recovered on the basis of confession leading to discovery, which is relevant under Section 27 of the Indian Evidence Act. After seizure, it was sent to RFSL, Hyderabad for examination and Ex.P.14 is the report of Assistant Director, APFSL, dated 08.10.2010. As per the report, the Laboratory received five items from the police for examination and opinion. Items 1 to 4 are only gauze cloth, torn black blouse with dark brown stains, black and cream colour checks design saree with dark brown stains and orange colour cotton petty coat. On all the four items, blood was detected, but could not determine the blood group of the stains on item Nos.1 to 4. Item No.5 is the boulder received by Laboratory through PC. Blood was not determined on the boulder. Therefore, killing Saidamma by using boulder – Ex.M.O.5 was not established. Yet another strange circumstance is that when the accused caused the death of his wife Saidamma, in the normal course, the boulder would be left at the

scene of offence and he is not supposed to take away the boulder and keep it in the hay stock or in any other place to screen the same. This is another abnormal circumstance to disbelieve the cause of death of Saidamma with the boulder – M.O.5.

Coming to the evidence of witnesses with regard to visit of house of Nagamma by the accused, there is any amount of discrepancy in the testimony of P.Ws.1, 2 and 3. P.W.1 is the mother of the deceased Saidamma. She is not the direct witness to speak about the visit of the accused to the house of Nagamma, but she came to know through Nagamma and P.Ws.2 and 3. In the examination in chief, P.W.1 testified that when Saidamma went to the house of Nagamma at 6.00 pm., the accused was readily available there and picked up quarrel with the deceased. It is contradictory to the evidence of P.W.2, who allegedly accompanied with the deceased Saidamma to the house of Nagamma i.e., scene of offence. According to her evidence, P.W.2 herself and deceased (Saidamma) went to Nalgonda, and from there, they went to her aunt's house situated at Shaligouraram Village and thereafter at about 8.00 pm., her father came to her aunt's house and then her father had dinner served by her mother and picked up quarrel and on the next day morning they found the dead body of Saidamma in a pool of blood. This piece of evidence is contrary to the testimony of P.W.1, but much credence cannot be given to it as she is not eyewitness to the visit and P.W.2 is the natural witness to speak about the incident.

P.W.3 is the daughter of Nagamma, who testified that the accused came to the house of Nagamma at 8.00 pm and had dinner served by Saidamma and the accused slept in the room and then P.W.3 herself, P.W.2 and her mother Nagamma were sleeping in the varanda. They also noticed about the quarrel between Saidamma and accused, but found dead body of Saidamma in a pool of blood at about 6.00 am on the next day. When P.W.3 was able to hear the quarrel between the accused and the deceased, she ought to have heard the cries of Saidamma when she received a grievous injury with a big boulder. Failure to hear any such cries of Saidamma when she was beaten with a big boulder is an unnatural circumstance to disbelieve the version of the prosecution and it creates any amount of doubt about the presence of P.Ws.2 and 3 during the night at the scene of offence in the varanda of the same house. For different reasons, Nagamma, who was the owner of the house where scene of offence is situated, was not examined by the prosecution and no explanation was given by the prosecution for her non-examination. Nagamma is the best person to testify about her health condition and visit of P.W.3 to see her, but for the reasons best known to the prosecution, it failed to examine her, who is an important witness.

Strangely, the son of deceased Saidamma and the accused was examined as P.W.4, who was away to the alleged scene of offence on the particular day and his examination is only to prove the earlier disputes between Saidamma and the accused i.e., the accused snatched away pustela thadu from the neck of his mother

Saidamma two weeks prior to her death, and in the said incident, when P.W.4 questioned, his father (accused) caused injuries on his body. But evidence of P.W.4 is totally unbelievable for the simple reason that he was examined by the doctor P.W.11, who found two simple injuries i.e., (i) abrasion 4X5 cm over the left side of neck and (2) abrasion 3X1 cm over the right side of neck. The doctor opined that the injuries are simple in nature and the age of injuries is 1-2 hours prior to examination. Ex.P.9 is the certificated issued by P.W.11. P.W.4 was examined on 17.06.2010 and if the injuries were caused about two weeks prior to the incident i.e., during the intervening night of 16/17.06.2010, the question of finding injuries, aged 1 to 2 hours prior to the examination would not arise, as such, P.W.4 is wholly unreliable witness and the Court cannot place implicit faith on the testimony of such evidence to record the conviction on the accused.

Yet, another strong circumstance to disbelieve the case of the prosecution is the time of death. According to the prosecution, the death took place at about 1.00 am during midnight i.e., intervening night of 16/17.2010. P.Ws.2 and 3 are the witnesses allegedly sleeping in the varanda during that night along with Nagamma. P.W.2, in her examination in chief, simply stated about the quarrel between the accused and the deceased Saidamma that took place about two weeks ago and their visit to the house of Nagamma, both her mother and father at different times and taking dinner and sleeping in one room, but in her evidence, during night at what time, the accused and Saidamma picked up quarrel is not known.

In the cross-examination, nothing was elicited to disprove her sleeping in the varanda. P.W.3 is another witness, who was sleeping in the varanda at the relevant time. According to her evidence, the accused came to her mother's house at 8.00 pm, and after dinner served by Saidamma, the accused and Saidamma were sleeping in a room and then, P.W.2, herself and her mother were sleeping in the varanda. She also testified about the quarrel that ensued between the deceased and the accused during night and finding the dead body of Saidamma in a pool of blood. In her cross-examination, nothing was elicited. However, it is evident from the testimony of P.Ws.2 and 3 that they did not disclose at what time they heard quarrel between the accused and deceased and whether the deceased raised any cries when she received a big blow with a big boulder which resulted in death. When they were really sleeping in varanda, they would have heard the cries raised by the deceased when she received such a grave injury with a big boulder on her head, but they did not state anything about this incident and they also did not state whether the accused came out from the room to pick up the boulder and to cause injury on the head of Saidamma and whether the boulder was available inside the room. In the absence of any evidence to that effect, their evidence with regard to causing injury with boulder is unbelievable. They did not state anything about the exact time of death, but it was during intervening night of 16/17.06.2010.

Learned counsel for the appellant contended that the time of death was changed for different reasons by the prosecution and

would draw the attention of this Court to the postmortem examination report Ex.P.11. The doctor who conducted postmortem examination over the dead body of Saidamma found one injury i.e., contusion 6X5 cm on left temporal region which is antemortem and opined that the cause of death was due to intracranial hemorrhage in column No.8 of the report. In the same column, the doctor opined that the time of death was 14-18 hours before the commencement of autopsy. Autopsy was commenced on 12.30 pm as per column No.6 of page No.1 of Ex.P.11 and the approximate time of 14-18 hours is accepted, the deceased might have died between 6.30 pm to 10.30 pm on 16.06.2010, but not during mid night. In normal course, the four hours margin can be given to the time of death determined by the doctor, but here the doctor himself fixed the approximate time of death between 14-18 hours prior to commencement of autopsy. Therefore, such benefit of 4 hours either upwards or downwards cannot be applied to this case, and apart from that, according to the testimony of P.W.2, the accused allegedly came to the house of Nagamma during night. As per evidence of P.W.3, the accused came to the house of Nagamma at about 8.00 pm and had dinner and slept in a room. If the time of death as certified by the doctor is accepted, the question of commission of murder of Saidamma, during night is not accepted. Therefore, Saidamma last seen with the company of her husband, the accused, alive during night is unbelievable, but on the basis of such evidence on record, it is difficult to accept that the accused/appellant is the person who caused the death of Saidamma.

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 suffered the death or should own the liability for the homicide (In **Mohibur Rahman and Another v. State of Assam**⁹). If said law referred above is applied to the present case, the conclusions arrived by the trial Court in holding that the accused committed the murder of Saidamma, cannot be accepted.

The last circumstance relied on by the prosecution is that recovery of M.O.5 on the confession leading to discovery in the presence of mediators viz., P.W.10 and Akula Sommantha (L.W.14), but they did not support the case of the prosecution. Yet, another fallacy in prosecution's case is that when the accused caused a blow with a big boulder, he ought to have left the boulder there itself due to perturbed mood, after causing injury, but collecting boulder and hiding it in a hay stock is most improbable circumstance. Apart from the same, finding no blood stain on it (M.O.5) as per FSL Report Ex.P.14 is another strong reason to disbelieve that M.O.5 was not the weapon used in commission of

⁹ AIR 2002 SC page 3064

offence and that the seizure itself is illegal in view of the law declared by the Apex Court in **Inspector of Police, Tamil Nadu Vs.**

Balaprasanna¹⁰. The Apex Court in the said case 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.
- 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

¹⁰ 2009(1) ALD (Crl.)(SC) page 113

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**¹¹, 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 i.e., boulder is ordinarily available on the public roads, therefore, not sufficient to convict the accused for the offence of murder under Section 302 of I.P.C. The case of prosecution is improbable to the natural circumstance and it cannot be believed. On the strength of such discrepant evidence, the Court cannot convict the accused for the grave offence.

As discussed above, the prosecution miserably failed to establish each and every linking circumstance to complete the entire chain of circumstances to infer the guilt of the accused. Hence, we find that the trial Court committed an error in finding appellant guilty for the offence punishable under Section 302 IPC.

For the aforesaid reasons, the criminal appeal is allowed and the judgment dated 18.01.2013 in S.C.No.485 of 2011 on the file of the Court of the Judge, Family Court-cum-Additional District & Sessions Judge, Nalgonda is set aside. The appellant/accused shall be set at liberty forthwith unless his detention is required in

¹¹ 2012 (2) ALD (Cri.) page 865 (SC)

connection with any other case. The fine amounts, if any, paid by him shall be refunded after appeal time.

M.SATYANARAYANA MURTHY, J

T.AMARNATH GOUD, J

Date: 29.03.2018
TJMR

