

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

And

HONOURABLE SRI JUSTICE M. GANGA RAO

Criminal Appeal No.765 of 2013

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

The appellant, being the sole accused in S.C.No.348 of 2012 aggrieved by the conviction judgment of the learned IX Addl. Sessions Judge, dt.03.07.2013 finding him guilty for the offences punishable under Sections 302 and 309 IPC respectively in sentencing him to undergo life imprisonment with a fine of Rs.1,000/- with default sentence of Simple Imprisonment for three months for the offence punishable under Section 302 IPC and Rigorous Imprisonment for six months for the offence punishable under Section 309 IPC to run both the sentences concurrently by giving set off of the remand period, maintained the present appeal, with contentions in the grounds of appeal vis-à-vis oral submissions of the learned counsel for the appellant/ accused that the trial Court's conviction judgment is contrary to law, weight of evidence, preponderance of probabilities, there is no direct evidence including of P.Ws.1 and 2 to the occurrence and the prosecution miserably failed to bring home the guilt of the accused beyond reasonable doubt by establishing the chain of circumstances by connecting the links and there were no even any fingerprints on the material objects (M.Os.1 and 2) even collected and so called recovery or attack by the accused with the weapon of offence in killing the deceased is bogus and planted and there is no motive for the accused against the deceased to kill even from the prosecution evidence particularly from P.Ws.1 and 2-the mother and sister of the deceased, thus the trial Court's conviction judgment is thereby unsustainable and

liable to be set aside and the appeal is to be allowed by acquitting the appellant/ accused.

2. Whereas, the learned Public Prosecutor representing respondent/ State in opposing the same supported the trial Court's judgment in finding the petitioner guilty for both the offences and also the sentence of imprisonment with fine and further submitted that for this Court while sitting in appeal against the trial Court's said conviction judgment or on the quantum of sentence, there is nothing to interfere and the trial Court judgment is well considered and supported by reasons having fresh in mind of the facts, merely because of some other view is possible, the Court cannot easily interfere with the appeal as held by the Apex Court in Abdul Razaq Vs. Nanhey and others¹ and sought for dismissal of the appeal.

3. Heard both sides at length and perused the entire material on record.

4. The sum and substance of the accusation against the accused by the prosecution from the police final report taken cognizance as PRC for the offences punishable under Sections 302 and 309 IPC by the learned committal Magistrate, Kamareddy in allotting PRC No.36 of 2012 which is outcome of Cr.No.345 of 2011 of Kamareddy Police Station registered on the report, dt.30.10.2011 of the defacto-complainant-P.W.1-mother(Razia Begum) of the deceased by name Rafia Begum covered by Ex.P.1 statement in registration of Ex.P.11 First Information Report by P.W.11, is that the accused brutally killed the deceased minor girl aged 17 years on 29.10.2011 at about 8.00 P.M., by causing injuries with pestle and stabbing with knife and made attempt to commit suicide by cutting throat at the house bearing No.5-8-383/ A Shehapuri colony, Kamareddy. The defacto-complainant-P.W.1-Razia Begum who set the

¹ AIR 1984 SC 452

law in motion by Ex.P.1 statement as recorded by P.W.11, is no other than mother of the deceased minor girl. P.W.2 Safia Begum is sister of the deceased girl and another daughter of P.W.1 and the husband and son of P.W.1 are at abroad. P.W.3-P.Aruna, P.W.4-Y.Ranjeeth and L.W.4-Raju are the circumstantial witnesses. P.W.6-K.Raja Reddy and L.W.7-E.Ramakrishana are the witnesses to the scene of observation and collection of incriminating material from the scene and P.W.5, L.W.10-K.Sailu and L.W.8-Shaik Parveen are the witnesses to the inquest and also seizure of the Clothes of deceased conducted by P.W.11 supra and P.W.9-Shaik Mahaboob and L.W.12-Syed Moulana are the witnesses to the arrest of the accused by P.W.12-Jaipal Reddy-Inspector and while in custody made a disclosure and seizure from the fact discovered and P.W.10-Rajasekhar is the photographer of the scene of offence and seizure of the Clothes of deceased. P.W.7-J.Ajay Kumar is the Doctor who conducted autopsy and P.W.8-Dr. Manoraj, treated the accused and issued wound certificate. L.W.16-K.Arun Jyothi is the chemical examiner of the material objects sent for examination and P.W.13-M.Muthaiah is the Inspector who filed chargesheet referred supra from the evidence and M.Os. 1 to 10 marked viz; M.O.1-chatni pounder (pestle) and M.O.2-knife are the weapons of offences seized from the scene and also identified as weapons of offence from the disclosure of the facts by the accused within his exclusive knowledge of it and M.Os.3 to 10 are ladies top, Salwar, Chunni, piece of mat with bloodstains, piece of cement flooring with blood stains, piece of cement flooring without blood stains and two shaving blades seized from the scene of offence. Exs.D.1 to D.5 are the portions of statements of P.Ws. 1 to 4 during cross-examination by the accused and Exs.P.1 to P.12 marked are: Ex.P.1 is complaint, Ex.P.2-inquest panchanama, Ex.P.3-seizure panchanama, Ex.P.4-Scene

of offence panchanama, Ex.P.5-seizure panchanama, Ex.P.6-rough sketch, Ex.P.7- Post mortem examination report, Ex.P.8-medical certificate, Ex.P.9-A and B-parts of confessional panchanama of accused, Ex.P.10-photographs ten in number, Ex.P.11-First Information Report and Ex.P.12-FSL report,

5. From the above material, now the points for consideration in deciding the appeal are:-

- i) Whether the deceased met with homicidal death, if so, in the hands of the accused, if so whether the injuries sustained by the accused in the same course of attack on the deceased caused by deceased or those are self-inflicted by the accused in the attempt of committing suicide or otherwise?
 - ii) Whether the prosecution proved guilt of the accused for the two charges levelled under Sections 302 and 309 IPC and if not the conviction judgment of the trial Court is unsustainable and otherwise even requires interference of this Court while sitting in appeal?
- and
- iii) To what extent?

Points i to iii:

6. As the points for consideration can be taken up together to avoid repetition of facts since inter-connected in deciding the appeal by sitting against the correctness of the trial Court's conviction judgment supra, those are taken up together.

7. Needless to repeat the substance of the accusation of the prosecution against the accused, P.W.2-Safia Begum, sister of the deceased and another daughter of P.W.1 in her evidence deposed that her husband and father are residing in Gulf. She and her two brothers, the deceased girl and their mother residing together at Kamareddy town and she is a beedi roller and the accused N.Laxman and P.W.4-Y.Ranjit

used to reside in a portion of their house as tenants. Above facts not even in dispute by accused. On that fateful day which is 13 months prior to her giving evidence, she sent her younger sister-the deceased and her friend Aruna-P.W.3 to bring eggs and after they came back, they were all sitting in the hall watching Television and the accused Laxman and P.W.4 Ranjith the tenants of their house portion also joined them. She identified the accused as said Laxman at the witness box. She deposed that at that time she went inside the kitchen to prepare curry as her younger sister Rafia Begum wanted to prepare for examinations did not join her in kitchen work, however her friend Aruna came to help her in the kitchen. Meantime the accused snatched the TV remote from son of P.W.2 to see cricket match, from that her son came into the kitchen weeping to complain against the accused-Laxman, by that time Ranjith also came into the kitchen and about to take her son to Laxman to give back remote of Television. The Accused-Laxman meantime locked the kitchen door from outside. When P.W.2, P.W.3-Aruna and P.W.4 Ranjith were inside even they were knocking the doors and shouted to open, he did not. They heard the voice of her younger sister Rafia(deceased) responded to open the door which were the last words of her they heard and in the meantime the Television volume was increased. When they came out of the kitchen by opening back door and found her younger sister-Rafia Begum and the accused were not there. They searched for them even on the terrace. They also tried to open fibre door separating the portion of accused and them, they tried to open the main door of the portion of the accused but were locked inside. P.W.2 immediately rushed to the house of Pentavva to where her mother-P.W.1 went and complained to P.W.1 about the issue and the accused and Raffia Begum (deceased) were not found. They came running back and tried to open

the door of the portion of the accused that was locked from inside. In the meantime, Raju-LW.4 came with instrument and opened the doors and they all went inside and found the deadbody of the Rafia with injuries and Chatni pounder (pestle) including head injury, injury on cheeks and cut injury on the neck and the accused was also found lying on the floor with injury on his neck. Then P.W.1 went to police station and reported the occurrence. She was examined by the police and M.O.1 is identified as the Chatni pounder and M.O.2 is identified as knife used by the accused. In the cross-examination, she deposed that she studied 10th class and on the date of incidence at about 10 or 11P.M. her statement was recorded by police and she stated the facts to the police. She stated to the police that even before they broke the doors open they searched for her sister and the accused. She denied the suggestion of she did not state before the police of Television volume increased or they searched for accused and the deceased before the doors were broken. She deposed that she stated before the police of fibre door between their portion and rented portion of the accused. She denied the suggestion of Ranjith was also a tenant of the house portion. She stated the police that there was injury on the cheek of her sister also. She deposed that there was no possibility for her to see while accused was causing injuries on the deceased as the doors were closed by the accused. The witness added that the accused taken her sister while she was watching Television. She deposed that she did not state to the police as in Ex.D.2 that at about 8.20p.m. the accused taken her sister Rafia Begum (deceased) away. She deposed that the time is between 7.30P.M. to 8.00 P.M., and she was watching Hindi serial 'Sathiya sath nibhana' and after that her son saw 'Chandramukhi' serial for 15 minutes and she did not state before the police as in Ex.D.3 in this

regard. She stated before the police that Laxman cut his throat with blades and fell on her sister. As her sister has not accepted love of the accused, he killed her. The accused and Ranjit(P.W.4) used to come into their house only when there is a cricket match to see Television. She denied the suggestion of Ranjit used to come frequently and used to be close with her sister-deceased and her sister refused the proposal of love by Ranjith to love him. She denied the suggestion of Ranjit developed grudge against the accused. She identified even in the cross-examination, M.O.1-Chatni pounder. She deposed however of Chatni pounders are available in all houses. She deposed that they will not use knife in their house but only sickle and denied the suggestion of they use knife in their kitchen. She denied the suggestion of the accused did not cause the injuries, much less killed her sister Rafia. She also denied the suggestion of accused was also attacked. She also denied the suggestion of she was deposing falsehood at the instance of police or she did not witness any incident or accused did not kill the deceased.

8. The Exs.D.2 and D.3 portions in the statement of P.W.2 are that Laxman used to take her sister Rafia to college on his bicycle and used to bring her to house from college. As she was close to him, the accused felt that her sister-deceased was loving him and as such he used to force her to love him. As she found the door of the portion closed from inside and also heard shouting of her sister from inside the room and due to suspicion they knocked the door and it was not opened. Even from these so called contradictions are no way beneficial to the accused, but for in supporting the prosecution version.

9. Coming to the evidence of P.W.1, she deposed that on the date of the incident she went to the house of Pentavva by instructed her elder daughter-P.W.2 to prepare curry taking help of her younger

daughter (deceased) Rafia. P.W.3-Aruna-friend of Rafia, who came for combined study along with her younger daughter-Rafia was also at their house by the time she went. Ranjith, accused Laxman, Rafia besides her grandson (son of P.W.2) were also there watching Television. Aruna went into kitchen to help P.W.2. The accused snatched remote from the hands of the son of P.W.2, for which the boy went into kitchen to complain to his mother against the accused and Ranjith also went into the kitchen, at that time the accused locked the kitchen door from outside and at that time, Rafia and the accused only were there in the TV room and the accused increased the volume of the Television. She deposed that they knocked the doors of the room where the accused was residing as a tenant and it was locked from inside and they tried to break the door open. M.Raju-L.W.4 broke open the door with the help of instrument (big knife). Then herself, Ranjith, Raju, and Aruna all went inside and found Rafia lying in a pool of blood with injury on her head, left side of chin and on throat which were inflicted by the accused only. The accused also fell down with cut injury on his throat. She put the thumb mark after cause prepared the complaint by her relative covered by Ex.P.1. She identified the M.O.1 Chatni pounder and M.O.2 knife used by the accused. In the cross-examination by the accused, she deposed that she is illiterate. By the time she went to police station and presented the report, it was midnight. Police came thereafter to her house and she deposed that she has not seen while the accused beat her younger daughter, but when they broke open the doors the accused and her daughter were there and thereby the accused killed her younger daughter. She deposed that the house contains two portions and in each portion there are three rooms, and there are two windows to the portion let out to Ranjith and the accused with small lane between both the

portions. She denied the suggestion of let out only to Ranjith that portion. Within 5 or 10 minutes after she went to the house of Pentavva, her elder daughter- P.W.2 came to her saying her younger daughter Pafia was not found. By the time she came and saw Pafia with injury she breathed last. She deposed that she did not state before the police as if in Ex.D.1. She deposed that the accused-Laxman made an attempt to commit suicide by cutting his throat. She denied the suggestion of she cannot say whether the accused cut his throat or somebody did it. The windows were stated closed. They broke open one of closed windows but did not find her daughter in the hall, then immediately they tried to broke the door but they did not. M.Raju-L.W.4 and Ranjith(P.W.4) broke the door. She denied the suggestion of accused is no way concerned with the alleged offence and he did not make any offence to commit suicide and there was an attack on him. She deposed that it is around 7.30p.m., she went to the house of Pentavva. She did not remember the designation of the police officer who recorded her statement. She denied the suggestion of in collusion with police, a false case is foisted against the accused and she is deposing falsehood on the instructions of police.

10. P.W.3-Aruna, co-student and friend of the deceased, aged about 18 years, deposed that on that day at about 6.30 or 7.00 P.M., she went to the house of deceased for combined study. P.W.2 is sister and P.W.1-is mother of the deceased. When they were studying, P.W.2 sent them to bring eggs and they came back with eggs and toothpaste. When P.W.2 and herself were inside the kitchen, the accused Laxman was not there and she did not notice when he came. The accused-Laxman came and later snatched the remote from the hands of son of P.W.2 from which he was weeping and on enquiry by P.W.2 with her son, he told

that the accused took the remote from him. on hearing while Ranjith was taking son of P.W.2 back to get back the remote from the accused, however in the meantime the accused closed the doors of the kitchen and bolted from outside and while he was pulling the door, heard the voice of the deceased stating she was about to open the door to their knocking. It is meantime the Television volume was increased and the door was not opened but succeeded to open other door somehow, and gone to the terrace and in search and not found the accused and Rafia Begam and P.W.2 rushed to the neighbours house to bring P.W.1. P.W.1 and inmates of her neighbours when tried to open the portion of the door closed from inside of the accused but not opened, meantime the L.W.4-M.Raju brought kammakathy(big knife) and broke open the door and they all went inside and saw the deadbody of Rafia Begum in a pool of blood with injuries on head and neck and the accused also found fell on the deceased and his throat was also cut. She further deposed that the accused killed Rafia Begum and she stated the same before the police. In her cross-examination she deposed that he used to visit the house of deceased regularly for studies and she also knows Ranjith as another tenant along with the accused. She stated that she cannot say the designation of the police and the time of her examination by police. She denied the suggestion of she did not state before the police that she went to the house of the deceased on that day by 7.00 P.M. for studies. She stated that when herself and P.W.2 were cutting onions in the kitchen, the accused Laxman, Ranjith and P.W 2's son were there Watching TV. She did not state police before as in Ex.D.4. Immediately after coming out of kitchen, they searched for the accused and Rafia in the bathrooms and it took half an hour or so to break open the doors where deadbody of the deceased and the accused with injury were

found lying. She deposed that she stated to police of Ranjith jumped inside the room after part of the door was got broken by M.Raju came with knife. She denied the suggestion that she did not state before police of Ranjith jumped inside the room after part of the door was got broken and that Raju brought Kamma Kathi(knife). She stated that she did not see the alleged killing. She denied the suggestion of she is tutored by the police to say as if the accused killed the deceased. She denied the suggestion of she did not come to the house of the accused on that day and she was close to the family of P.W.1 and due to which she is deposing falsehood to help them.

11. Coming to the evidence of P.W.4-Ranjith, another tenant of the house in the portion of the accused, he deposed in corroboration to the above that on that day it is about 8.00 or 8.30P.M., himself, P.W.2, her son, deceased and P.W.3 were watching Television. Himself and the accused went inside the house of P.Ws. 1 and 2 to watch cricket match and after P.Ws. 2 and 3 went inside the kitchen for cooking, the accused took remote from the son of P.W.2 and started watching cricket. Then while son of P.W.2 was going into the kitchen to complain about remote to his mother-P.W.2 in the kitchen, he slipped and fell down, then he also went inside to the son of P.W.2 and in the meantime, the accused bolted from outside the kitchen. By that time P.W.2, P.W.3 and son of P.W.2 were inside and in the TV Room only the deceased and the accused were there and even they knocked the door to open it was not opened and they heard the voice of the deceased that she was going to open but not opened and in the meantime, the Television volume was increased. There was one unused door to go out of the kitchen and he got open the same and they came out and searched for the accused and deceased and they did not find inside and on terrace and coming to the

portion let out was locked from inside. Meantime P.W.1 who went to the house of neighbours came there and on which he along with Mathar Raju, with knife broke open the doors and went inside and found the deceased fell in a pool of blood with injury on the head and throat and the accused with cut injury on throat and on hand was lying on the deceased and thus it is Laxman-the accused that killed Rafia for she refused the proposal of his love. In the cross-examination he deposed that he took Teacher Training at Vuyyulawada village and Nagar Kurnool and he joined B.Sc.(MPC) first year at Kamareddy Government Degree College and used to reside in ST Boys Hostel for about 7 or 8 months. He denied the suggestion of during the time of his discontinuation of degree, he was staying along with the accused in the house of P.W.1 as tenant. He denied the suggestion of one Shankar also used to reside as a roommate to him. He also deposed that the accused completed Teacher Training at Mahaboobnagar but he could not complete having failed in one subject. He denied the suggestion of he invited the accused to join him in preparing TET examination and brought him to the room on his expressing financial difficulty. He denied the suggestion of he was not examined by police at the scene of offence. He denied the suggestion of he did not state before the police of himself and the accused went inside the portion of P.Ws. 1 and 2 for watching cricket match. He stated before the police that son of P.W.2 fell down while going to complain to P.W.2 about the accused taking TV remote. He denied the suggestion of he did not so state before the police. It took few minutes to open the doors of the kitchen from other side after searched for few minutes. He deposed that there is one window to their portion. He denied the suggestion of he used to attend the works of P.W.1 and by the time he went inside, Rafia was dead. He did not state before the police as in

Ex.D.5. He stated to police that the accused killed the deceased with Chutni pounder and knife after entering the room. He deposed that on seeing the circumstances what he understood as the deceased refused the love proposal of the accused, the accused killed the deceased and the same he stated to the police though he is not an eye witness of accused causing any injuries to the deceased. He denied the suggestion of there is no proposal of love from the accused. He denied the suggestion of he proposed love to the deceased and on her refusal he bore grudge on deceased and responsible to her death and further when the accused attempted to rescue the deceased, he attacked the accused and caused injuries to him. He also denied the suggestion of he gained goodwill from P.W.1's family and foisted a false case against the accused.

12. This evidence of P.Ws. 1 to 3 unerringly pointed out that Panjith and Laxman-accused are the tenants in a portion of the house of the P.W.1 and in the other portion, P.W.1, P.W.2 and P.W.2's son and P.W.1's another daughter-the deceased were staying. P.W.3-Aruna is friend and classmate of the deceased used to come for combined studies and on the fateful day, P.W.3 also came and by 7P.M. as P.W.2 asked them to bring eggs and toothpaste, the P.W.3 and the deceased went and brought the same, in the meantime the P.W.1 went to neighbours house instructing P.W.2 to prepare food. While P.W.2 was preparing food with the assistance of P.W.3 in the kitchen, the accused and Panjith came to see cricket match and when the accused snatched the TV Remote from son of P.W.2, the minor boy went into kitchen to complain his mother about Laxman snatching remote and at that time, Panjith also went into the kitchen to bring back the boy to the accused to get back the remote from the accused to the boy; however taking

advantage of this, the accused bolted kitchen door from outside for not to allow their entry into the TV room and even they knocked the doors to open, he did not. Meantime the deceased when wanted to open however it appears the accused not allowed her to open and also increased the TV volume so that the deceased voice also could not be heard by the persons in the kitchen and in the meantime he has taken the deceased into the tenanted portion and bolted from inside. The persons from the kitchen cause opened another door not in use and came out and on search inside and on the terrace and not found and in the meantime P.W.2 brought her mother back from the neighbour's house and for the hue and cry, neighbours also came including M. Raju who brought big knife and broke open the tenanted portion and found the accused and the deceased inside and the deceased with the injuries breathed last and the accused also sustained injury on his neck and hand alive. This clearly unerringly establishes the deceased was died in the company of the accused and the accused also sustained injury, leave about whether he made an attempt to kill her or the deceased resisted for any of the attempt to rape her against her consent, from what the witnesses deposed accused found lying on the person of deceased and there is also bloodstained chutney pounder (M.O.1) and the knife. It clearly establishes from said evidence of it is the accused that killed the deceased having taken her forcibly in his room in the circumstances and the facts referred supra. This evidence clinchingly established the offences against the accused supra of the accused alone and none else that killed the deceased.

13. Coming to the so called contradictions under Exs.D.1 to D.5 from the statements of the witnesses supra, what is the contradiction from the evidence of P.W.4 is on shouting of Raffia-the deceased from

inside the room and due to suspicion knocked the door. Even the same is even favourable to the prosecution only and no way against the prosecution; equally from Ex.D.4 in the statement of P.W.3-Aruna on her shouting of Raffia from inside the room and due to suspicion they knocked the door and it was not opened. The Exs.D.2 and D.3 so caked contradictory portions in the evidence of P.W.2 as discussed supra also no way beneficial to the accused but for prosecution and even coming to Ex.D.1 portion of the statement of P.W.1, she stated consistently that since 4 months the accused-Laxman insisting the deceased girl to love him and on the previous day night he forced her to fulfil his lust and as she did not accept he beat with pestle on her head and stabbed her on her throat with knife and killed her. No doubt she is not an eye witness to the occurrence including as deposed by her but for inference to draw. The accused did not adduce any independent evidence. Apart from the evidence of P.W.5-K.Laxmi who deposed that on coming to know the death of Raffia, she came to Govt. Hospital, Kamareddy and saw the dead body and the police prepared Ex.P.2 inquest to which she is one of the witnesses along with one Muslim woman Sailoo and from the injuries on the head and throat, they came to the conclusion of the deceased was killed and she also saw the clothes of the deceased viz; lady top (MO-3), Salwar(MO-4) and Chunni(MO-5) of the deceased seized under Ex.P.3 panchanama to which she is also a witness. There is nothing to discredit her evidence in this regard and the suggestion to her in the cross-examination which she denied is of she is deposing falsehood even nothing taken place in her presence.

14. P.W.6-VRO, Kamareddy, deposed that he along with Ramakrishna (L.W.7) came with police to the scene of offence on 30.10.2011 at 6.00 A.M. and found a mat having bloodstains and the

police seized a piece of mat with bloodstains and a piece of mat without bloodstains, a piece of cement flooring with bloodstains and a piece of cement flooring without bloodstains and seized chatni pounder and the knife bloodstained and also two shaving blades which are marked as M.Os.1,2,6 to 10 and prepared scene of observation panchanama (Ex.P.4) and seizure panchanama(Ex.P.5), rough sketch(Ex.P.6) by the Investigating officer, and affixed slips on the material objects. He denied the suggestion of nothing took place and they are deposing falsehood.

15. P.W.11 deposed with reference to the evidence of P.Ws. 5 and 6 regarding the scene observation panchanama and rough sketch and seizure of M.Os. 1,2, 6 to 10 under cover of panchanama from the scene of offence besides receiving a report and registration of the First Information Report and issued Ex.P.11 and also referred the deadbody for autopsy and sending of the M.Os. for FSL. Ex.P.12 is the FSL report which shows human blood was found and group of blood not detected particularly on the clothes of the deceased and bloodstains on piece of mat, cement pieces, on the steal knife with plastic handle and on the pestle. It is no doubt stated on the knife blood was found however cannot say human blood or not but on the pestle it is human blood but blood group could not be detected.

16. P.W.7-Doctor Ajay kumar of the Area hospital, Kamareddy, deposed that he conducted autopsy, on 30.10.2011 based on the requisition, on the body of the deceased girl Raffia Begum and found 1) a lacerated wound on the frontal region with fractured skull, exposed brain matter, 2) A deep lacerated wound on right side of the forehead 5x5 cms in deep inside, 3) A lacerated wound on throat extending from middle of the throat to the left side about 10x8 cms in deep inside with

exposed trachea and cricoid cartilage with cut of left jugular, carotid vessel, and all the wounds are anti mortem in nature, cause of death is due to head injury and hemorrhagic shock, time of death is approximately within 24 hours and he issued post mortem certificate under Ex.P.7 with final opinion and stated that the injury No.1 is possible if a person hits with a chatni pounder and other injuries are possible with sharp weapon like knife. Besides the medical evidence corroborating to the above evidence of P.Ws. 1 to 4 in particular and the M.Os.1 and 2 contain blood stains though group not detected but human as referred supra particularly on the pestle and the medical evidence also shows not only injuries by pestle caused but also injuries caused using knife on the deceased when the accused was in the company of the deceased within the room by closed from inside.

17. Coming to the evidence of the P.Ws. 12 and 13-the other investigating officers, the P.W.12-Jaipalreddy deposed that the accused was apprehended and produced before him by the escort party after discharge from the Gandhi Hospital, Secunderabad on 14.11.2011 and in the presence of the mediators, P.W.9-Shaik Mahaboob and L.W.12-Syed Moulana), he recorded confession statement of the accused as the accused confessed voluntarily about the offence, he arrested the accused and produced before the Court. He denied the suggestion of the same is not correct and there is no any confessional statement made by the accused and he is deposing falsehood. P.W.13 deposed about gone through the investigation and filing chargesheet after receiving FSL report and Post Mortem Report supra. So far as the so called confession of facts, it is not admissible as hit by Section 25 of the Indian Evidence Act, for nothing therein, discovery of any fact from the disclosure to admit any portion under Section 27 of the Indian Evidence Act.

18. However, the evidence on record as discussed supra when unerringly establishes beyond all reasonable doubt of a basis for finding the accused guilty to convict from such a character of wholly inconsistent with innocence and consistent only with his guilt and what he tried to divert the offence against the P.W.4 as if he killed the deceased and attacked the accused is baseless from the said unerring evidence beyond reasonable doubt against the accused from the facts and circumstances and as per the settled law from the 5 JB expressions of the Apex Court in *M.G. Agarwal Vs. State*², and *Usman Main Vs. State of Bihar*³, *State of Haryana Vs. Bhagirath*⁴, *State of Punjab Vs. Karnail Singh*⁵, and that too when the deceased and accused were within the room by closing door from inside and the deceased was killed and the accused sustained cut injury to his throat and he was on the person of the deceased lying, he has to explain the special circumstances within his knowledge as well as to draw inference against him under Section 106 and 114 of the Indian Evidence Act of it is he that killed and not otherwise as laid down by the Apex Court in *Balram Prasad Agrawal vs The State Of Bihar*⁶.

19. Having regard to the above, it is proved against the accused beyond reasonable doubt of the deceased was killed in his hands and he then made attempt to commit suicide. Coming to Section 302 IPC though the trial Court in its finding held the accused is guilty for the offences under Sections 302 and 309 IPC, so also in awarding sentence of imprisonment with fine, for this Court while sitting in appeal there is nothing to say accused got motive to kill the deceased. In fact, the

² AIR 1963 SC 2000

³ (2004) 2 ALD CrI.916 SC

⁴ 1999 [5] SCC-96

⁵ 2003 (11) SCC 271 para 12

⁶ AIR 1977 SC 1830

evidence establishes that the accused taken the deceased girl to his room and closed the door to commit rape and she resisted and in that fight she died from his attack with pestle and knife to say the offence attracts is Section 304(part-I) IPC and not Section 302 IPC.

20. Accordingly and in the result, the Criminal Appeal is partly allowed by modifying the conviction and sentence from Section 302IPC of life imprisonment with fine of Rs.1000/- with default sentence of (3) three months Simple Imprisonment, to Rigorous Imprisonment for 10 years and while confirming the finding of guilt for the offence u/ sec.309 IPC with the sentence of 6(six) months Rigorous Imprisonment, to run both sentences concurrently by giving set off to the period undergone. Consequently, miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed.



Dr. B.SIVA SANKARA RAO J,

M.GANGA RAO, J

Date:23.11.2018
b/o.vvr