

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CRIMINAL APPEAL NO.604 OF 2013

JUDGMENT: *(Per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The accused in Sessions Case No.502 2011 on the file of IV Additional District and Sessions Judge (FTC), Tanuku, preferred this criminal appeal under Section 374(2) Cr.P.C, challenging the conviction and sentence passed in calendar and judgment dated 04.07.2012.

2. It is the case of the brutal murder of wife-Moturi Satyavani (deceased) allegedly by the husband inside the bed room on 14.11.2010. The appellant and the deceased were residing in house bearing Door No.2-7A, Post Office Street, Kanuru Agraharam Village, Peravali Mandalam as shown in rough sketch-Ex.P.11 and scene of observation report- Ex.P.6. The deceased was the third wife of the appellant and second marriage to her. The appellant always suspecting the fidelity of the deceased and whenever he go outside to do vegetable business, he used to tie her inside the room, used to bolt the door from outside and that whenever he entered into the room he used to verify underneath the cot and other articles, suspecting her fidelity. At the 3rd month, after delivery i.e. about 20 days prior to the incident, PW.1, mother of the deceased, sent the deceased to her matrimonial house along with new born child. The appellant developed suspicion that the deceased may kill him by administering some poison, he decided to kill Satyavani, purchased knife on 13.11.2010 and kept the same under the cot. On 14.11.2010, when PW.1 came to the house of the appellant at 06.00 PM to see her daughter and grand son, the deceased informed her that there was no change in

the attitude of the accused and on that PW-1 convinced her to adjust. After having dinner, PW1 went to sleep in the varandah at about 07.30 PM, the appellant and the deceased were inside the bed room. While PW-1 was sleeping, at about 11.00 PM, she heard cry from the bed room, where the accused and the deceased alone were found as 'amma narikesadu amma'. Immediately, PW.1 went to the bed room where the accused and the deceased were alone, found that the accused hacking his wife. Thus, the appellant caused six injuries on the body of his wife Satyavani, she died instantaneously, on the spot.

3. Witnessing the incident, PW.1 telephoned to his son, daughter-in-law and daughter-in-laws mother, who are at different villages and that they arrived at 06.00 a.m. on the next day i.e. on 15.11.2010. By the time they reached the scene of offence, the dead body was lying inside the room, but the appellant left the scene of offence immediately after the death of Satyavani. Thereafter, PW.1 along with her son went to the Peravali Police Station, lodged written report. The Station House Officer registered a case in Crime No.172 of 2010 for the offence punishable under Section 302 IPC, issued FIR-Ex.P.10 and the Inspector of Police took up investigation.

4. During course of investigation, the investigating agency examined as many as ten witnesses and recorded their statements, visited the scene of offence and found the dead body, scene of offence was observed in the presence of mediators-PWs.3 to 5 and drafted the observation report at the scene of offence-Ex.P.6 and prepared rough sketch-Ex.P.11 and seized snuff colour horizontal and vertical striped blanket, stained with blood.

5. After observation of scene of offence, the dead body was shifted to the Government Area Hospital, Tanuku for post-mortem examination. Post-mortem examination was done by PW.6-Dr G.Srinivasa Rao, Civil Assistant Surgeon, Area Hospital, Tanuku and issued Ex.P.9-postmortem certificate. The appellant was arrested in the presence of mediators he made a confession, led them to recover MO.1-knife and MO.6 blood stained shirt, produced before the police and the same were seized under cover of mediators reports-Exs.P.7 and P.8. During post-mortem, MO.2-jacket, MO.3-saree and MO.4-petti coat were recovered. MO.5-blanket was seized during observation itself under the cover of Ex.P.6-observation report. The scene of offence was also photographed during inquest over the dead body, in the presence of mediators.

6. Based on the material collected during investigation including, Ex.P.9 post-mortem certificate and Ex.P.12-RFSL report, the Inspector of Police concluded that there is *prima facie* material to proceed against the appellant, filed charge sheet before the II Additional Judicial Magistrate of First Class, Tanuku. The Magistrate took the case on file for the offence punishable under Section 302 IPC and registered the same as PRC No.17 of 2011, in turn, having concluded that as it is exclusively triable by the Court of Sessions, committed the case under Section 209(c) Cr.P.C to the Sessions Division, West Godavari District and in turn it was made over to IV Additional District and Sessions Judge, (Fast Track Court), Tanuku to try according to law.

7. After securing presence of the accused and on hearing both sides, the Sessions Judge, framed the sole charge for the offence punishable

under Section 302 IPC, read over and explained to him in Telugu, for which he pleaded not guilty and claimed to be tried.

8. During trial, the prosecution examined PWs. 1 to 8 and got marked Exs.P-1 to P-12, M.Os.1 & 6 to substantiate the case of the prosecution. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C, explaining the incriminating material that appeared against him in testimony of prosecution witness, but he admitted part of the incriminating material and denied part of it and reported no defence.

9. Upon hearing argument of learned Additional Public 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.1000/- with default sentence of simple Imprisonment for six months.

10. Aggrieved by the conviction and sentence passed by the Court below in Sessions Case No.502 of 2011, the present appeal is preferred on few general grounds.

11. As the appellant is not in a position to engage counsel, legal aid was extended to him and appointed Ms Hema Jaiswal, Advocate to conduct proceedings in appeal on behalf of the appellant/accused as legal Aid counsel.

12. During hearing, learned counsel for the appellant contended that the presence of PW.1 is doubtful and similarly MO-1-Knife is planted to rope the accused in grave offence punishable under Section 302 IPC and apart from that there is nothing on record to conclude that the appellant

had an intention to kill his wife. In the absence of any evidence to prove that he had intention to kill his wife, the conviction and sentence imposed by the Court below is erroneous and requested to set aside the conviction and sentence imposed against him. Learned counsel also contended that the answers given in examination under Section 313 Cr.P.C. cannot be taken into consideration to convict and if those answers are excluded from considerations and disbelieved the presence of PW.1 absolutely there is no material to conclude that the appellant committed offence muchless the offence punishable under Section 302 IPC.

13. Learned Public Prosecutor supported the case of the prosecution in toto, while, contending that based on the situs and nature of injuries, the Court can draw an inference that the appellant had an intention to kill his wife Satyavani and caused the injuries on the vital parts of the body of the deceased, which led to death. Learned Public Prosecutor also contended that it is for the appellant to explain cause of death when the incident occurred in the bed room, which is under his exclusive control when it is not the case of the prosecution that any other person entered into the bed room and caused those injuries. In the absence of any explanation from the accused i.e. appellant, the Court can accept the direct evidence of PW.1 and recovery of weapons i.e. MOs. 1-knife and 4-blood stained shirt and the report of RFSL-Ex.P.12 to conclude that the appellant is the person, who committed murder of his wife and that apart the answers given by him in the examination under Section 313 Cr.P.C. is a corroborative piece of evidence to the evidence of eye witness and other circumstantial evidence, requested to dismiss the appeal, confirming the conviction and sentence passed by the Sessions Court.

14. In view of the rival contentions of learned counsel for the appellant and learned Public Prosecutor, the point that arise for consideration is:

Whether the appellant caused death of his wife with an intention to kill her and that the injuries would lead to death in ordinary course of events, if not, whether the conviction and sentence imposed by the Sessions Court against him are liable to be set aside?

POINT:

15. Section 374 Cr.P.C conferred substantive right of appeal on the accused who is convicted by the trial Court and this Court while exercising power under Section 374(2) Cr.P.C is bound to re-appreciate 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-appreciate 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 trial Judge, 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 as held by the Apex Court in **Kamlesh Prabhudas Tanna & Anr v. State Of Gujarat**¹. Keeping in view, 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.

16. The present case is totally based on both direct and circumstantial evidence. The direct witness is only PW.1, mother-in-law of the appellant and the mother of the deceased. The circumstantial evidence is recovery of blood stained clothes i.e. MOs2 to 6 seized under cover of mediators report, on the basis of confession leading to discovery and finding the dead body in the bed room of the appellant, which is accessible to the family members alone and not to any others, in normal course, the other circumstances are motive and the conduct of the appellant prior and subsequent to homicidal death of his wife, thus the case of the prosecution is based on both direct and circumstantial evidence.

17 Homicidal death of Satyavani is not in dispute, as per Ex.P.9 post-mortem certificate. Oral evidence of PW.6 Dr Srinivas Rao is suffice to conclude that the death of Satyavani is an homicidal probably cause of death as noted in Column No.15 of the inquest report is another strong circumstance to conclude that the death of Satyavani was homicidal.

18. The post-mortem report – Ex.P.9 and testimony of PW.7-Dr. G.Srinivasa Rao establish that cause of death of Satyavani is due to ante

¹ (2013) 15 SCC 263

mortem injuries found on the dead body of the wife of the appellant. The injuries found on the body of the deceased are as follows:

External injuries:

- 1) An incised wound of size 5 cm x 3 cm x 4 cm deep present over right side of neck below and behind right ear. Blood clots present.
- 2) An incised wound of size 6 cm x 3 cm x 3 cm present over right side of neck about 3 cm below the injury No.1. Blood clots present.
- 3) An incised wound of size 7 cm x 3 cm x 1 cm present over right side of neck about 2 cm below and anterior to injury No.2. Blood clots present.
- 4) An incised wound of size 6 cm x 1 cm x ½ cm present over right side of neck above right collar bone. Blood clots present.
- 5) An incised wound of size 3 cm x 2 cm x 1 cm present over left side of neck above left collar bone. Blood clots present.
- 6) Left thumb is amputated from hand. All the above injuries are ante-mortem in nature.

19. The opinion expressed by the doctor is relevant at this stage. The doctor opined that cause of death was due to haemorrhage and shock on account of multiple injuries over neck. Neck is vital part of the body of any human being. Therefore, there is no dispute with regard to the homicidal death of the wife of the appellant inside the bed room of the house under his exclusive possession.

20. When the case is based on both direct and circumstantial evidence, the 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 as held by the

Apex Court in **Kishore Chand v. State of Himachal Pradesh**². The Apex Court in **Syed Hakkim & another v. State**³ 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.

21. Keeping in mind the principles laid down in various judgments referred supra, we advert to the direct evidence and circumstantial evidence adduced by the prosecution during trial in the Court below.

22. PW.1 is mother-in-law of the appellant and the mother of the deceased. According to prosecution, PW.1 came to the house of the appellant and the deceased, one day prior to the incident i.e. 13.10.2010 along with her son, who remain in the house of her daughter and appellant and whereas, son of PW.1 went back to his village. After having dinner, PW.1 went to bed in the varandah and while sleeping in the varandah at about 11.00 p.m. she heard cry of her daughter from the bed room as 'amma narekestunnadu amma'. Immediately, PW.1 rushed to the bed room and found that the appellant hacking her daughter (deceased) and in her presence, the appellant hacked twice.

² AIR 1990 S.C. page 2140

³ 2009 Cr.L.J. page 1891

23. Learned counsel for the appellant contended that PW.1 is a planted witness and her presence is doubtful. But in the entire cross examination of PW.1, nothing was elicited except suggesting that she is a planted witness by the police to support the prosecution case. But the said suggestion was denied by PW.1. In the absence of eliciting any fact during cross examination to improbabilise the presence of PW.1, it is difficult to accept her absence as contended by learned counsel for the appellant at the time of incident and since of offence, her evidence is consistent from the beginning and she explained as to why she came to the house of the appellant along with her son and leaving the house of appellant by her son to go to his house on the same day. The conduct of the appellant explained in the entire evidence establishes that the appellant was always suspecting the character of his wife and not allowing her to talk to neighbours.

24. The scene of offence is middle portion of the house, it consists of three rooms, one varandah as per Ex.P.11-rough sketch and observation report-Ex.P.6. There is a rear room and front room. By the side of the front room, there is a varandah, where PW.1 was sleeping. But she was able to hear cry of her daughter, who was hacked by her husband, the appellant with a curved knife during mid night. But none of the neighbours came there. It is not the case of the appellant that she raised cries loudly to attract the attention of neighbours since there is a wall on both sides of the portion occupied by the appellant and there may not be any possibility to hear the cries of the deceased during mid night, when the neighbours are in deep sleep, none of the neighbour came there and the presence of PW.1 cannot be doubted. When evidence of PW.1 is consistent about

witnessing the incident of hacking twice, when she went to the bed room on hearing the cry of her daughter, the Court cannot discredit her testimony, unless, there are strong circumstances to disprove or improbabilise her presence on the date and time, at the scene of offence and that the trial Court believed the testimony of PW.1 and her presence at the time of incident. The answer given in examination of accused for the Question No.2 under Section 313 Cr.P.C. is another strong circumstance to believe her presence in the house.

25. One of the contentions raised by learned counsel for the appellant is that even assuming for a moment that she was present at the time of incident, her conduct of maintaining silence without interfering when her daughter was being hacked by her husband - the appellant, creates any amount of doubt. When the accused was in such a mood to hack his wife, if PW.1 interferes, he would cause injuries on the body of PW.1 also and her life will be at stake. Therefore, maintaining silence without interfering while the appellant hacking her daughter is not a strong circumstance to disbelieve her presence at the time of incident, consequently, on this ground presence of PW.1 cannot be disbelieved.

26. The other witnesses examined before the Court, PWs.2 and 3 are not the direct witnesses, but they came to the scene of offence on receipt of information over phone from the neighbouring village i.e. Mulaparru and Ryali. But their evidence is only to support the case of prosecution that the death of daughter of PW.1 is homicidal.

27. The report was lodged with the police at 06.00 am, after arrival of PW.2 i.e. son of PW.1 though the incident took place during mid night at

about 11.00 PM. Learned counsel for the appellant contended that there is delay of more than six hours in lodging the report with the police. But the reason was explained by PW.1 in her examination in chief. The reason assigned by PW.1 is that her daughter was lying in pool of blood in a room and grand son aged three months was by the side of the dead body. In such a case, the ordinary conduct of the women is not to leave the dead body and child and that she was suffering from BP, PW1 being lady is not supposed to go to police station during mid night in such circumstance and report to the police about the commission of offence. Therefore, the delay in lodging the report is not a ground to disbelieve the case of the prosecution in the facts and circumstances of the case.

28. Coming to the first circumstances i.e finding dead body inside the bed room of the appellant and none were in the house except the child and PW.1, who was sleeping in the varandah at the time of incident and it is not the case of the defence that some body caused injuries on the body of the wife of the appellant, which led to her death. When the incident took at a place, not accessible to any third party during mid night, it is for the appellant to explain as to how the assault took place inside the bed room of the appellant. But in the entire cross examination of PW.1 or any other witness, he did not explain anything as to who caused those injuries on the body of the deceased, but maintained silence. Even in his examination under Section 313 Cr.P.C., the appellant did not give any explanation as to who caused injuries on the body of his wife. When death took place inside the house, it is for the appellant to explain as to how the injuries were caused on the body of the deceased.

29. An identical question came up before the Apex Court in **Trimukh Maloti Kikran v. State of Maharashtra**⁴ held that if an offence takes place inside the premises of a house and in such circumstances where the assailants have all the opportunity to enter into place and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer long explanation. In case if no explanation or false explanation from the accused, it would cause an additional link in chain of circumstances. Applying the above principle to the facts of the case, the findings of the trial Court cannot be reversed, as the accused did not offer any explanation as to the assailants who caused death.

⁴ (2006) 10 SCC 681

30. The other circumstance relied upon by the prosecution is that finding the dead body in a pool of blood as per the observation report-Ex.P.6 and rough sketch-Ex.P.1 i.e, the house portion in occupation of the appellant. If really, the death was caused by any other person, it must be explained by the appellant that some body accessed into the bed room during mid night and caused injuries over the dead body. If that is the case, the appellant is not expected to maintain silence without lodging report with the police about homicidal death of his wife. But he was absconding immediately after the incident and abscondence from the scene of offence is another strong circumstance to infer that the appellant caused death of his wife.

31. After arrest of the appellant he made confession before the Inspector of Police in the presence of mediators and on the assurance given by the appellant to show the weapon used in the commission of offence and clothes he was wearing, the investigating officer and mediators were led to place where MO1 and MO6 were concealed. Though the statement made by the appellant is an inculpatory, but still such confession made before the police leading to discovery is admissible under Section 27 of the Indian Evidence Act. Section 27 of the Indian Evidence Act is an exception to Sections 25 and 26. The conditions necessary for invoking the aid of the Section are as follows:

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

32. The effect is that so much of the information as relates distinctly to the fact thereby discovered is admissible. What is allowed to be proved is the information or such part thereof as related distinctly to the fact thereby discovered as held in **Dinakar v. State**⁵. The Apex Court in **Inspector of Police, Tamil Nadu Vs. Balaprasanna**⁶ laid down the following conditions to accept the evidence of discovery though not a substantive piece of evidence and also 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' on the confession 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

⁵ AIR 1970 Bombay page 438

⁶ 2009(1) ALD (CrI.) page 113

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."

33. In view of the law declared by the Apex Court in the above judgments referred supra, the confession leading to discovery though it inculcates the appellant in a grave crime punishable under Section 302 IPC, i.e murder of his wife in admissible and it is an exception to Section 25 of the Indian Evidence Act. In the present case, the mediator, who is examined as PW.8 supported the recovery of MO.1 and MO6 on the basis of confession leading to discovery MO1 and MO6 were concealed at a place not accessible to any other person and within the exclusive knowledge of the appellant, as such the prosecution is able to establish the said recovery based on the confession made by the appellant, leading to discovery.

34. Yet, another additional strong circumstance to believe the case of the prosecution is the answers given by the appellant in his examination under Section 313 Cr.P.C. For the first question, the appellant admitted

that he subjected his wife to harassment while denying the other part of the question. But curiously, for question No.3, which suggests that the appellant killed his wife due to suspicion and also harassed her, for one reason or the other he admitted and his answer is 'true'. Similarly, for the question No.4, part of question was denied while admitting suspecting the character of his wife. Similarly, he answered for question No.5 as 'true'. Likewise, he admitted about taking photographs at the community hall after seizure of MO1 and MO6, based on confession leading to discovery while answering Question No.8. Answered question No.10 about confession made by him. Similarly he accepted certain questions, which incriminates or inculcates him for the grave offence punishable under Section 302 IPC.

35. The contention of learned counsel for the appellant is that based on the answers given in examination under Section 313 Cr.P.C, the conviction cannot be recorded, accepting the case of prosecution. Before the trial Court learned counsel relied on certain decisions reported in **Ranjit Mondal and Sajal Barui and etc v State**⁷, **Shaik Iqbal John v Shaik Khader Basha and others**⁸, **M/s Hulas Rai Baij Nath v Firm K.B.Bass and company**⁹, **Kishanchand v Delhi Administration and another**¹⁰. In all the judgments, the consistent view of the Courts is that based on the answers given in the examination of the appellant under Section 313 Cr.P.C., the Court cannot record conviction of the accused. Thus, it means answers given by the accused in the examination under Section 313 Cr.P.C. alone can not form the basis for recording conviction

⁷ 1997 Cri.L.J 1586

⁸ 2003(2) ALT (Cri) 482 (A.P)

⁹ AIR 1968 SC 111 (v 55 C 30)

¹⁰ AIR 1979 SC 1128

of the accused, but the answers if corroborates, it is additional link in the chain of circumstances.

36. The Apex Court in **Sanatan Naskar and another v State of West Bengal**¹¹ and **Rafiq Ahmad @ Rafiq v State of U.P.**¹², consistently held that though the statement under Section 313 Cr.P.C. cannot be the sole basis for conviction of the accused, but certainly it can be a relevant consideration for the Courts to examine, particularly when the prosecution has otherwise been able to establish the chain of circumstances when the case is based on both direct and circumstantial evidence. Thus, it means, the answers given by the accused in the examination under Section 313 Cr.P.C. would form a strong additional circumstance to complete the links in the chain of circumstances. Taking into consideration of the answers given by the appellant in his examination under Section 313 Cr.P.C, the prosecution is able to establish all the links in the chain of circumstances to establish the guilt of the accused for the offence punishable under Section 302 IPC.

37. One of the major contention raised before this Court is that there is absolutely no oral evidence to substantiate the contention of the prosecution that the appellant allegedly hacked his wife with an intention to kill his wife Satyavani and there is no pre-meditation before hacking his wife. No doubt there is no oral evidence as the appellant had any intention to kill the deceased when the appellant and his wife entered into bed room. But learned Public Prosecutor contended that based on the nature and situs of injuries, the Court can draw inference that he had an intention

¹¹ AIR 2010 SC 3507

¹² AIR 2011 SC 3114

to kill the deceased. In the present case, the appellant caused as many as six injuries as mentioned in Ex.P.9-post-mortem certificate and this fact is supported by oral evidence of PW.6-Dr G.Srinivasa Rao besides the post-mortem report. The opinion expressed by the panchayatdars at the time of inquest in the presence of blood-relations of the deceased is also relevant and the evidence of PW.7-A.Chandra Sekhar, Inspector of Police coupled with the opinion expressed by the mediators and blood-relations in Column No.15 of Ex.P.2-Inquest Report clearly established that the appellant caused six injuries on the neck, which is vital part of a body of human being. If really the appellant had no intention to kill his wife at least after arrival of PW.1, the appellant would have left his wife without causing any further injuries. More particularly when the deceased raised cries 'amma narekesthunnadu amma' to attract the attention of the neighbours including PW.1, who was sleeping in the varandah of the house, where the scene of offence is located in bed room of the same house.

38. Taking into consideration of overall circumstances of the case and more particularly based on the situs of injuries, number of injuries and the weapon used in commission of offence causing injuries, inference can be drawn that the appellant had intention to kill his wife and caused injuries, which led to her death.

39. Yet another strong circumstance is abscondence of the appellant from the scene of offence, after the incident. The natural conduct of the husband when his wife died due to injuries is that he must lodge report with the police about homicidal death of his wife, instead of lodging report with the police, he absconded from the scene of offence and only after his arrest by the police, during investigation, few days after the date of

offence, he was seen in the village. Abscondence of the appellant is another strong additional circumstance to link the petitioner with the offence punishable under Section 302 IPC. According to judgment of the Apex Court in **Maha Singh v State (Delhi Administration)**¹³ the conduct of the accused would be relevant under Section 8 of the Evidence Act if his immediate reactions to the illegal overture of the complainant or his action in inserting unwanted something in his pocket were revealed in the form of acts accompanied then and there or immediately thereafter by words or gestures reliably established. Though previous bad character is not relevant under Section 54 of the Indian Evidence Act when the case of prosecution is based on circumstantial evidence, the Court can draw such inference based on the proved circumstances to decide the complicity of the accused. Therefore, the conduct of the appellant subsequent to the death of Satyavani and non-explanation about the cause of death of Satyavani is another strong circumstance to draw an inference that the accused is the person, who committed murder of his wife i.e. Satyavani.

40. Applying the principles laid down in the above judgment to the present facts of the case, taking into consideration of conduct prior and subsequent to death of his wife coupled with the direct evidence of PW.1 and circumstantial evidence, completed links in the chain of circumstances led the trial Court to conclude that the appellant killed his wife with intention to do away with the life of Satyavani, caused injuries with MO.1 knife. The cumulative effect of the proved facts completes the links in the chain of circumstance is incompatible with the innocence of the accused to draw inferences of guilt without giving scope for any other hypothesis.

¹³ AIR 1976 SC 449

Therefore, the trial Court rightly accepted direct evidence of PW1 and proved circumstances which completed the links in the chain of circumstances and drawn inferences that the accused is the person, who murdered his wife. Therefore, finding the appellant guilty by the Court below cannot be found fault while exercising power under Section 374(2) Cr.P.C. and consequently, the conviction and sentence passed against the appellant is hereby confirmed answering the point against the appellant and in favour of the prosecution.

41. In the result, the appeal is dismissed confirming the conviction and sentence passed by the IV Additional District and Sessions Judge (FTC), Tanuku in S.C.No.502 of 2011 vide judgment dated 04.07.2012 finding the appellant/accused guilty for the offence punishable under Section 302 IPC.

Consequently, miscellaneous applications pending if any, shall stand closed.



RAMESH RANGANATHAN,J

M. SATYANARAYANA MURTHY,J

Dated: 01.09.2018
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