

THE HON' BLE SRI JUSTICE A.V. SESA SAI

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 118 of 2012

AND

CRIMINAL APPEAL No. 655 of 2015

COMMON JUDGMENT: (per Hon' ble Sri Justice Gudiseva Shyam Prasad)

These two appeals are arising out of the judgment dated 12.09.2011 passed in Sessions Case No.343 of 2010 by the II Additional District and Sessions Judge, Chittoor at Madanapalle, convicting the appellants-accused Nos.1 and 2, for the offence punishable under Section 302 IPC, and sentencing them to undergo imprisonment for life, and also to pay fine of Rs.1,000/- each; in default, to undergo simple imprisonment for a period of three months each. Challenging the conviction and sentence passed by the trial Court, the accused No.1-Bukya Nagaraja Naik filed Crl.A.No.655 of 2015; and the accused No.2-Bukya Lalithamma filed Crl.A.No.118 of 2012.

2. The case of the prosecution, in brief, is that A1 is the husband of deceased Lakshmi. Four years after marriage, A1 brought A2-Lalithamma to his house stating that A2 is his second wife and kept her in the house. He started harassing the deceased by not

providing food to her and her children, and also used to beat her. Several mediations failed. On 15.02.2003, the deceased lodged a complaint against A1 in Punganur P.S., for the offence under Section 498A IPC, and the same was settled before the Lok Adalat in the year 2004, on an assurance given by A1 that he would look after the deceased well. However, the assurance was short-lived and the harassment by the accused went on. On the fateful day, A1 and A2 caught hold of the deceased, laid her on a cot, A2 caught hold of the foot and A1 sat on the chest of the deceased and throttled the deceased to death. A1 created a story that the deceased committed suicide by hanging with a saree to the ceiling hook in his house; and with the aid of his father, brought down the body of the deceased from the ceiling hook and laid it on the cot, hiding the fact of commission of murder of deceased by A1 and A2.

On hearing that his daughter committed suicide, the father of the deceased went to the house of A1 and found the dead body of his daughter. Thereafter, he lodged a complaint in the Punganur P.S., stating that his daughter committed suicide unable to bear the harassment in the hands of A1 and A2. The Police, Punganur, initially registered a case against the accused A1 and A2 in Crime No.138 of 2009 for the offence punishable under Section 306 IPC. The body of the deceased was sent for post-mortem examination, and the PME report revealed that the death of the deceased was due to asphyxia due to throttling. On receipt of PME report, the Section

of Law in Crime No.138 of 2009 was altered from Section 306 IPC to Section 302 IPC, and the case was registered on the file of the Judicial Magistrate of First Class, Punganur. The learned Magistrate numbered the case as PRC No.3 of 2010, and as the case involved an offence triable by the Court of Sessions, committed the case to the District and Sessions Judge, Chittoor, and the case was in turn made over to the II Additional District & Sessions Judge, Chittoor, Madanapalle, (for short, 'the trial Court') for disposal in accordance with law.

The trial Court issued summons to the accused A1 and A2. On their appearance, charge was framed against them under Section 302 IPC, read over and explained to them. The accused pleaded not guilty and claimed to be tried.

The prosecution, in order to prove the guilt of the accused, examined the witnesses PWs.1 to 15 and got marked Exs.P1 to P13 and M.Os. 1 to 4.

After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and the accused denied committing of the offence. On behalf of the accused, DW1 was examined, and Ex.D1 was marked.

The trial Court, having considered the oral and documentary evidence on record, held that the prosecution proved the guilt of the accused A1 and A2 beyond reasonable doubt, and convicted the accused A1 and A2 for the offence punishable under Section 302

IPC, and sentenced them to suffer imprisonment for life, and also to pay a fine of Rs.1,000/- each; in default of payment of fine, to undergo simple imprisonment for a period of three months each.

Challenging the conviction and sentence passed against them by the trial Court, the accused A1 and A2 preferred this appeal.

3. The point for consideration is whether the prosecution proved the guilt of the accused A1 and A2 for the offence punishable under Section 302 IPC, beyond reasonable doubt.

4. Heard Smt. C. Vasundhara Reddy, learned counsel for the appellants-accused, and the learned Public Prosecutor representing the State.

5. Learned counsel for the appellants-accused submitted that there are no direct witnesses to the occurrence, and the case rests on circumstantial evidence. It is contended that the trial Court has registered a case against the accused under Section 306 IPC, and later altered the Section of Law to Section 302 IPC, even though there is no direct evidence available on record. It is also contended that the very presence of the accused at the house on the date of occurrence is also not proved by the prosecution. It is further contended that the evidence of DW.1 clearly shows that the latch of the door was forcibly opened, which proves that the door was bolted from inside. It is further argued that this is not a case of

homicide and even according to the prosecution version, it is a case of suicide and the accused are entitled to benefit of doubt in this case.

6. Learned Public Prosecutor submitted that the trial Court has considered the evidence in a detailed manner and came to the conclusion, that this is a case of homicide, and that the accused A1 and A2 have throttled the deceased to death and their motive for commission of offence was that A1 married A2 and brought her to the house to stay under one roof along with the deceased, and thereafter started harassing the deceased physically and mentally, which ultimately led to the accused committing the offence. It is argued that the trial Court has come to a proper conclusion basing on the evidence of the medical officer who conducted autopsy of the dead body and came to the conclusion that the accused are liable for conviction under Section 302 IPC and, therefore, there are no grounds to interfere with the judgment of the trial Court.

7. A perusal of the record would show that the deceased lodged a complaint against A1 in the year 2003 in Punganur Police Station and a case was registered in Crime No.26 of 2003 against A1 for the offence under Section 498A IPC. Thereafter, mediation took place at the instance of elders, and on the assurance given by A1 that he would look after the deceased well, a compromise was effected in the Lok Adalat in the year 2004. Thereafter, the accused A1 has

brought A2-Lalithamma to his house stating that A2 is his second wife and kept her in his house.

8. The testimony of PW1-father of the deceased would reveal that the deceased Lakshmi begot two male children through A1, and four years after their marriage, A1 brought A2 to his house stating that A2 is his second wife, and leading marital life with A2 by keeping her in the house along with the deceased. A1 and A2 harassed the deceased by not providing food to her and her children, and necked her out of the house many times, and the deceased gave a complaint to the police against A1 in that regard and later the matter was compromised at the instance of elders and A1 promised to look after the deceased well, and on the previous day of the incident at 6:00 PM, A1 and A2 beat his daughter Lakshmi, and she kept her clothes in a bag and boarded an auto to go away and then LW.7-Ramana Reddy, LW.8-Krishnappa, LW.9-Narayana, LW.10-Guruswamy and LW.11-Venkataramana informed him that his daughter Lakshmi was going in an auto. On that information, himself and his wife started running after the auto, and some villagers present there stopped the auto and they all brought Lakshmi back to the house of the accused. They left their daughter at the house of the accused on the previous night of the incident and returned home. On the next day morning, the villagers informed PW.1 that his daughter was found dead in the house of

the accused. On that they went to the house of the accused and found the dead body of their daughter on the cot in the house of the accused. The facts stated in the complaint (Ex.P1) given in Punganur police station, corroborating the testimony of PW.1. Ex.P2 is a bunch of photographs of the dead body of the deceased Lakshmi. It is revealed from his cross examination that the house of A1 was 100 feet away from his house and everyday his daughter Lakshmi came to his house and informed him about the harassment meted out by the accused. The testimony of PW.1 is trustworthy. He does not know the cause of death of the deceased at the first instance that it was due to throttling. So he gave complaint, stating that his daughter committed suicide due to the harassment of accused A1 and A2.

9. It is the case of the accused that the son of the accused i.e., Bhanu Prasad is said to have witnessed the incident and his statement was recorded by the police, and as his son was not examined as a witness in this case, adverse inference has to be drawn. In fact, the son of the deceased ought to have been examined by the prosecution. However, the non-examination of Bhanu Prasad does not vitiate trial, as there is other evidence available on record, and hence no adverse inference can be drawn in this case.

10. PW2, the mother of deceased Lakshmi, has corroborated the evidence of PW1 stating that the accused A1 and A2 have harassed Lakshmi, and she stated to her that A1 beat her on the previous night of the incident, and she left the house in auto, and they pacified the matter and brought her to the house of the accused and left her.

11. PW3, who is the neighbour of the accused A1, corroborated the testimony of PW.2 about the quarrel between A1 and the deceased and the deceased leaving the house in an auto, and the villagers and herself brought her to the house of accused A1, and left her there on the previous day of the incident.

12. PW4 is a resident of the same village of A1, and she has supported the testimony of PW.3 about the quarrel between the accused A1 and deceased on the previous day of incident, and about the deceased leaving in an auto and the villagers stopping the auto, and bringing the deceased back to the house of A1 and leaving her at his house.

13. PW5 is the neighbour of deceased Lakshmi whose testimony was that the accused and deceased lived together happily even by the date of incident, and this witness was declared hostile as she did not support the version of prosecution. But, however, in the cross examination, she had spoken to the fact of A1's second marriage

with A2, and also about the harassment meted out to the deceased by A1, which corroborates the testimony of PW.1 and PW.2.

14. PW6 is resident of the same village of A1, and he supported the version of PWs.1 to 3 about the dispute between A1 and deceased on the previous evening, and about the villagers asking the accused A1 to look after the deceased well.

15. In fact, PWs.7, 8, 9 and 10, the other villagers, did not support the case of prosecution.

16. PW.11, the Village Revenue Officer of Mitta Chintalavaripalle, held inquest over the dead body of the deceased Lakshmi, and drafted the inquest report, Ex.P6. He admitted in Column No.7 of inquest report, it is mentioned that on the right side of the neck of the deceased, one contusion appearing as if the deceased got hanged, and in Column No.8, it is mentioned that there was one saree on the cot and it appears that the deceased got hanged with the said saree and, therefore, the said saree was seized. It is mentioned that she died due to hanging with a saree to the hook of fan.

17. PW.12, the Deputy Civil Surgeon, Community Health Centre, during relevant period, has conducted autopsy over the dead body of deceased Bukya Lakshmi on 07.07.2009, at 4.00 PM, and issued Post-mortem examination report Ex.P7. It is mentioned in the

report that the cause of death of the deceased was asphyxia due to throttling. The medical officer was cross-examined on the procedural aspects of receiving requisition from police, and conducting PME but nothing is elicited to discredit his testimony about his findings in PME.

18. The entire arguments of the learned counsel for appellants are based on the cause of death, as to whether it is a case of suicide or a homicide. The contention on behalf of appellants is that there is discrepancy in the inquest report and medical report. It is contended that the medical officer did not take into consideration the contents of inquest report while conducting the PME, and came to incorrect conclusion that it is a case of throttling.

19. The evidence of medical officer is sufficient to hold that the medical officer has given clear and categorical finding about the cause of death; that the death was due to throttling. The learned District Judge has extensively dealt with this aspect and given a clear finding that it is a case of homicide.

20. This case is based on circumstantial evidence. The deceased died in her matrimonial house. In the light of the following decisions, the accused A1 has to explain the reasons for the death of the deceased as he was residing with her. As this is a case of murder in matrimonial home, and it is not the case of the accused

that the offence was committed by somebody else, that there is a possibility of an outsider to commit the offence, the accused A1 is responsible to explain the reasons for the death of the deceased due to throttling. No doubt, the accused A1 has taken the defence that the deceased committed suicide by hanging. He got examined witness DW.1 who has stated that on the intimation of his son (accused A1), he came to the scene of offence and as the door was bolted from inside, they forcibly tried to open the door, and the door-latch got loosened and thereby they opened the door and entered into the room and found the deceased hanging to the ceiling fan with a saree, and he brought her down and gave water to her to drink. The conduct of the accused A1 and his father (DW1) appears to be unnatural, for the reason that as soon as his son (A1) informed him, they both reached home, but they did not inform any neighbours about the said incident. None of the neighbours had seen the deceased hanging to the ceiling fan of the house. Moreover, the PME report of the medical officer (PW.12) clearly reveals that this is a case of throttling. Therefore, the burden is on the accused A1 to explain the cause of death as he and the deceased were together, and immediately after the incident also, he has gone to his father's house and brought him to his house. Therefore, the continuous presence of the accused A1 with the deceased is proved beyond reasonable doubt on the previous night and also at the time of incident.

21. In **Trimukh Maroti Kirkan v. State of Maharashtra**¹, it is held in paragraph 16 as under:

“16. In a case based on circumstantial evidence where no eye-witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court (See State of Tamilnadu v. Rajendran (1999) 8 SCC 679 (para 6)).”

22. The ratio in the decision rendered in **Harishankar Gupta v. State of Chhattisgarh**² is applicable to the facts of the present case, in the light of the provision under Section 106 of the Evidence Act. In paragraph 18 of the said judgment, it is held as under:

“18. As has been mentioned earlier that as per post-mortem report the cause of death was strangulation, blood was found on the eyebrow, chin, blood was also oozing out of the mouth, blood was also seen on the pillow cover, a ligature mark was found on the neck, scratch injuries were found and all these things were so visible, but even then the accused without mentioning these things gave a false merg intimation in the police outpose that in the morning at about 7 a.m when he tried to woke up his wife Usha, she was found dead, whereas, she was murdered and that fact was suppressed by him. How that murder was committed, no explanation whatsoever has been offered by the accused, whereas, as per S. 106 of the Evidence

¹ (2007 CrLJ 20 (25))

² (2007 CrLJ 1009 (1016))

*Act, the burden was on the accused to explain how and in what circumstances murder of his wife Usha was committed. Merely, remaining silent does not discharge the burden, which was on the accused. No doubt, in a criminal case initially the prosecution was required to establish the ingredients of offence and then burden shifts on the accused to discharge his burden by cross-examining the prosecution witnesses or by adducing his evidence to show that how the murder was committed. The prosecution was able to discharge its burden, whereas, the accused was not able to discharge his burden, which was on him, as per provisions of S. 106 of the Evidence Act. In this respect the latest two judgments of Hon'ble Apex Court clarify the position. In the matter of **Trimukh Maroti Kirkan v. State of Maharashtra**³, interpreting the provisions of S. 106 of the Evidence Act, the Hon'ble Apex Court held that:*

"..... If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan 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 Court. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of S. 106 of the Evidence Act there will be a

³ 2006 AIR SCW 5300 = 2007 Cri LJ 20

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 any explanation. In case of no explanation or false explanation it would become an additional link in chain of circumstances.”

23. It is appropriate to refer to Section 8 of the Evidence Act which reads as under:

Motive, preparation and previous or subsequent conduct. –

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. – The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. – When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

24. In **State of Uttar Pradesh v. Kishan Pal & Ors.**⁴, the Hon'ble Supreme Court examined the importance of motive in cases of circumstantial evidence and held in paragraphs 38, 39 and 40 as under:

"38.the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eye-witnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye-witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of eye-witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.

40. As pointed out, even the accused persons have stated that they have been falsely implicated due to previous enmity, in such circumstances, it cannot be said that the accused persons had no motive to commit the crime in question."

⁴ (2008) 16 SCC 73

26. It is appropriate to refer to the testimony of medical officer on medical evidence. PW.12, medical officer, has reported in the PME examination, as under:

Appearance found at the post-mortem:

"Body of a female lying on its back four limbs stretched eyes closed mouth partly opened tongue inside the teeth. Both palms closed like fist. Motion at the anus. Rigor mortise present upper part of the chest, neck congested brownish colour both sides of the neck. Multiple crescent shaped nail marks skin deep present. Ante mortem in nature. Nails of both hands and feet bluish colour (ignored) deep brownish red congested pressure mark on the Right side of the neck present. A small Abrasion with dried Blood present on the middle finger of left hand all are ante mortem in nature.

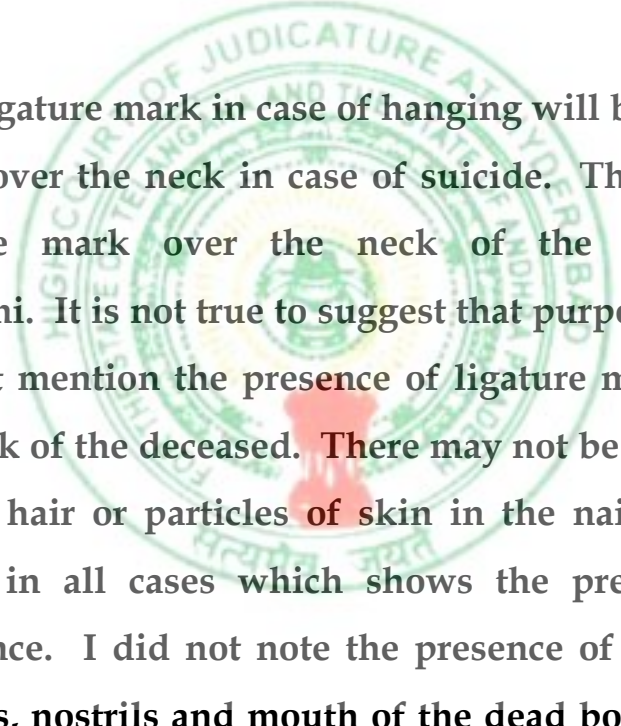
Internal examination:

Neck muscles congested.

Hyoid bone:- irregular inward fracture of the both horns of the hyoid bone present. Thyroid cartilage congested. Brochiel mucosa congested. Thorax normal size no rib fractures, no free fluid in Thoracic cavity. Both lungs congested dark red in colour. Heart empty. Normal size liver spleen and kidney normal in size and congested stomach empty inner surface congested. Bowels distended with gases. Bladder empty uterus normal size undergone BHT spinal cordoned column normal no frontal skull bones no fracture, membranes intact. Brain congested.

(b)The deceased would appear to have died of due to best of my knowledge and belief due to Asphyxia due to throttling. Time of death 12 to 16 hours prior to PM Examination.

27. In fact, the medical officer has given clear and categorical opinion about the nature of marks on the neck of the deceased. The medical officer has stated that the ligature mark in case of hanging will be in oval shape over the neck, in cases of suicide. But in this case, there is no ligature mark over the neck of the deceased Lakshmi. It is appropriate to note the cross-examination of PW.12 with regard to his findings in PME report about the cause of death, which read as under:



“The ligature mark in case of hanging will be in oval shape over the neck in case of suicide. There is no ligature mark over the neck of the deceased Lakshmi. It is not true to suggest that purposefully I did not mention the presence of ligature mark over the neck of the deceased. There may not be presence of any hair or particles of skin in the nails of the victim in all cases which shows the presence of resistance. I did not note the presence of blood in the ears, nostrils and mouth of the dead body of the deceased Lakshmi. Nail marks were observed all over the neck on both sides.”

28. This is a case of death of a married woman in a matrimonial home within 9 years of her marriage. The prosecution has proved that the deceased and her husband – A1 and his second wife are living together in the same house. A1 and A2 have been harassing the deceased from the date of A1 brought A2 to their house. On the

previous day of the incident also, an incident has occurred in which the deceased was ill-treated, so she left the house with her bag, but she was brought back home and left by her parents and villagers. On the very next day, she died. The prosecution is able to prove that the deceased died due to throttling. There is evidence to the effect that the deceased, A1 and A2 are residing together. The view of accused was that he had informed his father immediately about the deceased closing the doors inside the house and thus they both pushed the doors and forcibly opened the doors and found the deceased hanging to ceiling and brought her down. It is the case of prosecution that the deceased, A1 and A2 and two children of the deceased are residing in the same house. The accused has not stated about the presence of second wife and two children in the house and about their presence at the time of incident. The accused has not lodged a complaint. A1, A2 were not present thereafter as per the evidence and they did not explain satisfactorily how the deceased died, and medical evidence could prove that it is a case of throttling. It is not the case of accused that some other person had committed the offence. Even if the case of accused is taken into consideration as true, offence is coming under Section 306 IPC for which the punishment is ten years rigorous imprisonment, but in the light of the above strong circumstances, as there was no possibility for anybody to strangle the deceased, except the A1 and A2, who

were inimically disposed against the deceased, it can be safely concluded that they are liable under Section 302 IPC.

29. Learned counsel for the appellant has placed reliance on the judgments reported in **Goddegudem Vadenna v. State of A.P.**⁵ and **Sujit Biswas v. State of Assam**⁶ and argued that the case is based on circumstantial evidence and the trial Court convicted the appellant-accused on suspicion and so this is a case where benefit of doubt can be extended to the appellant-accused.

30. It is to be seen that in para-17 of the judgment in **Goddegudem Vadenna's case (5 supra)**, this Court observed as under:

"17. The only circumstance is that the accused and the deceased were living together as on the date of incident in Koilkonda Village after the marriage. Except that circumstance, there were no other circumstances to indicate that A.1 had strangled the deceased and was responsible for causing her death. From the evidence on record, except the fact that the death of the deceased was homicidal, there are no other circumstances to indicate that the accused has caused the death of the deceased. There is no direct evidence to prove the case against A.1, the case rests upon circumstantial evidence. Evidence which proves or tends to prove the factum probandum indirectly by means of certain inferences of deduction to be drawn from its insistence or its connection with other facts probantia, it is called

⁵ 2011 (1) ALT (CrL.) 291 (DB)(A.P.)

⁶ 2013 CRI.L.J. 3140

circumstantial evidence. It is something from which facts in issue are to be inferred.

31. Further, in para-6 of the judgment in **Sujit Biswas's case (6 supra)**, the Apex Court observed as under:

"6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely

probable doubt, but a fair doubt that is based upon reason and common sense. (vide: Hanumant Govind Nargundkar and Anr. V. State of M.P., AIR 1952 SC 343; State through CBI v. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)."

32. As a matter of fact, the facts of the present case are different from the facts mentioned in the above two decisions. In view of the foregoing reasons, the above two decisions are not applicable to the facts of the present case.

33. It is also pertinent to note that there is medical evidence which is an important circumstance to prove the guilt of the accused. The trial Court, basing on the evidence, held that A1 and A2 have jointly committed the offence of murder of the deceased Lakshmi by throttling.

34. On behalf of the defendants, DW.1 was examined. DW.1 is one B. Munuswamy Naik who is the resident of Patrapalli Thanda, and he is the father of A1. According to his testimony, four or five months prior to the death of the deceased Lakshmi, A1 was attending to Church frequently, and he intended to convert into Christianity and the deceased raised objection to his conversion into Christianity. The contention of the learned counsel for the appellant is that as the deceased Lakshmi did not like the accused A1 converting into Christianity, she might have committed suicide and

that the accused has not killed her. Except oral testimony of DW.1 with regard to the motive for the deceased committing suicide, there is no other material in support of this contention. The motive spoken by DW.1 does not appear to be strong enough to have led the deceased to commit suicide. It appears that it was only a feeble defence for the accused.

35. DW.1 further stated in his evidence that on the date of death of the deceased Lakshmi, he was at his house and, at about 5:45 AM, A1 approached and informed him that the deceased Lakshmi bolted the door from inside, and did not open and prior to that a galata went on between A1 and the deceased Lakshmi with regard to the proposal of conversion of religion. On knowing about the fact of bolting of door, he accompanied A1 and both of them went to the house of A1 and forcibly tried to open the door, and due to the force, the bolt loosened and fell down from the door and the door opened and then they went inside, and noticed the body of the deceased Lakshmi in hanging position, and thus the deceased hanged herself to the ceiling fan with the help of her saree. He went on to the cot and removed the saree and laid down the deceased Lakshmi on the cot. He poured water into the mouth of the deceased Lakshmi and the deceased Lakshmi took a gulp of water, and later she became unconscious. He asked the neighbours to inform the matter to the parents of the deceased Lakshmi and when

the parents of the deceased reached, the deceased was alive and she died ten minutes later. At about 11.00 AM, Head Constable and two police personnel of Punganur Police Station came to the house of A1 and he narrated the incident to them.

36. It is revealed from the cross-examination of DW.1 that he does not know the personal affairs of A1 which also clearly indicate that he was not having any particulars about the dispute between the deceased and A1 prior to the commission of this offence though he stated that the deceased did not like the accused No.1 converting into Christianity, that reason does not appear to be probable for her to commit suicide. The witness further admitted in his cross examination that the deceased Lakshmi earlier gave a complaint against A1 that he was harassing her and that A1 gave assurance to her that he will look-after her well and that a criminal case filed against A1 was settled by way of compromise.

37. On consideration of the evidence of DW.1, it can be safely concluded that the defence could not raise any ground to create a doubt with regard to the version of the prosecution. The defences raised are that the accused A1 tried to convert to Christianity which led her to commit suicide and the other defence is that the accused A1 approached his father (DW.1) stating that the deceased Lakshmi bolted the door from inside, and A1 and DW.1 both went to the house of A1 and opened the door forcibly due to which the bolt

loosed and the door got opened and they noticed the deceased Lakshmi hanging to the ceiling fan, and DW.1 went on to the cot and brought down the deceased Lakshmi.

38. The conduct of accused is highly doubtful. While he suspected that the deceased bolted the door from inside, usually he should either break open the door himself or inform neighbours to help in breaking open the door. Instead, he went to the house of his father DW1 and called him, and they both broke open the door. They both did not even inform the neighbours and took their help at that time which creates any amount of doubt about the conduct of accused. Section 8 of the Evidence Act clearly says about the previous or subsequent conduct of accused.

39. The defence raised by the accused by examining this witness does not appear to be probable in the light of the evidence available on record. The trial Court has clearly discussed about the situation in which the deceased was found and it reveals that it is a case of homicide. The trial Court, placing reliance on the medical evidence and the circumstances of the case that the dead body of the deceased was lying on the cot and the scene of offence, held that it was not a case of hanging. The medical evidence would reveal that it is a case of throttling. The motive for commission of offence was also said to be the harassment of A1 and A2 prior to the incident.

40. The translated copy of Ex.P11-FIR lodged by the father of the deceased Lakshmi reveals as under:

"Yesterday i.e., on 6-7-2009 evening at about 6 p.m., my son-in-law, his second wife Lalitha together abused and beat my daughter for not washing the clothes. Then my daughter with an angry and left the house with clothes and attempted to board auto to went some where, C. Ramana Reddy of my village, M. Krishnappa of Diguva Chintalavaripalle, B. Venkatramana, B. Sreeramulu Naik who witnessed the incident, informed us. Then we brought our daughter to my house and advised her to live with her husband and we all went to the house of my son-in-law. My son-in-law and his second wife Lalitha did not allow us and they scolded my daughter that "why she returned to his house? You go elsewhere and die. After your death we will be more happy". Thereafter we pacified the matter and send my daughter inside the house. Thereafter, today i.e., on 7-7-2009 morning at 6 a.m. we came to know that my daughter died. Immediately, myself, my wife, relatives went to the house of my son-in-law and saw the dead body of my daughter lying on the cot. My daughter was harassed by my son-in-law Nagaraja Naik, his second wife Lalitha together since 4 years by abusing and beating her and not providing food and clothing, she unable to bear the harassment meted by them, she disliked with her life, she hanged herself to ceiling fan and might have been died. The reasons for the death of my daughter is the harassment of my son-in-law Nagaraja Naik and his second wife Lalitha."

41. Learned counsel for the appellant, placing reliance on the complaint, contended that this is a case of suicide and not a case of homicide even according to the complainant; and that there are no

specific allegations against A2 that she was present at the time of commission of offence.

42. PW.1 has eight daughters. The deceased Lakshmi is his third daughter. He got his daughter married to the accused A1 nine years prior to her death. They were blessed with two children. They are Purushottam, aged 7 years, and Bhanu Prasad, aged 6 years. They lived happily till the birth of Bhanu Prasad. PW.2 stated that the younger son Bhanu Prasad was with the deceased at the time of the incident. The accused A1 has not explained as to the presence of Bhanu Prasad as to whether he was with her mother inside the house or he had gone somewhere else. This fact also makes the version of the defence of suicide a false.

43. PW.3 stated in his cross examination that A1 fell in love with A2 and married her. He saw the deceased crying while she was proceeding in an auto on the previous day of her death. He was present at the time of inquest. He stated that there were disputes between A1 and the deceased Lakshmi. He stated that A1 got converted to Christianity. The important admission of PW.5 in his cross examination by the prosecution is that after the incident, on the previous day of the death of deceased, the deceased Lakshmi was brought to the house of A1 and he saw A1, A2, and the deceased Lakshmi and the children of the deceased in the house of

A1 on the night of the day of dispute. He has also stated that A1 converted to Christianity.

44. PW.6 stated that he had not seen personally the accused A1 and the deceased disputing.

45. PW.12., the Medical Officer has stated in his cross examination that the victim may not be in a position to drink water after throttling and before her death. This observation of the medical officer would falsify the testimony of DW.1 that they gave water to the deceased and she gulped water and later she died after ten minutes. There is no evidence on record to show that the deceased was alive by the time PWs.1 and 2 came to see her. PWs.1 and 2 said that they saw the dead body of the deceased on the cot.

46. Therefore, the version of accused that she committed suicide is not believable, more particularly, in the light of other contentions and the medical evidence. Therefore, there are no reasons to disbelieve the version of prosecution, about the homicide of the deceased.

47. The testimony of PW.13, the Investigating Officer, that the deceased Lakshmi has got two sons. Both the sons are living with the deceased Lakshmi till her death. By the time he reached the house of A1, 40 to 50 persons were present there. He did not examine the sons of the deceased. His evidence reveals that till the

date of receipt of Post mortem examination he was under the impression that it is a case of Section 306 IPC.

48. The offence occurred in the house of accused A1. The accused A1, A2, the deceased and his two children are living in the house. There is no explanation offered by the accused as to what happened to A2 and his two children, whether they were present in the house at the time of the incident or not. The version of the accused A1 going to the house of his father and calling him, while the deceased bolted the door from inside, is highly unnatural, as he was leaving her inside having suspected that something may happen and going to the house of his father is a fabricated version to disguise the death by throttling. The accused after throttling the deceased, has created the version of hanging, and that is why there are no signs of hanging as per post mortem examination report.

49. The trial Court has taken into consideration various circumstances in the case and came to a conclusion that it is a case of homicide and convicted A1 and A2 for life under Section 302 IPC. The circumstances relied on by the trial Court are as follows:

- i) *That A1 has not lodged a complaint to the Police after the incident though he called his father to come to the scene of offence, and said to have forcibly opened the door, and entered into the house and brought down the deceased who was hanging with a saree to the ceiling.*

- ii) That A1 and A2 have been absconding from the scene of offence from the time of incident till they were arrested.
- iii) That A2 was along with A1 in the same house and leading matrimonial life with A1.
- iv) That A1 and A2 have harassed the deceased by beating and scolding.
- v) That the accused A1 has harassed the deceased at the instance of A2 even on the previous day of the incident.
- vi) That the investigating agency has not seized the latch which had loosened when A1 and his father pushed the door trying to forcibly to open it when the deceased was inside; and if really the incident has occurred in the manner A1 has stated, police would have seized the latch of the door.
- vii) That the accused A1 and A2 were residing with the deceased in the same house, and the deceased was killed by throttling as per medical evidence, the accused A1 and A2 have to explain, under what circumstances the deceased died and of throttling. Placing reliance on the decision in **Sooginu Subhas nagar v. State of A.P. (2007 (1) ACT CrL. (D.B)**, the trial Court came to a conclusion that the accused A1 and A2 are liable for the death of the deceased.
- viii) That there is no possibility of a single person to handle the deceased Lakshmi to kill by throttling, the involvement of both accused A1 and A2 is there as the deceased and the accused A1 and A2 was not in cordial terms with the deceased and A1 and A2 have beaten and scolded the deceased on the previous day of the incident.
- ix) That there is no possibility of the deceased Lakshmi committing suicide as DW1 did not state that the deceased had used

any article like a stool or chair to stand on to commit suicide by hanging, and there is no material to come to a conclusion that the deceased committed suicide.

xi) That the accused has not explained the reasons of the death of his wife due to throttling.

50. In view of the foregoing reasons, and in the light of the findings of the trial Court, there are no valid grounds to interfere with the conviction and sentence passed by the trial Court against A1 and A2 for the offence under Section 302 IPC.

51. Accordingly, the appeals filed by the accused A1 and A2 are dismissed, confirming the judgment passed by the trial Court in Sessions Case No.343 of 2010. The appellants-accused A1 and A2 are directed to surrender forthwith before the trial Court, for serving of the remainder of sentence. The bail bonds, if any, shall stand cancelled. Miscellaneous petitions, if any pending, shall also stand dismissed.

JUSTICE A.V. SETHA SAI

JUSTICE GUDISEVA SHYAM PRASAD

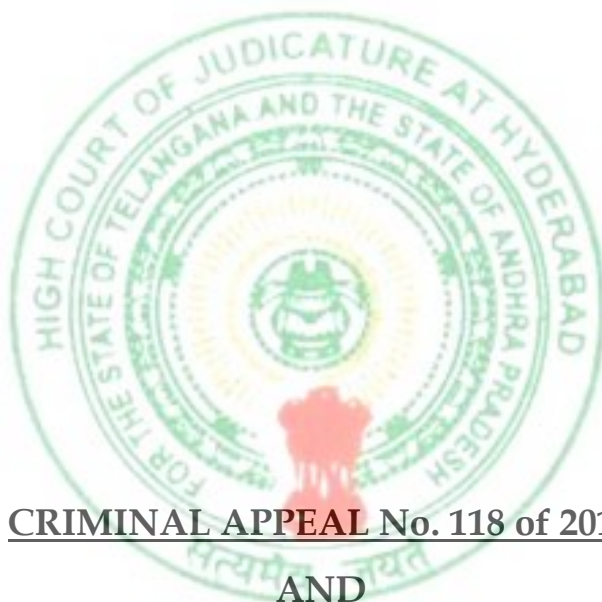
23rd February, 2018

KSM / MSR

THE HON' BLE SRI JUSTICE A.V. SESA SAI

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



CRIMINAL APPEAL No. 118 of 2012

AND

CRIMINAL APPEAL No. 655 of 2015

February, 2018

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KSM