

HON' BLE Dr. JUSTICE B.SIVA SANKARA RAO

AND

HON' BLE SRI JUSTICE M.GANGA RAO

Criminal Appeal No.762 of 2013

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

The sole accused of crime No.46 of 2012 of Easgaon Police Station, Adilabad District, registered for the offence punishable under Section 302 IPC, of Ex.P1 report of PW.1-G.Anil son of deceased and accused one among PWs.1 to 4, four children of accused and deceased dated 18.06.2012 at 00.01 hours after intervening night of 17.06.2012 for the alleged occurrence taken place the accused murdered the deceased with axe and fled away with the axe few hours before which is in the night of 17.06.2012, one Satyanarayan SI of Police LW.20 registered the crime and from which the Inspectors of Police LW.21-Shivaji, LW.22-MA.Pahaman conducted investigation and filed final report charging the accused for the offence under Section 302 IPC from which the learned Committal Magistrate, Srpur, taken cognizance of the offence by allotment of PRC.No.46 of 2012 and from that committed to the Sessions Division, Adilabad, where allotted SC.No.14 of 2013 by taking cognizance for the offence and made over to the learned III Additional Sessions Judge, Asifabad, who after hearing framed the sole charge for the offence under Section 302 IPC and from his examination the accused denied his complicity to the crime by pleaded innocence and claimed to be tried from which he was put to trial and from the evidence on record of PWs.1 to 12, Exs.P1 to P12 and MOs.1 to 3, the accused was examined under Section 313

Cr.P.C. where he denied truth of the incriminating evidence by pleading innocence and with no independent evidence adduced in his defence. It was therefrom and after hearing arguments of both sides the trial Judge found the accused guilty for committing the murder of his wife, the deceased in convicting him to undergo life imprisonment with fine of Rs.1,000/- with default sentence of one month simple imprisonment after hearing on sentence by conviction judgment with sentence imposed on 28.06.2013.

2. The accused maintained the appeal by impugning the legality and correctness of said trial Court's conviction judgment and sentence.

2(a). The contentions in the grounds of appeal vis-à-vis oral submissions of the learned counsel for the appellant/ accused are that the trial Court's conviction judgment is contrary to law, weight of evidence and probabilities of the case, went wrong in convicting the accused instead of acquitting for no basis to arrive conclusion of prosecution proved the guilt of the accused beyond reasonable doubt raised on circumstances and the chain linking the circumstances not proved by the prosecution and the accused pleaded innocence and the investigating officers not even examined and the same not even considered as fatal to the very prosecution case and the learned trial Judge erred in convicting the accused based on suspicions and the so called disclosure and recovery are not admissible under Section 27 of the Evidence Act, leave about recovery first and discovery later even not to rely therefrom apart from the alleged motive is only accused suspected

the deceased few months prior to the occurrence and not at relevant time and the prosecution evidence is highly improbable and the trial Court's conviction judgment is based on no proof but on surmises, thereby accused is entitled to be acquitted and the trial Court's conviction judgment is liable to be set aside.

2(b). Whereas the learned Public Prosecutor in opposing the same supported the trial Court's conviction judgment on all material aspects with the contentions of for this Court while sitting in the appeal with reasoned conclusions arrived by the trial Court in finding the guilt for the offence under Section 302 IPC and in sentencing him to undergo life imprisonment with fine no way requires interference in any manner and sought for dismissal of the appeal.

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

4. The sum and substance of the accusation in the charge sheet taken cognizance for the offence under Section 302 IPC by the learned Committal Magistrate and the learned Sessions Judge in framing a sole charge against the sole accused for said offence which sets the law in motion from the report of PW.1 covered by Ex.P1 in registration of the FIR is that the accused and deceased are husband and wife and the defacto complainant-PW.1 Anil, PW.2-Sharada, PW.3-Ravi, LW.4-Venkatesh, PW.4-Kavita wife of LW.6-Srinivas are the children of the deceased and accused, PW.5-Shanker, PW.6-Agaiah are the neighbours and also eye witnesses to the so called occurrence and LW.9-Rambai and LW.10-Vimala are

the sisters of the deceased the circumstantial witnesses, PW.7-Mahender photographed the dead body with the scene of offence covered by Exs.P2 to P6 photos and CD, PW.8-Poshakka-LW.14 is one of the punch witnesses to the inquest-Ex.P7. PW.12-Bapu is also witness to the inquest and scene observation covered by Ex.P8 and recovery of MOs.1 & 2 with Ex.P12 rough sketch, PW.9-D.Nagaiah-LW.15 and PW.10-A.Mallaiah-LW.16 are the witnesses to the arrest of the accused by police in their presence and the disclosure statement of him and discovery of the facts relating to accused produced the MO.3-axe which he concealed that was therefrom identified as weapon of offence covered by said appreciation and arrest and disclosure and discovery of the facts and seizure of weapon of offence Exs.P9 and P10 of MO.3-axe and sending of material objects to FSL and dead body to the autopsy by the IO. PW.11 is the Dr. Ajay Babu who conducted autopsy on the deceased having noted anti-mortem injuries and concluded of the cause of the death is from the lung injury and L carotid vessel injury and from shock and haemorrhage as noted in Ex.P11-PM report and that those injuries are caused by sharp edged weapon. It is from said evidence, though the IO who issued the FIR and IO who conducted the investigation and filed charge sheet did not choose to come to witness box, the trial Court convicted the accused having found him guilty after bringing the incriminating material to the accused by Section 313 Cr.P.C. examination and from his denial with no independent defence evidence and the same is under attack referred supra in maintaining the appeal

against it in seeking to acquit by setting aside the conviction judgment.

5. Now the points arise for consideration with reference to the material on record are that:

1) Whether the deceased met with homicidal death and if so, whether it is in the hands of the accused and whether same is proved by the prosecution beyond reasonable doubt?

2) Whether the trial Court's conviction judgment is unsustainable and requires interference either to set aside or to modify and if so, to what extent and with what observations?

3) To what result?

6. Amongst PWs.1 to 4, four children of the deceased and accused, PW.1 deposed that the accused (their father) bet the deceased (their mother) earlier even with stick by causing injury and she expressed unwilling to give report because the accused is her husband and the acts of accused were by suspecting the deceased. He deposed that it was about one year back on Sunday he gave money to his mother and father and went for outing at 04.00 PM. He returned later from PW.4-LW.5 telephoned to him and informed that the accused hacked the deceased with axe and fled away. He rushed to the house from the phone call and found his mother with injuries on the neck in the sitting posture at the chair and he went to the police station and presented the report covered by Ex.P1 and police examined him and recorded his statement. He deposed about PW.2 witnessed when accused hacked the deceased. In the cross examination PW.1 deposed the

fact of he was not the eye witnesses to the incident. He deposed further that prior to the death incident he did not give any report to the police against the accused and he cannot say the hospital name where his mother was treated for the prior incident of attack by accused with stick. He deposed that it was at about 09.30 PM or so he went to the police station and presented the Ex.P1 report. He deposed that he and LW.2 his sister signed on the report. The chair where his mother was is the green plastic chair and the police visited the scene of offence in the mid night on that day. He deposed that he gave on that day Rs.900/- to his mother and he denied the suggestion of LW.2 not telephoned to him and he did not give any amount to his mother on that day. He also denied the suggestion of he is deposing falsehood of accused suspected the deceased. He denied the suggestion of accused is not responsible for the death of the deceased or deceased was killed by somebody for the purpose of her ornaments.

7. PW.2 is the unmarried sister of PW.1 by name Saradha aged about 16 years deposed that PW.1 is her brother, LW.5 is her married sister and wife of LW.6 named supra she deposed that accused is their father and deceased is their mother and accused hacked the deceased with axe and killed at about 09.00 PM when she was at the house of LW.5 watching TV and she came to house when her father ran away from the house with the axe. She also deposed of she saw when her father hacked her mother on the neck with axe and when she raised loud cries, LWs.7 & 8 the neighbours and relatives among others came there. She deposed

that her father killed her mother due to suspicion against her. She also deposed in corroboration to what PW.1 deposed of even earlier the accused was beating the deceased. She deposed that PW.1 is her brother who reported about the occurrence to police and police examined her later. In the cross examination, PW.2 deposed that she went to the house of LW.5 (PW.4) her elder sister at 09.00 PM, which house is intervened by the house of Bapu in between. She deposed that there was no current at that time (electricity supply). She also deposed that house of Shanker-PW.5 is also near to their house. She also deposed that police examined her on that day. She deposed that she did not witness when accused was killing the deceased, but it is the accused that killed the deceased and she witnessed when accused fled away with axe from the house and no persons tried to catch the accused. She denied the suggestion of she did not witness her father while fleeing away and she is deposing falsehood and accused never bet the deceased even earlier and thereby they did not report to police. She also denied the suggestion of accused no way concerned with the death of the deceased.

8. PW.3-Ravi is another brother of PWs.1 & 2 and accused and deceased are their parents and PW.4 (LW.5) is also their sister. He deposed that on that day night 09.30 PM he saw his mother. He was at his mother in laws house with is intervened by 5 or 6 houses to the scene of offence house of them. He heard cries from his sister PW.2 and then proceeded to his house and his mother was in the plastic chair with injury on the neck and PW.2 (sister) informed

him of accused killed the deceased with axe. He did not see the accused at that time. He deposed that his father hacked his mother by suspecting her fidelity. He also deposed that even earlier his father was beating his mother which was once 5 months prior to the deceased was killed, he bet her with stick on her head. He stated police examined him and stated the facts. In the cross examination, he deposed that at the time of the incident he was at the house of suvarna. It was only on hearing the voice from his house he rushed to the house. He deposed that the voice from the scene of offence is not being heard from the house of Suvarana. He deposed that 20 minutes after the death of the deceased he reached the house and by then about 20 villagers gathered. It was at about 10 PM or so. He deposed that later police reached the place. He denied the suggestion of the accused never suspected the deceased. He deposed that for the earlier incident at the request of his mother (deceased) for accused caused the head injury no police report given. He denied the suggestion of accused did not beat the deceased at any time and he is deposing falsehood and what PW.2 informed him of the accused attacked the deceased is also false. From the above evidence, what PW.2 saw was the accused killed the deceased and ran away from the house with axe. What PW.2 saw while accused moving from the house with axe and therefrom stated of the accused killed the deceased to the PW.3.

9. PW.4 the wife of PW.5, another sister of PWs.1 to 3 deposed that 5 months prior to the accused killed the deceased,

accused bet the deceased with stick and it is by suspecting her fidelity he was harassing her. She deposed that accused hacked the deceased with axe on her neck and she was at her house which is separated by one house to the scene of offence and it is on hearing cries of PW.2 she rushed to the scene of offence and saw the mother-deceased in the chair with injury on the neck and she telephoned to PW.1 and he came to see and then went to the police station and reported and the police later came and she was also examined by the police at that time. In the cross examination, PW.4 deposed that for the earlier incident of accused bet the deceased, they did not report to the police as their mother instructed not to give report to police though she did not state that fact in the statement before police. PW.4 also deposed that the scene of offence house is intervened by one house of Bapu Rao (who also came there) to the house of her. She deposed that she telephoned to her brother PW.1 at 09.30 PM. She deposed that the axe was not there at the scene of offence. She denied the suggestion of she is deposing falsehood and accused did not attack the deceased. PW.5 husband of PW.4 also deposed in same lines and according to him on the date of incident he came from the field by 09.30 PM and heard loud cries from the scene of offence house of accused and deceased and went there and PW.2 who was in panic stated that her father (accused) killed her mother (deceased) and fled away. He also deposed that prior to the incident accused bet the deceased with stick on her head and he admonished him. He also deposed that the accused hidden some

where after the occurrence. In the cross examination he deposed that between 09.30 PM to 09.45 PM, PW.2 informed him at the scene of offence and he did not saw the accused. He did not state before police that prior to the death on one day at about 11 PM accused hidden in the house to kill his wife and he admonished. He deposed further in corroboration to the chief examination and other witnesses of 5 months prior to the occurrence, the accused bet on the head of the deceased and no police complaint given for that. He denied the suggestion of deposing falsehood with vengeance.

10. From said evidence of PWs.1 to 5 who are no other than 4 children and son in law of the accused and deceased, PW.2 is the crucial witness, she categorically deposed of accused killed the deceased and she saw when accused fleeing away with axe from the house having attacked the deceased on her neck when she sat at the chair and she raised cries for which PWs.4 & 5 whose house intervened by one house of Bapu Rao in between rushed so also PW.3 and for the telephone call of PW.4, PW.1 also came and they all saw the deceased with neck injury in the chair in a sitting posture died and PW.1 went to the police station later and reported and police came by midnight or so and stated in corroboration to it of they all were examined by the police.

11. The PW.1's evidence in corroboration to that of PW.2, in his setting the law in motion corroborated to the contents of Ex.P1-report registered as FIR even the IO who issued the FIR and investigated the case not examined in the case, their evidence is

consistent to the evidence of PWs.5 besides PWs.3 & 4, is admissible though not eye witnesses, of they came to the cries of PW.2 and PW.2 informed while she was in panic of accused fled away with axe from the house having attacked the deceased, so also what PW.2 telephoned to PW.1, which is admissible not only under Section 8 of the Evidence Act being relevant but also under Section 6 of the Evidence Act as per the expression of Division Bench of this Court in Bandela Nagaraju and others v. State of A.P.¹ speaks with reference to illustration (a) of Section 6 of the Evidence Act that a declaration made by a witness subsequent to the occurrence is admissible under Section 6 of the Act provided it can be validly assumed that the existing influence continued. While examining whether the declaration is connected with the fact in issue so as to form part of the same transaction, all the surrounding circumstances obtaining in each case have to be taken into consideration. In that case it was observed that the conduct of D in not immediately rushing to the Police Station does not give room for the assumption that his declaration was not contemporaneous or that the interval was such as to allow fabrication. The conditions for admissibility of such a statement relevant are the proximity of time and the proximity of the police station and continuity of action. The statement contained in Ex.P.1 thereby held satisfies the requirements of Section 6 of the Evidence Act and it is admissible, for that conclusion referred to Rex v. Christie², where it is laid down categorically that there

¹ APLJ 1984 (1) (HC)

² (1914) AC 545

cannot be any fixed limit of time and each case must depend upon its own facts and circumstances and a circumstance subsequent to the act may be admissible if it is a part of it and not a mere report of the past occurrence. The expression in Christie supra referred the earlier expression of House of Lords in Bedingfield's³ case that was referred in Wigmore's Treatise 3rd edition Volume VI page 1756 and also Sarkar's evidence 13th edition page 69. The same was reiterated and confirmed the conclusion though differed on facts by another Division Bench judgment in Daravath Kishen Vs. the State⁴ particularly at para 10.

12. Non examination of IO is not always fatal. Here in the case on hand, there are neither contradictions nor material omissions even required to put to the IO much less to complain from said non-examination of the IO of any prejudice caused to the accused. Thereby mere non-examination of IOs in the case no way fatal. The Apex Court in Ambika Prasad Vs. State⁵ categorically observed of even investigating officers not appearing without justifiable reasons, the mere non examination no way fatal. There even 2 police officials as witnesses, resiled earlier statements to help the accused-another police officer, it was held evidence of injured witness when corroborated by medical evidence establishing the prosecution case when that cannot be discarded. Thus neither the defective investigation nor IO not coming to witness box shall not result in acquittal of the accused when prosecution case is otherwise established. As it is the duty of the

³ (1879) 14 Cox CC 341

⁴ 1995 1 ACJ (Crl.) 504

⁵ 2000 (2) SCC 646

Court to see that no guilty person can be escaped unpunished while seeing no innocent person is punished.

13. Coming further to the evidence on record, PW.6-Agaiah whose house is nearby to the scene of offence deposed that it is on that night at about 09.45 PM from some lalli at the house of accused he went there and PW.2 stated that accused (their father) killed their mother (deceased) and the accused fled away. This witness also deposed of when accused fleeing away he saw from the back side. He noticed the deceased with neck injury on the chair. He also deposed about accused used to quarrel with deceased even prior to that and earlier he also bet her with stick which is by suspecting her fidelity and he deposed of police examined him. In the cross examination he deposed that it is a dark night and he was not able to identify the person. He denied the suggestion of PW.2 not informed him of accused killed the deceased with axe. He is admittedly not an eye witness either to the incident or to the earlier beating of deceased by accused. He denied the suggestion of he is deposing falsehood. There is nothing to say what animosity he got though he is natural witness and neighbour aged about 60 years to depose falsehood against the accused. Whatever this witness stated of he rushed there and he also saw the accused while fleeing away from his back side corroborates the evidence of what PW.2 stated of accused fled away from the house with axe having killed the deceased in the house. It is also admissible under Sections 6 & 8 of the Evidence Act referred supra.

14. Among the other evidence, PW.7-Mahender is the photographer who photographed the scene of offence and the dead body covered by Exs.P2 to P6 and deposited the same. He denied the simple suggestion of he did not take the photos. It is not even suggested of the photos do not relate to the scene of offence and dead body of the deceased. There remained out of the evidence of PWs.8 to 12 of whom PW.8-Ch.Poshakka is one of the villagers of the accused and deceased deposed of acted as punch witness to the inquest and scene observation covered by Exs.P7 & P8. She deposed in the cross examination of she does not know what are the contents written in the inquest report which she signed. She denied the suggestion of no inquest held. This witness also deposed about there are injuries on the body of the deceased and she was killed. PW.12 Bapu Rao is another witness to the inquest panchanama and to the scene observation and rough sketch and seizure of the blood stained earth and control earth at scene of offence. PW.12 also deposed in corroboration to the above.

15. PW.9 deposed that at the cross roads of Easgoan village he saw the accused hidden at Porka which was at about 09.00 AM about a year back to the evidence and when he asked the accused reason, he informed that he hacked his wife with axe having suspicion on her fidelity. Later police came there and when he tried to run away, police chased him and questioned him and he also stated the same before the police and he has brought the axe and shown and the same was seized which is MO.3-axe under cover of said apprehension of accused and his disclosure while in police

custody and discovery of the fact and seizure of the axe in Exs.P9 & P10 panchanamas. In the cross examination he deposed that his house and the cross road is 1 ½ kms. In the further cross examination he categorically deposed that the accused confessed before him prior to the police came there. Accused has shown the weapon to him and Mallaiah and the police seized the same under cover of panchanama after taken him to custody and the axe is with Bamboo stick support. He cannot say the length and there were blood stains on the axe. He cannot say what was written in the papers in the panchanama. Police obtained his signatures. He cannot remember the date and time, but by the time he signed, it was by midday. He denied the suggestion of accused did not confess before him and Mallaiah and he is deposing falsehood. This witness evidence including from the cross examination confirms that it is an extra judicial confession admissible under Section 24 of the Evidence Act by the accused having hidden there when questioned of he killed his wife with axe. Leave about it, even otherwise what the accused disclosed after police apprehension having shown the axe is admissible under Section 27 of the Evidence Act in relation to the fact discovered of the exclusive knowledge of the accused of concealment of the blood stained axe and his hiding near the cross road after the occurrence and seizure after arrest and disclosure while under police custody. PW.10 another witness Mallaiah to the said disclosure also corroborates in the material aspects to PW.9 supra.

16. In addition to above said evidence, coming to the medical evidence of PW.11-Doctor Ajay Babu Assistant Civil Surgeon at Srpur Community Health Centre, what he deposed is that, on 18.06.2011 at about 12.30 PM he received a requisition from the police and conducted autopsy thereafter on the body of the deceased and he noticed external injuries viz., multiple lacerations over chin and right front of chest of the deceased, another laceration of 6x2x0.5 cm over right front of the neck at the centre extending left side of neck, another big laceration of 6x2 cm with deep depth injury. He deposed that there are multiple blood clots around the lacerations and L Apex of the lung is visible through laceration on exploration of chest. He further stated L first line is found fracture and L Apex of lung is contused and there is laceration of 1x1x1 cm over L Apex of lungs. L carotid vessels found severed and all are anti mortem caused by heavy sharp edged weapon and cause of death is from the lung injury and carotid vessels injury associated with haemorrhage and shock as mentioned in Ex.P11-PME report. In the cross examination by accused he deposed that the 3 injuries possibly caused separately. He denied the suggestion of the injuries may be caused by falling from height on sharp edge.

17. From the above, the evidence of PW.2 is almost a direct evidence of accused and deceased last seen being wife and husband having he attacked the deceased with axe while fleeing away from the house of PW.2 who is no other than her father (accused) and mother (deceased) and for her cries PW.4 another

sister whose house intervened by one house of Bapu also came and PWs.5 & 6 also corroborated besides PWs.3 & 1 and this clearly establishes that the deceased was killed in the hands of her husband-the accused who got motive as earlier even 5 months prior to that occurrence of deceased was killed by accused, the accused attacked the deceased with stick on head and the other evidence shows frequently he was altercating with the deceased by suspecting her fidelity. Therefrom the evidence on record unerringly establishes from the chain of circumstances linked together to the only hypothesis reasonably made basis to the conviction of the accused of only inconsistent with his innocence and consistent only with his guilt so to conclude as also laid down in this regard in appreciation of the circumstantial evidence by the five Judge Bench expression of the Apex Court in *M.G.Agarwal Vs. State*⁶, from taking into consideration of these circumstances culminating in complete chain with no escape from the conclusion with all human probabilities of the deceased was killed in his house by the accused, husband of the deceased and none else from appreciation of the facts proved with all moral certainty of the prosecution evidence establishes unerringly and beyond reasonable doubt to the conclusion of it is the accused alone and none else that killed the deceased (wife of the accused) in the night of 17.06.2011 and fled away.

18. Thus there is nothing to interfere with the trial Court's said conclusion in finding the accused guilty, but for to say from

⁶ AIR 1963 SC 2000

said evidence on record there used to be altercations between the accused and deceased from said evidence discussed supra and it is in that course not with any pre-mediation and pre-plan irrespective of who was at fault and who raised the galata the accused used the axe at house in attacking the deceased with it from which she died, it attracts the offence under Section 304 part I IPC from his intention was in causing the injuries resulted the death though not with intention to murder from the exception No.4 of Section 300 IPC to alter said sentence of life imprisonment to rigorous imprisonment for 10 years while confirming the fine with default sentence.

19. Having regard to the above and in the result, this Criminal Appeal is partly allowed while confirming the finding of guilt arrived by the trial Court, modified the sentence of imprisonment for life under Section 302 IPC to imprisonment for 10 years under Section 304 (Part I) IPC while confirming the fine with default sentence. The accused is entitled to set off of the period undergone under Section 428 Cr.P.C.

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
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