

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

CRIMINAL APPEAL No.632 OF 2013

JUDGMENT: (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged order, dated 03.05.2013, passed in Sessions Case No.60 of 2012, whereby the learned Judge, Family Court-cum-Additional Sessions Judge, Khammam, convicted the appellant under Sections 365 & 302 of Indian Penal Code, 1908 (for short, 'IPC'), however, acquitted under Section 376 IPC.

2. The case of the prosecution is that on 23.09.2010 at 7.00 A.M., P.W.1, mother of the deceased, gave a complaint at Peruru Police Station, Peruru, stating that the deceased, her daughter - G.Nagalakshmi and appellant fell in love since six months. The appellant developed sexual intimacy with Nagalakshmi and promised to marry her. On 21.09.2010, at about 5.00 P.M., Nagalakshmi went to *Baddikottu* of Thota Narasimhulu (P.W.3) in their village at Rampuram. The appellant came there. Nagalakshmi insisted the appellant to marry her. There was altercation between Nagalakshmi and the appellant and the appellant beat Nagalakshmi with hands and forcibly took her against her will and disappeared. P.W.2, the second daughter of the complainant, by name Garapu Padma and the owner of said *Baddikottu*, viz., Thota

Narasimhulu (P.W.3) witnessed the incident and tried to stop the appellant, but failed. Later, P.W.1 and their relatives along with village elders came to spot, but could not find the appellant and Nagalakshmi. They searched in the village till morning of 23.09.2010 and at last the complainant lodged the complaint with the Police Station mentioned above.

3. On receipt of the complaint, a case in Crime No.12 of 2010 under Section 365 IPC was registered. During investigation, P.W.10 – the Sub-Inspector of Police, Peruru Police Station, examined and recorded the statements of P.Ws.1 to 3, visited the scene of offence (*Baddikottu*), incorporated the scene and sketch in crime details Form-1 before P.W.7 and L.W.13. On the same day, i.e., on 23.09.2010, at 2.00 P.M., the appellant surrendered himself before P.W.10 and confessed to have committed the offences. P.W.10 secured the mediators Vasam Narasimha Rao, Village Secretary, Dharmaram (P.W.8) and Made Laxmi Devi, Village Secretary, Peruru (L.W.15) and interrogated the appellant in their presence. The appellant confessed to have love affair with the deceased Nagalakshmi and had sexual relations with her and that on 21.09.2010, at about 5.00 P.M., he took Nagalakshmi from nearby shop of Thota Narasimhulu (P.W.3) to forest near Dharmaram Village and had sexual intercourse and pushed her into the rocky valley and later strangulated her with her *chunni* and killed her and that on coming to

know that the offence had come to the notice of all, he came and surrendered before the Police.

4. Based upon the said confession of the appellant, P.W.10 added Sections 376 & 302 IPC to Section 365 IPC and sent alteration memo to the concerned. Thereafter, the Circle Inspector of the Police, Venkatapuram (P.W.13) took up the investigation. He examined and recorded the statements of P.Ws.4 & 5 and L.Ws.4 & 6 & 8. In pursuance of said confession, the appellant lead the panchas - P.W.8 & L.W.15 and Police to Bogotta Waterfalls, the scene of offence, where P.W.13 incorporated the scene and sketch in crime details Form-2 before the same mediators and seized blood stained apparels of the deceased. He also conducted inquest panchanama Ex.P-4 over the dead body before said mediators and Bangaru Sampath Kumar (L.W.16). The Medical Officers (P.W.11 & L.W.17) conducted autopsy over the dead body of deceased and preserved specimen for chemical analysis and report. Viscera was transmitted to Forensic Science Laboratory, Hyderabad, and Siddhardha Medical College, Vijayawada, for analysis and report and thereafter reports were received.

5. Thereafter, the appellant was remanded to judicial custody, a requisition was filed to send the appellant to Government Hospital, Bhadrachalam, for potency test. The Medical Officer, Area Hospital, Bhadrachalam (P.W.9)

examined the appellant and issued potency report Ex.P-5 stating that he is capable of performing sexual intercourse. Medical Officers (P.W.11 & L.W.17), who conducted autopsy and preserved specimen for analysis and report, issued Post Mortem Examination report stating that the cause of death of the deceased is due to "Cardio Respiratory Arrest, due to asphyxia due to Hyoid bone fracture". The appellant was also subjected to DNA Finger Print Analysis at Forensic Science Laboratory, Hyderabad, through Court.

6. After the investigation, the charge sheet was finalised and took the charge sheet on the file of P.R.C.No.49 of 2011 before the Judicial Magistrate of First Class, Bhadrachalam, for offences under Sections 365, 376 & 302 IPC. On committal, learned Principal Sessions Judge, Khammam, has taken P.R.C.No.49 of 2011, on the file as Sessions Case No.60 of 2012 and made over the case to the file of the lower Court for disposal according to law.

7. Thereafter, the learned Judge framed the charges against the appellant for the offences punishable under Sections 365, 376 & 302 IPC, which were read over and explained to the appellant in his known language Telugu, for which he denied the offences, pleaded not guilty and claimed to be tried.

8. To bring the guilt home, the prosecution examined P.Ws.1 to 13 and got marked Exs.P-1 to P-12 and M.Os.1 to 3. After closing of prosecution evidence, the appellant was examined under Section 313 of Criminal Procedure Code (for short "Cr.P.C."), putting the substance of incriminating circumstances appearing against him from the evidence of prosecution witnesses, for which the appellant denied the incriminating evidence and reported that he has no defence witnesses.

9. The learned trial Court, after considering the depositions of the prosecution witnesses and material on record, convicted the appellant under Sections 365 & 302 IPC, however, acquitted the appellant under Section 376 IPC.

10. Being aggrieved, the appellant has preferred the present appeal.

11. Learned counsel appearing on behalf of the appellant argued that the incident of kidnapping was taken place on 21.09.2010 and said kidnapping was informed by P.W.2, who is the second daughter of P.W.1. However, P.W.1 made a complaint on 23.09.2010 and accordingly, F.I.R.No.12 of 2010 was registered for the offence punishable under Section 365 IPC. Thus, there is a delay in making the complaint and lodging the F.I.R., which has not been properly explained by the prosecution.

12. She further argued that P.W.2 – G.Padma, daughter of P.W.1 and sister of deceased, deposed that she saw the appellant and the deceased at 5.00 P.M. near the shop of P.W.3, whereas P.W.3, who is kirana shop owner and agriculturist, deposed that the appellant and deceased were in front of his kirana shop at 1.30 P.M. or 2.00 P.M. Thus, there is a contradiction in the deposition of P.W.2 and P.W.3. The deposition of P.W.4, another sister of the deceased, is of a hearsay because she had not seen the appellant and the deceased in front of the kirana shop of P.W.3. However, the said fact was narrated to her by P.W.2, her sister G.Padma.

13. Learned counsel for the appellant further argued that P.W.5 – Auto driver deposed that he had seen the appellant and the deceased on 22.09.2010 at 6.00 A.M., whereas P.W.6 – Alli Prakash Rao, another Auto driver, deposed that he had seen the appellant at 7.00 P.M. or 7.30 P.M. Thus, there is a discrepancy in the deposition of P.W.5 and P.W.6. In addition to above, the appellant himself surrendered before the Peruru Police Station, Peruru, and only thereafter, P.W.1 reported the matter to the Police Station, as she was not aware, who has kidnapped her daughter. However, P.W.1 states that the said incident of 21.09.2010 was brought to the notice of the elders. However, none of the elders had been examined.

14. It is further argued that P.W.8 – Vasam Narasimha Rao, Village Revenue Officer of Dharmaram Village, stated that on 23.09.2010, the police called him at 2.00 P.M., whereas P.W.10 – the then Sub-Inspector of Police, Peruru Police Station, deposed that P.W.8 and L.W.15 came for some work at the Police Station and in their presence, the appellant made his confessional statement. Thus, there is a contradiction in the deposition of P.W.8 and P.W.10. Thus, the benefit of the same to be given in favour of the appellant.

15. It is further argued that P.W.11 – Dr.P.Rama Rao, the then Civil Assistant Surgeon, Area Hospital, Bhadrachalam, deposed that himself and Medical Officer (L.W.17) conducted Post Mortem examination on the dead body of the deceased Nagalakshmi on 24.09.2010 on the requisition of Police and as per the Post Mortem report, there is only one injury, which is the cause of death and such injury could be inflicted by falling, as stated by P.W.11. Thus, she argued that the appellant was in love affair with the deceased and he wanted to marry her, but there was no intention to kill her, however, she died due to falling. Accordingly, she has prayed that the appellant is liable for acquittal, however, alternatively maximum he could be punished under Part II of Section 304 of IPC.

16. Learned Public Prosecutor, having pointed out certain portions of the oral evidence, placed reliance on the last seen theory and the discovery of the dead body of the deceased pursuant to the confessional statement of the accused and contended that the evidence brought on record sufficiently established the guilt of the accused and thus supported the judgment of the Court below.

17. The case for consideration before this Court is whether the prosecution has proved their case beyond reasonable doubt by examining prosecution witnesses and bringing the relevant material on record and consequently, the learned Trial Court has rightly convicted the appellant.

18. P.W.1 is the mother of the deceased, who deposed in her evidence that two years prior to her deposition, her daughter Nagalakshmi went to the shop of Thota Narasimhulu (P.W.3) at about 5.00 P.M. At that time, the appellant had altercation with the deceased and beat her and forcibly took her. Her another daughter G.Padma (P.W.2) witnessed it and interfered stating that the appellant fell in love with the deceased and left without marrying her. P.W.2 came and informed them and then they went in search of the deceased, but in vain. Later, she gave complaint Ex.P-1 to the Police Station. Thereafter, she came to know that the appellant surrendered before the Police and Police took them

at the instance of the appellant to the place of offence and showed the dead body of the deceased. The dead body was lying in *vaagu* (called 'Bogotta waterfalls') in the forest. She has also stated that P.W.2 also witnessed when the appellant took the deceased forcibly. P.W.1 has identified the Punjabi shirt (M.O.1), Salwar (M.O.2) and three pieces of Chunni (M.O.3) as belonging to her deceased daughter.

19. P.W.2, who is daughter of P.W.1 and sister of deceased, deposed in her evidence that the appellant and deceased fell in love. Two years back, at about 5.00 P.M., near the shop of Thota Narasimhulu (P.W.3), she saw the appellant and deceased talking together. When she asked the deceased as to why she is talking with the appellant, she informed that the appellant and herself fell in love and the appellant promised to marry her. The deceased also informed her that the appellant sexually enjoyed her and promised to marry her. She asked the appellant to marry her and then the appellant told that his parents are not willing for his marriage with the deceased. The appellant beat the deceased and took her forcibly. She did not observe as to where the appellant took the deceased. She went to their house and informed her mother P.W.1. While talking with the deceased, the appellant also beat her. She further deposed that P.W.3 also saw when the appellant took the deceased. Later, they searched for the deceased on the night of said incident and

also on the next day, but in vain. On the next day, P.W.1 gave a complaint. She further stated that on the date of complaint, the appellant surrendered at 2.00 P.M. at Police Station and confessed that he committed murder of Nagalakshmi after committing rape on her. The appellant then took them and Police to the place of offence and found the dead body of the Nagalakshmi was lying on the stones of *vaagu*. The clothes M.Os.1 to 3 belong to deceased Nagalakshmi.

20. P.W.3 – Thota Narasimhulu deposed that about two years prior to his deposition, at about 1.30 P.M. or 2.00 P.M., the appellant took Nagalakshmi by beating from nearby his shop. At that time, he interfered and asked the appellant not to beat Nagalakshmi and not to take her. At that time, P.W.2 questioned the appellant stating that the appellant is enjoying sexually Nagalakshmi since two years and he is not marrying her. Still, the appellant took Nagalakshmi by force. He did not know where the appellant took Nagalakshmi by force. Later he learnt that P.Ws.1 & 2 and their family searched for Nagalakshmi, but in vain. At last, they gave a complaint to the Police and subsequently learnt that the appellant surrendered before the Police and confessed that he committed murder of deceased Nagalakshmi. He along with P.Ws.1 & 2 went to the Police Station and the appellant lead

them and Police to the place of offence and showed the dead body of the deceased.

21. P.W.4 - G.Swaroop, who is another sister of the deceased, deposed that herself, P.Ws.1 & 2 and deceased Nagalakshmi used to reside together at their village. The appellant and deceased had love affair since two to three years prior to the death of the deceased. About two years prior to her deposition, at about 5.00 P.M., the deceased Nagalakshmi and the appellant were talking together near shop of P.W.3. Her sister P.W.2 witnessed it and questioned the appellant stating that the appellant is having love affair, but he is not marrying her. Her statement is based upon the narration of P.W.2. Thus, she has not witnessed the appellant and the deceased before the kirana shop of P.W.3.

22. P.W.5 - P.Sathyanarayana deposed that on 22.09.2010, he went to Wajeedu village from Dharmaram with passengers in his auto. While he was returning from Wajeedu and when he reached near Cheekupalli Village, there is one way to Bogotta waterfalls and at that place, the appellant was present with one girl. He asked the appellant and girl as to whether they intend to come in his auto as passengers. The girl was inclined to come in the auto, but the appellant told that they will not come and he may go. The time was 6.00 A.M. and the appellant at that time took said girl towards the way to the waterfalls. The girl was found

under fear by her appearance. He came to his village from there with his auto. He further deposed that he drove the auto for the entire day and in the evening hours, he went to his house and parked his auto and when he came out of his house, he met Alli Prakash Rao (P.W.6), who is related to him as brother-in-law, at about 9.00 P.M. While chit chatting, the discussion of the appellant came and in that discussion, he revealed to P.W.6 that while he was returning from Wajeedu, he saw the appellant with one girl at said place and the girl was inclined to come in his auto, but the appellant asked him to go stating that they will not come and later, the appellant took the girl towards the waterfalls side. He also deposed that at that time, P.W.6 told that while he was returning from Venkatapuram to Dharmaram Village, the appellant was at said road near Cheekupalli and the appellant came in his auto and got down from the auto at Rampuram at 7.00 P.M. or 7.30 P.M.

23. P.W.5 has further stated that on the next day, as usual he went with his auto to earn his livelihood. While he was returning from Venkatapuram with his auto to Peruru, he saw persons gathered near Cheekupalli at said road leading towards said *vaagu* (waterfalls). When he enquired as to what happened, he was informed that somebody killed one girl and the dead body of that girl was lying in the said *vaagu*. At that time, the dead body was brought from the *vaagu* and

he saw curiously as to whose body is and after seeing the dead body, he noticed that the dead body is of the same girl, who was with appellant on previous day. At that time, he revealed before the persons present there that he saw the appellant taking the deceased in earlier auto and it appears that those persons informed the Sub-Inspector of Police about what he informed to said persons. On the very next day morning, the Sub-Inspector of Police summoned him to Police Station and enquired. He informed the Sub-Inspector of Police as to what he knows. Then the Sub-Inspector of Police called P.W.6 through him when he was at Police Station and P.W.6 came to the Police Station. He further deposed that when he saw the dead body of the deceased at the said place, the appellant was there in the custody of Police at that time.

24. P.W.6 – Alli Prakash Rao deposed that he knows the appellant, who belongs to Rampuram Village. He runs auto from Peruru of Venkatapuram Village daily. About two years prior to his deposition, at about 7.00 P.M., while he was coming with his auto from Venkatapuram, the appellant boarded in the auto near Cheekupally at the road leading towards Bogotta waterfalls and the appellant got down from his auto at Rampuram. After coming to Dharmaram Village, he kept his auto at his house and later he came out of his auto and met P.W.5, who is his brother-in-law in relation. While chit chatting as usual, the discussion of the appellant

came between them. P.W.5 informed him about what had happened. Accordingly, they shared the information between each other. Thus, there is a consistency of the deposition of P.W.5 & P.W.6.

25. P.W.7 is a panch witness, who has proved Ex.P-2 crime details form, which bears his signature.

26. P.W.8 – Vasam Narasimha Rao deposed in his evidence that on 23.09.2010, at about 2.00 P.M., Police, Peruru, called him and Made Laxmi Devi, Village Revenue Officer (L.W.15) to Police Station, Peruru. On the instructions of Police, they made enquiry with the appellant present there and the appellant revealed that himself and the deceased Nagalakshmi fell in love since that period and on 21.09.2010 at 5.00 P.M., Nagalakshmi asked the appellant to marry her. At that time, there was an altercation between him and Nagalakshmi near the shop of P.W.3. P.W.8 further deposed that the appellant also revealed that at that time, the sister of Nagalakshmi by name Padma (P.W.2) came and questioned him as to why he is not marrying Nagalakshmi. The appellant also revealed that he forcibly took Nagalakshmi in forest near Dharmaram and they spent night in the forest. The appellant also revealed that while they were going to Bogotta *vaagu*, one auto belonging to P.W.5 came near Cheekupalli Village on road. At that time, Nagalakshmi was intending to come to Village in auto. The appellant also

revealed that then he took Nagalakshmi towards said *vaagu* and committed rape on her in forest near waterfalls and while Nagalakshmi was wearing clothes subsequent to commission of rape, he pushed her into waterfalls. He also revealed that later, he committed murder of Nagalakshmi. Thereafter, he returned to Village by auto at 7.00 P.M. and on the next day, he surrendered before the Police and thereafter, taken the panch witnesses and Police to show the dead body of the deceased.

27. P.W.9 Dr.S.Gopal, Civil Assistant Surgeon, Primary Health Centre, Ulvanoor, deposed that while he was working as Civil Assistant Surgeon, Area Hospital, Bhadrachalam, he conducted potency test of the appellant on 01.10.2010 and found that the appellant is capable of performing sexual activity. Ex.P-5 is the certificate issued by him.

28. P.W.10 is a Sub-Inspector of Police, Peruru Police Station, who deposed that on 23.09.2010, at about 7.00 A.M., he received Ex.P-1 complaint from P.W.1, registered a case in Crime No.12 of 2010 under Section 365 of IPC and issued First Information Report Ex.P-6. He examined and recorded the statements of P.Ws.1 to 3. He also visited the scene of offence near the shop of P.W.3 at Rampuram and prepared crime detail form Ex.P-2 in the presence of P.W.7 and D.Muthesh (L.W.13). He has further stated that on the same

day i.e., on 23.09.2010, the appellant surrendered before him at 1.30 P.M. at Police Station. He recorded his confession at 2.00 P.M. in the presence of P.W.8 and Made Laxmi Devi (L.W.15). The appellant confessed about the commission of rape and murder of deceased Nagalakshmi. He then altered the Section of Law adding Sections 376 & 302 IPC and sent alteration memo Ex.P-7 to Court. He has also sent information to the Inspector of Police (P.W.13), who took up the further investigation.

29. P.W.11 - Dr. P.Rama Rao, the then Civil Assistant Surgeon, Area Hospital, Bhadrachalam, deposed that himself and Medical Officer (L.W.17) conducted post mortem examination on the dead body of the deceased Nagalakshmi on 24.09.2010 on the requisition of Police and found three injuries viz., (1) Constrictual mark 3 cm x 2 cm x 1 cm in front of neck; (2) abrasion 1 cm x ½ cm over the upper lip; and (3) abrasion ½ cm x ½ cm over the back. He further deposed that the above injuries are ante mortem in nature. Injury Nos.2 and 3 are simple, whereas injury No.1 is grievous. They also found one internal injury on the dead body of the deceased, i.e., fracture of hyoid bone at the center, which is grievous in nature. They preserved organs from the dead body of the deceased for the purpose of examination and report by Forensic Science Laboratory, Hyderabad, which are (1) small intestines; (2) liver and

kidney; (3) Hyoid bone; (4) uterus; (5) blood; and (6) vaginal swabs. The said organs were sent by the Police to Forensic Science Laboratory, Hyderabad. Later, a report Ex.P-10 is received from the Forensic Science Laboratory, Hyderabad. As per the said report, they have given their opinion about the cause of death of the deceased. According to him, to the best of his knowledge, the cause of death of the deceased is due to “cardio respiratory arrest, due to asphyxia due to hyoid bone fracture”. Ex.P-8 is the post mortem examination report. Ex.P-9 is the expert opinion and Ex.P-10 is FSL report. On expert examination of dead body of the deceased, they suspected that there is a possibility of commission of rape on the deceased and as such they have collected vaginal swab and uterus for sending the same to the Forensic Science Laboratory, Hyderabad, for examination and report.

30. P.W.12 - A.Srinivasa Raju, who is the photographer, deposed that on 23.09.2010, Police, Peruru, called him to the Police Station. The appellant was present in the said Police Station. The appellant lead them and Police to Cheekupally Bogotta waterfalls. There they saw the dead body of the deceased Nagalakshmi lying in *vaagu*. There, at the instance of Police, he took the photographs of the deceased Ex.P-11, which are six in number photographs with one CD.

31. P.W.13 - V.Kiran Kumar, the then Inspector of Police, Venkatapuram, deposed that on 23.09.2010, he took up investigation from P.W.10 and examined and recorded the statements of P.W.4, L.Ws.4 & 6 to 8. Later, he secured the presence of P.W.8 M. Lakshmidevi and B. Sampath Kumar (L.Ws.15 & 16) and proceeded to the scene of offence as lead by the appellant. He prepared crime detail form/scene of offence Panchanama Ex.P-3. He also conducted inquest panchanama Ex.P-4 over the dead body of the deceased. He also seized Chunni, Punjabi shirt and pyzama (M.Os.1 to 3) of the deceased. Later, he returned to the Police Station and forwarded the dead body of the deceased for post mortem examination. He also got photographs of the deceased taken through photographer, which are Ex.P-11 with CD. Later, he sent the appellant to Court for judicial custody. Later, he examined and recorded the statements of P.Ws.5 & 6. He has also forwarded viscera to Forensic Science Laboratory through Deputy Superintendent of Police concerned. He also forwarded hyoid bone and also submitted a requisition before Magistrate to refer the appellant for potency test. Later, he received all material documents. Ex.P-12 is the Forensic Science Laboratory report. Later, on completion of investigation, he laid charge sheet.

32. In view of the above depositions, the case of the prosecution in its entirety, except the incident near the shop of P.W.3, rests on circumstantial evidence.

33. It is important to refer to the case of the Supreme Court herein reported in **Sanatan Naskar & another v. State of West Bengal [AIR 2010 SC 3570]**, wherein the Hon'ble Supreme Court has held as under:

"There cannot be any dispute to the fact that it is a case of circumstantial evidence as there was no eye-witness to the occurrence. It is a settled principle of law that an accused can be punished if he is found guilty even in cases of circumstantial evidence provided, the prosecution is able to prove beyond reasonable doubt complete chain of events and circumstances which definitely points towards the involvement and guilt of the suspect or accused, as the case may be. The accused will not be entitled to acquittal merely because there is no eye-witness in the case. It is also equally true that an accused can be convicted on the basis of circumstantial evidence subject to satisfaction of the accepted principles in that regard."

34. With regard to nature, character and essential proof required in a criminal case, which rests upon circumstantial evidence alone is decided by the Supreme Court in case reported in **Hanumant Govind Nargundkar v. State of M.P. [AIR 1952 SC 343]**, wherein the Hon'ble Supreme Court observed as under:

"... .. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypotheses of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of

evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

35. As discussed above, P.W.1 is the mother and P.Ws.2 & 4 are sisters of the deceased. P.W.3 is said to be the owner of *Baddikottu* at Rampuram. With regard to incident near *Baddikottu* of P.W.3 on 21.09.2010, there is direct evidence of P.Ws.2 & 3. The evidence of P.Ws.1 & 4 with regard to the incident near *Baddikottu* of P.W.3 is hearsay in as much as they were informed about such incident, according to them, by P.W.2. Though P.Ws.2 & 3 so also P.Ws.1 & 4 has been cross-examined at length, nothing has come from their consideration to discard their incident with regard to incident of kidnap. P.Ws.1 to 4 support the case of prosecution that the deceased Nagalakshmi was found missing from the Village from 21.09.2010 and P.Ws.2 & 3 saw the appellant taking Nagalakshmi forcibly after beating her. P.W.5 also saw them on the road near Cheekupalli Village on 22.09.2010. These circumstances prove that the appellant kidnapped Nagalakshmi and took her towards Bogotta waterfalls. P.W.6 has deposed in his evidence that the appellant travelled in his auto from Road near Cheekupalli Village on 22.09.2010 at 7.00 P.M. P.Ws.3, 5 & 6 are independent witnesses. P.W.3 has deposed in detail as to how he happened to witness the acts committed by the appellant when the appellant kidnapped the deceased and

P.W.5 have deposed about movement of appellant with deceased near Cheekupalli Village Road from where the way leads to Bogotta waterfalls.

36. The evidence of one of the independent panch witness P.W.8 with regard to alleged confession of the appellant at Police Station and after he surrendered, he lead the panchas and Police and P.Ws.1 to 4 to the scene of offence at Bogotta waterfalls and shown the dead body of the deceased. From the dead body, M.Os.1 to 3, which are the clothes of the deceased, were seized, which are crucial to the case of the prosecution. P.W.8 has deposed in his evidence supporting the case of the prosecution with regard to confession of the appellant and recovery of dead body of the deceased and clothes of M.Os.1 to 3. P.W.8 is a Village Secretary of Peruru Panchayat.

37. There is no note on record that the said witness had any grudge against the appellant and nothing has come out from the cross-examination of P.W.8.

38. P.W.7 is one of the panch witnesses for the crime detail form/scene of offence Panchanama Ex.P-2 conducted near *Baddikottu* of P.W.3 at Rampuram Village. He has deposed in his evidence about it. P.W.8 has also deposed about crime detail form/scene of offence Panchanama of other panchas at the scene of offence, i.e., Bogotta waterfalls.

He has also deposed in his evidence about the inquest Panchanama Ex.P-4 conducted over the dead body of the deceased. P.W.9 is the then Civil Assistant Surgeon, Area Hospital, Bhadrachalam, who conducted potency test of the appellant and issued certificate Ex.P-5.

39. P.W.12 is a photographer, who took photos of the deceased Nagalakshmi at the scene of the offence i.e., Bogotta waterfalls, which are marked as Ex.P-11 and later, he handed over the photos Ex.P-11 with CD to Police.

40. The arguments of the learned counsel for the petitioner are that there is a discrepancy in the evidence of P.Ws.1, 3, 8 and 10, which are not much relevant in the present case, for the reason that P.W.2, sister of the deceased, is the witness of altercation between the appellant and the deceased. P.W.5 - auto driver and P.W.6 - Alli Prakash Rao, another auto driver, are the last seen witnesses. P.W.5 - auto driver, at about 6.00 A.M., on 22.09.2010, saw the appellant and the deceased together, whereas P.W.6 - Alli Prakash Rao, another auto driver, who has taken the appellant at 7.00 P.M. or 7.30 P.M. and left to his village. Thus, from these circumstances, it is sufficiently established that the appellant only has committed the murder of the deceased. In addition to above, the dead body was detected on the confessional statement of the appellant. Had the appellant not committed the murder of the deceased, he

would not have known the place where the dead body was lying and would not have shown the dead body to the witnesses, panchas and the Police. Thus, depositions of these witnesses are very strong against the appellant and establish that the appellant only has committed the murder of the deceased.

41. It is not in dispute that the statements of the witnesses are recorded by the Trial Court after two years of the incident, therefore, it is obvious that there will be some contradictions. But if there are minor contradictions in their statements, that would not help the case of the appellant. The appellant has failed to establish that on the day of 22.09.2010, if he was not with the deceased, where he would be. So, to establish this fact he has not examined any of the witnesses.

42. On the delay of lodging the FIR, it is obvious that when there is information of missing of girl, firstly her family members make a search to know her whereabouts but do not disclose about the missing of a young girl to the public until their efforts of search turn out to be futile. However, when they could not find them two days, on 23.09.2010 they reported the matter to the Police Station and on the very same day, the appellant surrendered before the Police and thereafter, the Police came into motion and recovered the dead body at the instance of the appellant. Thus, there is no

delay in lodging the complaint and registering the FIR against the appellant and this delay, if any, is not fatal to the prosecution case.

43. It is not in dispute that the conviction cannot be recorded on a confessional statement of the accused made before the Police or to the Police Station. The facts that there is a quarrel between the accused and the deceased woman with whom he had affair of love and that the said quarrel was witnessed by the shop keeper (PW3) as well as the younger sister of the deceased (PW4) and that later the accused and the deceased woman who went away towards water falls were seen together by one auto driver (PW5) on the next day at 06:00 AM and that later the accused was alone seen at 07:00 PM on that day by another auto driver (PW6), who indeed brought the accused in his auto to the village clearly bring to the fore that the accused and the deceased woman were last seen together and that later the accused was alone seen. Therefore, it is for the accused to explain this incriminating circumstance. Apart from this, the fact that the dead body of the deceased, which was available at a remote place, was recovered at the instance of the accused and the said discovery of fact on the confessional statement made by the accused before the investigating officer, in the absence of any explanation from the accused, coupled with the afore-stated circumstances, cumulatively establish that the accused is

alone responsible for the murder of the deceased woman. It is pertinent to note that the accused gave an explanation as to the cause of the death of the deceased by stating that the deceased died by falling into the water falls. However, the Doctor (PW11) who conducted post mortem categorically stated in his report and evidence that the cause of death is cardiac respiratory arrest due to asphyxia on account of fracture of hyoid bone. The said reliable medical evidence makes it manifest that the explanation offered by the accused as to the cause of the death of the deceased is false and the said explanation is offered to somehow escape from the possible conviction. But the confession to the incident which lead to the discovery of the dead body at the instance of the appellant is vital to the case of the prosecution, which is sufficiently established.

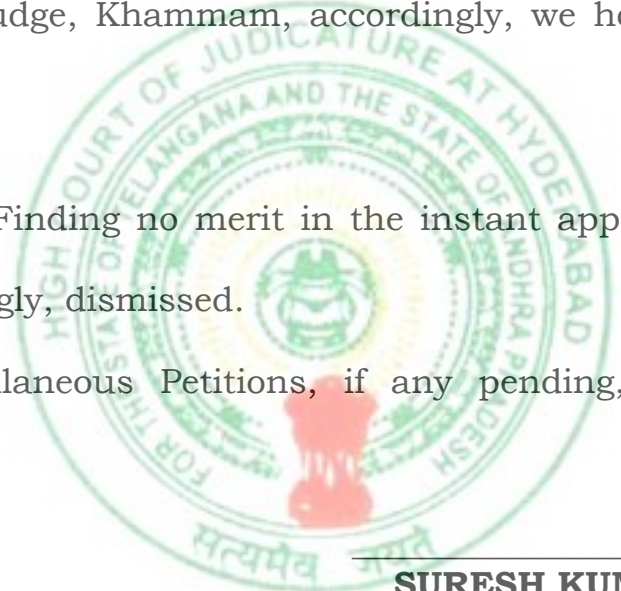
44. Before parting, it is trite to observe that we have noticed that in the charges framed, the dates of the incidents are wrongly mentioned by the Court below. However, neither the prosecution nor the accused noticed this aspect and proceeded on the assumption that there are no mistakes in the mentioning of the dates in the charges and, therefore, both the prosecution as well as the accused, who are aware of the dates of incidents, proceeded accordingly during trial on the correct lines. Further, for mere mistake in the charge as regards the dates mentioned therein, the accused is not

entitled to any benefit in the peculiar facts of the case and as the accused failed to show that any prejudice has been caused to him on account of the mistaken mention of the dates in the charges framed by the Court below.

45. In view of the facts and circumstances and the law discussed above, we find no illegality or irregularity in the judgment, dated 03.05.2013, passed in Sessions Case No.60 of 2012, by the learned Judge, Family Court-cum-Additional Sessions Judge, Khammam, accordingly, we hereby confirm the same.

46. Finding no merit in the instant appeal, the same is, accordingly, dismissed.

Miscellaneous Petitions, if any pending, shall stand closed.



SURESH KUMAR KAIT, J.

M.SEETHARAMA MURTI, J.

Date: 4th August, 2018

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