

HIGH COURT FOR THE STATE OF TELANGANA

HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.233 of 2012

Date: 16.07.2019

Between:

1) Gadasari Sriramulu

2) Madem Lakshmi.

...Appellants/Accused Nos.1 & 2

AND

The State of A.P.
Rep. by its Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad.

...Respondent/Complainant

Counsel for the Appellants : Sri P. Prabhakar Reddy

Counsel for the Respondent : The Public Prosecutor

The Court made the following:

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellants/Accused Nos.1 and 2, aggrieved by the judgment, dated 09.02.2012, passed in Sessions Case No.430 of 2010 by the Principal Sessions Judge, Khammam, whereby, the appellants/A.1 and A.2 were found guilty of the offence punishable under Section 302 read with 34 of IPC and were sentenced to undergo Life Imprisonment and to pay fine of Rs.500/- each, in default to suffer Rigorous Imprisonment for one month.

2. The case of the prosecution is that Accused No.2-Madem Lakshmi, is the second wife of Madem Satyanarayana (hereinafter referred to, as 'the deceased'), who was working as Police Constable. Their marriage was performed in the year 1992 and they were blessed with a daughter and a son. Before marriage, A.2 had illicit intimacy with A.1-Gadasari Sriramulu and after marriage, they stopped their extra marital relationship. The wife of A.1 died due to ill-health. After the death of wife of A.1, A.1 and A.2 started the extra marital relationship in the absence of the deceased. The deceased was transferred to V.R.Puram Police Station and to facilitate the studies of his children, he had taken a portion in the house of one Satyavathi at Gollabazar for rent and kept his family there and he used to attend his duties from Bhadrachalam. While so, A.1 purchased a cell phone and gave it to A.2 and whenever the deceased went out to attend official duties at V.R.Puram or any other outside duties, A.2 used to inform the same to A.1 through the cell phone and call him to her house. Then A.1 used to visit the house of the deceased and

participate in sexual intercourse with A.2 without fear. The children of the deceased used to observe the visit of A.1 to their house in the absence of their father, but A.2 used to keep them under threat and some times used to manage them with sweet words. The locality people also observed the unauthorised visit of A.1 to the house of the deceased and when they enquired with A.2 about the same, A.2 used to reply that A.1 is her brother. On coming to know about the unauthorised visit of A.1 to his house, the deceased had made an application for allotment of police quarter and after allotment, he shifted his residence to Quarter No.A3 at Old Police Quarters, Bhadrachalam. Even then, A.1 did not stop the illegal intimacy with A.2. Whenever her husband was outside on duty, A.2 used to call A.1 through the cell phone, A.1 used to visit the house of the deceased and both A.1 and A.2 used to continue their extra marital relationship. After noticing the same, the deceased warned A.2 and advised her not to do such things. When the deceased warned seriously, A.2 felt inconvenience with her husband and decided to do away with the life of her husband/deceased and informed the same to A.1. A.1 and A.2 tried to murder the deceased on one occasion, but they were unsuccessful.

3. In the morning hours of 20.06.2009, the deceased went to V.R.Puram Police Station and reported to duty. Immediately, A.2 informed the same to A.1 through cell phone. Thereafter, A.1 visited the house of the deceased. Then, A.2, along with her daughter, Sandhya Rani and A.1, went to Ramalayam temple to have darshan. At about 08:30 p.m, the deceased came to his house from V.R.Puram on tappal duty. A.2 informed the same to A.1. Then the deceased

went outside, had some alcohol, returned to house and slept on a cot in front room. Taking advantage of the intoxicated condition of the deceased, A.2 called A.1 over phone to come to her house. Immediately, A.1 visited the house of the deceased and with the help of A.2, A.1 murdered the deceased by throttling his neck while A.2 caught hold of the legs of the deceased firmly. After coming to conclusion that the deceased died, A.1 came out of the police quarter and the same was witnessed by the sweeper. In the morning hours, A.2 started crying saying that her husband fell down in the bathroom in the night and died.

4. On the report lodged by PW.1-son of the deceased on 21.06.2009, P.W.16-Sub-Inspector of Police, Bhadrachalam Town Police Station, registered a case in Crime No.138 of 2009 under Section 174 Cr.P.C. Thereafter under Ex.P.10-alteration memo, altered the Section of law from Section 174 Cr.P.C to Section 302 read with 34 of IPC and after completion of investigation, PW.17 laid charge sheet against A.1 and A.2 for the offence under Section 302 read with 34 of IPC before the Court concerned.

5. The learned Judicial Magistrate of First Class, Khammam, has taken cognizance of the case in P.R.C.No.61 of 2010 and committed the case to Sessions Division, Khammam, under Section 209 Cr.P.C., since the offence under Section 302 I.P.C. is exclusively triable by the Court of Session. On committal, the Court below registered the case as S.C.No.430 of 2010 for the offence punishable under Section 302 read with 34 of I.P.C. The Court below framed charge for the offence under Section 302 read with 34 of IPC against A.1 and A.2, read over

the same to them for which, they pleaded not guilty and claimed to be tried.

6. To prove the case of prosecution, PW.1 to PW17 were examined and Exs.P1 to P16 were marked, besides case properties MOs.1 to 4.

7. After closure of prosecution evidence, when A.1 and A.2 were confronted with the incriminating material appearing against them and examined under Section 313 of Cr.P.C, they denied the same and contended that they are falsely implicated in the case. No oral and documentary evidence has been adduced on behalf of the accused.

8. The Trial Court on analysis of both oral and documentary evidence and the submissions put-forth before it, held that the prosecution was able to prove the guilt of the A.1 and A.2 beyond all reasonable doubt for the offence punishable under Section 302 read with 34 of IPC and accordingly, convicted and sentenced the A.1 and A.2 to undergo Life Imprisonment for the offence under Section 302 read with 34 of IPC and to pay fine of Rs.500/- each, in default to suffer Rigorous Imprisonment for one month. Hence the Criminal Appeal by appellants/A.1 and A.2.

9. Heard arguments of Sri P. Prabhakar Reddy, learned counsel for the appellants/A.1 and A.2 and the learned Public Prosecutor for the respondent/State and perused the record.

10. Learned counsel for the appellants/A.1 and A.2 would contend that there are no direct witnesses to the alleged offence. The whole prosecution case is based on circumstantial evidence. The presence of A.1 and his visit to the house of deceased on date of alleged offence was not proved by leading cogent and convincing evidence. The trial

Court did not give any weightage to the statement made by A.1 and A.2, when they were examined under Section 313 Cr.P.C. No illegal intimacy between the A.1 and A.2 was proved. No weightage should be given to the evidence of PW.4, who identified the A.1 for the first time in the Court. There is no evidence to prove the conspiracy between A.1 and A.2. Furthermore, no weightage can be given to the evidence of PW.7-Sweeper. There are material contradictions and omissions in the evidence of prosecution witnesses. There is no specific mention in the FIR that A.1 used to visit the house of deceased. PWs.7 and 8 did not say at what time they saw A.1 on the date of alleged incident. PW.13 is a stock witness and he has good relations with the police and so he deposed against A.1. It is also contended that the family members of deceased wanted A.2 to relinquish her right in the landed property of the deceased and when she did not do so, she was falsely implicated in this case. The trial Court ought to have acquitted the appellants/A.1 and A.2, and ultimately, prayed to allow the appeal by setting aside the conviction and sentence recorded against the appellants/A.1 and A.2 for the offence punishable under Section 302 r/w 34 IPC.

11. On the other hand, learned Public Prosecutor for the State, would contend that there is no inconsistency in the evidence of the prosecution witnesses. The hairs of A.1 were found in the scene of offence. The hairs seized from the scene of offence and the sample hair collected from A.1, were subjected to morphological examination by the Andhra Pradesh Forensic Science Laboratories, Hyderabad (FSL) and they were found to be similar in morphological characters. PWs.7 and 8 stated to have seen the accused near the house of the

deceased. A.2 misled the police and family members stating that her husband fell down in the bathroom on that night and died. There is a post-mortem examination report, which clearly demonstrates several injuries on the dead body of the deceased and the deceased died due to asphyxia. It is a homicidal death. PW.2-daughter of the deceased was present in the house on the date of death of deceased. There is overwhelming evidence to prove the prosecution case beyond all reasonable doubt against the appellants/A.1 and A.2, for the offence under Section 302 r/w 34 IPC. The trial Court is justified in convicting and sentencing the A.1 and A.2 for the said offence and ultimately prayed to dismiss the appeal.

12. In view of the submissions made by both sides, the following points have come up for determination:

- 1. Whether the death of deceased-Madem Satyanarayana, was homicidal?**
- 2. Whether the appellants/A.1 and A.2 have caused the death of deceased-Madem Satyanarayana?**
- 3. Whether the prosecution proved the guilt of the appellants/A.1 and A.2 beyond all reasonable doubt for the offence under Section 302 r/w 34 IPC?**
- 4. Whether the conviction and sentence recorded against the appellants/A.1 and A.2 for the offence under Section 302 r/w 34 IPC is liable to be set aside?**

13. **POINTS:** The prosecution, in order to prove its case, examined P.W.1 to P.W.17 and got marked Exs.P.1 to P.16, besides case properties M.Os.1 to 4. PW.1 is the son of the deceased and PW.2 is the daughter of A.2 and deceased. PW.3 is the sister of the deceased. PW.4 is the neighbour of the deceased. PW.5 is the constable working

in Bhadrachalam Police Station. PW.6 is a photographer. PW.7 is a sweeper working in Bhadrachalam Police Station. PW.8 is the constable in the Bhadrachalam Town Police Station. PW.9 is the owner of the lodge. PW.10 is the photographer in Ramalayam Temple. PW.11 is the computer operator in Bhadrachalam Temple. PW.12 is the panch witness for scene of offence. PW.13 is the panch witness before whom extra judicial confession was made. PW.14 is the panch witness for confession and seizure panchanama. PW.15 is the Doctor, who conducted post-mortem examination over the dead body of the deceased. PW.16 is the Sub-Inspector of Police, who registered the case. PW.17 is the Investigating Officer, who investigated the case and filed charge sheet. Ex.P.1 is the report lodged by PW.1. Ex.P.2 is the photographs. Ex.P.3 is the Register maintained by Vijaya Lodge, Bhadrachalam. Ex.P.4 is the crime details form. Ex.P.5 is the Inquest panchanama. Ex.P.6 is the confession and seizure panchanama. Ex.P.7 is the seizure panchanama. Ex.P.8 is the post-mortem examination report. Ex.P.9 is the First Information Report. Ex.P.10 is alteration memo. Ex.P.11 is the FSL Report of deceased. Ex.P.12 is the FSL Report of A.1. Ex.P.13 is the copy of General Diary Entry and beat book of Bhadrachalam PS. Ex.P.14 is the duty passport of deceased. Ex.P.15 is the G.D Extract of V.R. Puram Police Station and Ex.P.16 is the call list of accused. M.O.1 is the Nokia cell phone. M.O.2 is the Black Colour cell phone. M.O.3 is the Jeans pant. M.O.4 is the shirt.

14. The evidence of PW.15, who was working as Deputy Civil Surgeon in Government Area Hospital, Bhadrachalam, reveals that he conducted post-mortem examination on the dead body of the

deceased between 2:30 pm to 4:00 pm on 21.06.2019 and found the following injuries:

External injuries:

- 1) *Upper part of the neck and face are bluish black in colour due to congestion is seen.*
- 2) *Sub-conjunctival haemorrhages are seen on both eyes.*
- 3) *Small abrasion is seen over right nostril size about $\frac{1}{2}$ cm x $\frac{1}{2}$ cm over area of right nostril and small contusions 2 to 3 number of minimum size over area of right nostril. Contusions of size $\frac{1}{2}$ x $\frac{1}{4}$ cm over area of left nostril along with other small contusions over left nostril 2 to 4 cms.*
- 4) *Small contusions are seen over both lips with tooth impressions due to pressure over lips in oral aspect of lips.*
- 5) *Crescentric abrasions with concavity towards left nostril is seen over left cheek and area of 4 in number size about 0.5 cm, 0.5 cm, 0.4 cm and 0.2 cm as mentioned figure's column.*
- 6) *Multiple small bruises are seen over both cheek on anterior aspect.*
- 7) *Contusions of size 2 cm. x 3 cm is seen on backside of chest seen prominent right scapular regions. Another contusion of 3 cm X 3 cm size seen over left scapular region.*
- 8) *Small contusions are seen over back of both legs in lower $\frac{1}{3}$ rd over both ankles on posterior aspect.*
- 9) *Two small abrasions of size 1 cm x $\frac{1}{2}$ cm and 1 cm x $\frac{1}{2}$ cm is seen middle third of left forearm.*

Internal injuries:

- 1) *Contusion underneath the skin and over sternocordio mabtoid and other neck muscles seen. Small multiple contusions seen over trancia over 4th and 5th rings.*
- 2) *On isolations of hyoid bone there is fracture of left lorn hyoid is seen. Haematoma of 5 to 10 cms is seen over posterior of left lorn of hyoid bone.*

All the aforementioned injuries were ante-mortem and according to PW.15, the cause of death of the deceased was due to asphyxia i.e, due to pressure over the neck of the deceased. Ex.P.8 is the post-mortem report, which corroborated the evidence of PW.15. Nothing was elicited in the cross-examination of PW.15 to discard his testimony. The inquest panchanama-Ex.P.5 and evidence of PW.12-panch witness and PW.16-Investigating Officer, reveals that the dead body of deceased was found in Quarter No.A3, Old Police Quarters, Bhadrachalam on 21.06.2009. There is no much dispute with regard to the place of finding the dead body of the deceased as well as the conduct of inquest panchanama by PW.16. All this evidence clinchingly establish that the death of deceased was homicidal and it was caused at the house of deceased, situated at Bhadrachalam.

15. PW.1-*de facto* complainant, son of the deceased, deposed that he knows both A.1 and A.2. A.2 is his step mother and his father died about two years prior to the date of his deposition i.e, 18.04.2011. He is staying with his paternal aunt and on receiving phone call that his father died at Bhadrachalam, he immediately rushed to the spot and found some external injuries on the dead body of his father and suspected that somebody murdered him and accordingly, he gave Ex.P.1-report to the police. He further deposed that A.1 used to visit the house of his father frequently and when he enquired with his sister (PW.2), she confirmed that A.1 was visiting the house frequently. Nothing was elicited from the cross-examination of PW.1 to discard his testimony.

16. PW.2, who is the daughter of A.2 and deceased, deposed that she knows both A.1 and A.2. PW.1 is her step brother. A.2 belongs to

Bhagvanpuram village and A.1 also belongs to same village. A.1 used to visit her house in the absence of her father and used to stay in a separate room. On 20.06.2009, herself and her mother went to temple at Bhadrachalam and A.1 also came there. On the same day night, her father came to the house and her mother (A.2) called A.1 over telephone and he came there and they talked for sometime. When she woke up in the morning, she came to know that her father died. She further deposed that she suspects, both A.1 and A.2 are responsible for the death of her father. She also informed PW.1 about A.1 visiting her house. M.O.1-silver colour Nokia cell phone, marked through her evidence. Though PW.2 was cross-examined by the accused, nothing useful could be extracted from her evidence.

17. PW.3, who is the sister of the deceased, deposed that the children of the deceased informed her that A.1 used to visit the house of the deceased in the absence of the deceased and on the previous night of the incident also A.1 visited the house of A.2. Further, A.1 and A.2 were responsible for the death of deceased.

18. PW4-police constable, who resides in the neighbour quarter of deceased and A.2, deposed that A.1 used to visit the quarter of the deceased and identified A.1 in the open court.

19. PW5 is also the police constable. He too deposed that A.1 used to visit the quarter of the deceased and when he enquired A.1, he stated that he is related to A.2.

20. PW.6 is the photographer and he deposed that on the request of Bhadrachalam police, he took photographs of the dead body of the deceased. Ex.P.2 is the photographs (4) in number along with C.D.

21. PW7, who is the sweeper in Bhadrachalam Police Station, deposed that she used to go to police station in the early hours to clean the police station and she saw A.1 in the early hours of 21.06.2009. Further, A.1 used to visit the quarters of deceased and A.2.

22. PW8-police constable, who resides in the old police quarters of Bhadrachalam, deposed that he also saw A.1 in the early hours of 21.06.2009 while he was returning from beat duty. When he enquired A.1, he stated that the deceased was his relative.

23. PW.9-owner of Vijaya Laxmi Lodge, Bhadrachalam, deposed that on 20.06.2009, A.1 came to his lodge and took a folding cot on rent by paying Rs.20/-. Ex.P.3 is the lodge register (entry dated 20.06.2009 marked). He further stated that A.1 left the lodge without intimation by leaving one cover containing one pant and shirt (M.Os.3 and 4).

24. PW.10-photographer in Ramalayam temple, deposed that about two years prior to the date of his deposition, A.1 and A.2 along with one girl came to the temple and he came to know that A.2 is the wife of a constable. The evidence of PW.10 corroborates with the evidence of PW.2 regarding A.1, A.2 and PW.2 visiting the temple on 20.06.2009.

25. PW.11, who is the computer operator in Bhadrachalam temple, deposed that he furnished the C.C camera footage from 20.06.2009 at 4:00m to next day morning to the police.

26. PW.12, who was working as Class-IV employee, deposed about conducting of scene of offence panchanama as well as inquest

panchanama, which are marked through him as Exs.P.4 and P.5 dated 21.06.2009. He also deposed about finding injuries on the face of the deceased.

27. PW.13 is said to be a witness to the confession made by A.1. In his evidence he stated that on 23.06.2009, A.1 came to him and confessed that he committed murder of the deceased and further, A.1 informed him that he had illicit intimacy with A.2. PW.13 also stated that he informed the said facts to the police. He identified the accused in the Court. In the cross-examination, he stated that A.1 approached him at 8:30pm. He also stated that he did not take A.1 to police station on that night and asked A.1 to come on next day. He stated that he used to visit the police station frequently being a member of Congress party. He denied the suggestion that he had good relations with the police and deposing falsely against the accused No.1. He also denied that A.1 did not confess the commission of offence to him.

28. PW.14, who was working as Village Revenue Officer in Bhadrachalam, deposed that A.1 and A.2 confessed the commission of offence in this case. Pursuant to the confession made by A.1, M.O.3-jeans pant and M.O.4-biscuit colour shirt, were recovered under Ex.P.7-seizure panchanama. Ex.P.6 is the relevant portion of confession made by A.1 leading to recovery.

29. The evidence of PW.16-Investigating Officer, reveals that he received Ex.P.1-report from PW.1 and registered a case in Crime No.138/2009 under Section 174 Cr.P.C, and issued Ex.P.9-FIR. He deposed that he recorded the statements of PWs.1 to 5 and another. He also deposed about conduct of scene of offence panchanama as

well as inquest panchanama over the dead body of the deceased. He also deposed about the statement given by PW.13 with regard to the confession made by A.1 in his presence. PW.16 further stated that in the presence of mediators, he seized hair from the scene of offence.

30. The evidence of PW.17-Inspector of Police, who completed the investigation and filed charge sheet, reveals that on 30.06.2009, he took up investigation and examined the witnesses in this case and arrested the A.1 & A.2, recorded their confession and seized M.O.1-cell phone and other material objects in this case. He also stated that he sent the hair collected from the hands of deceased at the time of P.M.E. report and the sample hair collected from the A.1, were sent to F.S.L and obtained Ex.P.11 and Ex.P.12-F.S.L. reports. There is also evidence of PW.17 that he examined the call details of A.1. He also examined C.C camera clippings dated 20.06.2009 and those clippings were got identified by PW.2.

31. PW.16-Investigating Officer, who conducted scene of offence panchanama, has clearly stated that he collected hair from the scene of offence. Ex.P.4-crime details form reveals that there were hairs on the bed present at the scene of offence. Ex.P.4 corroborates with the evidence of PW.16. PW.17 stated that hairs were collected from the hands of the deceased at the time of post-mortem examination. There is no such mention anywhere in the documents filed by the prosecution. However, there is a record to show that the hairs were collected from the scene of offence as deposed by PW.16 and those were sent to Forensic Science Laboratory, for examination and Ex.P12-F.S.L. report was received in this case, which fortifies that the

sample hair as well as hairs collected from the scene of offence, have got similar morphological characters.

32. There is specific evidence of PW.2, who is none other than the daughter of deceased and A.2. She has categorically stated that on the date of incident i.e, 20.06.2009, she herself and her mother (A.2) went to temple situated at Bhadrachalam. A.1 also came there. She further stated that on that night, her father came to the house and her mother made a call to A.1 and A.1 came to their house and both A.1 and A.2 talked for sometime. On the next day morning, she found that her father was dead. PW.2 was subjected to lengthy cross-examination, wherein she reiterated the presence of A.1 at their house on that night and so also the presence of A.2. PW.2 is a truthful witness. There is no reason for her to speak falsehood against A.1 and A.2. Her evidence is cogent and consistent. There are no material omissions and contradictions. The evidence of PW.2 is sufficient to hold that A.1 and A.2 were present at the house of deceased on the intervening night of 20/21.06.2009.

33. It is pertinent to state that Ex.P.1-report was lodged by PW.1, wherein he specifically mentioned that A.2 informed him that the deceased fell down in the bathroom and died. It is also relevant to state that when PW.15-doctor, conducted autopsy over the dead body of the deceased, he found certain ante-mortem injuries, which are mentioned in Ex.P.8-post-mortem report as well as in the evidence of PW.15-doctor. It establishes that A.2 misled the PW.1 stating that the deceased had fallen in the bathroom and died. A.2 did not give any explanation for the injuries suffered by the deceased. A.2 did not dispute her presence on the intervening night of 20/21.06.2009. A.1

also did not give any explanation with regard to his hair being found at the scene of offence. Simply both of them have denied the case of prosecution. As per Section 106 of the Indian Evidence Act, 1872, A.1 and A.2 are required to explain the facts within their knowledge. Section 106 of the Act, reads as follows:

"106. Burden of proving fact especially with knowledge – When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him."

34. It is appropriate to refer the decision rendered in **State of Madhya Pradesh vs. Ratan Lal**¹, wherein the Hon'ble Supreme Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with his innocence, the absence of such explanation itself is an additional link which completes the chain. When A.1 and A.2 were confronted with incriminating material appearing against them and examined under Section 313 Cr.P.C, simply they have stated that the case of the prosecution is false. They did not give any cogent explanation.

35. In the instant case, there is specific evidence of PW.16 that he found hair on the cot which was present at the scene of offence and the same was seized by him. Ex.P.4 is the Crime Detail Form/scene of offence panchanama, which reveals the presence of hair on the cot

¹ AIR 1994 SC 458

and also collecting those hairs during the course of preparation of said panchanama. Further, there is also evidence of PW.17 that the hairs collected were sent to Forensic Science Laboratory for examination and a report under Ex.P.12 was received. A perusal of Ex.P.12-FSL Report reveals that the hair collected from the scene of offence and the sample hair of A.1 were found to be similar in morphological characters. The evidence of PW.2-daughter of the deceased is very clear with regard to the presence of A.1 and A.2 at their house on that night. She also saw A.1 and A.2 together at Bhadrachalam temple. The call details of A.1 collected by PW.17 under Ex.P.16 reveals the communication made between A.1 and A.2. PWs.7 and 8 have seen the A.1 near the house of the deceased. Furthermore, as per Ex.P.3-lodge register (entry dated 20.06.2009) maintained by the Vijaya Lodge, Bhadrachalam, A.1 went to the said lodge on 20.06.2009 and took a folding cot on rent by paying Rs.20. The same was spoken by PW.9-lodge owner. There is also evidence of neighbours i.e, PWs.4 and 5, who also spoke about A.1 visiting the house of the deceased. A.1 is a native of Bhagavanpuram village, so also the A.2. There is no explanation from A.1 regarding his presence at Bhadrachalam on that fateful night and also at the surroundings of the house of the deceased. Thus the evidence on record makes amply clear the illegal intimacy between A.1 and A.2 and the presence of A.1 and A.2 on the intervening night of 20/21.06.2009. Nail bite marks, bruises, contusions, as indicated in the Ex.P.8-post-mortem report as well as in the evidence of PW.15-doctor, would substantiate that the deceased was strangled to death. Furthermore, A.2-wife of the deceased misled her step-son (PW.1) stating that the deceased had fallen in the bathroom, suffered

injuries and died. A.2 deliberately misled PW.1 that the deceased fell in the bathroom and died, when the actual cause of death of the deceased was due to strangulation. There is evidence of PWs.7 and 8 that they saw A.1 during morning hours of 21.06.2009 near Bhadrachalam police quarters i.e, immediately after the death of the deceased. No explanation was offered by A.1 as to what made him to go near Bhadrachalam police quarters, where the deceased had put up his family. It is also an incriminating circumstance against A.1. Further, there is specific evidence of PW.13 that A.1 had confessed the commission of offence in this case. PW.13 has no animosity to depose against A.1. There is no evidence that PW.13 had induced and compelled A.1 to confess the commission of offence. As per the evidence of PW.13, A.1 voluntarily went to him and confessed that he had illegal intimacy with A.2 and that A.1 and A.2 had caused the death of the deceased. Merely because PW.13 was visiting the police station being a member of Congress party, that cannot be a ground to discard his testimony. It is also relevant to state that the whole case of the prosecution is based on circumstantial evidence. Under these circumstances, it is appropriate to refer the decision rendered by Hon'ble Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***², wherein it was held as follows:

"When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

² AIR 1984 SC 1622

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

11. The conditions required to prove the guilty of the accused based on circumstantial evidence are also enunciated in the following cases:

"1. Hanumant Govind Nargundkar Vs. State of M.P.³.

2. C.Chenga Reddy Vs. State of A.P.⁴"

³ AIR 1952 SC 3442

⁴ (1996) 10 SCC 193

36. There is ample evidence on record to substantiate that there was illegal intimacy between A.1 and A.2. It is pertinent to state that A.1 is a native of Bhagavanpuram village, so also the A.2. They both developed illegal intimacy at their village itself. Both A.1 and A.2 were present at the house of the deceased on the intervening night of 20/21.06.2009. They were of the view that the deceased had shifted his house to avoid A.1 visiting his house. Since A.1 and A.2, wanted to continue their sexual relations uninterruptedly, they hatched a plan and successfully eliminated the deceased. The circumstances of the case, taken cumulatively, form a complete chain that there is no escape from the conclusion that in all human probability the death of the deceased was caused by A.1 and A.2 and none else. The evidence placed on record is complete and abundant to sustain the conviction and incapable of explanation of any other hypothesis than that of the guilt of A.1 and A.2. The evidence adduced by the prosecution is consistent, unerringly points towards the guilt of A.1 and A.2 and it is not inconsistent with their innocence. The prosecution has proved that A.1 and A.2 caused the death of the deceased on the intervening night of 20/21.06.2009. A.2 made an unsuccessful attempt to depict the death of the deceased as accidental. There is clear intention on the part of A.1 and A.2 to constitute the offence under Section 302 r/w 34 IPC. The prosecution has proved all the ingredients of Section 302 r/w 34 IPC beyond all reasonable doubt. The trial Court is justified in finding the A.1 and A.2 guilty of the offence under Section 302 r/w 34 IPC. There is no infirmity in the judgment of the trial Court and as such the conviction and sentence recorded against A.1 and A.2 is sustainable. Accordingly, all the points are answered against A.1 and A.2 and in favour of the prosecution.

37. In the result, the Criminal Appeal is dismissed, confirming the judgment, dated 09.02.2012, passed in S.C.No.430 of 2010 by the learned Principal Sessions Judge, Khammam. The appellants/ Accused Nos.1 and 2 were released on bail by this Court by order, dated 12.06.2017 passed in Crl.A.M.P.No.1192 of 2017. Since this Criminal Appeal is dismissed confirming the conviction and sentence recorded against the appellants/A.1 and A.2 by the Court below, A.1 and A.2 are directed to surrender before the Superintendent, Central Prison, Cherlapally, forthwith to serve the remaining period of sentence. If A.1 and A.2 fails to surrender as ordered, the Court below is directed to issue Non-bailable warrant against them and take all consequential measures.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date: 16.07.2019
scs