THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
AND
THE HONOURABLE SRI JUSTICE B.KRISHNA MOHAN

CRIMINAL APPEAL No.540 of 2015

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

The accused/appellant was found guilty for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, "I.P.C.") in Sessions Case No.271 of 2014 *vide* judgment, dated 22.5.2015, passed by the learned Principal Sessions Judge, East Godavari at Rajahmundry and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default of payment of fine, to suffer simple imprisonment for a period of six (6) months. Aggrieved by the calendar and judgment imposing conviction and sentence on 22.5.2015, the present appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.").

2. The appellant is the sole accused who faced trial for the sole charge under Section 302 I.P.C. The case of the prosecution, in brief, is that Kechchala Lakshmi, W/o.K.Latchi Reddy (hereinafter, referred to as "the deceased") married one Kadaru Rama Krishna of Gokavaram Village about 16 years prior to the incident. She was blessed with a daughter and a son during their wedlock but due to disputes, about three years prior to the incident, she separated from her husband Rama Krishna and returned to her maternal house at Busigudem Village along with her children. The children are studying in a Government School by staying in the Government Hostel where as Latchi Reddy, the accused/appellant, is also a native of Busigudem Village. Prior to his marriage with the

deceased, he married twice. His first wife died due to ill-health. His second wife deserted him and married another person. Later, he developed illicit intimacy with the deceased Kechchala Lakshmi and for the last one and a half years prior to the incident, they have been living as wife and husband by attending coolie work. About two months prior to the incident, he developed suspicion about the chastity of the deceased Lakshmi. Thereupon, disputes arose between them and the matter was placed before the village elders. The elders admonished the accused and advised the couple to lead marital life but he did not mend his attitude. On 30.7.2012, at about 3:00 P.M., the accused and the deceased returned home after attending coolie work. Again, the accused/appellant raised a dispute and an altercation took place between them. Consequently, he grew wild and picked up a curved knife (kondapodu) available in the house and furiously hacked on her throat and caused a grave bleeding injury. Immediately, she fell down in the room of their thatched house and died on the spot.

Hearing the screams of the deceased, Kathula Bhumireddy (P.W.4), who is a neighbour, rushed there and witnessed the accused coming out of the house with a blood stained knife in his hand. On seeing P.W.4, the accused stated that he hacked Lakshmi and escaped from the scene of offence with knife. Immediately, P.W.4 went to the house of Chavala Trimurthula Reddy (P.W.2), who is the brother of the deceased Lakshmi, and informed about the incident. Immediately, P.W.2 rushed to the house of the accused and found the dead body of deceased Lakshmi lying in a pool of blood. On hearing the screams of the

deceased, Kattula Mangamma (L.W.9), Chedala Puttamma (L.W.10), Budamala Venkata Reddy (L.W.11), Budamala Sanyasi Reddy (L.W.12) (not examined as witnesses), who are neighbours of the accused, learnt about the commission of the offence and saw the dead body at the scene of offence. Later, Budemala Pandamma (P.W.3), who is the sister of the deceased, Chavala Akkamma (L.W.5 - not examined), who is the paternal aunt of the deceased, Bantukula Bullamma (L.W.6 - not examined), who is the maternal aunt of the deceased, Bantukula Narasimha Reddy (L.W.7 – not examined), who is the cousin of the deceased, and Chavala Sanjeeva Kumari (L.W.8 – not examined), who is the daughter of the deceased, also came to know about the incident and saw the dead body at the scene of offence i.e., in the house of the accused. P.W.2 went to Gorla Guna Bhushanam (P.W.1), who is the Village Revenue Officer of Busigudem and informed the incident. Immediately, P.W.1 rushed to the scene of offence and went to Rampachodavaram Police Station and submitted a written report in Telugu marked as Ex.P-1.

Basing on Ex.P-1, the case was initially registered as Crime No.86 of 2012 for the offence punishable under Section 302 I.P.C of Rampachodavaram Police Station at about 7:00 A.M. on 31.7.2012 by the Sub Inspector of Police, Sakhinetipalli Police Station, who was holding additional charge as In-charge of Rampachodavaram Police Station and issued Express F.I.R.

A.B.G. Tilak (P.W.10), who is the Inspector of Police, Mummadivaram Circle, In Charge of Rampachodavaram Circle and presently, working at Rajanagaram Police Station, took up

investigation, recorded statement of P.W.1, visited the scene of offence in the presence of mediators - P.W.1 and Nakka Balasivarama Krishna (L.W.13), verified the scene of offence, got marked observation report under Ex.P-5, also got photographed the scene of offence, seized blood stained earth and controlled earth from the scene of offence. Exs.P-2 to P-4 are the photographs and M.Os.1 and 2 are the seized blood stained earth and controlled earth under a cover of observation report. He held inquest over the dead body in the presence of panchayatdars – P.W.1, Batchala Adinarayana and Singoji Satyavathi (L.Ws.14 and 15) and blood relatives – P.W.2, P.W.3, P.W.4 and L.Ws.5 to 8 and recorded their statements. During inquest, the inquest panchayatdars opined that the apparent cause of death was due to homicidal assault by the accused.

After completion of the inquest, the dead body was sent to the Community Health Centre, Rampachodavaram for conducting autopsy under the escort of WHG-1208 (L.W.19) and P.C. 726 (P.W.20) of Rampachodavaram Police Station.

Dr.N.Sudhakar Rao, Civil Assistant Surgeon, Community Health Centre, Rampachodavaram (P.W.5) held autopsy over the dead body and in turn, handed over M.O.4 – maroon colour cotton blouse, light rose colour polyester saree with black design – M.O.5, white colour cotton petticoat – M.O.6, two mud bangles of light blue and light red colour - M.O.7 were handed over to the Inspector. The Investigating Agency made every effort to apprehend the accused but found him absconding.

On 07.08.2012, at about 5:00 A.M., the accused approached P.W.1 at his house, made an extra judicial confession of the commission of offence and the same is reduced into writing by P.W.1 and produced the accused before Rampachodavaram Police Station along with the written report in Telugu at 6:30 A.M. Basing on the extra judicial confession before P.Ws.1 and 4, the accused was arrested at 7:30 A.M. on the same day. P.W.1 was re-examined and his statement was recorded by the Inspector of Police. At about 7:30 A.M. on the same day, on interrogation of the accused in the presence of two mediators – Mulavada Bharathi (L.W.16), who is the V.R.O. of Rampachodavaram, and Adabala Bapiraju (L.W.17) at the police station, the accused confessed about the commission of the offence. A mediators' report was also drafted recording his statement that he threw away the crime weapon i.e., knife into the shrubs at the outskirts of Rampachodavaram Village. In pursuance of the confession leading to discovery, the accused led the police to the shrubs at Rampachodavaram Village and shown the knife – M.O.3 used in commission of offence and the same was seized under a cover of mediators' report drafted at 9:00 A.M. on the same day. Thereafter, the accused was produced before the learned Judicial Magistrate of First Class, Rampachodavaram on the same day and remanded to judicial custody.

One K.V.Satya Narayana, Inspector of Police, Anaparthi Circle, In Charge of Rampachodavaram Police Station (P.W.8), took up further investigation and obtained Post Mortem Certificate of the deceased *vide* P.M.No.26/2012, dated 31.7.2012, wherein the doctor opined that the cause of death was due to hemorrhage

and shock as a result of injury to neck vessels associated with injury to trachea and neck muscles with sharp object.

P.W.8 forwarded the material objects i.e., clothes of the deceased, blood stained earth, controlled earth and knife to A.P.F.S.L. for analysis and report. Later, R.J.Ravi Kumar, Inspector of Police, II Town Law and Order Police Station, Rajahmundry Urban (P.W.9) took up further investigation, obtained a report from A.P.F.S.L. *vide* File No.SER/810/2012, dated 08.01.2013, wherein the F.S.L. opined that human blood was detected on the blood stained earth, clothes of the deceased and knife but group of the blood could not be detected on blood stained earth and curved knife whereas the blood on the clothes of the deceased was "O" group. Thus, based on the evidence collected during investigation, P.W.9 concluded that the appellant/accused caused injuries which led to the death of Lakshmi and filed a charge sheet before the learned Judicial Magistrate of First Class, Rampachodavaram.

The learned Judicial Magistrate of First Class, Rampachodavaram, before whom the charge sheet was filed, after following the procedure under Sections 207 and 209 Cr.P.C., committed the case to the Sessions Division, East Godavari, as the offence is exclusively triable by a Court of Sessions. In turn, the learned Principal Sessions Judge, East Godavari, after receipt of record, registered the same as Sessions Case No.271 of 2014 and tried.

3. Upon securing the presence of the accused/appellant, the learned Principal Sessions Judge, Rajahmundry, after hearing the

learned Public Prosecutor and the learned counsel for the accused, framed a sole charge against the accused/appellant for the offence punishable under Section 302 I.P.C., read over and explained to him in Telugu. He pleaded not guilty and claimed to be tried.

4. During trial, prosecution examined P.Ws.1 to 10 and got marked Exs.P-1 to P-16 besides case property - M.Os.1 to 7.

5. After closure of the prosecution evidence, the accused/appellant was examined under Section 313 Cr.P.C. explaining the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same and reported no defence evidence.

6. Upon hearing argument of both the learned Public Prosecutor for the State and the learned counsel for the defence, the trial Court found the accused guilty for the offence punishable under Section 302 I.P.C., convicted and sentenced him as stated supra.

7. Aggrieved by the calendar and judgment, the present appeal is filed on various grounds by Sri B.Parameswara Rao, learned Legal Aid Counsel.

8. The main contentions of the accused/appellant are that the learned Sessions Judge failed to appreciate the evidence in proper perspective and committed an error and did not even take into consideration the mercy pleaded by the accused/appellant, who is having two children aged 5 years and 10 years and sickly old aged mother. It is also further contended that none witnessed the alleged incident of murderous assault and that there is absolutely

no evidence to believe that the accused/appellant perpetrated the murder of Lakshmi with an intention to kill her and failed to consider the law laid down by the Apex Court in **Ramkukar Pandey Vs. State of Madhya Pradesh**[1]**,** committed a grave error in finding the accused/appellant guilty for the grave offence punishable under Section 302 I.P.C. and erroneously, sentenced him to undergo imprisonment for life and requested to set aside the same.

9. During hearing, Sri B.Parameswara Rao, learned Legal Aid Counsel, while reiterating the contentions, would draw the attention of this Court to various sentences in the evidence of the prosecution witnesses more particularly, the evidence of P.W.1 - V.R.O. regarding receipt of information by the brother of the deceased through Bhumireddy, who allegedly witnessed while the accused was coming out from the house holding a blood stained knife – M.O.3. Since Bhumireddy was constructing a house at a distance of ten yards from the scene of offence and more particularly, when the coolies were not attending to work on that day, his presence at the time of the incident is highly improbable. He further drew the attention of this Court about the delay in lodging the report – Ex.P-1 with the police as the date of incident i.e., 30.07.2012 was a rainy day. Similarly, in the evidence of P.W.3, he expressed ignorance as to why Bhumireddy was present. Latchi Reddy and his wife were quarrelling. Bhumireddy was living nearby the house of Latchi Reddy but he does not know. Therefore, there is any amount of suspicion about the presence of Bhumireddy at the time of incident and witnessing the accused

[1] A.I.R. 1975 SC 1026

while coming out from the house armed with a blood stained knife - M.O.3. Similarly, in the evidence of P.W.4 also, he made certain admissions about the construction of a house near to the scene of offence but admitted that coolies did not attend the work on the specific day. In the circumstances, the very presence of P.W.4 at the scene of offence and witnessing the incident is highly improbable and benefit of doubt is to be extended to the accused. If the evidence of P.W.4 is disbelieved, there is absolutely no other evidence to connect the accused with the offence punishable under Section 302 I.P.C., but the trial Court did not consider the evidence in proper perspective and committed grave error in finding the accused guilty and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default, to suffer simple imprisonment for six months.

10. On the other hand, learned Public Prosecutor representing the State supported the judgment in all respects while drawing the attention of this Court to the material available on record to substantiate the circumstances to draw an inference that the accused/appellant alone is the person who caused the injury, which resulted in the death of Lakshmi. Therefore, the proved circumstances completed the links in the chain of circumstances to draw an inference that the accused/appellant alone caused such an injury with an intention to kill her due to suspicion on her character and the previous incidents spoken by P.W.4 and other witnesses regarding quarrel on account of suspicion substantiates that he had intention to kill her and knowledge that the injury caused on her body with M.O.3 is sufficient to cause death in normal course of events thereby, the trial Court rightly concluded

that the accused/appellant is the person who perpetrated the murder of Lakshmi and sentenced him to undergo imprisonment, which is the minimum sentence prescribed for the offence punishable under Section 302 I.P.C. and requested to dismiss the appeal by confirming the conviction and sentence passed by the learned Principal Sessions Judge, East Godavari at Rajahmundry.

11. Considering the rival contentions and perusing the material available on record, the sole point that arises for determination is:

> ***"Whether the evidence of P.W.4 and the circumstantial evidence is sufficient to find the accused/appellant guilty for the offence punishable under Section 302 I.P.C., if not, whether the conviction of the accused/appellant for the offence punishable under Section 302 I.P.C. by the learned Principal Sessions Judge, East Godavari at Rajahmundry, sentencing him to undergo imprisonment for life and to pay a fine of Rs.10,000/- by the learned Principal Sessions Judge, East Godavari at Rajahmundry and in default, to suffer simple imprisonment for a period of six months is sustainable?"***

12. Section 374 Cr.P.C conferred a substantive right of appeal on the accused who is convicted by the trial Court and this Court, while exercising power under Section 374(2) Cr.P.C, is bound to re-appraise entire evidence to come to an independent conclusion uninfluenced by the findings recorded by the Court below and decide the legality of conviction and sentence passed by the Sessions Court. Therefore, it is the duty of this Court to re-appraise the entire evidence recorded by the Court below after giving an opportunity to both the parties, i.e., accused and the respondent, unless the Court finds manifest perversity in the calendar and judgment or such findings were recorded without evidence. Normally, this Court cannot interfere with such fact findings in appeal while exercising jurisdiction under Section

374(2) Cr.P.C. It is the sacrosanct duty of the appellate Court, while sitting in appeal against the judgment of the trial Judge, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected by the appellate Court to be undertaken and when that is not done, the cause of justice is not sub-served, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt (*vide* ***Kamlesh Prabhudas Tanna & Anr v. State Of Gujarat***[2]). Keeping the scope of Section 374(2) Cr.P.C., we would like to re-appreciate entire evidence on record to come to an independent conclusion uninfluenced by the findings recorded by the Court below.

13. **POINT**:-

Admittedly, the case of the prosecution is purely based on circumstantial evidence. When the case of the prosecution is based on circumstantial evidence, each and every circumstance which completes the chain of links is to be established and the proved circumstances must complete every link in the chain. In case of failure to prove one of the links in the chain of circumstances, conviction cannot be sustained. The Apex Court, while discussing the scope of Section 3 of the Evidence Act, more particularly, circumstantial evidence, held that in a case of murder when the prosecution is relying on circumstantial evidence, it is for the

[2] (2013) 15 SCC 263

prosecution to prove all the incriminating facts and circumstances and the circumstances which are incompatible with innocence of the accused to draw an inference of guilt and such evidence should be tested by touch-stone of law relating to circumstantial evidence laid down by Supreme Court (vide ***Syed Hakkim & another v. State***[3]).

14. Similarly, in ***G.Parshwanath v. State of Karnataka***[4], the Supreme Court is of the view that when the case of the prosecution is based on proof of circumstantial evidence on the basis of which conclusion of guilt drawn must be fully established, individual chain of circumstances must be complete pointing out the guilt of accused, all proved facts must lead to inference of guilt of the accused alone and Court has to draw distinction between primary and basic facts while appreciating the circumstances and regard must be had to common course of natural events and human conduct and finally, the facts established should be consistent only with hypothesis of guilt of accused and it does not mean that each and every hypothesis suggested by the accused must be excluded by proved facts. In ***Rukia Begum Vs. State of Karnataka*** with ***Issaq Sait and another v. State of Karnataka with Nasreen v. State of Karnataka***[5]; ***Jagroop Singh Vs. State of Punjab, Inspector of Police, Tamil Nadu Vs. Balaprasanna***[6]***, Shaik Khadar Basha v. State of Andhra Pradesh***[7], the same principle was reiterated.

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[3] 2009 Cr.L.J. page 1891
[4] AIR 2010 S.C. page 2914
[5] AIR 2011 SC page 1585
[6] 2009(1) ALD (Crl.) page 113
[7] 2009(1) ALD (Crl.) page 859 (AP)

15. The Supreme Court, in ***Trimukh Maloti Kikran v. State of Maharashtra***[8], held as follows:

> ***"In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that 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 they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence".***

The relationship between the deceased Lakshmi and the accused/appellant is not in dispute. They were living together in the house i.e., where the scene of offence is located. Similarly, homicidal death of Lakshmi is also not in dispute. More over, the evidence of the Doctor – Sri N.Sudhakar Rao (P.W.5), who conducted autopsy over the dead body, is sufficient to conclude that the death of Lakshmi is a homicidal one. During post mortem examination, P.W.5 found incised injury of 4 cms x 2 cms x 3 cms extending from the nape of neck to the right side of the neck up to the level of cervical vertebrae and incised wound of 6 x 2 x 3 cms on the front of the neck and corresponding internal injuries. While opining that the cause of death was due to hemorrhage and shock due to neck vessels injury associated with injury of trachea and neck muscles with sharp object and issued Ex.P-7.

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[8] (2006) 10 SCC 681

16. Apart from the evidence of P.W.1, who is the Inquest Panchayatdar, Ex.P-6 – Inquest Report is the positive proof that the death of deceased Lakshmi is homicidal. Therefore, there is absolutely no dispute with regard to the homicidal death of Lakshmi. Even otherwise, the material on record proved that the cause of death of Lakshmi was due to injuries as stated herein above and as mentioned in Ex.P-7 – Post Mortem Certificate and Column No.15 in Ex.P-6 – Inquest Report.

17. The next question is who caused injury on the neck resulting death of Lakshmi. It is the consistent case of the prosecution from the beginning that both Lakshmi and the accused/appellant are living in the house of the accused/appellant for the last 1 ½ years prior to the incident as wife and husband. Though the accused married twice, he lost his first wife due to ill-health and deserted his second wife and was living with Lakshmi though she was married and blessed with two children, who are studying by staying in a hostel. This fact is not disputed in the entire cross examination of any of the witnesses.

18. The incident took place on 30.07.2012 at about 3.00 P.M. when the accused/appellant and Lakshmi returned home after attending coolie work. He suddenly raised a dispute with regard to her chastity/character as he was always suspecting that she developed illicit contacts with others thereby, there was an altercation between Lakshmi and the accused/appellant. Thereupon, the accused grew wild and picked up a curved knife (kondapodu) available in the house and hacked on the throat of Lakshmi, who received a deep cut injury on her throat and

collapsed in the room, which is the scene of offence situated at the house of the accused/appellant, with profuse bleeding and died on the spot whereas Bhumireddy (P.W.4) is constructing a house at a distance of ten yards from the scene of offence and this fact is not disputed by the defence counsel before the trial Court in the cross examination of any of the witnesses, who raised a specific plea that there was no possibility of presence of Bhumireddy (P.W.4) on the date of incident since it was raining and workers did not attend the construction work. Merely because it was raining and no workers attended the construction work, presence of Bhumireddy (P.W.4) at the partly constructed house cannot be disbelieved. He being the owner of the partly constructed house can visit his house for watering, curing partly constructed building or any other work. Therefore, presence of Bhumireddy at his partly constructed house, which is ten yards away from the scene of offence, is not improbable in the natural circumstances. In the examination in chief of Bhumireddy (P.W.4), he testified that his house was under construction by the date of incident, which is ten yards away from the house of Kechchela Latchi Reddy. On one day, he went to Rampachodavaram for bank work and returned to his house under construction at 3:00 P.M. Before 3:30 P.M., he heard cries from the house of Latchi Reddy/accused/appellant. Immediately, while he was peeping through his window, he saw Latchi Reddy coming out of the house holding a knife. The said Latchi Reddy/accused/appellant told him that he killed his sister and asked him to inform the same to Trimurthulu Reddy. Accordingly, he informed the same to Trimurthulu Reddy but P.W.4 did not go to the dead body due to fear. Trimurthulu Reddy went to the dead

body and he was accompanied by Akkamma. The incident took place on 30th July and on the same day, with the help of the village elders, Trimurthulu Reddy and Narasimha Reddy, went to the police station and the police came to the village on 31st July. In the cross examination, P.W.4 admitted that the workers did not attend the work on the date of incident during afternoon. Taking advantage of the said admission, learned Legal Aid Counsel would contend that the presence of Bhumireddy (P.W.4) is unnatural but it is not a ground to disbelieve the presence of Bhumireddy (P.W.4) at his house while it was under construction. Therefore, there is no probability to prove the presence of Bhumireddy (P.W.4) at his house, which is ten yards away from the scene of offence on the specific date of incident so also, nothing was elicited to discredit his testimony as to his presence on the date and time of the offence at his partly constructed house and witnessing while the accused/appellant was coming out from the scene of offence holding a blood stained knife - M.O.3. Hence, the trial Court rightly believed his presence at his partly constructed house and witnessing while the accused was coming out from the house holding a blood stained knife - M.O.3. The finding of the trial Court with regard to the presence and witnessing while the accused was coming out from the scene of offence holding a knife cannot be disturbed even after re-appreciation of evidence by this Court being an appellate Court.

19. The learned Legal Aid Counsel further contended that there is a delay in lodging the report since the incident occurred on 30th July whereas the report - Ex.P-1 was lodged by P.W.1 with the police on 31st July but a specific explanation was given in the

evidence of P.W.2 that 30.07.2012 was a rainy day. Therefore, a complaint was lodged on the next day as per the advice of the village elders. Hence, the delay is not fatal to the case. Consequently on the ground of delay in lodging the report, the case of the prosecution cannot be disbelieved.

20. P.Ws.2, 3 and 4 consistently stated about living together by accused and the deceased in one house as wife and husband and also spoke about the suspicion of the accused on the character of the deceased, picking up quarrel etc. The earlier quarrel between the accused/appellant and the deceased Lakshmi is another strong circumstance to believe that the accused/appellant was suspecting her fidelity, which led to serious quarrel and in a sudden grave provocation during that quarrel, the accused/appellant picked up M.O.3 and hacked on her head, which resulted in her death. Death due to hack injury is not much in controversy and the evidence of P.W.4 is a strong circumstance to believe that the accused/appellant is the person who caused the injury on the neck of Lakshmi. Otherwise, the question of accused coming out from the house holding a knife and asking P.W.4 to inform P.W.2 about causing injury and killing of Lakshmi does not arise. This fact is substantiated by the evidence of P.W.4.

21. There is evidence of P.W.1 – V.R.O. regarding extra judicial confession but while considering the truth in the confession, the confession has to be tested on the touch stone of credibility.

22. Extra Judicial confession, if inspires confidence of the Court and the true version of the accused is mentioned on extra judicial confession, conviction can be recorded if corroborated by other

circumstances. But extra judicial confession itself alone cannot form the basis for conviction and such conviction is illegal. Before touching evidentiary value of extra judicial confession, the Court must look into various circumstances like prior acquaintance with the person to whom the accused gave statement and whether it is voluntary in nature.

23. Apart from the evidence of P.W.1, the accused made a confession before P.W.1 about commission of the offence, which would fall within the meaning of an extra-judicial confession. The accused and P.W.1 are known to each other, as P.W.1 is V.R.O. of village who is looking after the affairs of villagers. No enmity or animosity was attributed to P.W.1 to speak against him. Therefore, the accused, being illiterate, gave such confessional statement to P.W.1. It inspires confidence of the Court. Consequently, the Court may rely on the same and the same is another circumstance to conclude that it is the accused/appellant who caused injury on the body of Lakshmi. The same is proved by examining P.W.1.

24. The other part of the circumstantial evidence available on record is the evidence relating to confession leading to discovery after arrest of the accused/appellant. Ex.P-8 is the admissible portion of the confession statement leading to discovery and Ex.P-9 is the mediators' report drafted at the time of seizure of M.O.3. Though the recovery of M.O.3 under the cover of Ex.P-9 is not a substantive piece of evidence, it is one of the strong circumstances to connect the accused with the offence since M.O.3 was produced by the accused/appellant himself from the shrubs at the outskirts

of Rampachodavaram, which is within the exclusive knowledge of the accused/appellant and not accessible to any other person. Hence, the confession leading to discovery and recovery of M.O.3 is another strong circumstance, which completes the links in chain of circumstances to draw an inference that the accused is the person who caused injury which led to death of Lakshmi.

25. One of the circumstances relied by the prosecution is the motive. But, motive is not a substantive piece of evidence. It is only a corroborative piece of evidence to complete the links in the chain of circumstances. Here, in fact, no motive was attributed to the accused to kill the deceased. Even if the prosecution failed to prove the motive part, it is not a strong circumstance to disbelieve the entire case of the prosecution since motive is only a corroborative piece of evidence. Enmity may be one of the circumstances but that itself is not a substitute for proof.

26. In **Anil Rai v. State of Bihar**[9], the Apex Court held that the admitted position of law is that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the Courts are required to scrutinize their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity held to be a double edged weapon may be

[9] 2001(2) ALD (Cri.) page 446

instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eye witnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eye witnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly, when it is alleged as a motive for the commission of the crime cannot be made a basis to discard or reject the testimony of the eye witnesses, the deposition of whom is otherwise consistent and convincing.

27. The scientific evidence that is available on record is another piece of evidence. Ex.P-10 is the F.S.L. report and on examination of M.Os.1 to 7, A.P.F.S.L., opined that human blood was detected on item Nos.1 and 3 to 6 viz., blood stained earth, torn maroon colour cotton blouse, light pink colour polyester saree, white colour cotton petty coat and a curved knife with long wood handle. Blood on item Nos.3, 4 and 5 was detected as “O” group. Group of blood on item Nos.1 and 6 could not be detected. However, the medical evidence supports the ocular testimony of P.Ws.1, 2 and 4 that the

injuries found on the dead body of Lakshmi could be caused with sharp edged weapon like M.O.3 *vide* Ex.P-7. This is not rebutted in the lengthy cross examination of any of the witnesses. Therefore, the prosecution is able to establish the motive, which is relevant under Section 8 of the Indian Evidence Act, 1872, though it is not a substantive evidence i.e., suspicion on the fidelity of the deceased lakshmi and picking up quarrel prior to and on the date of incident.

28. Finding the accused coming out from the house holding M.O.3 while saying that he killed the sister of P.W.4 is another strong circumstance to connect the accused with the offence punishable under Section 302 I.P.C. The accused and deceased alone were living in the house where scene of offence is located. When death took place inside the house of accused, it is for him to explain as to how she died and who caused death, but no explanation was given by accused in his examination under Section 313 Cr.P.C. or no suggestion was put to any witness as to the person who caused death.

29. Besides these two circumstances, the third circumstance i.e., confession leading to discovery and recovery of weapon is sufficient to complete the links in the chain of circumstances to draw an inference from the proved circumstances that the accused alone is the person who caused the injury and responsible for the death and the proved circumstances are inconsistent with the innocence of the accused.

30. In respect of cases where the offence took place in privacy and if the accused alone was in the house, the burden is on him to explain under what circumstances the dead body was in his house. The observation of the Supreme Court in **Trimukh Maroti Kikran**[9] is relevant in this regard, which reads as under:

> ***"if an offences takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to place and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of s. 106 of the evidence act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and off erring no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer long explanation. In case of no explanation. In case if no explanation or false explanation form the accused, it would cause an additional link in chain of circumstances."***

31. Admittedly, the scene of offence is in the house of accused/appellant, which is in his exclusive possession of the accused. When the death took place inside the house where the accused and the deceased alone were living, death is in the exclusive knowledge of the accused as to who caused the death of Lakshmi. Therefore, in view of Section 106 of the Evidence Act, the

burden automatically shifts on to the accused to explain the circumstances which led to death of Lakshmi or who caused death of Lakshmi.

32. In the case of **Gajanan Dashrath Kharate v. State of Maharashtra**[10], their Lordships of Honourable Supreme Court have held that the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer explanation. In paragraph No.13, their Lordships have held as under:

> ***"13. As seen from the evidence, appellant Gajanan and his father Dashrath and mother Mankarnabai were living together. On 7-4-2002, mother of the appellant-accused had gone to another Village Dahigaon. The prosecution has proved presence of the appellant at his home on the night of 7-4-2002. Therefore, the appellant is duty-bound to explain as to how the death of his father was caused. When an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on the accused to offer. On the date of the occurrence, when the accused and his father Dashrath were in the house and when the father of the accused was***

[10] 2016 (4) SCC Page 604

found dead, it was for the accused to offer an explanation as to how his father sustained injuries. When the accused could not offer any explanation as to the homicidal death of his father, it is a strong circumstance against the accused that he is responsible for the commission of the crime."

33. In the case of **Ashok v. State of Maharashtra**[11]**,** their Lordships of Honourable Supreme Court have held that initial burden of proof is on prosecution to adduce sufficient evidence pointing towards guilt of accused. However, in case it is established that accused was last seen together with deceased, prosecution is exempted to prove exact happening of incident as accused himself would have special knowledge of incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Their Lordships have held as under:-

"12. From the study of above stated judgments and many others delivered by this Court over a period of years, the rule can be summarised as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of the accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of the Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused, etc. non-explanation of death of the deceased, may lead to a presumption of guilt."

34. In view of the law declared by the Apex Court, though initial burden is on the prosecution, when the prosecution was able to establish the scene of offence which is within the exclusive possession of the accused, the onus of proof shifts on to the

[11] (2015) 4 SCC Page 393

accused to explain but the accused did not give any explanation either by putting any suggestion to the witnesses or in his examination under Section 313 Cr.P.C. or by adducing any independent evidence. This is also another strong circumstance to believe that the accused/appellant caused the death of Lakshmi.

35. As per the judgment in ***Dhirendra Kumar v. State of Uttarakhand***[12]**,** the Apex Court has laid down certain parameters which are to be taken into consideration while deciding the question as to whether a case falls under Sections 302 or 304 I.P.C which are as follows:

a) The circumstances in which the incident took place;
b) The nature of weapon used;
c) Whether the weapon was carried or was taken from the spot;
d) Whether the assault was aimed on vital part of body;
e) The amount of force used;
f) Whether the deceased participated in the sudden fight;
g) Whether there was any previous enmity;
h) Whether there was any sudden provocation;
i) Whether the attack was in the heat of passion;
j) Whether the person inflicting the injury took any undue advantage or acted in the cruel or unusual manner.

36. The same is reiterated in the later judgment of the Apex Court in ***Lavghanbhai Devjibhai Vasava v. State of Gujarat***[13]. By applying the principles laid down in the above judgment, there was a stand by between the accused and the deceased and in the stand by, the accused hacked deceased with M.O.3, though he had no intention to kill her and that there was no previous enmity between them, but out of sudden provocation, the accused attacked the deceased in a heat of passion and

[12] 2015 SCC Online SC 163
[13] (2018) 4 SCC 329

inflicted injury. In those circumstances, the offence committed by the accused would attract the offence punishable under Section 304 Part-II I.P.C. Thus, the accused is liable to be convicted for the offence punishable under Section 304 Part-II I.P.C as he had no intention to kill the deceased.

37. The Sessions Court found the accused guilty for the offence punishable under section 302 I.P.C and sentenced him as stated above but as per the admitted case of the prosecution and the evidence on record, during quarrel ensued between the accused and the deceased suspecting her fidelity by the accused, suddenly, he picked up M.O.3 from the house and hacked on her neck. Sudden picking out M.O.3 from the house is in a heat of passion thereby, it is difficult to infer that he had an intention to kill Lakshmi but it was only in a spur of moment and heat of passion, he picked up M.O.3 and hacked Lakshmi, who succumbed to the injuries immediately. Hence, the offence committed by the accused/appellant, at best, would fall within exceptions i.e., not amounting to murder to attract an offence punishable under Section 302 Part-II I.P.C.

38. In the result, the conviction and sentence recorded by the learned Principal Sessions Judge, East Godavari at Rajahmundry *vide* judgment, dated 22.5.2015, in Sessions Case No.271 of 2014 against the appellant/sole accused for the offence punishable under Section 302 I.P.C. are set aside, instead, the appellant/sole accused is found guilty of the offence punishable under Section 304 Part-II I.P.C, accordingly convicted and sentenced to undergo rigorous imprisonment for a period of seven (7) years and to pay

fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of three (3) months. The period of remand underwent by him during investigation, trial and after conviction shall be given set off under Section 428 Cr.P.C.

39. The Criminal Appeal is, accordingly, partly allowed.

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

JUSTICE M.SATYANARAYANA MURTHY

JUSTICE B.KRISHNA MOHAN

Date : 20.5.2020
AMD

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
AND
THE HONOURABLE SRI JUSTICE B.KRISHNA MOHAN

CRIMINAL APPEAL No.540 of 2015

Date : 20.5.2020

AMD