



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

CRIMINAL APPEAL NO: 388 OF 2010

Between:

1. THOTA DURGA RAO S/o Krishna,
Muramanda Village,
Kadiam Mandal,
E.G.Dist.

...PETITIONER(S)

AND:

1. THE STATE OF A.P. Represented by its Public Prosecutor,
High Court of Andhra Pradesh, Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): P DURGA PRASAD

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.388 OF 2010

Between:

Thota Durga Rao, S/o.Krishna,
Aged about 30 years,
Muramanda Village, Kadium Mandal,
East Godavari District. Appellant

Versus

The State of AP,
Re. by Public Prosecutor,
High Court of A.P.
Amaravathi. Respondent

DATE OF JUDGMENT PRONOUNCED : 28.06.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be
marked to Law Reporters/Journals? Yes/No
2. Whether His Lordship wish to see
The fair copy of the judgment? Yes/No

A.V.RAVINDRA BABU, J



*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

+ CRIMINAL APPEAL No.388 OF 2010

% 28.06.2023

Between:

Thota Durga Rao, S/o.Krishna,
Aged about 30 years,
Muramanda Village, Kadium Mandal,
East Godavari District.

Appellant

Versus

The State of AP,
Re. by Public Prosecutor,
High Court of A.P.
Amaravathi.

Respondent

! Counsel for the Appellant : Sri A.S.K.S. Bhargav,
learned counsel, representing
Sri P. Durga Prasad, learned
Counsel.

^ Counsel for the Respondent : Sri Y. Jagadeeswara Rao,
Special Assistant, Rep.
Learned Public Prosecutor.

> Head Note:

? Cases referred:

1. AIR 2017 (SC) 804
2. AIR 2023 (SC) 193
3. 1984 (4) SCC 116
4. 2023 (AIR) SC 1464

This Court made the following:

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU****CRIMINAL APPEAL No.388 OF 2010****JUDGMENT:**

The judgment, dated 09.03.2010, in Sessions Case No.53 of 2009 on the file of the Court of VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry (for short, 'the learned Additional Sessions Judge is under challenge in this Criminal Appeal filed by the appellant.

2. Originally, the appellant herein faced charge in the aforesaid Sessions Case under Section 302 of the Indian Penal Code, 1860 (for short, 'the IPC') in alternative under Section 304-B IPC, and the learned Additional Sessions Judge, after completion of trial, found the accused guilty of the offence under Section 304(Part-II) IPC *i.e.*, culpable homicide not amounting to murder, as against the original charge under Section 302 IPC or alternatively Section 304-B IPC and accordingly convicted him under Section 235(2) Cr.P.C and, after questioning him about the quantum of sentence, sentenced him to suffer Rigorous Imprisonment for four (4) years.

3. Felt aggrieved of the same, the unsuccessful accused therein filed the present Criminal Appeal.



4. The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court, for the sake of convenience.

5. The Sessions Case No.53 of 2009 on the file of the Court of VI Additional Sessions Judge (FTC), East Godavari District, Rajahmundry arose out of committal order in PRC No.10 of 2008 on the file of the Court of VII Additional Judicial First Class Magistrate, Rajahmundry (for short, 'the learned Magistrate') pertaining to Crime No.55 of 2007 of Kadiyam Police Station.

6. The State, represented by the Inspector of Police, Rajahmundry Rural filed charge sheet in the aforesaid Crime alleging the offence under Section 302 IPC against the accused. The case of the prosecution, in brief, according to the averments in the charge sheet, is as follows:

(i) The accused is resident of Muramanda Village and Kadiyam Mandal. He is a lorry driver by profession. Thota Dhanalakshmi (hereinafter referred to as 'the deceased'), aged about 28 years, is the wife of the accused. The deceased is the daughter of the *de-facto* complainant namely Sana Satyanarayana (LW.1), who is also a lorry driver. Sana Sankaramma *i.e.*, LW.2 is the wife of *de-facto* complainant and mother of the deceased. Sana



Sreenu (LW.3) and Sana Bhavani Sankar (LW.4) are the brothers of the deceased.

(ii) Five years prior to the date of occurrence *i.e.*, on 16.03.2007 LW.1 performed the marriage of the deceased with the accused. At the time of marriage, he paid Rs.40,000/- towards dowry to the accused and also presented traditional and customary presentations. Out of the wedlock, the deceased and the accused were blessed with two children. The accused is habituated to drinking and spending money lavishly. He was also harassing and beating the deceased whenever she questioned about his behavior. About eight months ago, accused purchased a lorry borrowing amount from one finance company. At the time of the said transaction, the *de-facto* complainant gave Rs.20,000/- to the accused on his request. Accused used to go on the lorry and return to his house irregularly in a drunken state. Whenever the accused comes in drunken state, he used to abuse the deceased and assault her. The deceased, unable to bear the harassment and ill-treatment of accused, on one occasion, made an attempt to commit suicide. Accused used to demand the deceased to divorce him. The deceased brought the facts to the notice of her father and her father brought the facts to the notice of elders namely Bhogireddi Suribabu (LW.6), Namala Rama Sankaram (LW.14),



Gunnam Veerraju (LW.15), Chunduri Venkateswara Rao (LW.16) and Vattikuti Janakiramayya (LW.17). During enquiry by the elders, accused raised counter allegations stating that the deceased used to defy and retaliate him and that she should change her behaviour. However, they advised the accused to change his behavior towards the deceased and also advised the deceased to be cordial towards her husband. Ten days prior to 16.03.2007, accused sold away his lorry for Rs.1,20,000/- through his friend Chittimenu Venkataramana (LW.10). LW.10 received Rs.30,000/- from the broker and gave Rs.19,500/- to the deceased and paid Rs.10,000/- to the accused. Accused demanded the deceased to give away Rs.19,500/- to him to purchase another lorry with that amount and the amount received by him after securing the loan from some finance company. The deceased and the *de-facto* complainant did not accept that proposal. In this connection, there was a quarrel between accused and the deceased.

(iii) While the matter stood thus, on 16.03.2007 at about 01:00 a.m., LW.13 – Tarajula Pushpa, the junior maternal aunt of the accused and LW.8 – Yerramsetti Veerababu attended the house of LW.1 at Vemagiri and informed him that the deceased is seriously ill. Then, LW.1 along with his neighbourers *i.e.*, LW.6



and LW.7 went to the house of the accused at Muramanda. They all noticed the dead body of the deceased lying in the backyard of the house of the accused. In the day break, they noticed injuries on the dead body of the deceased. Enquiries made by LW.1 disclosed that on 16.03.2007 night, there was a quarrel between the deceased and the accused and in view of the presence of injuries on the body of deceased, LW.1 concluded that the accused committed murder of his daughter. On 17.03.2007 at about 11:00 a.m. LW.1 lodged a report at Kadiyam Police Station. LW.29, SI of Police, Kadiyam Police Station registered the same as a case in Crime No.55 of 2007 for the offence under Section 302 IPC and investigated into. On 17.03.2007, he examined LW.1 – Sana Satyanarayana, LW.2 – Sana Sankaramma, LW.3 – Sana Sreenu, LW.4 – Sana Bhavani Sankar, LW.5 – Kakileti Satyavathi, LW.6 – Bhogireddi Suri Babu, LW.7 – Bhogireddi Adilakshmi, LW.8 – Yerramsetti Veerababu, LW.9 – Kurada Vasantha Rayudu, LW.10 – Chittimenu Venkata Ramana, LW.11 – Putchala Naga Satyanarayana and LW.12 – Lanka Simhadri Mohan Kumar and recorded their detailed statements. He inspected the scene of offence in the presence of mediators *i.e.*, Thokala Satyanarayana Murthy – LW.20 and Narsipudi Chakradhara Rao – LW.21 and prepared observation report. LW.12 took photos of the dead body



of the deceased at the scene of offence. During investigation, LW.5, neighbourer to the house of the accused, spoke to the behaviour of the accused that on 16.03.2007 at 11:00 p.m. accused brought the deceased using criminal force from their house into the backyard by squeezing her neck and hit the head of the deceased towards the trunk of the coconut tree and as such the deceased fell down and died. Accused told her that the deceased died due to fits. LW.5 did not disclose to the accused that she witnessed the occurrence due to fear towards the accused but she informed to the parents of the deceased after their arrival to the scene of occurrence that she witnessed the occurrence. Kakileti Satyanarayana – LW.19, husband of LW.5, also witnessed the occurrence.

(iv) As the death of the deceased took place within five years from the date of her marriage, the Sub-Inspector of Police sent the requisition to the Mandal Executive Magistrate, Kadiyam to hold inquest over the dead body of the deceased. Later, he referred the dead body of the deceased to the District Hospital, Rajahmundry for conducting autopsy over the dead body of the deceased by a team of doctors. The dead body of the deceased was shifted to the Government Hospital, Rajahmundry. On 18.03.2007, LW.30 – Inspector of Police, Rajahmundry Rural took



up the investigation after verifying the investigation done by LW.29 – SI of Police. He examined Kurada Vasantha Rayudu – LW.9 and Putchala Naga Satyanarayana – LW.11, local private medical practitioner, to prove that the said private medical practitioner attended the house of the accused, examined the deceased in the backyard of his house and declared her dead due to injuries on the person of the deceased. On 18.03.2007, the Mandal Executive Magistrate held inquest over the dead body of the deceased at Mortuary of the District Hospital, Rajahmundry and the inquest report was drafted and attested by Thokala Satyanarayana Murthy – LW.20 and Tripurari Gandhi – LW.22. The accused remained absconded since the time of commission of offence and surrendered before LW.20 – VRO on 20.03.2007 at his residence and made his detailed confessional statement of murder of the deceased committed by him. LW.20-VRO handed over the accused to LW.30 - Inspector of Police, Rajahmundry Rural. After perusing the report of LW.20, LW.30 interrogated the accused in the presence of mediators *i.e.*, Narsipudi Chakradhara Rao – LW.21 and Jakka John – LW.24. Before them also the accused made a detailed confessional statement. During the said confession before the mediators, the polyester shirt found on the person of the accused which was worn by him was seized at the time of offence.



Top button of the shirt was missing and the shirt is having irregular folds. The accused revealed that during the struggle his wife held the shirt at neck and squeezed the shirt during which the button was cut off from the shirt and fell down. The shirt was seized under the cover of mediators report, attested by the said mediators. Inspector of Police arrested the accused and produced him before the Court for remand. LW.27 – Dr. Y. Rajani Kumari and LW.28 – Dr. R. Madhavi, Civil Assistant Surgeons, District Hospital, Rajahmundry as team of doctors held autopsy over the dead body of the deceased and issued postmortem certificate opining that the deceased died due to asphyxia as a result of throttling and that the injuries are ante-mortem in nature. The investigation reveals that the accused committed murder of the deceased at his house on 16.03.2007 night at 11:00 p.m. Hence, the charge sheet.

7. The learned VII Additional Judicial First Class Magistrate, Rajahmundry took cognizance of the charge sheet and numbered it as PRC No.10 of 2008. After appearance of the accused and after completing the formalities under Section 207 Cr.P.C, PRC No.10 of 2008 was committed to the Court of Session and thereafter it was numbered as S.C. No.53 of 2009 and made over to the Court of



learned Additional Sessions Judge for disposal in accordance with law.

8. After appearance of the accused before the learned Additional Sessions Judge (Fast Track Court), Rajahmundry, charge under Section 302 or alternatively under Section 304-B IPC was framed and explained to the accused in Telugu, for which he pleaded not guilty and claimed to be tried.

9. During the course of trial, before the Court below, on behalf of the prosecution, PW.1 to PW.18 were examined and Exs.P-1 to P-18 and MO.1 were marked. During the course of cross-examination of PW.1, Ex.D-1 was marked.

10. After closure of the evidence of the prosecution, accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which he denied the same. Accused stated that he has defence evidence and in furtherance got examined DW.1 and further examined himself as DW.2. Through the examination of DW.1, Ex.X-1 was marked.

11. The learned Additional Sessions Judge, on hearing both sides and after considering the oral and documentary evidence on



record, found the accused guilty of the offence under Section 304 (Part-II) IPC which is culpable homicide not amounting to murder as against the original charge under Section 302 IPC or in alternative 304-B IPC. The findings of the learned Additional Sessions Judge in this regard are that the accused committed the offence without pre-meditation in a sudden fight in the heat of passion upon sudden quarrel and without unusual manner and that he had no intention to murder the deceased but he had knowledge that by such an act accused is likely to cause death of the deceased. While holding so, the learned Additional Sessions Judge found guilty of the accused under Section 304(Part-II) IPC, as above, and after questioning him about the quantum of sentence, sentenced him to suffer Rigorous Imprisonment for four years.

12. Felt aggrieved of the same, the un-successful accused filed the present Appeal challenging the judgment of the learned Additional Sessions Judge in convicting him under Section 304(Part-II) IPC.

13. As against the findings of the learned Additional Sessions Judge, exonerating the accused of the original charge, the State did not file any Cross-Appeal. So the scope of the Appeal is limited



to the effect that whether the prosecution before the Court below proved the offence under Section 304(Part-II) IPC against the accused.

14. Now, in deciding this Criminal Appeal, the points that arise for consideration are:

- 1) Whether the prosecution before the Court below proved that on 16.03.2007 at about 11:00 p.m. accused caused homicidal death of the deceased by strangulating her to death beyond reasonable doubt?
- 2) Whether there are any grounds to interfere with the judgment of the learned Additional Sessions Judge?

15. **POINT Nos.1 & 2:** PW.1 before the Court below is the father of the deceased and he is no other than the *de-facto* complainant. PW.2 is the mother of the deceased and wife of PW.1. PW.3 is the so called witness for the attack made by the accused on the deceased but she did not support the case of prosecution. PW.4 was examined to prove the disputes between the accused and the deceased. Prosecution examined PW.5 to speak to the fact that he came to know about the death of the deceased through the accused that the deceased died due to fits. PW.6, the mediator, did



not support the case of prosecution. The prosecution examined PW.7 to speak about the so called disputes between the deceased and the accused. PW.8 is the Private Medical Practitioner, who examined the deceased at the request of the accused and found her dead. PW.9 is the photographer who took photographs over the dead body of the deceased during the course of investigation. PW.10 did not support the case of prosecution. PW.11 was examined by the prosecution to prove the disputes between the accused and deceased. PW.12 is husband of PW.3 who did not support the case of prosecution. PW.13 is the mahazar witness before whom accused is alleged to have made an extra judicial confession under Ex.P-9. PW.14 was the mediator in whose presence the accused gave confession under Ex.P-10 (admissible portion in the arrest mahazar) after extra judicial confession in Ex.P-9. PW.15 is the Mandal Executive Magistrate, who conducted inquest over the dead body of the deceased. PW.16 is the Medical Officer who conducted post-mortem examination over the dead body of the deceased. PW.17 is the SI of Police, who registered the FIR on the report lodged by PW.1 and took up part of investigation. PW.18 is the Inspector of Police.



16. Accused examined DW.1, Professor in Neurology, Rangaraya Medical College, Kakinada to speak about the ill-health of the deceased. Further the accused examined himself as DW.2 in furtherance of his defence.

17. Coming to the evidence of PW.1, his evidence on material aspects is that he is the father of deceased – Dhana Lakshmi. Accused is his son-in-law. The marriage of the deceased with the accused took place in the year 2002. At the time of marriage, he paid Rs.40,000/- towards dowry and sare samans. Accused is a lorry driver. They lived happily for three years and during their wedlock, they were blessed with two daughters. Accused used to beat the deceased in drunken state and on that he and LW.6-Suribabu went to the house of the accused and had mediation and elders therein admonished the accused but he did not follow the advice of the elders. The above said mediation took place three months prior to the incident. Accused purchased a lorry with the amount of Rs.20,000/- given by him, eight months prior to the occurrence. He made the said payment to accused as the accused is abusing and beating the deceased. Two or three months thereafter, accused sold away the lorry and intended to purchase another lorry for which he and the deceased advised him not to



purchase lorry and instead invest that amount by way of savings. On 16.03.2007 at about 01:00 a.m., LW.8-Veerababu and another came to him and informed that the health of the deceased was not good. Then, they went to the house of the accused and found the dead body of the deceased backside of the house. He enquired the accused and he told him that the deceased fell down while proceeding to attend calls of nature. On the next day morning, he observed injuries on the neck of the deceased and he enquired the house owners of the accused *i.e.*, LW.5 - K. Satyavathi and LW.19 - K. Satyanarayana, who told him that at 11:00 p.m. of the previous night they heard cries from the house of the accused. Then he tried to report the incident to the Police but parents of the accused obstructed him in the morning. So, he lodged the report at about 10:30 or 11:00 a.m. Ex.P-1 is his statement before the Police. The deceased used to inform him through phone or when she comes to his house that the accused used to harass her for purchase of lorry.

18. PW.2, the mother of the deceased and the wife of PW.1, deposed about the performance of the marriage between the accused and deceased and presentation of Rs.40,000/- towards dowry and sare saman etc., She further deposed about the fact



that both the accused and deceased were blessed with two daughters. Insofar as the incident in question is concerned, she deposed that on the demand made by the accused, they paid Rs.20,000/- for purchase of a lorry. Accused purchased the lorry and sold it later. Sale proceeds of Rs.20,000/- were with the deceased and accused used to demand for that amount to purchase another lorry. They objected for purchase of another lorry as such accused raised disputes. Three months prior to the occurrence, deceased informed her that the accused used to harass her by beating and abusing her for purchase of lorry with that amount. PW.1, herself and LW.10-Venkata Ramana went to the house of the accused and raised the issue before elders. The deceased intimated to them that the accused is beating her and abusing her repeatedly and she intends to commit suicide. They advised her not to do so. On 16.03.2007 at about 01:00 a.m. LW.13 - Pushpa and LW.8 - Veerababu came to their house and informed them that the deceased was suffering with illness. Then, she, PW.1 and others went to the house of accused and they were informed that the deceased fell down due to weakness. They did not view anything on that night but observed that the dead body was lying on the backside of the house. LW.5-Satyavathi and LW.19-Satyanarayana, owners of the house of the accused, are



residing by the side of the house of the accused. Accused, his mother, his maternal aunt and others were present there. They came to know through Satyavathi that they heard cries from the house of the accused at about 11:00 p.m. After sunrise they found 10 injuries on the dead body of the deceased and they suspected that the accused was responsible for the death of the deceased. Police examined and recorded her statement. PW.1 lodged the report with the Police at 11:00 a.m. on the next day.

19. PW.3, the so called owner of the house, in which the deceased and accused used to reside, did not support the case of the prosecution. She was also cited by the prosecution as a witness who witnessed the occurrence. Her evidence is that she knows the accused, his wife *i.e.*, the deceased and their children. They used to reside as tenants in their house since one month prior to the occurrence. After death of the deceased, she came to know about her death but she did not witness anything. Accused and deceased used to live cordially. Prosecution got declared her as hostile as she did not support the case of prosecution and during her cross-examination by learned Additional Public Prosecutor, she deposed that she did not state as in Ex.P-2. She admitted in cross-examination that after the accused knocked her



door, she opened the door and went towards backside of the house and observed the deceased lying on the floor. She did not observe whether she was alive or dead by then. Then, she, accused and deceased alone were there. By the time of arrival of PW.1 and PW.2, she was present and talked with them. While she was present there, doctor came and examined the deceased and declared her dead. She denied that she stated before Police as in Ex.P-2 and she is deposing false.

20. Coming to the evidence of PW.4, he supported the case of the prosecution. According to him, on 16.03.2007 at 01:00 a.m. one Pushpa – LW.13 came to the house of PW.1 and informed that the health of the deceased was not good as such all of them went in an auto to the house of the deceased and observed the death of the deceased on the backside of her house. They found injuries on the neck, body and on legs of the deceased. Further, three months prior to the occurrence, accused and deceased lived cordially and subsequently disputes took place between them. He admonished the accused as he used to beat the deceased but there was no change in his attitude. He came to know through deceased that the accused used to beat her in drunken state.



21. Turning to the evidence of PW.5, he supported the case of prosecution. According to him, accused used to work as a lorry driver and subsequently he purchased the lorry. Initially, the accused resided in the house of Gadde Veerraju as tenant and subsequently shifted to the house of PW.3. Accused used to take alcohol. Accused and deceased were disputing with each other. On 16.03.2007 at about 11:00 p.m. while he was sleeping, aunt of the accused informed him that the deceased was not feeling well and accused informed him that the deceased died due to fits. He along with the aunt of the accused went to PW.1 and informed the incident to PW.1 from there he went to PW.2 to intimate the same. Meanwhile, PW.2 started from that village and he returned to Muramanda village. He observed the injuries on the dead body of the deceased.

22. PW.6 did not support the case of prosecution. According to him, he never acted as mediator and never admonished the accused. During his cross-examination by the learned Additional Public Prosecutor, he denied that he stated before Police as in Ex.P-3 (161 Cr.P.C statement).

23. Turning to the evidence of PW.7, the so called elder, his evidence is that once he admonished the accused when he came in



a drunken state. When the deceased questioned the accused for profits on lorry, accused stated that he did not receive any amount. Accused purchased the lorry eight months prior to the incident and he sold the same subsequently with the consent of the deceased. They received Rs.30,000/- towards sale consideration. Accused paid Rs.20,000/- to the deceased and kept Rs.10,000/- with him. Though the accused intended to purchase another lorry, PW.1 did not accept for the same and the accused intended to do money lending business with that amount. Accused and the deceased disputed for lorry fare. Then, he, one Chunduri Venkateswara Rao - LW.16, along with PW.1 and PW.2 and brother of deceased admonished the accused three months prior to the incident. Thereafter, the accused used to behave properly.

24. Coming to the evidence of PW.8, Private Medical Practitioner, resident of Muramanda Village, he knows the accused, who is also resident of Muramanda Village. On 16.03.2007 at about 11:00 p.m. accused and Pushpa - LW.13 came to his house and informed that the deceased was attacked with fits. Then they went to the house of the accused and found the deceased lying on the backside of the house. He examined the



deceased and declared her dead. He did not notice any injuries on the dead body of the deceased.

25. PW.9 is the photographer, who took photographs over the dead body of the deceased and according to him at the request of Kadiyam Police he went to Muramanda Village and photographed the dead body of the deceased. Ex.P-4 is three photos along with corresponding negatives.

26. PW.10 did not support the case of prosecution. Accused is her sister's son. According to her, accused and deceased had cordial relations. She does not know anything about the disputes. On the next day morning of the incident, she came to know about the death of the deceased and went to see her dead body. Prosecution got declared her hostile. During her cross-examination, she denied that she stated before Police as in Ex.P-5 and she is deposing false.

27. Prosecution examined PW.11, the elder, who deposed that three months prior to the occurrence, disputes took place between the accused and deceased. Then, he and PW.7 admonished the accused but he did not heed their words. Accused was having lorry in his wife's name. He is having bad habit to drink alcohol.



28. PW.12, who is no other than the husband of PW.3, did not support the case of prosecution though he testified that the accused and deceased resided in their house as tenants. Prosecution got declared him as hostile and during his cross-examination he denied that he stated before Police as in Ex.P-6 but he admitted in cross-examination that about 01:00 a.m. during night, his wife went to the scene and he reached there at 02:00 a.m. by which time the deceased died. He does not know how the deceased died and did not enquire about her cause of death. He denied that he was deposing false.

29. PW.13 is the VRO of Muramanda Village before whom accused is alleged to have made an extra judicial confession – Ex.P-9. Further, he was mahazar witness for the inquest report and also observation of the scene of offence.

30. PW.14 is mahazar witness to the arrest of the accused when PW.13 produced the accused before the Inspector of Police. Their evidence will be discussed hereafter.

31. PW.15 is the Mandal Executive Magistrate who supported the case of the prosecution with regard to conducting of inquest. According to her, she worked as Mandal Executive Magistrate,



Kadiyam from 2003 to February, 2009. On 18.03.2007 she held inquest over the dead body of the deceased. She examined PW.1, PW.2 and two others. Ex.P-11 and Ex.P-12 are the statements of PW.1 and PW.2. Ex.P-8 is the inquest panchanama.

32. PW.16 is the Medical Officer who conducted post-mortem examination over the dead body of the deceased and issued postmortem certificate. Her evidence, in substance, is that on 18.03.2007 she received a Memo from Mandal Executive Magistrate, Kadiyam to conduct post-mortem examination over the dead body of the deceased and accordingly she along with one Dr. Y. Rajani Kumari – LW.27 conducted post-mortem examination over the dead body of the deceased from 03:15 to 05:15 p.m. and found the following external injuries:

- “1. Discoid bruise present on the right side of the neck transverse parallel to the mandibular border extending on to the midline measuring 1" in length. Bluish black in colour between thyroid cartilage and mandible border on right side with skin raised.
2. Confluent bruising present on the left side of the neck below the angle of mandible extending to midline transverse 2" x 2" size bluish black with skin raised.
3. Confluent bruising present on to left side of the neck below injury No.2 parallel to it present above the



supraclavicular area 2" x 2" size bluish black in colour with skin raised.

4. Discoid bruise present on the left side of the neck just lateral to the external injury No.2, 1" in length bluish black in colour with skin raised.

5. Discoid bruise present on the left side of the neck posterior lateral to the external injury No.4, below the left ear 1" in length. Bluish black in colour with skin raised.

6. Diffuse bruise on the back of the head in occipital area.

7. Diffuse bruise on the back of the right side below the scapular with skin peeled off. Bluish black in colour.

8. Bruise present on right ankle lateral side. Bluish black with skin raised. 2" x 2" in size.

9. Bruise present on left ankle lateral side. Bluish black with skin raised. 2" x 2" in size."

She further deposed that the cause of death, according to the best of her knowledge, was asphyxia as a result of throttling and the injuries are ante-mortem in nature. Ex.P-13 is the post-mortem certificate.

33. PW.17 is the Sub-Inspector of Police, who registered the FIR basing on Ex.P-1 report. He further deposed that he proceeded to scene of offence after registration of the FIR and in the presence of punch witnesses prepared observation report and further rough sketch and he sent a requisition to PW.15 to conduct inquest and during investigation he examined PW.1, PW.2, PW.3, PW.4, PW.5,



PW.6, PW.7, PW.8, PW.9, PW.10 along with three others and recorded their statements under Section 161 Cr.P.C. PW.3, PW.6 and PW.10 stated before him as in Ex.P-2, Ex.P-3 and Ex.P-5. Later, CI of Police returned from bandobasth duty and took up further investigation.

34. PW.18 is the Inspector of Police who deposed that on 18.03.2007 he took up further investigation, proceeded to the scene of offence and examined PW.1 to PW.10 and three others. He was also present by the time of conducting inquest by PW.15 at the District Hospital, Rajahmundry. At the scene of offence, he further examined PW.11 and PW.12 and four others and recorded their statements under Section 161 Cr.P.C. PW.12 stated before him as in Ex.P-6. He further deposed that on 20.03.2007 at 12:00 noon while he was present at Kadiyam Police Station, PW.13 - VRO of Muramanda Village came to Kadiyam Police Station along with the accused and presented Ex.P-9 - confessional statement of accused recorded by him. On perusing Ex.P-9, he kept the accused in surveillance. Then, he secured PW.14 and another mediator and interrogated the accused in the presence of mediators and accused confessed his guilt and handed over MO.1 torn shirt stating that he wore the same at the time of commission



of offence. Ex.P-10 is the admissible portion of the mediators report. On the next day, he sent the accused to remand. After receipt of Ex.P-13 - post-mortem report and after completion of investigation, he filed charge sheet.

35. As pointed out accused examined DW.1 and got himself examined as DW.2. The evidence of DW.1 is that he was working as Professor in Neurology, Rangaraya Medical College, Kakinada. Deceased - Thota Dhanalakshmi was admitted in his ward on 06.05.2006 and she was discharged on 20.05.2006. She was treated for her head-ache, vomitings and blurred vision with history of abnormal behavior. During investigation, they found some abnormality in her brain, tuberculosis, neurocysticercosis and there is possibility to get fits with the above complications. There is also a possibility of over muscle activity if she gets fits. Ex.X-1 is case sheet.

36. The evidence of DW.2, who is no other than the accused, is that the deceased - Dhanalakshmi is his wife. They have two daughters aged 5 and 3 respectively. Elder daughter is with her and younger daughter is now with his in-laws. Five years prior to the death of the deceased, his marriage with the deceased was performed. Two months thereafter he came to know about the ill-



health of the deceased *i.e.*, fits. They loved each other and there were no disputes between them. One year after the marriage, elder daughter's birth took place. Since then, the deceased was suffering with severe fits. She used to fell down and saliva used to come from her mouth with protruding eyes. They used to take the deceased for treatment at Dr. Satyanarayana in Murmanda village. They continued the medicines for her disease. His in-laws also used to visit his house to enquire about the health of the deceased. He is a lorry driver. He used to visit the house once in a week or fortnight, while attending his duty. Deceased was treated at Government General Hospital, Kakinada to cure her fits. At the time of discharge of his wife from GGH, Kakinada doctors advised and prescribed medicines to control the fits and further warned that there is a life risk to the deceased in case they discontinue to use the medicines. Though he was no way concerned with the death of deceased, a false case is foisted against him by his in-laws. Next day morning after the occurrence, he was arrested by the Police. He never harassed the deceased and was not in the habit of taking alcohol.

37. Sri A.S.K.S. Bhargav, learned counsel, representing Sri P. Durga Prasad, learned counsel for the appellant, would contend



that PW.3, the so called direct witness, and the so called witness who heard the cries from the house of the accused, and further the husband of PW.3 *i.e.*, PW.12 did not support the case of the prosecution. PW.6 and PW.10 also did not support the case of prosecution. There was no direct evidence to the effect that the accused committed murder of the deceased. None of the witnesses testified that the accused killed the deceased. PW.1 and PW.2 were not direct witnesses to the occurrence. The prosecution pressed into service the so called extra judicial confession – Ex.P-9 through PW.13 with a fabricated version as if accused confessed the guilt before PW.13. Accused had no reason to confess the guilt before PW.13. As there was no evidence collected by the Investigating Officer, Investigating Officer pressed into service Ex.P-9 through PW.13. In fact, accused was taken into custody on 17.03.2007 itself as such extra judicial confession of the accused cannot be believed. PW.13, the VRO, was the stock witness to the Police. Extra judicial confession is a very weak piece of evidence, based on which conviction cannot be sustained. The Court below based on certain circumstances, which were held to be proved, and basing on the extra judicial confession found favour with the case of prosecution. The learned Additional Sessions Judge did not analyze the evidence with care and caution and erroneously



convicted the accused. Though there was no dispute about the death of the deceased in the backyard of the house of the accused, but the death was due to the fact that the deceased suffered with fits during the fateful night, fell down and received injuries. In furtherance of his defence, accused examined DW.1, the doctor, who treated the deceased when she was admitted in Rangaranga Medical College, Kakinada with the complaint of fits. Further, accused examined himself as DW.2 explaining the ill-health of the deceased. The Court below without analyzation of the evidence in proper perspective and without any convincing evidence erroneously recorded an order of conviction under Section 304(Part-II) IPC. Prosecution failed to prove the case against the accused before the learned Additional Sessions Judge beyond reasonable doubt. The defence of the accused is that there was possibility for the fracture of hyoid bone due to muscle over activity when the deceased suffered with fits. So she would have fallen on hard surface. So, the possibility of the deceased receiving injuries cannot be ruled out on account of her fits. The Medical Officer mistook the injuries as ante-mortem and erroneously gave a finding that the death was due to asphyxia due to throttling. The evidence of the Medical Officer, who was examined by the prosecution, is not at all convincing. There was no proper



appreciation of evidence by the learned Additional Sessions Judge and it is a fit case to extend the benefit of doubt to the accused, as such the Criminal Appeal is liable to be allowed.

38. Sri Y. Jagadeeswara Rao, learned Special Assistant, representing learned Public Prosecutor, would contend that the medical evidence was absolutely in favour of the case of the prosecution. The deceased received as many as 10 ante-mortem injuries. Injuries found on the head of the deceased were on account of the fact that the accused hit the head of the deceased to a tree. With regard to findings of the Court below when the quarrel took place between the accused and the deceased and when the deceased caught hold of the collar of the accused, accused grew wild and pressed the neck of the deceased and hit her head to a tree as such she died. The presence of the accused throughout the night along with the deceased in the house was not in dispute. The cause of death was due to asphyxia due to throttling. The injuries received by the deceased were also evident from Ex.P-4 photographs and negatives. No other person had any access to the house of the accused. Accused had to explain how the deceased died. He canvassed a theory before the Private Medical Practitioner in the midnight that the deceased died due to



fits. The private medical practitioner examined the deceased and found her dead. As it was night, he could not notice any injuries then. Even PW.1 and PW.2 noticed no injuries after their arriving to the scene because it was night and during the morning only they could notice the injuries on the dead body of the deceased. The chain of circumstances established by the prosecution as regards the fact that the deceased and accused were alone in the house during the entire night unerringly pointed out the guilt against the accused. Accused fabricated a theory that the deceased died due to fits, which is proved to be false with the medical evidence. Apart from this, accused made Ex.P-9 – extra judicial confession before PW.13, which was found to be convincing by the Court below. The crucial aspects in Ex.P-9 had corroboration from the evidence let in. Various circumstances that were established by the prosecution coupled with Ex.P-9 would prove the offence alleged against the accused. The Court below only after proper appreciation of the evidence on record could found the accused guilty of the culpable homicide not amounting to murder, as such the Appeal is liable to be dismissed.

39. In the light of the above contentions advanced, firstly, this Court would like to deal with as to whether the death of the



deceased was homicidal, as canvassed by the prosecution or on account of the ill-health of the deceased, as canvassed by the accused.

40. Coming to the evidence of DW.1, who was examined by the accused in support of his defence, what he deposed was that the deceased was admitted in the hospital on 06.05.2006 and discharged on 20.05.2006 and she was treated for her head-ache, vomitings and blurred vision with history of abnormal behavior. It is no doubt true that the deceased was suffering with fits, in view of the evidence of DW.1 and coupled with Ex.X-1. The incident in question was happened on 17.03.2007. The treatment of the deceased in the said hospital was from 06.05.2006 to 20.05.2006 *i.e.*, much before the offence in question. So, the evidence of DW.1 is not useful to the accused to contend that the deceased died due to fits.

41. Turning to the evidence of DW.2, who is no other than the accused, he did not traverse the case of the prosecution that during night of 16.03.2007 he was present along with the deceased in the house. PW.1, PW.2 and even PW.3, the hostile witness, categorically testified the presence of the accused in the house during the fateful day. Their evidence was not challenged



suggesting any theory that the accused was not physically present when the deceased died. On the other hand, though accused stepped into the witness box as DW.2 did not deny his presence during the night of 16.03.2007. So, the evidence of DW.2 is such that he used to treat his wife with love and affection but the deceased was suffering with ill-health *i.e.*, fits and she was treated with Dr. Satyanarayana in Muramanda village and at the time of discharge from the Government Hospital, the doctors warned that there is a life risk to the deceased in case she discontinues to use the medicines. So, the substance of the evidence of DW.2 is silent for obvious reasons as to what happened during the night of 16.03.2007. There is no dispute about the evidence of PW.3 that accused knocked her door during night and took her to the backyard of his house. Apart from this, there is no challenge to the evidence of the Private Medical Practitioner *i.e.*, PW.8 that on 16.03.2007 at 11:00 p.m. accused and PW.10 came to his house, informed that the deceased was attacked with fits and then he went to the house of the accused and he observed the deceased lying on the backside of the house. So, the presence of the accused at the time of death was not in dispute. So, accused as DW.2 did not deny his presence at the time of death. It is not the evidence of DW.2 absolutely that he does not know at what time the deceased



suffered with fits. Accused had no explanation how the dead body of the deceased was found on the backyard of the house. It is not his evidence that during midnight he woke up, searched for the deceased and found her lying in the backyard of his house with injuries and as such he intimated the same to PW.3 or the Private Medical Practitioner. The accused got suggested to PW.1 during cross-examination that he did not know how the deceased died but was under the impression that it was due to fits. Hence, basing on the evidence of DW.1, it cannot be held that the cause of the death of the deceased was due to fits.

42. There is categorical evidence of PW.1 and PW.2 that though they could not notice any injuries during the midnight of 16.03.2007 but after coming to know about the incident through PW.3, that she heard cries from the house of the accused during midnight, they could find injuries on the dead body of the deceased during day time *i.e.*, next day. Though PW.3 and her husband did not support the case of prosecution but the fact *i.e.*, proved by the prosecution is that the accused knocked the doors of PW.3 and took her to the backyard where the dead body was lying. So, according to the evidence of PW.1 and PW.2, they found injuries over the dead body of the deceased on the next day. Even



Ex.P-4 photographs took by PW.9 discloses about the injuries on the neck of the deceased. To the evidence of PW.9 that he photographed the dead body, there is no challenge and accused got reported nil cross-examination. So, the photographs under Ex.P-4 coupled with the negatives would reveal the injuries received by the deceased on her neck. As seen from the inquest report under Ex.P-8, coupled with the evidence of Mandal Executive Magistrate *i.e.*, PW.15, during course of inquest, they have noted 4 injuries *i.e.*, 1) contusions on right and left side of neck with nail scratches and stress marks, 2) bump on the back of the head, 3) contusions present on the back. Blood appears to come out and 4) pressed contused injuries on both ankles. The evidence of PW.16 coupled with Ex.P-13 - post-mortem report shows as many as 9 injuries on the dead body of the deceased. Those are the injuries physically found on the dead body of the deceased. Further, there is inverted fracture of hyoid bone with altered blood clots at the fracture side. Cracking of cricoid and thyroid present. Bruising of platysma, blood clots into strap muscles of the neck present. Accused got cross-examined PW.16, who is the Medical Officer, who deposed that she is M.B.B.S. graduate. Naturally, in case of throttling victim will resist and will cause nail marks and other injuries on the assailant. She further



deposed that it is not possible that in case of epilepsy death will be treated as asphyxia and there will be muscle over activity. She disagreed with the proposition that there being no direct injury to the hyoid bone in case epilepsy, it can cause fracture of hyoid bone. She further denied that her evidence is incorrect.

43. It is to be noticed that the whole defence of the accused appears to be that the deceased received as many as 9 injuries as shown in Ex.P-13, as well as infected fracture of hyoid bone as the deceased suffered with fits. PW.16, Medical Officer, denied the defence theory in this regard. It is rather improbable to assume that the deceased received as many as 9 injuries just by fall as she suffered with fits. It is rather improbable to assume that the deceased received infected fracture of hyoid bone with altered blood clots at the fracture side. The medical evidence is negating the defence theory. The physical injuries which can be noticed from Ex.P-4 photographs can be attributed to the findings of the Medical Officer that there was infected fracture of hyoid bone. The injuries on the neck of the deceased, as can be found in Ex.P-4, can only be possible if the assailant pressed the neck of the deceased by way of throttling. Having regard to the evidence of PW.1 and PW.2 as regards the injuries and having looked into the



photographs under Ex.P-4 and the medical evidence, this Court is of the considered view that it is very difficult to say that the death of the deceased was due to fits as canvassed by the accused. Apart from this, PW.1, PW.2 and PW.4 also deposed that they observed injuries on the neck, body and on the legs of the deceased. Even according to PW.5, he observed the injuries on the dead body of the deceased. There is no dispute about the injuries received by the deceased *i.e.*, injury Nos.1 to 9 and fracture of hyoid bone. During the entire cross-examination of PW.16, accused did not challenge the findings of the Medical Officer with regard to noticing of injury Nos.1 to 9 and noticing of fracture of hyoid bone. Defence of the accused is that those injuries could be possible by muscular activity as deceased suffered with fits. PW.16 denied the defence theory in this regard. The very defence of the accused before the Court below that the death of the deceased was due to fits appears to be wholly improbable. Accused miserably failed to probabilize his defence theory. Having regard to the above, this Court is of the considered view that the prosecution adduced cogent evidence before the Court below that the death of the deceased was of homicidal and the accused failed to prove contrary and failed to probabilize his theory that the death of the



deceased was on account of the fits coupled with the injuries received due to fits.

44. Now, another aspect to be seen here is as to whether the homicidal death of the deceased was on account of the act of the accused.

45. At the outset, this Court would like to make it clear that a look into the judgment of the Court below means that the learned Additional Sessions Judge looked into certain circumstances as regards presence of the accused during the fateful night, non-accessibility to the house of the accused by anybody and looking into the confessional part *i.e.*, extra judicial confession was of the view that the extra judicial confession had support from the chain of circumstances. However, the learned Additional Sessions Judge did not spell out the circumstances in clear manner. It is settled law that in an Appeal against conviction, the appellate Court has to analyze the evidence, independently, and has to arrive at an independent conclusion as held by the Hon'ble Apex Court in ***Ajay Kumar Ghoshal and others v. State of Bihar and others***¹.

¹ AIR 2017 (SC) 804



46. Keeping in view of the same, now this Court has to analyze the evidence on record as to whether the prosecution established the fact that the accused caused homicidal death of the deceased.

47. PW.1 with regard to the incident in question under Ex.P-1 narrated certain things that were happened during the intervening night of 16/17-03-2007 to the effect that at about 01:00 a.m. Pushpa, the aunt of his daughter, and Y. Veerababu came to his house at Vemagiri and informed that his daughter is very weak and she is not able to speak as such he along with Bogireddy Suribabu, Adilakhsmi went to Muramanda village in Auto and saw the dead body of deceased lying in the backyard of their house. When he questioned the accused as to what happened, he stated that she died due to fits. After sunrise, he observed the dead body of deceased and found pressing injuries on both sides of her neck, contusion with blood and injuries on both foots and on the ankles. This version, as mentioned in Ex.P-1, was spoken by PW.1 during his evidence. The evidence of PW.1 in this regard has support from the contents of Ex.P-1. The evidence of PW.2, wife of PW.1 and the mother of deceased is also on the same lines. The prosecution by virtue of the evidence let in also alleged that the accused informed to PW.3 that deceased died due to fits. Though prosecution cited



PW.3 as a witness to the occurrence but she did not support the case of prosecution. However, prosecution also alleged that the accused intimated to PW.5 and PW.8 - Private Medical Practitioner, during the fateful night of 16.03.2007 after 11:00 p.m. that the deceased died due to fits. It is also the case of prosecution that the accused led PW.3 to the backyard of his house where the dead body of the deceased was lying. Prosecution has alleged the presence of accused during the intervening night of 16/17-03-2007 in the house along with the deceased. The case of the prosecution is that the death of the deceased was homicidal. So, looking into the contents of Ex.P-1 coupled with the case of the prosecution with reference to the evidence adduced, the prosecution relied upon the following chain of circumstances to prove the guilt against the accused:

- 1) Death of the deceased by name Thota Dhanalakshmi was homicidal.**
- 2) The accused and deceased were residing together especially on the date of incident during the fateful intervening night of 16/17-03-2007.**



3) Accused informed to PW.1 and PW.2 after their arrival to the scene that the deceased died due to fits.

4) The accused intimated to PW.3, PW.5 and PW.8 that the deceased died due to fits and further led PW.3 to the backyard of his house where the dead body was lying on the floor.

5) The dead body of the deceased was lying in the backyard of the house of the accused with injuries.

6) Accused propagated a false theory to PW.1, PW.2, PW.3, PW.5 and PW.8 that the death of the deceased was on account of fits.

48. Apart from the above chain of circumstances, the prosecution also relied on the extra judicial confession said to be made by the accused under Ex.P-9 before the concerned VRO, *i.e.*, PW.13 and further recovery of MO.1 – shirt which was worn by the accused at the time of commission of offence.

49. Though PW.3 did not support the case of the prosecution but the prosecution has relied upon the above chain of circumstances and extra judicial confession to prove the guilt against the accused. The law with regard to the principles relating



to the circumstantial evidence is well settled. The Hon'ble Apex Court in ***Prem Singh v. State of NCT of Delhi***², relying upon its previous decision in ***Sharad Birdhichand Sarda v. State of Maharashtra***³, held that the said decision is a guiding light for the Courts in regard to the proof of a case based on circumstantial evidence. The Hon'ble Apex Court extracted the observations of its earlier decision at Para No.152, which are as follows:

“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 in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis 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.”

50. The Hon'ble Apex Court by looking into the above decision further extracted the conditions at Para Nos.153 and 154, which are as follows:

² AIR 2023 (SC) 193

³ 1984 (4) SCC 116



“**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an Accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra {(1973) 2 SCC 793} where the observations were made:

Certainly, it is a primary principle that the Accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency,



(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

51. Apart from relying upon the principles enunciated with regard to the proof relating to circumstantial evidence, the Hon'ble Apex Court also dealt with the issue as to whether the false explanation or false defence of the accused can be taken as additional link to complete the chain of circumstances. Looking into the above, the Hon'ble Apex Court at Para Nos.158, 159 and 160 held as follows:

“**158.** It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor General relying on a decision of this Court in ***Deonandan Mishra v. State of Bihar*** {AIR 1955 SC 801} to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case.....



159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the Accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation.

160. If these conditions are fulfilled only then a court can use a false explanation or a false defence as an additional link to lend an assurance to the court and not otherwise.....”

52. Keeping in view the established principles relating to the circumstantial evidence, now, I would like to analyze the evidence on record as to whether the evidence adduced by the prosecution met with the settled principles relating to the circumstantial evidence.

53. PW.1, father of the deceased, and PW.2, mother of the deceased, categorically deposed that during midnight, when they went to the village of the accused and visited the house, they



found the dead body of the deceased and when they questioned the accused as to what happened, he informed them that the deceased died due to fits. On the next day, after sunrise only they could notice the injuries on the dead body of deceased. The presence of accused during the course of entire cross-examination of PW.1 and PW.2, as spoken to by them, was not challenged by the accused by suggesting any contra version that by the time he was not present in the house. Though PW.3, who was cited as a witness to the occurrence, did not support the case of the prosecution but the learned Additional Public Prosecutor after getting her declared as hostile elicited certain crucial admissions from the witness which were not challenged by the accused in any way. So, the evidence of PW.3 in cross-examination by the learned Additional Public Prosecutor is that after the accused knocked her door, she opened the door and went towards backside of his house and observed the deceased lying on the floor. Accused and deceased alone were present by then. By the time of arrival of PW.1 and PW.2 also she was present there and she talked with them. While she was present there, doctor came and examined the deceased and declared her dead. The accused got reported nil cross-examination of PW.3. So, the fact that the accused knocked the door of PW.3 and led her to the backyard of the house where



the dead body was lying was not in dispute. Apart from this, according to the evidence of PW.5, he is resident of Muramanda Village. On 16.03.2007 at about 11:00 p.m. while he was sleeping, aunt of the accused informed him that the deceased is not feeling well. Accused also informed to him that the deceased died due to fits. She along with the aunt of the accused went to PW.1 and informed the same; from there he went to PW.2 to intimate the same. To the above evidence of PW.5 also accused did not dispute his presence in the house. So, the evidence of PW.5 that accused intimated to him that the deceased died due to fits at about 11:00 p.m. is also convincing. It has support from the evidence of PW.1.

54. Coming to the evidence of PW.8, Private Medical Practitioner, he categorically testified that on 16.03.2007 at about 11:00 p.m. accused and Pushpa came to his house, informed him that the deceased was attacked with fits and on that he went to the house of the accused and observed that the deceased was lying on the ground on the backside of the house. He examined and declared her dead. Even to the testimony of PW.8, no contra version was suggested. So, the prosecution further established cogently that the accused went to the house of PW.8, Private



Medical Practitioner, and informed him that the deceased was attacked with fits.

55. Therefore, absolutely the accused claimed before PW.1, PW.2, PW.5 and PW.8 as if he was a witness to the death of the deceased due to fits. All the above goes to prove that the prosecution adduced cogent evidence about the presence of the accused along with the deceased in the house and they were residing together during the fateful night. According to the evidence of PW.5, the time at which accused intimated to him that the deceased died due to fits was at about 11:00 p.m. Even according to the evidence of PW.8 also accused went to his house at 11:00 p.m. and informed him that the deceased was attacked with fits. This Court already pointed out that the prosecution established cogently that the death of the deceased was homicidal but not basing on the theory projected by the accused that she died due to fits. This Court already dealt with the same in the earlier discussion elaborately.

56. So, the prosecution has established the fact that the death of the deceased was homicidal and that during the fateful intervening night of 16/17.03.2007, accused and deceased were together in the house and accused intimated to PW.1, PW.2, PW.5



and PW.8 that the death of the deceased was due to fits, which was proved to be false. Apart from this, it is the accused who led PW.3 to the backyard of his house. Further, the prosecution has established cogently that the accused projected a false theory before PW.1, PW.2, PW.5 and PW.8 that the deceased died due to fits. Though PW.3 exhibited hostile attitude by deviating from her 161 Cr.P.C. statement, marked under Ex.P-2, but to the extent she supported the case of the prosecution can be taken into consideration. So, she supported the case of the prosecution to the effect that accused opened the door of her house and led her to the backyard of his house where the dead body of the deceased was lying.

57. Now, this Court has to look into the conduct of the accused. As this Court already pointed out the accused propagated a theory that the deceased died due to fits which was proved to be false. In **Prem Singh** (2nd *supra*), the Hon'ble Apex Court while dealing with the circumstantial evidence held that on proving the chain of circumstances the Court can take into consideration false explanation or false defence of the accused as an additional link to lend an assurance to the Court.



58. As this Court already pointed out while dealing with whether the death of the deceased was of homicidal or on account of the fits, accused did not open his mouth as to what happened during the intervening night of 16/17-03-2007. He never disputed his presence along with the deceased in the house at that time. It is not the evidence of DW.2, the accused, that while he was sleeping the deceased was missing and he went to the backyard and found the deceased lying. It was never his defence as such he never disputed his presence during the intervening night of 16/17.03.2007. Obviously, no semblance of explanation was coming from the mouth of DW.2, the accused, as to what happened during the intervening night of 16/17-03-2007. The Hon'ble Apex Court in **Prem Singh** (2nd *supra*), categorically held that the false explanation or false defence of the accused can be taken as a factor as an additional link to lend an assurance to the Court. In view of the facts and circumstances, accused was supposed to put forth a reasonable explanation how the deceased died and the explanation setup by the accused was proved to be false. Absolutely, it was never the defence of the accused that apart from him any others were residing in the house. It is not the case of the accused that a third party had access to the house of the accused during the fateful night of 16.03.2007.



59. Having regard to the above, this Court is of the considered view that the prosecution cogently established the circumstances from which the conclusion of the guilt is to be drawn. It is a case where the accused set up a false plea that the deceased died due to fits, which was proved to be false. Though accused stepped into the witness box, he evaded to explain anything as to what happened during the intervening night of 16/17.03.2007. Prosecution established the death of the deceased as homicidal. The circumstances that are established by the prosecution are only consistent with the hypothesis of the guilt of the accused and they are of conclusive nature and tendency and basing on the evidence adduced all the circumstances that are established are excluding every hypothesis except the one that the accused was responsible for cause of the death of the deceased.

60. Turning to the fact that whether the prosecution proved the motive for the offence satisfactorily, there is evidence of PW.1 and PW.2 about the disputes that arose between the accused and the deceased when the accused sold away the lorry and proposed to purchase another lorry. PW.4, categorically deposed that three months prior to the incident, accused and deceased lived cordially and thereafter disputes took place between the accused and the



deceased and he admonished the accused. Accused used to beat the deceased but there is no change in the attitude of the accused. The prosecution also examined PW.7, who deposed categorically that out of the sale proceeds of the lorry, Rs.20,000/- was kept with the deceased and Rs.10,000/- was kept with the accused. He further deposed that when the accused intended to purchase another lorry, PW.1 did not accept and asked the accused to invest the same in savings. Accused elicited from his cross-examination that the deceased purchased lorry in her name and she used to manage the lorry affairs. It is not the defence of the accused that he was not concerned with the lorry. So, the prosecution categorically established the motive for the offence also.

61. Apart from the fact that the prosecution established cogently all the requirements of circumstantial evidence but it has also relied on the extra judicial confession under Ex.P-9, said to be made by the accused before PW.13. The contention of the accused is that he never gave such extra judicial confession and in fact he was arrested by the Police on 17.03.2007 itself in the morning as such there was no question of his giving the extra judicial confession.



62. The Hon'ble Apex Court in **Pawan Kumar Chourasia v. State of Bihar**⁴ held that though extra judicial confession is weak piece of evidence but conviction can be sustained on the basis of extra judicial confession, provided the confession is proved to be voluntary and truthful and the Court has to satisfy itself with the reliability of the confession keeping in view of the circumstances in which it is made. As a matter of rule, corroboration is not required. However, if an extra judicial confession is corroborated by other evidence on record, it acquires more credibility.

63. Keeping in view, now I would like to deal with as to the reliability of Ex.P-9 extra judicial confession said to be made by the accused. Coming to the evidence of PW.13 he was a mediator to the observation of the scene of offence and inquestnama. He supported the case of the prosecution. He was also cited as a person before whom the extra judicial confession was made. His evidence in this regard is that on 20.03.2007 accused came to him and stated that he is working as a lorry driver and he sustained loss in his lorry and married five years back and they are having two children. Himself, his wife and two daughters are jointly living. He confessed that when his wife insisted him about the lorry

⁴ 2023 AIR (SC) 1464



amount by caught hold of his collar, he got angry and hit the head of the deceased to a coconut tree and on that he made others to believe that she was attacked with fits and due to fear of Police, he requested him to produce him before Police. He recorded the confessional statement of the accused under Ex.P-9, which bears the signature of the accused and himself. So, he produced the accused along with Ex.P-9 before Kadiyam Police Station.

64. Prosecution examined PW.14 – another mediator, whose evidence is that on 20.03.2007 Police called him to Police Station and then he went to Kadiyam Police Station along with the village servant and PW.13 surrendered the accused and accordingly he prepared mediators report. Ex.P-10 is the mediators report relating to admissible portion. MO.1 is the shirt produced by the accused which was seized by the Police. During cross-examination of PW.13, before whom the accused was said to have made extra judicial confession, he categorically deposed that he recorded Ex.P-9 at about 10:00 a.m. Kadiyam Police Station is situated at 5 K.Ms to Dulla Village. By 10:15 a.m. he handed over the accused and Ex.P-9 to the CI. He alone went to the Police Station along with Ex.P-9. He presented Ex.P-9 before Police which was already reduced into writing. He denied that the person who gave the



statement is not that of Durga Rao (accused). He denied that Ex.P-9 appears to have been prepared at Police Station as the signature of CI is there. As evident from the cross-examination of PW.13, he withstood the probing and marathon cross-examination. No discrepancies were elicited with regard to the time of recording of Ex.P-9. As seen from Ex.P-9 though there was signature of CI but he made it in token of receipt of Ex.P-9 only. By any stretch of imagination, it cannot be held that Ex.P-9 was prepared in the Police Station. Similarly, there remained nothing in the evidence of PW.14 during cross-examination on crucial aspects to disbelieve his testimony. So, the evidence of PW.13 and PW.14 reveals that after the accused was produced before CI under Ex.P-9, CI secured the presence of PW.14 and confession of accused was recorded again and the relevant portion is Ex.P-10, which is relating to seizure of MO.1 – shirt, which was worn by the accused at the time of commission of offence. The Inspector of Police who was examined as PW.18 categorically deposed that on 20.03.2007 while he was present in Kadiyam Police Station, PW.13 brought the accused along with Ex.P-9. On perusing Ex.P-9 – confessional statement of accused alleged to have been made before PW.13, he kept the accused under surveillance and after securing mediators, accused in the presence of mediators



confessed his crime and handed over MO.1 torn shirt, which was worn by him at the time of offence.

65. During cross-examination, he denied that the accused is in the custody of Police since 17.03.2007 till he produced him in Court and that MO.1 is not the shirt of the accused. The contention of the accused is that he was taken into custody by the Police on 17.03.2007 itself. It is to be noticed that during cross-examination of PW.4 deposed that by 09:00 a.m. Police arrived to the scene of offence and immediately after arrival of the Police accused was taken into custody. It is to be noticed that the very lodging of Ex.P-1 by PW.1 before the SI of Police, Kadiyam was at 11:00 a.m., according to the evidence of PW.17. He denied during cross-examination that on the same day accused was arrested on suspicion. Absolutely, nothing was suggested to PW.17 that even before registration of FIR on report from PW.1 he went to the scene of offence and took the accused into custody. There was no cross-examination of PW.18 to the effect that even before registration of FIR, he rushed to the house of the deceased in the morning and took the accused into custody. It is to be noticed that the presence of the accused was there throughout the intervening night of 16/17.03.2007. According to the evidence adduced, PW.1, PW.2,



PW.3, PW.5 and PW.8 visited the house of the accused and found the dead body of deceased. So, by then the presence of the accused was not in dispute. It is the case of the prosecution that Police visited the scene of offence after registration of FIR and conducted observation of the scene of offence etc. So, evidence of PW.4 in cross-examination that immediately after arrival of Police, accused was taken into custody is nothing but vague. Basing on a stray answer, the case of the prosecution cannot be thrown out when the prosecution established the chain of circumstances cogently which un-erringly points out the guilt against the accused.

66. A look into Ex.P-9 goes to reveal that when the deceased caught hold of the collar of the accused, questioning the amount from the sale of the lorry, he grew wild and hit the head of the deceased to a coconut tree. There were corresponding injuries on the backside of the head of the deceased, according to the medical evidence let in. According to Ex.P-9, when the deceased caught hold of the collar of the accused, shirt button was found missing. So, MO.1 was the shirt which was worn by the accused at the time of commission of offence and according to MO.1, the shirt button of the accused was found missing. It is to be noticed that the truth



can be found from Ex.P-9 because it contained certain circumstances favourable to the accused. If the Investigating Officer thought of to manufacture or fabricate Ex.P-9 there would not have been a confession or narration in Ex.P-9 that at the spur of the moment accused attacked the deceased. In fact the version propagated under Ex.P-9 is favourable to the accused to contend that he did not murder the deceased intentionally. So, the *bona-fides* under Ex.P-9, in my considered view, cannot be doubted because the circumstances explaining the manner of attack gives aid to the accused to say that he did not commit murder intentionally. In fact, if Ex.P-9 was not there, there was no occasion for the Court below to consider that accused committed culpable homicide not amounting to murder and to impose a lesser punishment.

67. Having considered the overall facts and circumstances, I am of the considered view that Ex.P-9 is found to be voluntary on the part of the accused explaining the circumstances in which he attacked the deceased which resulted into her death. It cannot be held by any stretch of imagination that accused was in illegal custody right from 17.03.2007 till 20.03.2007. To taint Ex.P-9 as fabricated one the contention of the accused is that he was in



custody of the Police. When the accused was produced before the jurisdictional Magistrate, he never complained any ill-treatment and never alleged that he was in illegal detention right from 17.03.2007. Apart from the chain of circumstances which are categorically established by the prosecution, the falsity of the accused in fabricating a theory that the death of the deceased was on account of fits and his silence when he was examined before the Court as DW.2 without explaining anything as to what happened during the fateful night of 16.03.2007 can be taken as an additional link which lends credence to the case of the prosecution. Apart from the crucial allegations narrated in Ex.P-9 – extra judicial confession, there is corroboration to Ex.P-9 for the reason that MO.1 was recovered from the accused to which the shirt button of the accused was found missing. There was no occasion for the Investigating Officer to fabricate a theory in Ex.P-9.

68. Having regard to the above, I am of the considered view that the extra judicial confession under Ex.P-9 is found to be voluntary. On close analysis of the evidence on record, this Court is of the considered view that the prosecution has categorically established all the chain of circumstances before the Court below



beyond reasonable doubt which points out the guilt against the accused. The extra judicial confession relied upon by the prosecution further lends assurance to the case of the prosecution. As seen from Ex.P-9, when the deceased caught hold of the collar of the accused at about 11:00 p.m. when the accused came in drunken condition questioning about the amount received from the sale proceeds, he grew wild and hit the head of the deceased to a coconut tree. Apart from this, according to the medical opinion, there was fracture of hyoid bone also. Though the accused had no intention to commit the murder of the deceased but the evidence let in established that the accused caused homicidal death of the deceased which amounts to culpable homicide not amounting to murder. The Court below looking into over all facts and circumstances, subjected the accused to undergo Rigorous Imprisonment for four (4) years for the offence under Section 304(II) IPC, which cannot be said to be harsh by any stretch of imagination. In the light of the above, I am of the considered view that the prosecution has categorically proved the guilt against the appellant-accused beyond reasonable doubt for the offence of culpable homicide not amounting to murder as such overall findings of the learned Additional Sessions Judge in finding



the accused guilty of the offence cannot be said to be erroneous as such the judgment is sustainable under law and facts.

69. In the result, the Criminal Appeal is dismissed confirming conviction and sentence imposed against the appellant/accused in Sessions Case No.53 of 2009, dated 09.03.2010, on the file of the Court of VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry.

70. The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the judgment of this Court including the trial Court record, if any, to the Court below on or before 10.07.2023 and on such certification, the trial Court shall take necessary steps to carry out the remainder sentence, if any, imposed against the appellant/accused in S.C. No.53 of 2009, dated 09.03.2010, and to report compliance to this Court. A copy of this judgment be placed before the Registrar (Judicial), forthwith, for giving necessary instructions to the concerned Officers in the Registry.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

JUSTICE A.V.RAVINDRA BABU

Date: 28.06.2023
DSH