

*** THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
* THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

+ Criminal Appeal No.1162 of 2014

% Date: 07.04.2022

Between

Thota Koti, S/o. Reddaiah ... Appellant/Accused No.1

AND

**\$ State of Telangana,
Rep. by its Public Prosecutor,
High Court of Judicature at Hyderabad.**

... Respondent/Complainant

! Counsel for the Appellant : Sri P. Bhanu Prakash

**^ Counsel for the Respondent : Sri C. Pratap Reddy,
Public Prosecutor**

> HEAD NOTE:

? Cases referred

- 1) 2022 All SCR (Crl.) 596
- 2) 2022(1) ALD (Crl.) 214 (DB)
- 3) 2021 (2) SCC (Cri) 679
- 4) 2019 Cri.L.J. 1423 (SC)
- 5) 2014 (2) ALD (Crl.) 248 (AP)
- 6) (2008) 15 SCC 430
- 7) (2007) 13 SCC 284
- 8) AIR 2017 SC 1507
- 9) AIR 1984 SC 1622
- 10) AIR 1994 SC 458

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

CRIMINAL APPEAL No.1162 OF 2014

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

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C'), is filed by the appellant/ Accused No.1, challenging the judgment, dated 27.08.2014 passed in Sessions Case No.39 of 2013 by the learned II Additional Sessions Judge, Warangal, whereby, the Court below acquitted the appellant/A.1 of the offences under Sections 498-A, 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ('D.P.Act'), and convicted him of the offences under Sections 302 and 201 of IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months of the offence under Section 302 IPC; to undergo rigorous imprisonment for two years and to pay fine of Rs.500/-, in default, to under simple imprisonment for one month of the offence under Section 201 of IPC. Both the sentences were ordered to be run concurrently.

2. Heard the submissions of Sri P.Bhanu Prakash, learned counsel for the appellant/A.1, Sri C.Pratap Reddy, learned Public

Prosecutor appearing for the respondent/State and perused the record.

3. The case of the prosecution, in brief, is that on 21.03.2012 at 09:30 hours, PW.1-Manda Laxminarayana, lodged Ex.P.1-report with the police stating that his second daughter by name Thota Chamanthi (hereinafter referred to as 'deceased') got married to Accused No.1-Thota Koti (hereinafter referred to as 'A.1') about six years ago. Cash of Rs.1,00,000/- and two acres of agricultural land was given as dowry at the time of marriage. The deceased and A.1 were blessed with two children. Thereafter, A.1 started harassing the deceased to sell the agricultural land given towards dowry. Therefore, about six months prior to the death of the deceased, the agricultural land was sold and the sale proceeds of Rs.4,00,000/- was given to A.1. Thereafter, A.1 and the deceased led happy marital life for few days. Again, A.1 started harassing the deceased to bring additional dowry of Rs.2,00,000/-, for which, about 15 days prior to the death of the deceased, an amount of Rs.50,000/- was given to A.1. While so, on 21.03.2012, during the early hours, i.e., at about 02:00 hours, A.1 and his parents i.e., A.2-Reddaiah, A.3-Shashirekha harassed the deceased. In that context, A.1 killed the deceased by beating with M.O.2-hammer and threw the dead body in the well, which is located within the

premises of house of A.1. PW.1 stated that A.1, A.2, A.3 and the sister-in-law of the deceased Bootham Vijaya (A.4) and her husband Bootham Sudhakar (A.5), are responsible for the death of deceased. On 21.03.2012 at about 7.00 A.M, A.5 informed PW.1 over phone about the incident. PW.1 and his family members went to the house of the accused and found the dead body of the deceased in the well. Hence, PW.1 lodged Ex.P.1-report dated 21.03.2012 with the Kakatiya University Campus Police Station, Warangal Urban, to take necessary action against A.1 to A.5.

4. Basing on Ex.P.1-report, P.W.17-D.Chandraiah, Inspector of Police, KUC Police Station, registered a case in Crime No.56 of 2012 against A.1 to A.5 for the offences under Sections 498A, 302, 201, 109 r/w 34 of IPC and took up investigation. During the course of investigation, the police visited the scene of offence i.e, house of A.1, A.2 and A.3, bearing H.No.1-39, situated at Ramaram Village, Hasanparthy Mandal, Warangal Urban District and recorded the statements of the witnesses, prepared scene of offence panchanama, drawn rough sketch, collected bloodstained swab, control swab and bloodstained hammer from the scene of offence and conducted inquest over the dead body of the deceased in the presence of PW.14-Mandal Revenue Officer, Hanmakonda, and sent the dead body to M.G.M. Hospital, for post-mortem

examination. On 21.03.2012 at 14:00 hours, A.1 surrendered before PW.17-Investigating Officer and voluntarily confessed about the commission of offence along with other accused and the confessional statement of A.1 was recorded in the presence of mediators and pursuant to the same, material objects were seized at the instance of accused. Thereafter, police arrested the accused and sent him for judicial custody. PW.16-Dr.K.Laxman, conducted autopsy over the dead body of the deceased and opined that the cause of death of the deceased was due to blunt injuries on head associated with blunt injuries on chest. The statement of PW.5 was recorded by the learned Chief Judicial Magistrate of First Class, Warangal, under Section 164 Cr.P.C. After completion of investigation, police filed charge sheet for the offences under Section 498A, 302, 201, 406 IPC and Sections 3 and 4 of D.P.Act, against A.1; for the offences under Sections 498-A, 302 r/w 34 IPC and Sections 3 and 4 of D.P. Act against A.2 and A3; for the offences under Sections 498A, 302 r/w 109 IPC and Sections 3 and 4 of D.P.Act against A.4 and A5.

5. The learned Principal Judicial Magistrate of First Class, Warangal, took cognizance of the case and vide PRC No.6 of 2012, committed the case to the Court of Session under Section 209 Cr.P.C, since the offence under Section 302 of I.P.C. is exclusively

triable by the Court of Session. On committal, the Court of Session registered the case as S.C.No.39 of 2013 and made over to the Court below for trial and disposal, in accordance with law.

6. On appearance of the accused, the trial Court initially, framed charges for the offences under Sections 498A, 302 r/w 34 IPC, 201 r/w 34 IPC, Sections 3 and 4 of D.P.Act against A.1 to A.5; also framed charge for the offence under Section 109 r/w 34 of IPC against A.4 and A.5, read over and explained to them in Telugu, for which, they pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution filed Crl.M.P.No.139/2013 seeking to add additional charge for the offence under Section 304 Part-B of IPC. The said petition was allowed on 19.11.2013 and additional charge for the offence under Section 304 Part B of IPC was framed against A.1 to A.5, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

8. To prove the guilt of the accused, the prosecution has examined PWs.1 to 17 and got marked Exhibits P1 to P14 besides Material Objects 1 to 11. On behalf of the accused, Ex.D.1 to D.8 were marked, but no witness was examined.

9. PW.1-Manda Laxminarayana, is the father of the deceased. PW.2-Manda Komuramma, is the mother of the deceased. PW.3-

Mudigonda Rambabu, is the tenant in the house of the accused in the ground floor. PW.4-Manda Sateesh, is the brother of the deceased. PW.5-Donthula Prakash, is the tenant in the adjacent house of the accused. PW.6-Sangala Premdev, is the Grampanchayat worker, who fished out the dead body of the deceased from the well. PW.7-Bura Harinath, is the photographer. PW.8-Sankella Mallaiah and PW.9-Parikirala Pochaiah, are the panchayat elders. PW.10-Bhutham Bhagyalaxmi, is the maternal aunt of the deceased. PW.11-Sunkari Sadanandam, is the panch witness for scene of offence. PW.12-Bejjala Kumaraswamy and PW.15-Manda Ramesh, are the panchas for confession. PW.13-Y.Govinda Reddy, is the Magistrate who recorded the 164 Cr.P.C. statement of PW.5. PW.14-Jannu Sanjeeva, is the Mandal Revenue Officer, who conducted inquest over the dead body of the deceased. PW.16-Dr.K.Laxman, is the doctor who conducted autopsy over the dead body of the deceased and PW.17-D.Chandraiah, Inspector of Police, is the Investigating Officer who conducted investigation in this case and filed charge-sheet before the Magistrate concerned. Ex.P.1 is the report dated 21.03.2012 given by PW.1. Ex.P.2 is the wedding card of the deceased. Ex.P.3 are photographs of dead body of the deceased along with C.D. Ex.P.4 is the crime details form along with rough sketch. Ex.P.5 is the inquest panchanama. Ex.P.6 is the signature on confession and

recovery panchanama. Ex.P.8 is the recovery panchanama. Ex.P.9 is the 161 Cr.P.C statement of PW.5. Ex.P.10 is the post-mortem examination report. Ex.P.11 is the final opinion. Ex.P.12 is the First Information Report. Exs.P.13 and Ex.P.14 are the Regional Forensic Science Laboratory Reports dated 12.06.2012. M.O.1 is the red and orange colour bangle pieces of the deceased. M.O.2 is the bloodstained hammer. M.O.3 is the bloodstained green and black colour bed sheet. M.O.4 is one silver leg chain (anklet) seized from scene of offence. M.O.5 is bloodstained black and green saree of the deceased. M.O.6 is the bloodstained green colour design jacket having yellow colour border. M.O.7 is the yellow colour petticoat of the deceased. M.O.8 is four silver toe rings of the deceased. M.O.9 is silver leg chain (anklet) seized from the dead body of the deceased. M.O.10-seven bangles i.e, two red colour bangles, two green colour bangles and three orange colour bangles. M.O.11 is bloodstained violet colour T-shirt of A.1. M.O.12 is the bloodstained blue colour night pant of A.1. M.O.13 is the gold pustelathadu of the deceased. Ex.D.1 is the relevant portion of 161 Cr.P.C statement of PW.1. Exs.D.2 to D.4 are relevant portions of 161 Cr.P.C statement of PW.2. Ex.D.5 is relevant portion of 164 Cr.P.C statement of PW.5. Ex.D.6 is the relevant portion of 161 Cr.P.C statement of PW.8. Ex.D.7 and D.8 are relevant portions of 161 Cr.P.C statement of PW.9.

10. After completion of trial, A.1 to A.5 were examined under Section 313 Cr.P.C and confronted with the incriminating evidence appearing against them. They denied the same and did not examine any witness on their behalf.

11. The trial Court, having considered the submissions made and the evidence available on record, *vide* impugned judgment, dated 27.08.2014, acquitted A.2 to A.5 of the offences punishable under Sections 498A, 302, 201, 109 r/w 34, 304 Part B IPC and Sections 3 and 4 of D.P.Act and A.1 of the offences punishable under Sections 498A, 304 Part B IPC and Sections 3 and 4 of D.P.Act, but convicted and sentenced A.1 of the offences under Sections 302 and 201 of IPC, as stated *supra*. Aggrieved by the conviction and sentence recorded against him of the offences under Sections 302 and 201 IPC, the appellant/A.1 preferred this appeal.

12. The learned counsel for the appellant/A.1 would contend that the whole prosecution case is based on circumstantial evidence. There are no direct witnesses to the alleged death of the deceased. The prosecution failed to establish the links in the chain of circumstances to form a complete chain as to draw an irresistible inference that it is A.1 who committed the murder of his wife i.e, deceased. There is no motive for commission of offence by A.1. A.1 is an auto driver and he used to ply auto during night time

also. A.1 was not present in his house on the intervening night of 21/22.03.2012. There is no person who saw the accused either while causing the death of the deceased or while throwing the dead body of the deceased in the well. The trial Court erroneously arrived at a conclusion that there is cogent and convincing evidence on record to establish the links in the chain of circumstances. Without there being any legally sustainable evidence, the trial Court arrived at a conclusion that A.1 had caused the death of his wife (deceased). PW.3 is not a direct witness to the offence. Though PW.5 deposed that A.1 confessed about the commission of offence, there are omissions and contradictions in his statements. In the 164 Cr.P.C statement recorded by PW.13-learned Magistrate, PW.5 stated that he was sleeping outside of the house but when he was examined by the Court, he stated that he was sleeping in the auto outside of the house. Such variation amounts to material contradiction and on this score, the evidence of PW.5 cannot be believed as he is not a trustworthy witness. There is no cogent and convincing evidence to substantiate that A.1 had caused the death of the deceased. At the most, the material on record leads to suspicion. Suspicion, however strong it may be, will not take the place of legal proof. On the basis of suspicion, A.1 cannot be convicted and sentenced of the offences under Sections 302 and 201 IPC. The material objects

in this case are planted by PW.17-Investigating Officer at the behest of the family members of the deceased. Furthermore, there was no dowry harassment and no motive on the part of A.1 to commit the alleged offence. A.1 did not confess the commission of the alleged offence. The so-called recovery of the material objects pursuant to the alleged confession of A.1, is absolutely false. The prosecution failed to prove the guilt of A.1 beyond all reasonable doubt and ultimately prayed to allow the appeal by setting aside the conviction and sentence recorded against A.1 of the offences under Sections 302 and 201 IPC and acquit him for the said offences. In support of his submissions, learned counsel for the appellant/A.1 placed reliance on the following decisions:

- (i) *Satye Singh and another v. State of Uttarakhand*¹**
- (ii) *Putti Vinod, Guntur District v. State of A.P. rep. By Public Prosecutor*²**
- (iii) *Shivaji Chintappa Patil v. State of Maharashtra*³**
- (iv) *Devi Lal v. State of Rajasthan*⁴**
- (v) *Gandham Ravi v. State of Andhra Pradesh*⁵**
- (vi) *Krishnan v. State, rep. by Inspector of Police*⁶**
- (vii) *Keshav v. State of Maharashtra*⁷**

13. On the other hand, learned Public Prosecutor for the State would contend that A.1 is the husband of the deceased. Both A.1

¹ 2022 All SCR (CrI.) 596

² 2022(1) ALD (CrI.) 214 (DB)

³ 2021 (2) SCC (Cri) 679

⁴ 2019 Cri.L.J. 1423 (SC)

⁵ 2014 (2) ALD (CrI.) 248 (AP)

⁶ (2008) 15 SCC 430

⁷ (2007) 13 SCC 284

and the deceased were living together and the subject death was caused in the bed room of A.1 and the deceased. The material objects seized from the scene of offence were sent to Forensic Science Laboratory and a report under Ex.P.13 was obtained. Ex.P.13-FSL Report substantiates that blood group of the deceased found on M.O.5-saree, M.O.6-blouse and M.O.3-bed sheet, is of 'B' group and the blood group found on M.O.12-blue colour night pant of A.1 (which was seized pursuant to his confession), is also of 'B' group. Thus the blood found on M.Os.3, 5, 6 seized at the scene of offence matched with the blood found on M.O.12-blue colour night pant of A.1 (M.O.12). There are no major discrepancies in the evidence of PW.5 to discard his testimony. PW.5 had clearly and categorically stated how A.1 approached him and confessed the commission of offence. There is no reason for PW.5 to depose falsely against A.1. PW.3, who is tenant of the accused, also supported the case of the prosecution. There is also evidence of PW.1-Manda Laxminarayana, father of the deceased, PW.2-Manda Komuramma, mother of the deceased and PW.4-Manda Sateesh, brother of the deceased, to substantiate that A.1 harassed the deceased for additional dowry and ultimately put her to death. Besides the evidence of panch witnesses and PW.17-Investigating Officer, there are also material objects to connect A.1 with the subject death. There is overwhelming evidence on record to

substantiate that A.1 had committed the offence. It is further contended that the subject death is homicidal and the A.1 had not disputed the same. The other accused in this case i.e, A.2 to A.5 were living separately and the same was deposed by PW.1 in his evidence and therefore, the trial Court gave benefit of doubt to them and acquitted them for the charges framed against them. As far as A.1 is concerned, the link in the chain of circumstances is complete. The prosecution proved the guilt of A.1 beyond all reasonable doubt. Further, A.1 failed to discharge his burden in explaining the incriminating circumstances appearing against him under Section 106 of Evidence Act. All the circumstances put-forth by the prosecution, being of a definite tendency, are unerringly pointing towards the guilt of A.1. The trial Court had elaborately dealt with the entire oral and documentary evidence on record and arrived at a just conclusion. The trial Court is justified in convicting and sentencing the A.1 of the offences under Sections 302 and 201 of IPC, and ultimately prayed to dismiss the appeal by confirming the conviction and sentence recorded by the trial Court against A.1. In support of his submissions, the learned Public Prosecutor placed relied upon the decision of the Apex Court in ***State of Jammu & Kashmir v. Vijay Kumar and others***⁸.

⁸ AIR 2017 SC 1507

14. In view of the above submissions made by both sides, the following points arise for determination in this appeal:

- (1) Whether the subject death of the deceased is homicidal?*
- (2) Whether A.1 caused the death of the deceased on the intervening night of 21/22.03.2012?*
- (3) Whether the prosecution was able to prove the guilt of A.1 beyond all reasonable doubt?*
- (4) Whether the conviction and sentence recorded against A.1 of the offences punishable under Sections 302 and 201 of IPC, is liable to be set aside?*

POINTS:

15. The admitted facts of the case are that A.1 and the deceased are husband and wife and they were living in H.No.1-39, situated at Ramaram Village, Hasanparthy Mandal, Warangal Urban District. There is no dispute that the subject death of the deceased is homicidal. There is evidence of PW.16-Dr.K.Laxman that on a requisition being sent to him by Tahsildar, Hanmakonda, he conducted post-mortem examination over the dead body of the deceased on 21.03.2012 at about 11:30 AM. PW.16 deposed that he found following ante-mortem injuries over the dead body of the deceased:

- 1. Contusion of 6x4 cms bluish, red in colour over right front of the neck 4 cms below the jaw (lower border)*
- 2. Laceration of 6x3 cms with underlying comminuted fracture, surrounding tissue contusion over the right*

temporal area of head – irregular margins, cutting of blood vessels covered by red scab.

3. *Abrasion of 5x3 cms bluish red colour over membrum sternum (centre of chest)*
4. *Contusion of 2x1 cms bluish, red in colour over left side of fore head – near the hair line.*
5. *Contusion (2) 1 x 9 cms diameter over outer aspect of right shoulder joint bluish red in colour.*
6. *Contusion of the scalp 4 x 3 cms dark red in colour over left frontal area of skull.*
7. *Contusion of brain 6 x 3 cms red in colour over anterior surface of frontal lobe.*
8. *Contusion entire front of neck deep to skin deep structure.*
9. *Contusion of oesophagus 4 x 3 cms.*
10. *Chest: Fracture right side of ribs from T3 to T4 in mid clavicular line with underlying tissue contusion, collapsed lungs, 80 to 100 cc of blood present in the chest.*

As per the evidence of PW.16-Doctor, Injuries 2, 7, 8, 9 and 10 were caused with a blunt object and that resulted in the death of the deceased. Ex.P.11 is the final opinion issued by PW.16-Doctor. Ex.P.10-post-mortem examination report issued by PW.16, discloses that the approximate time of death is 12 to 18 hours prior to conducting post-mortem examination over the dead body of the deceased. There is also Ex.P.4-crime details form, Ex.P.5-inquest panchanama and the evidence of PW.17-Investigating Officer, to demonstrate that the deceased was subjected to death at the house of accused on the intervening night of 21/22.03.2012 and later the dead body was thrown in the well, situated on the

backyard of house of accused and during morning hours, the dead body was fished out from the said well. After completion of inquest, the dead body was sent to autopsy. All these evidence clinchingly establish that the death of the deceased is homicidal. So the question that needs to be answered in this case is as to who caused the death of the deceased.

16. It is to be noted that the whole case of the prosecution is based on circumstantial evidence. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved, and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The question whether chain of circumstances unerringly establish the guilt of the accused needs careful consideration. The proof of a case based on circumstantial evidence, which is usually called 'five golden principles', have been stated by the Hon'ble Apex Court in ***Sharad Birdhi Chand Sarda Vs. State of Maharashtra***⁹, which reads as follows:-

⁹ AIR 1984 SC 1622

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established, as distinguished from 'may be' established.

(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 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.

17. Keeping the above principles in mind, we would now venture to analyse the evidence on record. Admittedly, the deceased is the wife of A.1 and they were living in their house bearing H.No.1-39, situated at Ramaram Village, Hasanparthy Mandal, Warangal Urban District. PW.3-Mudigonda Rambabu, is the tenant of A.1, deposed that he knows the accused. He returned home at 10:00 PM and heard some dispute going on between the A.1 and the deceased, but he did not find out what was the dispute. On the next day morning, he was informed by the police that accused killed the deceased and dragged her body and threw it in the well. He also deposed that he saw the dead body of the deceased after it was taken out from the well and there were injuries over the dead body of the deceased. In the cross-examination, PW.3 denied the suggestion that he was not tenant in the house of the

accused. He also denied the suggestion that there was no quarrel between A.1 and the deceased at 10:00 PM in the night before the death of the deceased and that he was deposing falsely at the behest of the police. There are no material omissions or contradictions in the evidence of PW.3 to discard his testimony. Further, there is no reason for PW.3 to depose falsely against the accused.

18. There is evidence of PW.5-Donthula Prakash, who specifically deposed before the Court that deceased died on 21.03.2012 and on that night, A.1 came and woke him up at 3:30 AM and informed that he killed his wife (deceased) and threw her body in the well. He stated that he was sleeping in the auto outside the house. PW.5 further deposed that when he questioned the A.1 as to why he was disturbing him at that time, A.1 asked him to come upstairs and see the dead body of the deceased. So he went upstairs into the house of A.1 but he did not see the dead body of deceased. PW.5 stated that he saw bloodstains and hammer in the room, which is in the first floor of house of accused. He further deposed that he could not see anything in the well as it was dark at 3:30 AM. At the instance of A.1 only, he looked into the well. Then A.1 asked him to drop him at Police Station. So he went to wear clothes and came to drop A.1 but A.1 had already left. Though this witness

was cross-examined at length, nothing was elicited to discard his testimony.

19. It is contended on behalf of the appellant/A.1 that when the statement of PW.5 was recorded by PW.13-learned Magistrate under Section 164 Cr.P.C, PW.5 stated that he was sleeping outside of the house but when he was examined by the Court, he stated that he was sleeping in the auto outside of the house and that such variation amounts to material contradiction and on this score, the evidence of PW.5 cannot be believed and he is not a truthful witness. As seen from the material placed on record, in 164 Cr.P.C statement, PW.5 deposed that he was sleeping in front of his house at the time of incident and in the evidence before the Court, he stated that he was sleeping in the auto outside of the house. It may be noted that 164 Cr.P.C. statement of PW.5 was recorded by the Magistrate on 28.03.2012 and PW.5 was examined before the Court on 08.10.2013. The alleged discrepancy in the evidence of PW.5 pointed out by learned counsel for the appellant/A.1, which is minor in nature, can occur even in the statement of a truthful witness due to lapse of time, as the memory fades with the passage of time and it is not expected that the witnesses will give parrot-like version. It is humanly impossible for a person to remember every minute detail of what

had happened about one and half year ago. Thus, the said discrepancy pointed out by the learned counsel for the appellant/A.1 cannot adversely affect the evidentiary value of PW.5. Further, the alleged discrepancy does not go to the root of the matter. The evidence of PW.5 is clear, cogent and consistent and cannot be disbelieved. In any event, the aforesaid small discrepancy would not create a dent in the case of the prosecution. Further, admittedly, PW.5 is a neighbour and his house is adjacent to the house of A.1. The relation in between PW.5 and A.1 is not strained at any point of time. A.1 is an auto driver and PW.5 is also an auto driver. It is quite natural for A.1 to reveal the manner of commission of offence to PW.5. Furthermore, at the instance of A.1, PW.5 went to the house of A.1 and found bloodstains and hammer in the room of A.1, which is in the first floor of house of A.1. There was no possibility for any person to get into the house of A.1 and commit the murder of the deceased and then throw the dead body in the well, which is situated within the premises of house of A.1. It is the A.1 who informed PW.5 that he killed the deceased and threw her body in the well and on the same day morning, the dead body of the deceased was taken out from the well.

20. There is also evidence of PW.6-Sangala Premdev, who deposed that he went inside the well and took out the dead body of the deceased. In the course of investigation, PW.17-Investigating Officer, collected the viscera of the deceased and the sample water from the well and sent them to RFSL Warangal for diatom test and report. Ex.P.14 is the RFSL report dated 12.06.2012, wherein it is mentioned that diatoms are detected in Item No.2-sample water collected from the scene of offence. Ex.P.14 establishes that the dead body of the deceased was retrieved from the well. There is also evidence of panch witnesses, i.e., PW.11-Sunkari Sadanandam and PW.12-B.Kumara Swamy, coupled with PW.17-Investigating Officer, to substantiate the same. Therefore, the contention raised on behalf of A.1 that PW.5 is not a truthful witness and his evidence cannot be relied upon, is unsustainable.

21. There is also evidence of PW.1-father, PW.2-mother and PW.4-brother of the deceased, who clearly and categorically stated that two acres of land and cash of Rs.1,00,000/- was given to A.1 towards dowry at the time of marriage between A.1 and deceased. When A.1 harassed the deceased for additional dowry, two acres of land was sold and the sale proceeds of Rs.4,00,000/- was given to A.1. Thereafter, when A.1 again started harassing the deceased,

PW.1 gave Rs.50,000/- as additional dowry to A.1. Even then A.1 did not stop the harassment. Besides the evidence of these witnesses, there is also evidence of PW.9-Parikarala Pochaiah, and PW.10-Bhutham Bhagya Laxmi, to substantiate that two acres of land and Rs.1,00,000/- was given as dowry at the time of marriage of A.1 and the deceased. Further, PW.10 deposed that six months prior to the death of deceased, he purchased two acres of land for Rs.4,00,000/- and PW.9 deposed that the sale proceeds i.e, Rs.4,00,000/- was given to A.1 in the presence of A.2 and A.3. There is ample evidence on record to substantiate that the deceased was subjected to dowry harassment before her death. Though there is such evidence, the trial Court erred in not finding the A.1 guilty of the offences under Sections 498A of IPC.

22. In the course of conduct of Ex.P.5-inquest panchanama, in the presence of PW.11-Sunkari Sadanandam, M.O.1-red and orange colour pieces of bangles, M.O.2-bloodstained hammer, M.O.3-bloodstained green and black colour bed sheet, M.O.4-one silver leg chain (anklet), M.O.5-bloodstained black and green saree of the deceased, M.O.6-bloodstained green colour design jacket having yellow colour border, M.O.7-yellow colour petticoat of the deceased, M.O.8-four silver rings of the deceased, M.O.9-silver leg chain (anklet) seized from the dead body of the deceased, M.O.10-

seven bangles i.e., two red colour bangles, two green colour bangles and three orange colour bangles, were seized from scene of offence. There is also evidence of PW.12-B.Kumaraswamy, panch witness for confession and recovery panchanama and also PW.17-Investigating Officer that A.1 confessed about the commission of offence. Pursuant to confession of A.1, M.O.11-blood stained violet colour T-shirt of A.1 and M.O.12-blood strained blue colour night pant of A.1, were seized. The material objects seized during the course of Ex.P.5-inquest panchanama as well as Ex.P.8-recovery panchanama, were sent to F.S.L for examination and report. Ex.P.13-F.S.L Report establishes that human blood was detected on Item No.1-Gauze cloth with punch chit and dark brown stains, Item No.2-gauze cloth with punch chit, Item No.3 (M.O.1-red and orange colour bangle pieces), Item No.4 (M.O.2-hammer), Item No.5 (M.O.3-bloodstained green and black colour bed sheet, Item No.6 (M.O.5-bloodstained black and green saree of the deceased), Item No.7 (M.O.6-bloodstained green colour design jacket having yellow colour border), Item No.8 (M.O.11-bloodstained violet colour T-shirt of A.1) and Item No.9 (M.O.12-blood strained blue colour night pant of A.1). Blood group of bloodstains found on item Nos.1, 5, 6, 7 and 9 is of 'B' group. The blood group of the deceased found on M.O.3-bed sheet, M.O.5-saree and M.O.6-blouse, is of 'B' group and the blood group

found on M.O.12-blue colour night pant of A.1, (which was seized pursuant to his confession), is also of 'B' group. Thus, these material objects connect the A.1 to the subject death of the deceased.

23. It is contended before this Court on behalf of appellant/A.1 that in the cross-examination of PW.1, he stated that he lodged two complaints, one is at 8.00 AM and another one is at 9.30 AM, which is fatal to the case of prosecution. It is pertinent to state that PW.1 in his evidence specifically stated that one Kattaiah, had prepared Ex.P.1-report dated 21.03.2012 on his dictation. There is evidence of PW.17-Investigating Officer, that he received only one report i.e, Ex.P.1. The said Kattaiah, died before the commencement of trial before the Court of Session. PW.1 was examined on 21.08.2013 i.e, after one year five months from the date of lodging Ex.P.1-report (dated 21.03.2012). He was under trauma and agony in view of death of his daughter (deceased). Further, as per material placed on record, only one complaint was lodged by PW.1 and there is also evidence of PW.17-Investigating Officer to that effect. So it is not a material discrepancy or omission and on this ground, the whole prosecution case cannot be discarded.

24. It is also contended on behalf of appellant/A.1 that A.1 was not present at his house on the intervening night of 21/22.03.2012 and there is no person who saw the accused either causing the death of the deceased or while throwing the dead body of the deceased in the well. Absolutely there is no evidence on record led by A.1 to substantiate the said contention. The said defence is invented only to escape from the punishment from this case. The evidence of PW.3 and PW.5 fortifies the presence of A.1 at his house along with the deceased on the intervening night of 21/22.03.2012. Furthermore, on the date of offence i.e., on 21.03.2012, A.1 surrendered before PW.17-Investigating Officer, at 14:00 hours and voluntarily confessed to have committed the offence.

25. Here, it is apt to state that when an accused takes the plea of *alibi*, the burden of proof heavily lies on him under Section 103 of Evidence Act, to prove the same. If a person is charged with the offence of murder, he has to prove that he was elsewhere. The plea of *alibi* has to be taken at the earliest point of time and it has to be proved to the satisfaction of the Court. But once the prosecution succeeds in discharging the burden to prove the culpability of the accused, it is incumbent on the accused, who adopts the plea of *alibi*, to prove it with absolute certainty, so as to

exclude the possibility of his presence at the place of occurrence. In the instant case, the appellant/A.1, except contending that he was not present at the scene of offence on the intervening night of 21/22.03.2012, did not examine a single witness to prove his *alibi*. The burden of proving *alibi* was on the accused and he failed to discharge the same. In the absence of any sort of evidence, the appellant/A.1's plea of *alibi* cannot be accepted. In fact, failure on the part of the appellant/A.1 to make good his plea of *alibi* is another factor, which provides additional link in the chain of circumstances.

26. Further, as per Section 106 of the Indian Evidence Act, 1872, the accused is required to explain the facts within his/her knowledge. Section 106 of the Act, reads as follows:

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

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

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

27. It is appropriate to refer the decision rendered in **State of Madhya Pradesh vs. Ratan Lal**¹⁰, wherein the Hon'ble Supreme

¹⁰ AIR 1994 SC 458

Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with his innocence, the absence of such explanation itself is an additional link which completes the chain. In the instant case, when the appellant/A.1 was confronted with incriminating material appearing against him and examined under Section 313 Cr.P.C, simply he denied the same and stated that he was falsely implicated in this case. He did not give any cogent explanation.

28. In **Vijay Kumar's** case (8 supra), cited by the learned Public Prosecutor, the Hon'ble Apex Court observed as follows:

“13. It is obvious from the medical evidence that the death was homicidal and the body was thrown in the Nallah after killing. The body had torture marks including the burn marks. This is further established on record that immediately before the death, the deceased was living with her husband. In the light of evidence on record, it could be held that burden would be on the husband under Section 106 of the Evidence Act to explain the circumstances, in which the deceased living with him was killed and her body was thrown in the Nallah.

14. Even if the benefit of doubt is given to other family members, there is no reason to doubt the involvement of accused-Vijay Kumar in the murder. The evidence of PW.11 also corroborates the involvement of the accused Vijay Kumar.”

29. In view of the above discussion, it can be safely concluded without there being any doubt that the evidence adduced by the

prosecution is consistent only with the hypothesis of the guilt of the accused and exclude every possible hypothesis of the innocence of the accused. The chain of evidence is so complete and do not leave any reasonable ground for the conclusion consistent with the innocence of the accused and would, in all probability, show that the subject death was caused by the A.1 and none else. The motive for causing the death of the deceased was that the deceased was not getting money from her parents. The manner in which the subject death was caused, as deposed by PW.16-Dr.K.Laxman, coupled with Ex.P.10-post-mortem examination report and Ex.P.11-opinion of the PW.16, clearly demonstrates that the appellant/A.1 had a clear intent to cause the death of the deceased and he was successful in doing so. Further, the facts and circumstances of the case on hand do not establish that there was any kind of provocation given by the deceased to A.1 to cause the subject death. Therefore, the offence committed by the accused does not fall under Exception 4 to Section 300 of IPC.

30. We have gone through the decisions relied upon by the learned counsel for the appellant/A.1. There cannot be any dispute with regard to the legal propositions laid down in the said decisions. But in the instant case, the oral and documentary

evidence on record clinchingly establish that it is the A.1 alone caused the subject death of the deceased with M.O.2-hammer and thrown the body in the well, situated within in the premises of his house. Thus, the facts of the cited decisions are distinguishable and not applicable to the facts of the case on hand. Further, it is settled law that each case has to be decided on its own merits.

31. In the instant case, the evidence on record clearly demonstrates that after causing the death of the deceased in his house, A.1 in order to screen the evidence, had thrown the dead body into the well, which establishes the commission of offence under Section 201 IPC by A.1. In view of the circumstances narrated above, the requirements under Sections 302 and 201 of IPC are proved by the prosecution beyond all reasonable doubt.

32. The trial Court had elaborately dealt with the entire ocular and material evidence on record and rightly found the A.1 guilty of the offences under Sections 302 and 201 IPC. The findings arrived by the trial Court are based on evidence on record. There is nothing to take a different view. All the contentions raised on behalf of the appellant/A.1 do not merit consideration. The trial Court is justified in convicting the A.1 of the offences as indicated above. The trial Court is also justified in imposing the sentence of

imprisonment against the A.1, as indicated above. The Criminal Appeal is devoid of merit and is liable to be dismissed.

33. In the result, the Criminal Appeal is dismissed, confirming the conviction and sentence recorded against the appellant/A.1 of the offences under Sections 302 and 201 of IPC, vide judgment, dated 27.08.2014, passed in S.C.No.39 of 2013 by the learned II Additional Sessions Judge, Warangal.

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

Dr. SHAMEEM AKTHER, J

JUVVADI SRIDEVI, J

07th April, 2022

Note:

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SCS / BVV