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Public Prosecutor, High Court of A.P., Hyd. Vs. Sivaraj Alias Suraj

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Court : Andhra Pradesh

Decided On : Apr-27-1998

Reported in : 1998(3)ALD818; 1998(1)ALD(Cri)934; 1998(2)ALT(Cri)316

Judge : Motilal B. Naik and ;V. Bhaskar Rao, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 325; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 174 and 313; [Evidence Act, 1872](#) - Sections 106

Appeal No. : CrI. A. No. 1012 of 1996

Appellant : Public Prosecutor, High Court of A.P., Hyd.

Respondent : Sivaraj Alias Suraj

Advocate for Def. : M/s. C. Padmanabha Reddy for ;C. Praveen Kumar, Adv.

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

ORDER

Motilal B. Naik, J.

1. This appeal is filed by the State against the decision of the Metropolitan Sessions Judge, Visakhapatnam in Sessions Case No.78 of 1994, dated 26-12-

1995 in acquitting the sole accused from the charge under Section 302 IPC.

2. The sole accused in Sessions Case No.78 of 1994 who is the respondent in this appeal was charged that on 10-1-1994 around 7.30 p.m. in his rented house, a portion in the house bearing No.61-3-47 in Ramakrishna Puram, Visakhapatnam, during mid-night committed murder of his wife Smt. Suseela, 5th daughter of Laxmamma @ Sivamma of Asthur village in Bidar District of Karnataka State by holding her neck by dhoti and hanging her to tile fan hook of the terrace and thereby committed an offence punishable under Section 302 IPC.

3. The case of the prosecution, in brief, is that the deceased Smt. Suseela was the 5th daughter of Laxmamma@ Sivamma of Asthur village in Bidar District of Karnataka State. She was married to the accused about 10 years ago. The deceased gave birth to two daughters, viz., Mutamma, aged 9 years and Chandrakala @ Chandrika, aged 4 years. According to the prosecution, the deceased was a sickly woman as a result of which the accused left her at her parents' house for more than two years. However, two months prior to the incident, the brother of the deceased Babu Rao (PW3) brought the deceased to the house of the accused and left her there along with her second daughter. The accused was visiting a way side tea stall known as Karuna Tea Stall in Ramakrishnapuram area owned by one Koteswar Rao. Said Koteswar Rao had his younger sister-in-law by name Varalakshmi. The accused expressed his desire to marry the sister-in-law of Koteswar Rao, namely, Varalakshmi. The accused has also stated that his wife consented for the same owing to her ill-health. The accused slowly developed contacts with Varalakshmi and the intimacy between them grew to the exchanging letters.

4. The accused was a tenant in the house bearing door No.61-3-47 in Ramakrishnapuram occupying a portion in the first floor. The landlady (PW1) and her husband noticed the accused quite often returning home in an intoxicated state and used to pick up quarrels with the deceased. The other tenants also knew about the quarrels between the accused and the deceased.

5. On 10-1-1994, the accused returned home around 7.30 p.m. in an intoxicated condition and picked up quarrel with the deceased. During mid-night the accused

severely beat the deceased, abused her and dealt blows with a pot and stick. There was some resistance on the part of the deceased as a result of which the accused also received injuries on his body. The accused in order to get rid of the deceased, tied her neck with a Dhoti and hanged her to death from the hook of the terrace. As the minor child Chandrakala was weeping loudly, the landlady (PW1) went up-stairs along with her husband. The accused, in the meantime came down and informed Subba Rao who is the owner of the house that his wife has expired. Thereupon, the landlady rushed to the up-stairs and shouted in the name of Suseela and found no response and the door was closed from inside. The landlady realised that the accused did not come out of his portion through normal way and had come down only after getting up to the terrace from the backyard of the portion through the open bath-room. She requested one Satyanarayana to go into the house but he did not accede to her request. Then, the landlady requested one John Razario to go inside and he entered the portion where the deceased was there and found all the articles in the room in pelmel condition and the deceased was found hanging to a fen hook. The landlady brought a knife and with the help of the knife, said George Razario cut the dhoti and brought down the dead body. He also brought the child who was weeping and handed over the landlady. The child informed the landlady that her lather committed the offence. The accused did not evince any anxiety despite the death of his wife. The accused was sent to King George Hospital for treatment as some injuries were found on his body. The accused told the doctor that the injuries were caused during the domestic struggle between himself and his wife at about 8.30 p.m. After the receipt of the post mortem certificate, the F.I.R. which was originally registered under Section 174 Cr.P.C. was altered on 12-1-1994 to Section 302 IPC. The accused was taken into custody and sent for remand.

6. The prosecution, in order to bring home the guilt of the accused, examined PWs.1 to 11. PW1 is the landlady, PW2 is another tenant of PW1, PW3 is the brother of the deceased, PW4 - Doctor who issued post mortem certificate, PW5 is the mother of the deceased, PW9 is the Professor of Orthopaedics who examined the accused on a reference by the Police. The prosecution also got marked Exs.P1 to P32 and M.Os.1 to 10. On behalf of the defence, Exs.D1 and D2 portions of 161-statements of PWs.2 and 5 were marked respectively.

7. After completion of the prosecution evidence, the accused was examined under Section 313 of CrP.C. on the basis of the incriminating evidence available against him. The accused, however, denied the charge and pleaded not guilty.

8. The Court below on a consideration of the oral and documentary evidence, rejected the version of the prosecution and held that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. This conclusion is drawn by the Court below on the basis of the evidence of PWs. 1 and 2 that the accused was fully drunken and he would not have designedly murdered his wife in such an inebriated state. The Court below also felt that the accused had suffered fracture on his right collar bone and as such he could not lift his right hand above horizontal position and therefore, the accused could not have lifted the dead body of his wife after killing her by strangulation and he would not have hanged her to the hook of the ceiling fan. By holding so, the Court below acquitted the accused from the charge under Section 302 IPC, against which the present appeal is preferred by the State.

9. On behalf of the State, Smt. C. Suseeta Devi, learned Public Prosecutor, at the outset, contended that the relationship between the accused and his deceased wife was not cordial on account of the ill-health of the deceased. The accused has sent his wife to her parents house for more than two years to get treatment and it is only two months prior to the incident, the deceased along with her youngest daughter were brought to the house of the accused by the brother of the deceased. Learned Public Prosecutor further stated that during the stay of her wife at her parents' house, the accused had developed intimacy with one Varalakshmi (PW6) who was then staying at Visakhapatnam along with her brother-in-law who was running a tea-stall by name Karuna Tea Stall. Learned Public Prosecutor further contended that the accused had even prepared to marry said Varalakshmi which fact was also admitted by Varalakshmi in her evidence as PW6. Counsel contended that this must have been the reason for the accused to do away with the life of the deceased. Learned Public Prosecutor has contended that as spoken to by PW2 in her evidence, the accused and the deceased were quarrelling frequently and on 10-1-1994 when she (PW2) heard the weeping of the child around mid-night, came down and intimated to the landlady (PW1) and while both

of them were going up-stairs the accused was coming down from me stair case. According to the learned Public Prosecutor, when PW1 along with her husband went to the portion of the accused, the accused met them on the stair-case in an intoxicated condition and informed them that his wife has died. Immediately PW1 went to the portion of the accused and knocked the door but there was no response. When she asked Satyanarayana who was staying on the terrace portion, to go into the portion of the accused, he did not go there out of fear. Then PW1 asked one John Razario who was staying opposite to her house and he entered the house of the accused from the rear window pane and informed PW1 that the deceased was hanged to a hook of the fan tied with a Dhoti. PW1 then gave him a knife and with the help of it, he cut the Dhoti and brought down the body of the deceased. According to the Public Prosecutor, PW1 has further deposed that after the dead body of the deceased was brought on the floor, said Razario who died during the pendency of the case, handed over the child to PW1 through the window pane. As per the advise of said Razario, PW1 lodged a complaint to the police on the same night and police came to the spot. In the morning around 7.00 a.m. the doors of the house were broken and the scene of offence was noticed along with the dead body of the deceased. Panchnama was prepared around 9.00 a.m. as per the version of Ranch witness (PW7). According to PW7 who is the panch witness, he noticed injury on the head of the deceased and a scar on her throat. It is also noticed that the household articles were in pelmel condition. Learned Public Prosecutor further contended that as per the evidence of PW10 - Sub Inspector of Police, on 10/11-1/1994, around 2.00 a.m. the received a complaint from PW1 on which basis he registered a case in Crime No.4/94 under Section 174 Cr.P.C. and visited the scene of offence. According to PW10, the scene of offence is the western portion of the first floor and the body of the deceased was lying in the living room. Near the dead body there was a stool of the height of 11/2 feet. PW10 also noticed other articles in pelmel condition and the table fan was found thrown on the floor. He also found the rolling pin used for preparing chapatis broken. He prepared a rough sketch of the scene of offence Ex.P30 and examined PW1. Learned Public Prosecutor stated that the evidence of PW2 is to the effect that on hearing the cries of the child around mid-night on the date of incident, she woke up the landlady and when they were going to the house

of the accused, they noticed the accused coming down from the rear portion of the house on the stair case in an inebriated condition. Learned Public Prosecutor contended that the evidence of PWs. 1 and 2 clearly show that the accused person was present in the house on the date of incidence and was seen coming out of the house from the rear side of the house and met PW1 and her husband in the stair-case and informed them about the death of the deceased. As per the version of PWs. 1 and 2 the accused did not come out of his house till he committed the offence and it is only after committing the offence, he came down from the portion of his house which is on the first floor and after seeing PWs. 1 and her husband in the stair-case he informed them about the death of his wife, the deceased. According to the learned Public Prosecutor, this evidence of PWs. 1 and 2 is sufficient to fix the accused to the guilt as he is solely responsible for the death of his wife. As per the learned Public Prosecutor, the accused was also sent to the doctor PW9 who treated him and deposed that on 11-1-1994 he treated the accused for the injuries due to struggle between him and his wife around 8.30 p.m. on 10-1-1994 at his residence. The injuries found by the doctor PW9 on the body of the accused are as follows:

- '1. A superficial abrasion of 13 cm. on left shoulder;
2. An abrasion of about 1' below the right ear.
3. Two abrasions of about 1 1/2' on the right side of the neck.
4. Multiple abrasions on left knee;
5. Multiple abrasions on right knee.

After treating the accused the doctor PW9 issued Ex.P28 certificate and opined that the injuries noticed on the person of the accused would have been caused by nails. The learned Public Prosecutor contended that the evidence of PW9 coupled with the injuries found on the accused as under Ex.P28 is enough to show that there was a scuffle between the accused and his wife the deceased and he received these injuries by his wife when she resisted the acts of the accused. The learned Public Prosecutor, also referred to the evidence of PW4 Dr. N.V.S.L.

Narasimham who conducted post mortem examination on the dead body of the deceased on 11-1-1994 around 1.30 p.m. and found as many as nine injuries on the body of the deceased. While referring to injuries 6 to 9 found on the dead body of the deceased the doctor PW4 opined that these four injuries are contusions and they are possible to be caused by MO1 wooden rolling pin. The learned Public Prosecutor submitted that in the light of the evidence of PW1, PW2, the medical evidence of PW4 and PW9 and the evidence of PW10 who worked as Sub Inspector of Police, Malkapuram during the period of incidence, the prosecution has amply demonstrated the guilt of the accused and therefore pleaded the acquittal order passed by the trial Court cannot be sustained.

10. Sri. C. Padmanabha Reddy, learned senior Counsel appearing on behalf of Sri C. Praveen Kumar Counsel for the respondent-accused, on the contrary submitted that the trial Court has disbelieved the version of the prosecution and has rightly acquitted the accused giving benefit of doubt to the accused. The learned senior Counsel further contended that the trial Court found that the accused was seen in drunken condition as spoken to by PWs. 1 and 2 and when a person is in a highly drunken state it would be impossible for him to systematically plan to do away with the life of the deceased. The learned Counsel further pleaded that the lower Court also found that the accused had sustained fracture on his right collar-bone and the disability he developed due to fracture is about 25 and with that fracture of collar-bone it is impossible to believe that the accused had lifted the body of his wife after tying dhoti to her neck and fixed it to the hook of the fan to the terrace. The learned senior Counsel also contended that the trial Court has come to a right conclusion holding that the accused having found in a highly intoxicated condition and found disabled himself would not have lifted the deceased to such a height to fix her hanging to the hook and therefore he stated that the trial Court has rightly held that the accused cannot be held responsible for the death of his wife the deceased. Alternatively, the learned Counsel for the accused contended that even if the evidence of prosecution is accepted it cannot be said that the accused had any intention to kill his wife. It is contended that if the accused had killed his wife, he would not have informed about the death of his wife to PW1 and her husband and he would have absconded from that place. The injuries found on the deceased cannot lead to an inference that the accused had any intention to cause death of

his wife. At best if the Court comes to a reasonable conclusion finding the accused guilty, alternatively the offence would come under Section 325 I.P.C. In support of his above contention, the learned senior Counsel has taken us to the following decisions

In Re Chinnathambi, : AIR1953 Mad239

In Re T, Narayana Murthy, 1971 (1) ALT 315

11. On an extensive hearing of the learned Public Prosecutor on behalf of the State and the learned senior Counsel appearing on behalf of the respondent-sole accused, the point for consideration before us is :

Whether prosecution is able to bring about the guilt of the accused and if so whether the trial Court is justified in rejecting the evidence of the prosecution ?

12. In order to prove the guilt of the accused the prosecution though has examined as many as eleven witnesses and got marked Exs.P1 to P32 and MOs. 1 to 10, the evidence of PWs. 1, 2, 3, 4, 5, 6, 7 and 10 in our view is crucial in tilting the pendulum. PW1 is the landlady who has deposed that on 10-1-1994 around 8 p.m. she has noticed the accused going to his portion which is on the first floor. She also deposed that around 12 midnight her husband woke her up for giving medicine to him and while she was giving medicine and coconut-water to her husband she heard the child Chadrakala, daughter of the accused and the deceased weeping in an unusual manner. On hearing these weepings she informed her husband also about the unusual weepings by the child. At that point of time PW2, who is a tenant, came to her portion and also informed PW1 that the child has been weeping and there is none to pacify the child. According to PW1, PW2 suggested her to accompany her (PW2) to see the happening there. She was climbing steps being followed by her husband. She found the accused climbing down the stair-case. When she questioned the accused, he informed them that his wife Suseela died and while hugging her husband the accused fell down. She noticed the accused in intoxication mood. Then she advised her husband to remain there and went upstairs of the portion occupied by the accused. She found the living room latched from inside. She called the deceased. But no response.

She sought the help of one Satyanrayana who is sitting on the terrace and requested him to get into the living room of the accused but he refused. When the door was found closed from inside she asked the accused how he came out when the door is latched from inside. According to PW1, the accused informed her that he came out through gap on the rear side, she then took the help of John Rozaria and sought his assistance. The said John Rozaria according to PW1, entered the room from rear side and saw the deceased hanging by her neck to the hook of the fan with cloth. A knife was given and the said John Rozaria cut the cloth and brought the body of the deceased on the floor. He also gave her the child through window. When asked the child informed that her father tied rope to her mother. According to PW1, after these developments she went to Malkapuram police station and lodged a complaint on the same night under Ex.PI. Police came to the house and inspected the scene of offence. In the cross-examination PW1 has stated that the police broke open the doors about 7 a.m. on 11-1-1994. PW1 has also deposed that she did not notice the accused leaving the house prior to the incidence. It is only after midnight she noticed the accused coming as indicated above from the house.

13, PW2, the tenant in one of the portions adjacent to the portion of the deceased, has spoken to the effect that after hearing the cries of the child in the midnight she came down to the ground floor and informed PW1 the landlady about the weeping of the child. She deposed that she was accompanied by PW1 and proceeded to the upstairs to find out the happening. According to her, as they were climbing the steps the accused was found coming down from the terrace of the first-floor. When questioned the accused stated about the death of the deceased. She is categorical that on the date of incidence she noticed the accused entering the house around 8 p.m. Though the defence has only succeeded in bringing out some discrepancies in 161 Cr.P.C. statements of PW2 and the statement made before the Court by PW2 under Ex.D1, the evidence of PWs.1 and 2 by and large, who are uninterested witnesses prove that the accused was present on the night in their portion of the house and it is only around midnight he tried to come out after the incidence which was noticed by PWs. 1 and 2 and also the husband of PW1.

14. The evidence of PW4 the doctor who has conducted postmortem examination has found as many as nine injuries on the body of the deceased. With regard to the injuries 6 to 9 which are also contusions on the head the doctor has opined that these injuries are possible by MO1 (wooden rolling pin). The evidence of PW9 another doctor reveal that the accused was treated by him on 11-1-1994 and he found as many as five injuries on his body and he issued Ex.P28 certificate. According to PW9 these injuries are simple and are possible to be caused by nails.

15. PW7 one of the panch witness for the inquest, whose presence was sought by the police on 11-1-1994 deposed that around 9 a.m. on 11-1-1994 he visited the scene of offence situate on the first floor and in the first room of the building, along with other. He also noticed dead body on the floor and white lungi hanging from the hook from the roof. He also noticed the injuries on the head of the deceased and a scar on her throat. He found a pot broken and other things thrown pelmel and also a wooden rolling pin in broken condition.

16. The evidence of PW10 the then Sub-Inspector of Police, Malkapuram P.S. at the relevant time deposed that he visited the scene of offence and noticed, nearby the dead body, a stool of the height of one and a half feet. He also noticed broken pot pieces. Table fan was found thrown on the floor with its framed. The wooden rolling pin used for preparing chapatis was found broken. According to him, he examined PW1, her husband Subba Rao, the daughter of the deceased Chandrakala and one D. Rozaria, PW2 and recorded their statements. After recording the statements he summoned panchayatdars. One K. Narasimha Murthy, Rozario and PW7. According to him, the inquest on the dead body was held between 9 a.m.to 12 noon. He further deposed that he noticed some injuries on the person of the accused. The injuries he found on the accused are abrasions below ear and on left shoulder and two abrasions on the right side of neck. PW10 further deposed that he sent the accused for medical examination. He also found the letters written by PW6 to the accused which are Ex.P15.

17. Thus, the evidence of PW4 and PW9 who found injuries on the accused and contusions on the head of the deceased coupled with the evidence of PW7 and

PW10 amply prove the fact that there was a struggle between the accused and the deceased. The evidence of PWs. 1 and 2 further discloses that the accused was present in his portion of the house from 8.30 p.m. on 10-1-1994 and he did not leave his portion. We accept the circumstances under which he was noticed coming out of his portion in the midnight as spoken to by PWs. 1 and 2.

18. In the background of this evidence by the prosecution, the presence of the accused in his portion on that day from 8.30 p.m. and his statement made to PW1 and her husband in the presence of PW2 about the death of his wife in the midnight has been established. The circumstances of the presence of the accused is established in the house along with his wife and minor daughter. The death of his wife is reported by the accused to the prosecution witnesses. In the absence of proper explanation as to the cause of the death of his wife by the accused and failure to explain the circumstances under which his wife died would also be taken as an additional link to the chain of circumstances which establish that the accused is responsible for the offence. The presence of the accused right from 8.30 p.m. on 10-1-1994 and his coming out of his room from the rear window on the midnight as the door of the portion being latched from inside and the minor daughter Chandrakala being found weeping and the body of the deceased found hanging to the hook of the fan tied with dhoti as spoken to by PW1, the injuries found on the body of the accused as spoken to by PW9 and the head injuries found on the deceased as spoken to by PW4 are all the chain of circumstances which establish that the accused and the accused alone is responsible for the death of his wife the deceased. As indicated above in the absence of any explanation by the accused the circumstances leading to the death of his wife under Section 106 Indian Evidence Act presumption could be drawn and such presumption is also an additional link to the chain of circumstances to hold that the accused is guilty of the offence.

19. The prosecution has also reasonably succeeded in bringing about the motive part on the accused to do away with the life of his wife. The prosecution has been able to show that the deceased was sickly person as spoken to by the brother of the deceased who has been examined as PW3 and her mother PW5 and both of them have spoken to the effect that the deceased was being treated. That apart

the prosecution is able to show that the accused had developed intimacy with one Varalakshmi who has been examined as PW6 and proposed to marry her. The said Varalakshmi, who has been examined as PW6, has spoken that the accused requested her brother-in-law to search for a girl and was informing her brother-in-law that his wife was sick and wanted to marry other lady. She has admitted the fact of her being proposed to him when she developed good friendship with him and even writing letters. According to her, the accused also visited her native village and asked her mother's permission to marry her. Since the accused belonged to a different caste the proposal of the accused was dropped. Therefore, the prosecution has been able to show through the evidence of PWs. 2, 3, 5 and 6 that the deceased was sickly person and that the accused was interested in marrying PW6. Through these witnesses the prosecution has been able to reasonably bring about the motive part of the accused to do away with the life of his wife the deceased.

20. The learned Metropolitan Sessions Judge, Visakhapatnam has though held that there was friendship between the accused and PW6 and has also held the presence of the accused on that night in his house, yet disinclined to accept the prosecution version that the accused is responsible for the death of the deceased. While reaching to such a conclusion the learned Metropolitan Sessions Judge has held that when the accused was found in a fully drunken state, it may not be possible if a person in such a drunken state to designedly kill a person or hang a person to death. The learned trial Court has also found that the accused had suffered a fracture to his right collar-bone and he cannot lift his right hand above the horizontal position. While reaching to such a conclusion the trial Court has held that the accused having suffered fracture to his right collar-bone, he could not have lifted the dead body after killing her by strangulation and put up a show of hanging. The trial Court has further observed that the deceased was heftier than the accused and that being the situation the accused would not have hung her body to the hook of the fan to give a colour of suicide. The trial Court felt that the evidence of the prosecution is based on purely conjectures and surmises and the quality of evidence tendered by the prosecution is uninspiring. While holding thus, he rejected the case of the prosecution and acquitted the accused from the charge.

21. The finding of the trial Court that the accused had a fracture to his right collar-bone and he was not able to lift his right hand above the horizontal position and he would not have lifted the deceased being heavier and strangled her and hung her to the hook of the fan, we do not think, this finding justifiable. Firstly when the accused was examined on 11-1-1994 on a reference by the concerned police PW9 who examined him found the following injuries:

- '1. A superfluous abrasion of 13 cm. on left shoulder.
2. An abrasion of about 1' below the right ear.
3. Two abrasions of about 1 1/2' on the right side of the neck.
4. Multiple abrasions on left knee;
5. Multiple abrasions on right knee.'

Except these injuries, PW9 did not find any other injury as is evident from Ex.P28 certificate issued by the doctor. The doctor PW9 has deposed that he is M.S. Orthopaedics and had also private practice in Malkapuram area. The doctor has deposed that on examining the accused, in the Court on 13-9-1995, he found the accused sustained a fracture to his collar-bone and he has also opined that the disability is about 25 per cent. In the cross-examination he stated that the injuries he noticed at the first instance on 11-1-1994 are all simple in nature and which could be caused by nails. It is surprising that the alleged fracture on the right collar-bone found on the accused was not noticed when the accused was first examined by the doctor on 11-1-1994. It is likely even if it is to be accepted that the accused had fractured his right collarbone this injury could have been caused on subsequent days but as on the date of examination of the accused by the doctor on 11-1-1994, excepting the five injuries as indicated above under Ex.P28 by PW9 who examined the accused, there was no other injury found on the body of the accused. That being the factual position, we are afraid the finding of the lower Court that with the fractured shoulder the accused would not have lifted the heavier body of the deceased and would not have been in a position to tie the body to the hook of the fan cannot be accepted. It is surprising how the lower Court can

find that the deceased is heftier than the accused. Probably on seeing the photograph of the deceased the lower Court seems to have reached to the conclusion that the deceased is heftier and the accused would not have been in a position to lift the heftier body which cannot be accepted and it is far from reality,

22. The other finding of the trial Court is that the accused was found in such a drunken condition as spoken to by PWs. 1 and 2 and the person being in such a drunken state would not have designedly killed a person or hung a person to death. We do not think this conclusion of the Court below could be accepted. Merely because the accused was in drunken condition, it cannot be said that the person in drunken state of mind cannot act cruelly. It may be so, to act cruelly a person may need support of alcohol to give strength to act cruelly. Normally, a man may hesitate to do an unkindest act unless in certain provocative circumstances. But a man in a drunken state of mind is capable of doing the unkindest act also. Injuries found on the body of the accused and the injuries particularly injuries 6 to 9 found on the dead of the deceased which are contusions, the broken rolling pin MO 1 and the pelvic condition of the living room of the accused as found at the time of inspection of the scene as spoken to by PWs. 1, 2, 7 and 10, we have no hesitation to hold that there was struggle between the accused and the deceased. The injuries found on the body of the accused would prove that the deceased tried to protest and there was struggle. Being a sickly person, could not overpower the strength of the accused and suffered the death in the hands of the accused. The accused, in order to escape from the liability and to prove that it is not a death of homicidal but of suicidal, tied the dead body to the hook of the fan attached to the terrace/roof.

23. As discussed we are of the view that in the absence of the accused explaining the circumstances under which his wife died coupled with the evidence of PWs. 1, 2, 3, 4, 5, 6, 7, 9 and 10 and the accused's statement before the doctor PW9 that he received injuries in the domestic struggle with his wife, we are convinced that all the links in the chain of circumstances lead to reach a conclusion that it is the accused and accused alone who is responsible for the death of the deceased. We hold that the circumstances under which the death is caused by the accused have reasonably been explained by the prosecution. We are, therefore, of the view that

the trial Court is not justified in rejecting the evidence of the prosecution on some imaginary grounds though the reality is otherwise.

24. The learned senior Counsel appearing on behalf of the respondent accused alternatively pleaded that if the Court on an overall appreciation of the evidence reach to the conclusion that the accused is solely responsible for the death of the deceased, he had no intention to cause the death of the deceased and that the offence if at all made out by the prosecution could be brought under Section 325 I.P.C. but not under Section 302 I.P.C. In support of his contention the learned Counsel for the accused has drawn our attention to the decisions in Chinnathambi and Narayana Murthy cases (supra). We do not think, this submission could be accepted. We are certain that the accused had worked out a scheme and had intention to kill his wife. If the accused had no intention to kill his wife and is an innocent person, there was no reason for him to come from rear windows stealthily. He could have opened the doors and could have come from the main entrance and informed to others about the death of his wife, Though he informed to PW1 and her husband about the death of his wife, he did not even explain the circumstances of the death. We have no hesitation to say that the accused had worked out a definite scheme and his intention was clear to cause the death of his wife. The accused had reasons to do so as he found his wife sick and staying with her parents for long spells undergoing medical treatment. The deceased had stayed more than two years in the house of her parents in Bidar district of Karnataka State and had returned only two months prior to the incident to Visakhapatnam along with her brother PW3 and minor child Chandrakala, It is also evident that the accused had developed intimacy with PW6 and desired to marry her. The accused thought that the presence of the deceased is an obstacle for his marriage with PW6 and there is every reason to believe the prosecution version that the accused had intention to do away with his life of the deceased. We, therefore, reject the alternative submission made by the learned Counsel appearing on behalf of the accused.

25. In the result, we find the accused guilty of committing the murder of his wife Suseela on the night of 10-1-1994 in the portion of house No.61-3-47, Ramakrishnapura, Visakhapatnam, which offence is punishable under Section 302

I.P.C. We convict the accused for the said offence and sentence him to undergo rigorous imprisonment for life and also impose a fine of Rs. 1,000/- and in default, he shall further undergo rigorous imprisonment for three months. Accordingly, the judgment of the learned Metropolitan Sessions Judge, Visakhapatnam dated 26-12-1995 in Sessions Case No.78 of 1994 is set aside and consequently the appeal filed by the State is allowed.

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