

APHC010677272013



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3474]

WEDNESDAY ,THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL NO: 174/2013

Between:

Chelliboina Ravi Kumar,

...APPELLANT

AND

The Stat Eof Ap Rpe By Its Pp Hyd

...RESPONENT

Counsel for the Apellant:

1.D SANGEETHA REDDY

Counsel for the Respodent:

1.PUBLIC PROSECUTOR

The Court made the following:

APHC010690342013



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CRIMINAL APPEAL NO: 173/2013

Between:

C.suryanarayana, Visakhapatnam & 3 Othrs., and ...**APELLANT(S)**
Others

AND

State Of Ap Rep Pp Hyd

...RESPONENT

Counsel for the Apellant(S):

1.C VASUNDHARA REDDY

Counsel for the Respodent:

1.PUBLIC PROSECUTOR

The Court made the following:

APHC011422202013



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THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL(S.R.) NO: 12925/2013

Between:

D.venu Visakhapatnam.

...APPELLANT

AND

Ch Suryanarayana Visakapatnam And 4 Otrs

...RESPONENT

Counsel for the Apellant:

1. DUVVURI SURYA NARAYANA

Counsel for the Respodent:

1. PUBLIC PROSECUTOR (AP)

2. 7626/C VASUNDHARA REDDY

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

SPECIAL DIVISION BENCH

CRIMINAL APPEAL No.174 OF 2013, 173 OF 2013

& CRL.A.(S.R.)No.12925/2013

CRIMINAL APPEAL No.174 OF 2013

Between:

Chelliboina Ravi Kumar,
S/o.Suryanarayana,Aged31 years,
Taxi Driver, R/o.D.No.9-7-29/14,
Six Top Junction, Sivajipalem,
Visakhapatnam.

..... Appellant/A-1

A N D

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

..... Respondent/Complainant

CRIMINAL APPEAL No.173 OF 2013

Between:

1. Chelliboina Suryanarayana,
S/o.LatePydayya, Aged 52 years,
R/o.D.No.9-7-29/14, Six Tap Junction,
Shivajipalem, Visakhapatnam.
2. ChelliboinaGuramma,
W/o. Suryanarayana, Aged 46 years,
R/o.D.No.9-7-29/14, Six Tap Junction,
Shivajipalem, Visakhapatnam.
3. MedaboinaSyamala Devi,
W/o.Krishna, Aged 29 years,
R/o.D.No.1-105, Pilavanipalem,
Madhurawada, Visakhapatnam.

4. Duvvi Prasanna Kumari,
W/o.Suresh, Aged 26 years,
R/o.D.No.9-6-27, Shivajipalem,
Visakhapatnam. Appellants/A-2 to A-5

A N D

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad. Respondent/Complainant

CRL.A.(S.R.)No.12925/2013

Between:

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad. Appellant/Complainant

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R/o.D.No.9-6-27, Shivajipalem,
Visakhapatnam. Respondents/A-2 to A-5

DATE OF COMMON JUDGMENT PRONOUNCED: 27.03.2024

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE K.SURESH REDDY

AND

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

- | | |
|--|--------|
| 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 |
| 3. Whether His Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURESH REDDY, J.

B.V.L.N.CHAKRAVARTHI, J.

*** HON'BLE SRI JUSTICE K.SURESH REDDY**

AND

*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CRL.A.No.174 OF 2013, 173 OF 2013

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Visakhapatnam.

..... Appellants/A-2 to A-5

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The State of Andhra Pradesh,
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Visakhapatnam. Respondents/A-2 to A-5

! Counsel for the Appellants : Smt.C.Vasundhara Reddy

^ Counsel for the Respondent : Sri S.Dushyanth Reddy,
Addl. Public Prosecutor.

< Gist:

> Head Note:

? Cases referred:

- 1. 2022LiveLaw (SC) 582**
- 2. AIR 1989 SC 1519**
- 3. 2020 (10) SCC 733**
- 4. 2008 (11) SCC 352**
- 5. 2002 (10) SCC 518**
- 6. AIR 1983 (SC) 810**
- 7. AIR 2016 (SC) 4486**
- 8. 2016 (3) ALT (CrI.) 505 (DB) (AP)**

This Court made the following:

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(Special Original Jurisdiction)

**WEDNESDAY, THIS THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

SPECIAL DIVISION BENCH

PRESENT

HON'BLE SRI JUSTICE K.SURESH REDDY

AND

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL APPEAL No.174 OF 2013, 173 OF 2013

& CRL.A.(S.R.)No.12925/2013

CRIMINAL APPEAL No.174 OF 2013

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The State of Andhra Pradesh,
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High Court at Hyderabad. Respondent/Complainant

CRL.A.(S.R.)No.12925/2013

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R/o.D.No.9-6-27, Shivajipalem,
Visakhapatnam. Respondents/A-2 to A-5

Counsel for the Appellant(s) : Smt.C.Vasundhara Reddy

Counsel for the Respondent(s) : Public Prosecutor

COMMON JUDGMENT:

(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

1. Heard Smt.C.Vasundhara Reddy, learned counsel for the appellants/accused No.1 to 5, and Sri S.Dushyanth Reddy, learned Addl.Public Prosecutor for respondent/State.
2. The appeal vide CRL.A.No.174/2013 is filed for A-1. The appeal vide CRL.A.No.173/2013 is filed for A-2 to A-5. Both the appeals arose from the judgment dated 12.02.2013 passed in S.C.No.148/2011 on the file of the learned Mahila Court, Visakhapatnam (hereinafter referred to as 'trial Court'). The appeal vide CrI.A.(S.R.)No.12925/2013 is filed for the State through Public Prosecutor U/s.372 Code of Criminal Procedure, 1973 (for brevity 'Cr.P.C.') against A-2 to A-5, challenging the judgment of acquittal for the offence U/s.304-B, 120-B Indian Penal Code, 1860 (for brevity 'I.P.C.').

3. The accused No.1 was tried and convicted by the trial Court for the offence U/s.302 of I.P.C. and sentenced to suffer rigorous imprisonment for life, and also to pay fine of Rs.2,000/- (Rupees Two Thousand only), in default, to suffer simple imprisonment for one year. The accused No.2 to 5 were tried and convicted by the trial Court for the offence U/s.498-A I.P.C. and sentenced to suffer rigorous imprisonment for three years each, and also to pay fine of Rs.5,000/- (Rupees Five Thousand only) each, in default, to suffer simple imprisonment for one year each. The accused No.1 to 5 were tried and acquitted for the offence U/s.304-B I.P.C. Challenging the same, the State filed appeal vide CrI.A.(S.R.)No.12925/2013. The accused No.6 to 9 were tried and acquitted for the offence U/s.120-B I.P.C. It was submitted that State filed no appeal against the said acquittal.

4. The case of the prosecution is that the marriage of Smt.D.Krishna Veni (hereinafter referred to as 'deceased') and A-1 was solemnised on 29.08.2010; at the time of marriage, a sum of Rs.1,50,000/- towards dowry was presented to A-1 as a consideration for marriage; Rs.20,000/- was presented to

sisters of A-1; a motor cycle was presented to A-1 purchased in the name of deceased; the deceased was studying engineering course at the time of marriage; the deceased joined the conjugal life with A-1 at her in-laws house; one or two months after A-1 started harassing the deceased physically and mentally demanding to bring rents collected for the house standing in the name of parents of deceased and also to execute a deed for half share in the house property in the name of A-1; the deceased informed the harassment to her parents' unable to bear the harassment, the deceased returned to her parents' house and attending college; the parents of deceased informed parents of A-1 i.e., A-2 and A-3 about the harassment; they asked them to meet the demands of A-1, otherwise, he would be cruel to deceased.

(a) On 04.03.2011 at about 06.00 p.m. the deceased attended college; she was returning to her parents' house by walk; she reached the scene of offence located on Kalabharathi road in Maddilapalem at Visakhapatnam; A-1 way laid came to her, quarrelled with her, picked out a knife, hacked the deceased on the neck; the deceased fell down and died on the spot;

(b) One Sri G.Simhadri informed the parents of deceased over phone about the incident; Sri Ch.Gopi (P.W-4) a resident of Maddilapalem, who was present at the scene of offence, witnessed the offence committed by A-1; the elder brother of mother of deceased reached the scene of offence, found the deceased died; the people who gathered there informed the parents about the offence committed by A-1; the deceased was immediately shifted to King George Hospital, Visakhapatnam; the mother of deceased presented a report (Ex.P-1) to the Inspector of Police P.Krishna Varma (P.W-19) III Town Police Station, Visakhapatnam, and he registered the same as FIR (Ex.P-19) in Cr.No.125/2011 for the offence U/s.302, 498-A IPC and submitted the original FIR to the learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam, and copies to all concerned.

(c) Inspector of Police (P.W-19) visited the scene of offence, collected mediators i.e., PLV Narayana Murthy (P.W-11) and another, and in their presence, observed the scene of offence, seized blood stained earth and controlled earth with the assistance of clues team; he also seized one blood stained hand kerchief under the cover of an observation

report (E.P-10); he prepared rough sketch for scene of offence (Ex.P-20); the scene of offence was video-graphed and photographed (Ex.P-21); he sent requisition to Mandal Executive Magistrate, Visakhapatnam, P.Dharma Chandra Reddy (P.W-18) to conduct inquest over the dead body of deceased, since the deceased died within seven years of marriage; on 05.03.2011 Mandal Executive Magistrate, Visakhapatnam conducted inquest at mortuary of King George Hospital, Visakhapatnam, in the presence of inquestdars' under the cover of Ex.P-18 inquest report; Inspector of Police basing on the inquest report included section 304-B IPC beside 302, 498-A IPC and submitted alteration memo (Ex.P-22) to the Court; he sent the dead body for conducting autopsy.

(d) Doctor V.Chandra Sekhar (P.W-14), Assistant Professor, Forensic Medicine, Andhra Medical College, Visakhapatnam, conducted autopsy over dead body of deceased on 05.03.2011 at 12.05 to 01.30 p.m. and issued Ex.P-16 post mortem certificate, opining that the deceased would appear to have died due to section of spinal cord of neck due to chop wound.

(e) Assistant Commissioner of Police, East Division, Visakhapatnam (P.W-20) conducted further investigation; on 06.03.2011 he visited scene of offence, secured the presence of D.Venu (P.W-1), Ch.Satyanarayana (P.W-2), V.Nageswara Rao (P.W-3) and Ch.Gopi (P.W-4) examined and recorded their statements; on information he visited the thatched house of one Ch.Venkata Rao at Vizayanagaram and arrested A-1 in the presence of B.Govinda Raju (P.W-12) and another mediator and recorded confession statement (Ex.P-11), seized blood stained T-shirt and cell phone; basing on the confession, he visited SKML staircase shop situated at Maddilapalem along with accused and mediators and seized a knife produced by A-1 from underneath the shop (M.O-1) under the cover of Ex.P-12 mediators report; basing on the confession of A-1, he included section 120 IPC and submitted alteration memo (Ex.P-23) to the Court; he proceeded to Geetha Bar and Restaurant, Maddilapalem, secured the presence of S.Ramachandra Rao (P.W-5), B.Chinn Rao (P.W-9) and others and recorded their statements; he proceeded to the house of A-1 and arrested A-2 to A-5 in the presence of B.Govinda Raju (P.W-12) and another mediator by name

Ch.NarayanaRao (L.W-11); Inspector of Police proceeded to Nethaji Colony and arrested A-7 at his house.

(f) On 07.03.2011 he visited Sivajipalem and secured K.Kalyani (P.W-7), M.Srinivas (P.W-8) and others and recorded their statements; he deputed Sub Inspector of Police to arrest A-9 at Vijayawada, and accordingly, on 08.03.2011 SI of Police G.Diwakar Yadav (P.W-16) arrested A-9; Assistant Commissioner of Police arrested A-8 also; he made attempt to examine and recorded statements of the persons living in the neighbouring houses to scene of offence, but none of them came forward to give statements; he received post mortem certificate on 11.03.2011; he sent the material objects to RFSL, Visakhapatnam for their opinion; the Scientific Officer, RFSL, Visakhapatnam, by name B.Ramakrishna Rao (P.W-13) issued Ex.P-15 RFSL report; on 12.03.2011 he visited Vignan Engineering College, where the deceased was studying engineering and examined witnesses and recorded the statements of Professor N.Rajender, A.Divya and R.Priyanka and others; after completion of investigation, he laid report (charge sheet) against the accused on 03.06.2011.

5. During trial, 20 witnesses were examined for the prosecution as P.Ws-1 to 20 respectively, 23 documents were marked as Exs.P-1 to P-23 respectively, apart from M.Os-1 to 6. Some portion of statements of the witnesses recorded U/s.161 Cr.P.C. (P.W-1, P.W-18 and P.Narasimhamurthy (L.W-17) were marked as Exs.D-1 to D-3 for the defence.
6. The accused were examined U/s.313 Cr.P.C. regarding the incriminating evidence appearing against them from the evidence for the prosecution. The accused denied the same as false. No defence witnesses were examined for the defence.
7. The learned trial Court after hearing the prosecution and defence, found the A-1 guilty and convicted for the offence U/s.302 IPC, and also found the A-2 to A-5 guilty and convicted for the offence U/s.498-A I.P.C. Challenging the judgment, the appellants/accused No.1 to 5 preferred separate appeals stated supra.
8. The learned trial Judge acquitted A-1 to A-5 for the offence U/s.304-B IPC, and A-1, A-6 to A-9 for the offence U/s.120-B I.P.C. The State filed appeal challenging the acquittal of A-2 to A-5 for the offence U/s.304-B I.P.C.

9. Smt.C.Vasundhara Reddy, learned counsel for the appellants/accused No.1 to 5 vehemently argued that no incriminating evidence is available against the accused for the offence U/s.498-A IPC. She would further submit that the learned trial Court relied on the evidence of P.W1 to convict the accused No.1 to 5 for the offence U/s 498-A IPC. Whereas Ex.P-1 presented by P.W-1 does not disclose any material to connect the accused A1 to A5 for the offence U/s.498-A IPC and the evidence of P.W-1 deposed before the trial Court is an improved statement to implicate the accused, and therefore, the evidence of P.W-1 cannot be used to convict the accused.

10. She would further submit that the learned trial Judge erroneously relied on the testimony of P.W-4, and convicted A-1 for the offence U/s.302 IPC.; He is a chance witness; and his evidence before the Court does not inspire any confidence that he was present at the time of incident; he did not state physical features of the offender in the statement given to the police, and he identified A-1 first time only in the Court, and no test identification parade was conducted by the police during investigation; in those circumstances, no reliance can be placed on the evidence of P.W-4 to convict A-1, it is not

sustainable in law; the weapon seized (M.O-1) is also creates a doubt, in view of the evidence of the doctor (P.W-14), it would show that police planted the weapon, to support the theory of recovery of M.O-1 at the instance of A-1;

11. In support of her arguments, relied upon the following judgments of the Hon'ble Apex Court:

1. Amrit Singh Vs. State of Punjab¹

2. State of U.P. Vs. Madan Mohan and others²

12. Sri S.Dushyanth Reddy, learned Addl.Public Prosecutor argued that the evidence of P.W-1 i.e., mother of deceased would establish that A-1 to A-5 after the marriage harassed the deceased demanding additional dowry and therefore, she left the house of A-1, residing in the house of her parents to continue her engineering studies; there are no grounds to disbelieve the evidence of P.W-1.

13. The learned Addl.Public Prosecutor would further argued that the evidence of P.W-4 would establish that he is a resident of Maddilapalem, Visakhapatnam and it is an

¹ 2022LiveLaw (SC) 582

² AIR 1989 SC 1519

admitted fact that the murder was committed on the road leading to Kalabharathi located in Maddilapalem, Visakhapatnam, and the offence was committed at about 06.00 p.m. in the month of March; the evidence of P.W-4 would establish that he came to the place of incident located near to his house, to have snacks during evening time, and his evidence also would establish that he went to the hospital also, he was present at the time of inquest; he identified A-1 without any semblance of doubt; there was quarrel between A-1 and the deceased prior to A-1 hacking the deceased, noticed by the him and others; he was examined before the Court within a period of six months from the date of incident; the incident was occurred on 06.03.2011 and he was examined on 10.11.2011 in the Court; In that view, there are no reasons to disbelieve the testimony of P.W-4 and further nothing was elicited in his evidence to contend that he had motive or any other reason to depose against the accused or in favour of the prosecution.

14. He would further submit that Test Identification Parade is not a substantive piece of evidence and at best it can be used as a corroboration, and it is for the purpose of helping

investigating agency with an assurance that their progress with the investigation into the offence is truthful and on right lines; mere absence of Test Identification Parade will not make the evidence of an eye witness regarding identification of the accused untrustworthy, when his evidence would establish that his presence is very much possible at the time of incident, there is sufficient time for him to observe the physical features of A-1; in those circumstances, the decisions relied upon by the learned counsel for accused have no application to the facts of the case on hand.

15. The learned Addl. Public Prosecutor in support of his arguments, relied upon the following judgments of the Hon'ble Apex Court:

1. **Chunthuram Vs. State of Chattisgarh**³
2. **Md.Kalam @ Abdul Kalam Vs. State of Rajasthan**⁴
3. **State of Himachal Pradesh Vs. Premchand**⁵

16. In the light of above rival contentions, the point that would arise for determination in these appeals is as under:-

³ 2020 (10) SCC 733

⁴ 2008 (11) SCC 352

⁵ 2002 (10) SCC 518

“Whether the prosecution proved the guilt of the A-1 for the offence U/s.302I.P.C. and A-1 to A-5 for the offence U/s.498-A I.P.C. beyond all reasonable doubt?”

17. **POINT:**

We perused and considered the evidence of P.Ws-1 to 20 and documents on record. The evidence of P.W-1 i.e., mother of deceased coupled with Ch.Satyanarayana (P.W-2) brother of P.W-1 and Ch.Narayana Rao (P.W-17) another brother of P.W-1 would establish that the deceased is the wife of A-1. A-2 and A-3 are parents of A-1. A-4 and A-5 are sisters of A-1. Marriage of the deceased and A-1 was solemnized on 29.08.2010 at Visakhapatnam. The evidence of P.W-1, P.W-2, P.W-7, P.W-8 and P.W-17 would establish that A-1 and the deceased lead happy conjugal life for about two or three months and later, A-1 started demanding the deceased to get the rents collected for the building belonging to P.W-1 i.e., mother of the deceased. Their evidence would also establish that A-1 harassed the deceased physically as well mentally to meet his demand to get rents collected for the building of P.W-1 and to get a deed executed by P.W-1 for half share of the said building in the name of A-1.Ex.P-1 is the first

information report presented by P.W-1 to the police soon after the murder of the deceased.

18. According to the first information report, A-1 harassed the deceased demanding for house rents and for transfer of half share of house property standing in the name of P.W-1. He used to beat the deceased to meet the demand and it was informed to A-2, A-3 and sisters of A-1, but they did not care of A-1. Therefore, Ex.P-1 does not disclose anything about the harassment of A-2 to A-5, except that they did not take care of A-1, though they were informed about his harassment. But P.W-1 in the evidence before the Court made several allegations against A-2 to A-5 on harassment. On consideration of the facts and circumstances coming out from the evidence on record, we are of the opinion that she tried to implicate A-2 to A-5 for the reasons best known to her, subsequent to death of her daughter in the incident occurred on 04.03.2011.

19. Viewed from any angle, we are of the considered opinion that no incriminating material made out against A-2 to A-5 for the offence U/s.498-A IPC. However, the evidence of P.W-1, P.W-2, P.W-7, P.W- and P.W-17 would establish that

soon after the marriage, A-1 started harassing the deceased physically and mentally demanding her to bring rents collected for the house owned by P.W-1 and also to get a deed executed in his favour for half share in the said building and as a result, the deceased forced to leave the matrimonial home and reach the house of P.W-1 i.e., her mother to continue her engineering studies.

20. Therefore, we are of the opinion that the prosecution beyond all reasonable doubt proved the offence U/s.498-A IPC against A-1 only. Hence, the conviction and sentence imposed by the trial Court against A-2 to A-5 for the offence U/s.498-A IPC is liable to be set aside.

21. When coming to the charge for offence U/s.302 IPC against A-1, the case of prosecution is that on 04.03.2011 at about 06.00 p.m. the deceased was returning to home from the college, she reached the place i.e., scene of offence located on the road leading to Kalabharathi in Maddilapalem, Visakhapatnam. A-1 way laid, quarreled with the deceased, and hacked with M.O-1 knife on the neck; as a result, the deceased suffered injury on the neck i.e., section of spinal cord of neck due to chop wound and died at the spot.

22. The evidence on record shows that scene of offence is a busy locality, surrounded by residential houses, pushcart vendors selling sweet meets/snacks on the right side. Many people witnessed the incident, but due to fear pushcart vendors ran away. One G.Simhadri intimated P.W-1 about the incident, and then, on her request, P.W-2, P.W-17 and others reached scene of offence. P.W-1 presented Ex. P-1 report to the police.

23. The evidence of P.V.Krishna Varma (P.W-19) would show that on 04.03.2011 at about 06.30 p.m. he received report (Ex.P-1) from P.W-1 and registered the same as case in Cr.No.125/2011 and submitted copies to all concerned. Ex. P-19 is the original FIR and visited scene of offence with clues team.

24. The evidence of S.Lakshmi Narasimha (P.W-15) would show that on 04.03.2011 on the request of Inspector of Police, III Town P.S., Visakhapatnam, visited the scene of offence as a member of clues team. P.W-19 further deposed that on visiting the scene of offence, he collected the mediators P.W-11 and another. P.W-11 deposed that on 04.03.2011 at about 06.30 p.m. Inspector of Police, III Town P.S.,

Visakhapatnam, visited the scene of offence and observed the same and seized M.O-2 cloth stained with blood, M.O-3 spectacles, M.O-4 hand kerchief stained her blood available at the scene of offence vide Ex. P-10 observation report. Therefore, the evidence of P. W-11 corroborates the evidence of Inspector of Police about visiting the scene of offence soon after the incident and seizure of M. Os-2 to 4 available at the scene of offence.

25. It is pertinent to note down that the report of Scientific Officer of RFSL would establish that he received hand kerchief and cloth seized by the police and they contained blood, hand kerchief belonging to the deceased also contain blood of human origin of 'AB' group.

26. The Inspector of Police further deposed that the scene of offence was photo-graphed as well as video-graphed. Ex.P-21 are the photographs, and later sent a requisition to Tahsildar, Visakhapatnam to conduct inquest over the dead body of deceased. Sri P.Dharmachandra Reddy (P.W-18) the then Tahsildar, Visakhapatnam, deposed that on 05.03.2011 on the request of police, he conducted inquest over dead body of

deceased at mortuary of King George Hospital, Visakhapatnam, in the presence of panchayatdars, blood relatives of the deceased and others and Ex.P-18 is the inquest report. His evidence establishes that at the time of inquest, he recorded the statements of P.W-1, P.W-2, P.W-3 and P.W-4. Therefore, the evidence of P.W-4 that he went to King George Hospital, Visakhapatnam, and present at the time of inquest is proved by the prosecution.

27. The Inspector of Police further deposed that he sent the dead body to conduct autopsy. The evidence of P.W-14 would establish that he conducted autopsy over the dead body of deceased and issued Ex.P-16 post mortem certificate.

28. P.W-20 is the then Assistant Commissioner of Police, East Division, Visakhapatnam, conducted further investigation in the case. He deposed that he examined P.W-1, P.W-2, P.W-3, P.W-4 and other witnesses and recorded their statements on 06.07.2011; on information, he proceeded to the Phase-III, VUDA Colony, Vizianagaram and arrested A-1 in the presence of P.W-12 and another; basing on the fact discovered from the statement made by A-1, seized M.O-1 knife kept underneath a buddy shop; Basing on the statement

of A-1, included the names of A-6 to A-9 for the offence U/s.120-B IPC vide Ex.P-23 alteration memo. Later, proceeded to Gita Bar and Restaurant, Maddilapalem and secured witnesses and recorded statement of P.W-5, P.W-9 and others.

29. It is pertinent to note down that P.W-5, P.W-6 and P.W-9 did not support the case of the prosecution. Assistant Commissioner of Police further deposed that he arrested A-2 to A-5 in the presence of P.W-12 and another; later arrested A-6, A-7 and on 07.03.2011; Visited Sivajipalem, Visakhapatnam, and examined P.W-7, P.W-8, P.W-17 and others and recorded their statements and on his instructions, SI of Police (P.W-16) arrested A-9 on 08.03.2011; A-8 was also arrested during the course of investigation. He categorically deposed that he made all efforts to examine the persons living in the houses located in and around the scene of offence including the owners of shops and workers in the nearby vicinity, but nobody came forward to give statement. He also deposed that on 11.03.2011 after receipt of post mortem certificate, he forwarded M.Os-1 to 6 to RFSL, Visakhapatnam, and P.W-13 issued Ex.P-17 report; on

12.03.2011 he also visited Vignan College, where the deceased was studying; On completion of investigation, he laid the police report (charge sheet) on 03.06.2011.

30. The prosecution case to prove the offence U/s.302 IPC alleged against A1 is based on two material facts. One is based on the evidence of P.W-4 i.e., G.Simhadri, an eye witness to the incident of murder. The second fact is recovery of M.O-1 knife basing on statement of the A1, relied under section 27 of the Indian Evidence Act.

31. P.W-4 deposed that he is working as a car driver, and on 04.03.2011, at about 05.50 p.m., he went to road near Kalabharathi, Maddilapalem, Visakhapatnam to have noodles; He ordered noodles in a shop located there and awaiting; He witnessed A-1 and a woman (deceased) wearing college dress, carrying a bag quarrelling; He also noticed A-1 keeping motor cycle across the woman on the road; He categorically deposed that he witnessed A-1 hacking on the neck of the deceased with a knife, and as a result, the woman fell down on the ground; Several people gathered there including auto drivers; On seeing the same, A-1 ran away; People chased him, but

in-vain, and later he came to know that A-1 is the husband of the deceased. He identified the A1 in the Court.

32. It is pertinent to note down that P.W-4 identified M.O-1 knife, as the knife used by A-1 for committing the offence. The evidence of P.W-4 would establish that later 108 ambulance came to there, shifted the dead body to King George Hospital, Visakhapatnam.

33. The defence vehemently argued that he was a planted witness. We perused the evidence of P.W-4. In the cross-examination, he deposed that the house bearing No.53-24-21 at Maddilapalem belongs to his father and he is residing in the said house; He is working as a driver at Grand Bay Hotel, Visakhapatnam, and on that day, he did not go to work and in the evening time, he came to the road near Kalabharathi at Maddilapalem, to take snacks. As already stated above, he was present at the time of inquest even as per evidence of Tahsildar (P.W-12).

34. The evidence of P.W-4 would establish that he went to King George Hospital, Visakhapatnam, after the body was shifted to the hospital. We do not find any reason to disbelieve

the presence of P.W-4. He identified M.O-1 as that of the weapon used by A-1. Nothing was elicited in the cross-examination to jettison his testimony. No motive or reason for P.W-4 to depose against A-1 or in favour of the police was made out in the cross-examination.

35. The evidence of P.W-12 would establish that police arrested A-1 on 06.03.2011, and basing on his statement about the location of the weapon, police recovered M.O-1 knife kept underneath a shop. We do not find any reason to disbelieve the evidence of mediators (P.W-12) on recovery of M.O-1.

36. The report of the Scientific Officer of RFSL, Visakhapatnam, would establish that M.O-1 knife contain blood stains of human origin. The evidence of the Scientific Officer, RFSL, Visakhapatnam, would establish that T-shirt of A-1 was stained with human blood of 'AB' group. The clothes of deceased also stained with human blood of 'AB' group. The evidence of doctor, conducted autopsy would establish that the injury found on the neck of the deceased is possible with a weapon like M.O-1.

37. The evidence of B.Govinda Raju (P.W-12) would shows that on 06.03.2011 A-1 was arrested by police and seized a blood stained T-shirt wore by A-1 at that time. It was marked as M.O-5 identified by the witness. It was forwarded to RFSL, Visakhapatnam as per evidence of B.Ramakrishna Rao (P.W-13), Scientific Officer, working in RFSL, Visakhapatnam at the material point in time.

38. The evidence of P.W-13 would establish that as many as 11 items were received by RFSL, Visakhapatnam pertaining to Cr.No.125/2011 of III Town P.S., Visakhapatnam. Among them, item No.4 T-shirt with dark brown stains i.e., T-shirt seized from A-1 on 06.03.2011.

39. The evidence of P.W-13 coupled with his report (Ex.P-15) would show that RFSL received a white coloured hand kerchief with dark brown stains (item No.1), a chudidhar top (item No.7), chudidhar bottom (item No.8) and a chunni (item No.9) and inner brassier (item No.10) belonging to the deceased collected from her body.

40. The evidence of Scientific Officer (P.W-13) and his report (Ex.P-15) would disclose that item No.7, 8, 9 and 10 contains

blood of human origin and blood group of 'AB' blood found on item No.9 and 10 i.e., chunni and inner brassier of the deceased is also 'AB' group. It is pertinent to note down that the offence of murder was occurred on 04.03.2011. The accused was arrested soon after the offence i.e., on 06.03.2011 at about 10.00 a.m. The T-shirt found on the person of A-1 at the time of arrest contained blood stain marks. It is also of 'AB' group. No explanation from the accused as to how his shirt contained AB positive blood found on the clothes of the deceased, except a lame attempt that he was fisted on nose by the police.

41. The evidence of Dr.V.Chandrasekhar (P.W-14) would show that he conducted autopsy over dead body of the deceased on 05.03.2011 at 12.05 p.m. to 01.30 p.m. He found a Punjabi dress stained with blood. He deposed that an elliptical shaped 9x4 cms, vertebral canal deep 6 cms noted from above downwards towards center and center adjoining left part neck from back center of hairyline of right part of neck to front outer upper $\frac{1}{4}$ right part of neck across right side of neck with clean, regular cut margins with same sized moderately angled ends exposing the clear cut surfaces

underlying tissues. He opined that the injury would appear to have caused by a sharp edged heavy weapon used with force and that the deceased would appear to have died of instantaneously due to section of spinal cord of neck due to chop wound on neck. Ex.P-16 is the post mortem certificate.

42. The evidence of B.Govinda Raju (P.W-12) establish that on 06.03.2011 after arrest of A-1, he was interrogated by the police, A-1 confessed that the weapon used for committing the offence was kept underneath a buddy shop and in pursuance of the fact discovered, police seized M.O-1 knife from the place disclosed by A-1 under the cover of Ex.P-14 in Ex.P-12 mediators report. M.O-1 is the knife. As stated above, M.O-1 was forwarded to RFSL and blood stains of human origin were found on M.O-1 knife.

43. Therefore, the scientific evidence corroborates the oral testimony of P.W-4 i.e., the evidence of mediator (P.W-12). Therefore, all the facts and circumstances made out from the scientific evidence would corroborate the evidence of P.W-4 testimony. Therefore, we do not find any reason to disbelieve the testimony of P.W-4.

44. Section 134 of Indian Evidence Act, 1872 lays down that “no particular number of witnesses shall in any case be required for the proof of any fact”. It is quality and not quantity, which determines the adequacy of evidence. Once complicity of accused is proved by credible evidence of only one witness, the accused shall not be acquitted, unless prosecution case is otherwise found to be untrustworthy.

45. The Hon’ble Apex Court in the case **Ranji Surya Palvi Vs. State of Maharashtra**⁶ held that “corroboration of sole eye-witness in murder case is not necessary”. The Hon’ble Apex Court in the case of **S.P.S.Rathore Vs. CBI and another**⁷ held that “evidence is weighed and not counted. Evidence of even a single eye-witness truthful, consistent and inspiring confidence is sufficient for maintaining conviction”.

46. The contention of the defence is that the police did not conduct Test Identification Parade during investigation for establishing the identity of A-1 by P.W-4; and he identified A-1 in the Court first time. It is pertinent to note down that the offence was committed on 04.03.2011. P.W-4 was

⁶ AIR 1983 (SC) 810

⁷ AIR 2016 (SC) 4486

examined in the Court on 17.10.2011 i.e., within six months. So, we are of the considered opinion that there is no chance for P.W-4 to forget the offender. In that view of the matter, and also of other facts and circumstances in the case peculiar to this case discussed above, the decision relied upon by the learned counsel for A-1 on Test Identification Parade will not help to the case of A-1, to disbelieve the testimony of P.W-4.

47. In the light of foregoing facts and circumstances discussed, we are of the considered opinion that the prosecution successfully bring home the guilt of A-1 for the offence U/s.302 IPC, beyond all reasonable doubt. In that view of the matter, we do not find any ground to interfere with the conviction and sentence imposed by the learned trial Court against A-1 for the offence U/s.302 and 498-A I.P.C.

48. As already stated supra, the prosecution failed to bring home the guilt of A-2 to A-5 for the offence U/s.498-A IPC beyond all reasonable doubt.

49. The appeal filed by the defacto-complainant through the Public Prosecutor U/s.372 Cr.P.C., is challenging the acquittal of A-2 to A-5 for the offence U/s.304-B IPC. It is

pertinent to note down that A-1 to A-5 were charged with the offence U/s.498-A, 304-B IPC. In the appeal grounds, it is stated that though technically A-2 to A-5 are not liable for punishment for the offence U/s.304-B IPC, they are liable for punishment for the offence U/s.302 IPC. This contention is totally misconceived. It is not the case of the prosecution that A-1 conspired with A-2 to A-5 for committing the murder of deceased, and as a result, he murdered the deceased. No charge was framed against A-2 to A-5 for the offence U/s.302 r/w.120-B IPC. In those circumstances, we are of the considered opinion that this appeal is totally misconceived.

50. It is the case of prosecution that A-1, and A-6 to A-9 conspired to commit murder of the deceased, and accordingly, A-1 committed murder of the deceased. A-6 to A-9 were acquitted for the offence U/s.302 r/w.120-B IPC. No appeal filed by the defacto-complainant or State against the said acquittal of A-6 to A-9. In those circumstances, we are of the considered opinion that the appeal filed by the defacto-complainant contending that A-2 to A-5 are liable for punishment for the offence U/s.302 r/w 120-B IPC is misconceived. Therefore, appeal deserves no consideration

and liable to be rejected at the threshold, refusing leave. Accordingly, leave is refused; Appeal is rejected at the stage of admission. Accordingly, the point is answered.

51. In the light of foregoing discussion, the appeal filed for A-1 vide CrI.A.No.174/2013 is liable to be dismissed. The appeal filed for A-2 to A-5 vide CrI.A.No.173/2013 is liable to be allowed.

52. In the result, the Criminal Appeal No.174/2013 filed for A-1 is dismissed, by confirming the conviction for the offence under Sections 302 and 498-A and sentence imposed by the trial Court against A-1, as per judgment dated 12.02.2013 in S.C.148/2011 on the file of Mahila Court, Visakhapatnam.

53. As the appellant/A-1 was granted bail by this Court on 18.04.2018, A-1 is directed to surrender before the Superintendent, Central Prison, Visakhapatnam, forthwith. If not, the learned trial Judge is directed to take steps to secure the presence of A-1 by issuing Non-bailable Warrant to serve the remaining sentence of imprisonment.

54. The Criminal Appeal No.173/2013 filed for A-2 to A-5 is allowed. Therefore, the conviction for the offence under Section 498-A IPC and sentence imposed by the trial Court as per judgment dated 12.02.2013, in S.C.148/2011 on the file of Mahila Court, Visakhapatnam, against A2 to A5 is set aside. The fine amount if any paid by them be refunded.

55. So far as A-2 to A-5 are concerned, they were also granted bail by this Court on 26.02.2013, they are directed to appear before the Superintendent, Central Prison, Visakhapatnam, for completing the legal formalities in terms of the judgment rendered in **Batchu Ranga Rao and others Vs. State of A.P.**⁸

56. Leave to file appeal by the defacto-complainant through the Public Prosecutor challenging acquittal of A-2 to A-5 for the offence U/s.304-B IPC is rejected, and there by the said appeal is rejected.

⁸ 2016 (3) ALT (CrI.) 505 (DB) (AP)

Miscellaneous petitions pending, if any, in both the Criminal Appeals shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE B.V.L.N.CHAKRAVARTHI

L.R. Copy is to be marked

B/o. psk.

Date: 27.03.2024

psk

HON'BLE SRI JUSTICE K.SURESH REDDY

AND

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL APPEAL No.173 OF 2013 & 174 OF 2013
& CRL.A.(S.R.)No.12925/2013

(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

Note: Mark L.R. Copy

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Date: 27.03.2024

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