HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

AND

HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

CRIMINAL APPEAL NO.326 of 2017

JUDGMENT :(*Per Hon'ble Sri Justice G. Ramakrishna Prasad*)

This Criminal Appeal is filed by the Sole Accused/Appellant challenging the Judgment of the IVth Additional District and Sessions Judge, Nellore dated 21.10.2016 in S.C.No.184 of 2015. For the sake of convenience, the sole Accused/Appellant shall be referred to as the Appellant.

2. The Appellant has been found guilty for murdering one Smt. Baddala Nagalakshmi with whom the Appellant has been cohabiting (living-in-relationship) for some time while both of them have individual spouses and also children through their respective spouses.

3. The Appellant has been found guilty and convicted for the offence punishable under Section 302 of Indian Penal Code (for short 'IPC') and under Section 235 (2) of Criminal Procedure Code (for short 'Cr.P.C') and sentenced to undergo imprisonment for life for the offence punishable under Section 302 of IPC and sentenced to pay a fine of Rs.1,000/- and in default of payment

of fine amount, the Appellant shall undergo one year Simple Imprisonment.

4.The case of the prosecution is that:

i. Smt. Baddala Nagalakshmi is married to one Sreenivasulu about 9 years prior to the incident and they were blessed with one daughter. As her husband (Sri Sreenivasulu) had gone to Kuwait for his livelihood, Nagalakshmi along with her daughter stayed in the house of Nagalakshmi's maternal grandfather at Rapur for some time.

ii. The Appellant is married to one Smt. Sampoornamma and they were blessed with two daughters. The Appellant is an Auto Driver and he used to pick up coolies and transport them to Rapur in his Auto. During these trips to and from Rapur, he developed acquaintance with Baddala Nagalakshmi, who was residing at Rapur along with her grandfather. This resulted in illicit intimacy between them.

iii. The grandfather of Smt. Baddala Nagalakshmi had left her at Naiduvaripalli Village when he acquired definite knowledge about the illicit relationship between the Appellant and his granddaughter. The Appellant started visiting her at Naiduvaripalli Village also to continue his affair with Nagalakshmi. As the relatives of Nagalakshmi admonished both

of them, the Appellant brought her to Nellore in the month of December, 2014 and started living in the rented house owned by Sri Sk.Khadar Basha (PW.5).

iv. The Appellant could not keep her happy as he used to spend his meagre earning (by plying Auto) for his vices including alcoholism. The Appellant defaulted the payment of rent for his Auto, and therefore, the owner had declined to lend the Auto on hire.

v. One Smt. Rajamma, who is the mother of Smt. Baddala Nagalakshmi working in Kuwait used to transfer money to the account of son of Sk.Khadar Basha (PW.5) who was the erstwhile landlord of Nagalakshmi and that money of Nagalakshmi was used by the Appellant for his bad vices. The Appellant used to demand Nagalakshmi to bring more money from her mother Rajamma, who was working at Kuwait. The Appellant also specifically insisted on Nagalakshmi to bring money from her mother to purchase a new Auto with her financial help.

vi. It is the further case of the prosecution that the Appellant used to pick up quarrels with Nagalakshmi and used to assault her. The Landlord Sri Sk. Khadar Basha (PW.5) got them evicted from his house in the month of March, 2015 after having come to know that they were not wife and husband.

vii. The Appellant approached his relative, one Smt. Gurrala Sravani (PW.1) and her husband Sri Gurrala Venkata Ramana (LW.2) for their help to secure a rented house. The Appellant secured a rented house which belongs to Sri Korna Ramalingaiah (PW.3) with the help of Smt. Gurrala Sravani (PW.1) and Sri Gurrala Venkata Ramana (LW.2) and started living with Nagalakshmi.

viii. That on 05.04.2015 at about 10.00 P.M, the Appellant had quarrelled with Nagalakshmi for money. Smt. Gurrala Sravani (PW.1) and her husband Sri Venkata Ramana (LW.2) had pacified them. Thereafter, when they went to the house of Smt. Varalakshmi (PW.6), she admonished the Appellant for harassing Nagalakshmi, when she was in the state of pregnancy.

ix. The next day i.e., on 06.04.2015, at 10.00 P.M, the Appellant picked-up Nagalakshmi from the house of Smt. Gurrala Sravani (PW.1) and went to his house. The prosecution further stated that the Appellant developed hatred towards Nagalakshmi since her mother Rajamma declined to help the Appellant financially to purchase a new Auto and at about 12.00 midnight, he intentionally picked up a quarrel with Nagalakshmi and beat her and caught hold of tuft of hair and hit her head forcibly to the floor and pressed her neck tightly. By this act of

the Appellant, Nagalakshmi became unconscious. The Appellant kept her on the cot and after understanding that she died, in order to escape from liability, he went to the house of Smt. Gurrala Sravani (PW.1) and informed her that Nagalakshmi fell down because he beat her and requested her to go and see Nagalakshmi and in the meantime, he would purchase cigarettes and return back.

x. While so saying, the Appellant absconded from that place. Smt. Gurrala Sravani (PW.1) went to the house of Nagalakshmi by relying on the statement of the Appellant and found her in unconscious state laying on the cot, bleeding from nose and mouth. Then she called the landlady of Nagalakshmi one Smt. Pulusu Hymavati (PW.2) and on arrival of all other neighbours, they called 108 Ambulance Van. The Ambulance personnel examined Nagalakshmi and declared her dead.

xi. Smt. Gurrala Sravani (PW.1) gave a report to the police and case was registered as Cr.No.74/2015. During the course of investigation, the then Inspector of Police (PW.14) visited and observed the scene of offence in the presence of mediators (Iragaraju Thirumala Raju-PW.8 and Thata Venkateswarlu-PW.9). He had prepared the Observation Report of the scene of offence and took photographs of the same with the help of

Bathala Venkata Ramanaiah (PW.10). He also held inquest over the dead body of the deceased Nagalakshmi in the presence of mediators (Navuru Masthanamma-PW.11, Indla Vinod-LW.17 and Ari Thirupalu-LW.16).

xii. Dead body of Nagalakshmi was shifted to the Hospital for post-mortem and Appellant was arrested on 12.04.2015 and his statement was recorded in the presence of mediators (Iragaraju Thirumala Raju-PW.8 and Pesala Anjani Kumar-PW.12).The Appellant was remanded to the judicial custody.

xiii. The prosecution further stated that from the facts collected during the course of investigation, it is established that the Appellant voluntarily beat Nagalakshmi brutally by catching hold of her tuft of hair and hit her head to the floor. Simultaneously, the Appellant pressed the throat/neck of Nagalakshmi with an intention to kill her and committed an offence punishable under Section 302 of IPC.

xiv. The Appellant was charged under Section 302 IPC, read over and explained in Telugu for the offence punishable under Section 302 IPC and the Appellant pleaded not guilty and claimed to be tried.

xv. About 14 witnesses were examined on behalf of the prosecution and Exs.P.1 to P.22 were marked.

5. After closure of prosecution side evidence, the Appellant was examined under Section 313 Cr.P.C explaining the incriminating circumstances as appearing in the evidence/depositions of prosecution witnesses.

6. The following evidence was adduced by Trial Court.

7. The prosecution examined 14 witnesses and had marked Exs.P.1 to P.22. The Appellant neither examined any defence witnesses nor produced any documents.

8. PW.1 (Gurrala Sravani) used to reside in the neighbourhood where the Appellant and the deceased were living together. She has stated in her chief-examination that 20 days prior to the date of death, the Appellant and the deceased jointly approached her and requested her to search for a house on rent. On the very same day, she had mediated and provided a rented house belonging to one Pulusu Hymavati (PW.2) for a sum of Rs.1,500/- per month. She further stated that the Appellant and the deceased have moved into the rented house on the same day. She further deposed that the Appellant used to run an Auto by taking it on rent from one Ingilala Varalakshmi (PW.6). She further stated that the Appellant was already married and blessed with two daughters and the deceased is also married and blessed with one daughter. She deposed that she used to

live in the adjacent lane, and that, after the Appellant and the deceased have moved into the rented house belonging to Pulusu Hymavati (PW.2), the Appellant started running an Auto for livelihood and after 10 days, the Appellant has stopped going to work. She further deposed that the mother of the deceased was staying in Kuwait. She has also come to know that Ingilala Varalakshmi (PW.6) has stopped giving Auto to the Appellant because he had failed to pay the hire charges for the Auto. She has also deposed that the Appellant used to ask the deceased to get money for the purchase of Auto from her mother who was staying in Kuwait. The deceased used to contact her mother over phone and requested her for money towards purchase of Auto.

9. PW.1 further deposed that the deceased has requested her mother to send money to enable the Appellant to purchase an Auto in the presence of this witness and that the mother of the deceased has refused to give money as she does not know the Appellant. The Deponent has also stated that the deceased had abandoned her daughter and she has been living with the Appellant. She further deposed in her Chief Examination that the Appellant used to quarrel with the deceased because her mother has refused to send money for purchase of the Auto.

10. She has also stated that on the previous night, the deceased stayed at the house of PW.1 till about 10.00 P.M and the Appellant and the deceased had left the house of PW.1;that, during the early hours of the next day i.e., the intervening night between 06.04.2015 and 07.04.2015, the Appellant came to the house of PW.1 at about 3.30 A.M and informed her that he beat the deceased and asked the witness to go and see Nagalakshmi, and, while so saying, the Appellant had left the house of PW.1 for purchasing cigarettes.

11. The witness also stated that immediately she had gone to the rented house and saw that the place was dark without lights and that it was bolted from outside; that, she had opened the door and entered into the house and switched on the lights and saw the deceased sleeping on the cot; that, she had tried to wake her (the deceased) up, but she did not wake up and that she had then called Pulusu Hymavati (PW.2) (the landlady). The neighbours also gathered and they had opined that Nagalakshmi died; that, she saw blood oozing from nose and mouth of the deceased; that the Ambulance was called; that the Ambulance personnel had examined and declared that Smt. Baddala Nagalaskhmi died; and, that, at about 7-30 AM, she had gone to the police station and lodged a Complaint (Ex.P.1).

12. In the cross-examination of PW.1, she has deposed that every day the Appellant used to drop the deceased at her house while he was going out for his work in the Auto and that the deceased used to stay with PW.1 in her house and used to watch Television; and, that, even on 06.04.2015 the deceased stayed at the house of witness till 10.00 P.M. Even in the cross examination, she had clearly stated that the Appellant came to the house of the witness at 3.30 AM on 07.04.2015 and informed her that he beat Nagalakshmi and asked the witness to go and see Nagalakshmi.

13. The PW.2 (Pulusu Hymavati) (the landlady) has stated in the Chief Examination that PW.1 came to the house of PW.2 at 3.30 AM or 4.00 AM on 07.04.2015 and that PW.1 and PW.2 have entered the house of the deceased and found the deceased sleeping on a cot; that, she found swelling in the mouth region of the deceased and also several injuries on the back side of her head; that, she is the person who called the Ambulance van over phone and that the inmates of the Ambulance examined the deceased and declared her as dead. She also stated that by that time, some neighbours were also present. She also confirmed the fact that PW.1 had told her that the Appellant came to her

house at about 3.30 A.M and informed her that he beat Nagalakshmi.

14. PW.3 (Korna Ramalingaiah, aged 68 years), who is the father of Pulusu Hymavati (PW.2), deposed that he resides adjacent to the house of PW.2. This goes without saying that this witness was the immediate neighbour to the Appellant and the deceased. He deposed that his daughter (PW.2) called him at about 3.30 AM and they went and saw that the deceased was laying on the cot. He also deposed that *"*some white foam was coming from the *nose* of Nagalakshmi (deceased)*"* and that she was not moving. He also deposed that the inmates of Ambulance tested Nagalakshmi and declared her as dead.

15. PW.4 (Sannapaneni Padmamma) has deposed that the deceased is her neighbour and that she saw the dead body of the deceased laying on a cot; that, the Appellant is an Auto driver and she does not know the family affairs of the Appellant and the deceased; that, there was a whisper in the locality that the Appellant and deceased were already married before they married each other; and, that, she saw the dead body from a distance and that she did not observe the injuries over the dead body from that distance. The learned Addl. Public Prosecutor requested the Court to treat this witness as hostile and sought

permission of the Court to cross-examine her. Upon grant of permission she was cross-examined. The statement given by her in Ex.P.2 to the extent that the Appellant and the deceased used to quarrel with each other was denied by this witness.

16. PW.5 (Sri SK. Khadar Basha) was the erstwhile landlord where the Appellant and the deceased lived together soon before they moved to Venugopala Nagar. This witness is a resident of Nakkalagunta, Kondayapalem, Nellore District. He deposed that he is a Milk Vendor and he does not know PW.1 and he stated that he knows the Appellant. He deposed that in the month of December, 2014, Appellant and the deceased approached him for letting out his house; that, he had let out his house on monthly rent of Rs.2,500/- to the Appellant and the deceased; that, the Appellant is an Auto driver; that the mother of the deceased stays in Kuwait; that, the Appellant and the deceased used to quarrel with each other on petty matters; that, they did not pay the rent on time; that, the mother of the deceased used to send money through bank account of his son and that he used to withdraw the money and hand over the same to the Appellant. He further deposed that the Appellant and the deceased are not wife and husband and that they have vacated his house after staying for a period of three months. He

had also denied the suggestion that he is giving false deposition to the effect that the mother of the deceased was sending money to the Appellant through his son's bank account.

17. PW.6 (Ingilala Varalakshmi) has deposed that she knows the Appellant, but she does not know the deceased. At this stage, learned Additional Public Prosecutor sought permission to treat this witness as hostile and cross examined her. Nothing substantial has been elicited in the cross examination.

18. The prosecution examined PW.7 (Baddala Penchalaiah). He is the maternal uncle of the deceased. His statements are based on second-hand information including the illicit intimacy between the Appellant and the deceased. He also stated that the husband of the deceased Nagalakshmi is none other than his brother by name Srinivasulu.

19. Similarly, PW.8 (Iragaraju Thirumala Raju), Village Revenue Officer was also examined. Nothing substantial has been elicited in the cross examination

20. PW.9 (Tata Venkateswarlu) is a flower vendor and resident of Venugopala Nagar. He had deposed that he was called by the police and he came to the scene of offence at about

9.30 AM and he was present at the scene of offence for about ten minutes.

21. PW.10 (Bathala Venkata Ramanaiah) the photographer, who had taken the photographs (Ex.P.5 to P.18) has been examined and cross-examined, but nothing substantial has been elicited except that he has confirmed the taking of pictures.

22. PW.11 (Navuru Masthanamma) is also a neighbour in the neighbourhood and she has signed the Inquest Report.

23. PW.12 (Pesala Anjani Kumar) is the resident of Nawabpet, Nellore. He has deposed that on 12.04.2015 at 4.00 PM he was called by the II Town police and requested him to act as mediator and he therefore acted as a mediator.

24. PW.13 (Dr. Sasi Kanth) is the Assistant Professor, Forensic Medicine of A.C.S.R Medical College, Nellore. He stated about the contents of the Post-mortem Certificate prepared and issued by him, which is usefully extracted hereunder:

Ante-Mortem Injuries

1.	:-	A laceration on upper lip of size 2 x 1 C.Ms lower lip 2 x 1 C.Ms present.
2.	:-	A contusion beside left eye of sixe 2 x 1 C.M., present.
3.	:-	Another contusion of size 4 x 0.5 C.M., on

		left cheek black in colour
4.	:-	Fracture of 8 ribs on left side present.
5.	:-	Abrasion on left side ear present of size 6 x 1 C.M., red in colour
6.	:-	An abrasion below the chin present.
7.	:-	Right eye is black eye present.
8.	:-	Several other, small contusions of 4-5 present on face and neck, including a nail mark left cheek of size 0.5 C.M.,

Scalp and Skull	:-	Nothing particular
Brain and menninges	:-	Congested
Neck, Larynx, Thyroid Cartliege, Hyoid bone, other structures	:-	Neck structures congested, fracture of right horn of Hyoid bone present
Ribs and Chest Wall	:-	Nothing particular, Ribs no fracture
Lungs and Plural cavities	:-	Lungs congested, no free fluid in plural cavities
Trachea, Bronchi, media-stenum heart and other structures and abdominal wall and peritoneal cavity	:-	Nothing particular
Stomach contents	:-	100 ML Liquid present, mucosa – Normal
Viscera of the abdomen as liver, spleen, pancreas, kidneys, adrenals	:-	Nothing particular
Pelvic bones	:-	No fracture
Genital Organs	:-	Nothing particular

Spinal Column and Spinal Cord	:-	No fracture
Additional Observations	:-	Uterus is bulky and 20 x 20 C.Ms size with dead fetus inside.

25. The cross examination of PW.13 is relevant for the purpose of this case, which is being reproduced hereunder:

"CROSS-EXAMINATION BY THE DEFENCE COUNSEL:-

As per postmortem certificate, PC 2446 Uva Kumar produced and identified the dead body. It is not true to suggest that there is no mention in Ex.P-20 postmortem certificate that PC 2446 produced the dead body. It is true PC 2446 handed over the copies of first information report, inquest report along with requisition for conducting autopsy.

I did not mention the name of father or husband of deceased in Ex.P-20 postmortem certificate. I did not mention the weight of dead body in Ex.P-20 Postmortem Certificate. The body was wrapped with bed sheet. There is no specific mention in Ex.P-20 as to whether the body was with clothes or without clothes.

Lividity was present on the total back side of body. The rigor martis starts on eyelids. There is no mention in postmortem certificate as to rigor martis present over upper limbs. It is not true to suggest that putrefaction starts 12 hours after the death during summer season.

Against the column Ribs and Chest Wall, I noted as nothing particular, ribs no fracture. I did not specifically mention against that column that there was no fracture on right side or left side. I did not specifically mention that left1 to 8 ribs were fractured against the column ante mortem injuries.

I did not specifically mention the total number of small contusions on face and neck. Against injury No.8, I noted nail mark on left cheek. We cannot elicit finger prints and thumb marks over neck or any other part of body with naked eye.

Contusion means - Blackish. Congested means - Red. I did not specifically mention the fracture of front or back side ribs. It is

not true to suggest that I did not mention the external or internal injuries in Ex.P-20 postmortem certificate.

I did not find any external injuries over skin corresponding to fracture of ribs. It is not true to suggest that fracture of right horn of Hyoid bone isnothing but postmortem injury and not ante mortem injury.

I did not obtain X-ray of neck structure before conducting postmortem. I did not obtain finger prints over the dead body. I did not take photographs or video while conducting postmortem over the dead body.

The deceased was carrying two to three months pregnancy. The appearance of the pregnancy will be after three months. It is not true to suggest that the appearance of pregnancy will be after two months. It is not true to suggest that as per size 20 x 20 fetus referred to in postmortem certificate corresponding to fifth month pregnancy.

There was no alcohol in the dead body. But I did not mention specifically in the report. It will take 24 hours for completion of digestion of food. It is not true to suggest that Postmortem Certificate issued by me is not in accordance with proper proforma.

There was no swelling over the dead body by the time I received. I did not specifically mention the blood stains available over the dead body. The dead body was cleaned with water before conducting postmortem. I did not preserve viscera etc., from the dead body.

Froth will be present in case of poisonous death. I did not specifically mention about teeth. It is not true to suggest that I did not conduct postmortem over the dead body of deceased and that I simply prepared in Postmortem certificate in Ex.P-20 by perusing inquest report and other crime records and that I prepared Post mortem Certificate at the instance of police.

I did not mention the address of deceased in Ex.P-20. It is not true to suggest that I deposed the cause of death as throttling as suggested by the Public Prosecutor and that I noted the time of death as supplied by the relatives of deceased and police.

Re-examination:Nil ”

26. PW.14 (V. Sudhakar Reddy) is the Inspector of Police. Ex.P.1 is the Report given by PW.1; Ex.P.2 and Ex.P.3 are the Section 161 Cr.P.C Statements of PW.4 and PW.6 respectively; Ex.P.4 is the Observation Report of scene of offence; Exs.P.5 to P.18 are the photographs taken at the scene of offence by PW.10; Ex.P.19 is the Inquest Report and PW.11 had spoken about the Inquest Report; Ex.P.20 is the Post-mortem Certificate and that the contents of the Post-mortem Certificate were confirmed and spoken by PW.13; Ex.P.21 is the FIR; Ex.P.22 is the Rough Sketch of the scene of offence. PW.14 who is the Investigating Officer spoke about the Exs.P.21 and P.22.

27. Having considered the above facts and depositions, the Court of IV Additional District and Sessions Judge, Nellore by its Judgment dated 21.10.2016 in Sessions Case No.184 of 2015 convicted the sole accused under Section 302 of IPC and sentenced him to life. The Sessions Court has noted that the case does not involve any direct witness and the case of the prosecution proceeded on the basis of circumstantial evidence that is available. The Sessions Court has given categorical findings against the Appellant by applying the theory of 'last seen together'. The Sessions Court noted the fact that the Accused/Appellant did not produce any alibi to prove to the

contrary that he was away from his house at the time the incident occurred. The learned Sessions Judge has further held as under:-

> "*39. Once the prosecution proves that the death of deceased is not natural, but due to homicidal violence, the burden rests on the accused, as PW1 last seen the deceased with the company of accused. The accused and deceased Nagalakshmi were living together in the house of PW-2.*
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> *Section 106 of the Evidence Act runs as follows:*
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> *"106 of Burden of proving fact especially within knowledge when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*

28. The Sessions Court has also taken into account the Post-mortem Report (Ex.P.20) to the effect that the cause of death is due to shock and hemmorage due to throttling.

29. From the above mentioned facts and depositions this Court has to decide whether the Judgment rendered by the IVth Additional Sessions and District Judge, Nellore dated 21.10.2016 in Sessions Case No.184 of 2015 is sustainable or not?

SUBMISSIONS OF THE LD. DEFENCE COUNSEL:

30. Sri G. Vijaya Saradhi, learned Counsel for the Appellant has submitted that there is no Motive on the part of the Appellant; that the Principle of Last Seen Theory cannot be

applied against the Appellant and that the forensic evidence cannot be relied upon due to lopsidedness in conducting post-mortem. Learned Counsel would submit that merely by relying on the statement of PW.1 to the effect that the Appellant was demanding money from Nagalakshmi and an inference cannot be drawn to the effect that the Appellant had the Motive for doing away with the life of Nagalakshmi.

30.1. Learned Counsel has also submitted that in view of the facts and circumstances of the case, the Last Seen Theory insofar as the husband and wife are concerned, cannot be applied against the Appellant. He placed reliance on Para Nos.22 and 23 of the Judgment rendered by the Hon'ble Apex Court in ***Shivaji Chintappa Patil Vs. State of Maharashtra ((2021) 5 SCC 626)***. Para Nos.22 and 23 are usefully extracted hereunder:

> *"22. It will also be relevant to refer to the following observations of this Court in Gargi [Gargi v. State of Haryana, (2019) 9 SCC 738 : (2019) 3 SCC (Cri) 785] : (SCC p. 775, para 33)*
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> > *"33.1. Insofar as the "last seen theory" is concerned, there is no doubt that the appellant being none other than the wife of the deceased and staying under the same roof, was the last person the deceased was seen with. However, such companionship of the deceased and the appellant, by itself, does not mean that a presumption of guilt of the appellant is to be drawn. The trial court and the High Court have proceeded on*

> *the assumption that Section 106 of the Evidence Act ["106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."] directly operates against the appellant. In our view, such an approach has also not been free from error where it was omitted to be considered that Section 106 of the Evidence Act does not absolve the prosecution of its primary burden. This Court has explained the principle in Sawal Das v. State of Bihar [Sawal Das v. State of Bihar, (1974) 4 SCC 193 : 1974 SCC (Cri) 362] in the following : (SCC p. 197, para 10)*
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> > *'10. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused."*
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> *23. It could thus be seen that it is well-settled that Section 106 of the Evidence Act does not directly operate against either a husband or wife staying under the same roof and being the last person seen with the deceased. Section 106 of the Evidence Act does not absolve the prosecution of discharging its primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof would lie upon the accused."*

30.2. Learned Counsel has also placed reliance on lopsidedness in recording the details in the Post-mortem Certificate (Ex.P.20). Learned Counsel would point-out that while PW.13, Dr. Sasi Kanth, Assistant Professor, Department of Forensic Medicine, A.C.S.R Government Medical College, Nellore,

has prepared the Report of Post-mortem (Ex.P.20), it is shown that there is a fracture of eight ribs on the left side present under the sub-heading '*Ante Mortem* Injuries'. Whereas, in the description of each organ below in same Report, he has clearly stated under heading "Ribs and Chest Wall: Nothing Particular, Ribs No fracture". Learned Counsel would submit that these inconsistencies would vitiate the creditworthiness of the Report of Post-mortem examination (Ex.P.20).

30.3. Learned Counsel would submit that the prosecution has failed to establish every link and that the inability in establishing all the missing links is fatal to the case which is based on exclusive circumstantial evidence.

30.4. Learned Counsel would submit that the prosecution has miserably failed to connect all links in the chain of circumstances and the same is fatal to the prosecution in a case of circumstantial evidence. He would submit that the Report of Post-mortem does not establish the cause of death. He submits that the froth coming out of the mouth of the deceased would be only on account of death by poisoning, whereas the cause of death, as indicated by the Forensic Expert, is on account of 'shock and hemmorhage due to throttling'.

SUBMISSIONS OF THE LD. PUBLIC PROSECUTOR:

31. Learned Public Prosecutor would submit that the prosecution has successfully proved guilty of the Appellant by establishing every link in the chain of circumstances. He submits that the facts in the present case do clinchingly establish that the Appellant had Motive for doing away with the life of Nagalakshmi because of the following reasons :

i. Appellant bore grudge against Nagalakshmi because her mother declined to render any financial help for purchase of Auto;
ii. That the Report of Post-mortem Examination (Ex.P.20) would indicate Uterus is bulky and 20 x 20 cms size with dead foetus inside about which, the Appellant had prior knowledge (as per charge-sheet;
iii. That PW.13 (Forensic Doctor) has stated that the foetus would be about 8 to 12 weeks.

32. Learned Public Prosecutor further submits that the cause of death is clearly established as homicidal by taking into account the fracture of right horn of Hyoid bone coupled with various injuries noted on the mouth, neck, chin, cheeks and back portion of head of the deceased.

33. Learned Public Prosecutor further submits that the Last Seen Theory would apply against the Appellant because the

Appellant left the house of PW.1 along with the deceased at 10.00 P.M on 06.04.2015 and again met PW.1 at 3.30 A.M on 07.04.2015 only to state that Nagalakshmi is laying unconscious because he beat her. While the Appellant had indicated that he would return back after purchasing cigarettes, but he did not return back and went missing. In this regard, the Appellant did not prove otherwise with any alibi to the effect that he has not spent the fateful night in the company of the deceased.

34. Learned Public Prosecutor has placed reliance on Para Nos.12 to 15 of Judgement rendered by the Hon'ble Apex Court in ***Kalu Alias Laxminarayan Vs. State of Madhya Pradesh ((2019) 10 SCC 211)***. Para Nos.12 to 15 are usefully extracted hereunder:

> *12. The occurrence had taken place in the rural environment in the middle of the month of October when it gets dark early. Normally in a rural environment people return home after dusk and life begins early with dawn. It is strange that the appellant did not return home the whole night and was taken into custody on 21-10-1994.*
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> *13. In the circumstances, the onus clearly shifted on the appellant to explain the circumstances and the manner in which the deceased met a homicidal death in the matrimonial home as it was a fact specifically and exclusive to his knowledge. It is not the case of the appellant that there had been an intruder in the house at night. In Hanumant v. State of M.P. [Hanumant v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343 : 1953 Cri LJ 129] , it was observed: (AIR pp. 345-46, para 10)*
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> > *"10. … It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances*

from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

14. In Tulshiram Sahadu Suryawanshi v. State of Maharashtra [Tulshiram Sahadu Suryawanshi v. State of Maharashtra, (2012) 10 SCC 373 : (2013) 1 SCC (Cri) 193] , this Court observed: (SCC pp. 381-82, para 23)

"23. It is settled law that presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above position is strengthened in view of Section 114 of the Evidence Act, 1872. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct, etc. in addition to the facts of the case. In these circumstances, the principles embodied in Section 106 of the Evidence Act can also be utilised. We make it clear that this section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but it would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference. It is useful to quote the following observation in State of W.B. v. Mir Mohammad Omar [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] : (SCC p. 393, para 38)

'38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional

cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In Shambu Nath Mehra v. State of Ajmer [Shambu Nath Mehra v. State of Ajmer, 1956 SCR 199 : AIR 1956 SC 404 : 1956 Cri LJ 794] the learned Judge has stated the legal principle thus: (AIR p. 406, para 11)

"11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.""

15. In Trimukh Maroti Kirkan v. State of Maharashtra [Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80] , this Court was considering a similar case of homicidal death in the confines of the house. The following observations are considered relevant in the facts of the present case: (SCC pp. 690-91 & 694, paras 14-15 & 22)

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See Stirland v. Director of Public Prosecutions [Stirland v. Director of Public Prosecutions, 1944 AC 315 (HL)] — quoted with approval by Arijit Pasayat, J. in State of Punjab v. Karnail Singh [State of Punjab v. Karnail Singh, (2003) 11 SCC 271 : 2004 SCC (Cri) 135] .) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable

of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

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

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.

* * *

22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime."

35. Learned Public Prosecutor further submits that when the cause of death is on account of shock and hemmorrhage due

to throttling, though there are inconsistencies in the recording as regards the fracture of eight ribs on the left side in the Report of Post-mortem (Ex.P.20), those inconsistencies shall not be fatal to the case of prosecution.

ANALYSIS:

36. In order to appreciate the facts on record and also to see whether the conviction rendered by the Sessions Court sentencing the Appellant to life is justifiable or not, the following issues should be analyzed :

1) Motive

2) Last seen together

3) Quality of circumstantial evidence.

MOTIVE

37. As per charge-sheet the motive for accused for doing away with deceased was that, as he was in financial crises and he has to look after the deceased and the child, yet to be born. In view of this, the Appellant had decided to do-away with the deceased. It is also stated in the charge-sheet that the Appellant intentionally picked-up quarrel with the deceased for want of money for his vices and beat on her cheek with hand, when the

deceased raised alarm, he caught hold of her tuft of hair and hit her head forcibly to the floor and pressed her neck tightly.

38. PW.1 (Gurrala Sravani) and her husband had close interaction with the Appellant and the deceased ever since PW.1 (Gurrala Sravani) has arranged a rented house in Venugopala Nagar. PW1, in her deposition, has also stated emphatically that in her presence also the deceased had spoken to her mother who has been living in Kuwait and requested her to arrange money to enable the Appellant to purchase an Auto; whereas the mother had declined to extend monetary help. She had also stated that the Appellant and the deceased used to quarrel often because the mother of the deceased had declined to arrange finance for the Appellant to purchase an Auto; due to which the Appellant has developed hatred towards the deceased.

39. PW.13, Doctor who conducted Post-mortem (Ex.P.20) over the deceased had stated in his deposition that the deceased was two to three months pregnant and that there is dead foetus and its size is 20 x 20 cms. He also deposed about several *Ante-mortem* injuries on the face and head region including the fracture of right horn of Hyoid-bone. According to him, the cause of death to the best of his knowledge and belief was due to shock and hemmorage due to throttling. He also deposed that

such injuries, as discussed by him, are possible if a person closed the mouth and pressed the neck of the person (throttling) and that, such injuries are sufficient to cause the death of a person in the ordinary course of nature.

40. The Sessions Court had agreed with the circumstances as explained by PW.1 that the Appellant and the deceased used to quarrel very often; that the mother of the deceased had declined to provide finance to the Appellant for purchasing an Auto; that the Appellant had bad habits, and therefore, was not able to provide sufficient money to the deceased for running of the house; and, that the Appellant had bore grudge against the deceased and held that the Appellant had motive to kill the deceased.

41. We have carefully gone through the evidence of PW.1 and find no reason to suspect her. She is an independent witness and known well to deceased and Appellant and has no reason to speak ill of Appellant. So we hold that the prosecution hasclinchingly established the 'motive' aspect.

42. Accordingly, we sustain the findings of the learned Sessions Judge to the effect that the Appellant had 'motive' to do away with life of Nagalakshmi.

LAST SEEN TOGETHER

43. The evidence of PW.1, which is unimpeached, is that the deceased was in the company of PW.1 till 10.00 P.M on 06.04.2015 and that the Appellant had gone to the house of PW.1 to take the deceased along with him to their dwelling. PW.1 had also stated that the Appellant had again knocked at her door at about 3.30 A.M on 07.04.2015 and stated that he had beaten the deceased and that she fell down and she is unconscious. She had also stated that the Appellant had requested her to go and see the deceased. PW.1 has also stated that she along with her son had gone to the house of the Appellant. The door was bolted from outside and that she opened the bolt and went inside the room. The room was dark. When she turned-on the light, she saw the deceased laying on the cot in an unconscious manner. She has also stated that the Appellant, when he came to the house of PW.1 at 3.30 A.M on 07.04.2015, he told her that he had beaten the deceased and the deceased fell unconscious. She also deposed that the Appellant has also requested PW.1 to go and see as to what happened to the deceased and that he would return after purchasing cigarettes. PW.1 had also stated that though the Appellant had

stated that he would return after purchasing cigarettes, he did not return.

44. From the evidence of PW.1, it is clear seems that the Appellant and the deceased were together soon before the deceased had breathed her last. The Sessions Court has also noted that the Appellant did not produce any alibi to establish that he was not with the deceased soon before her death. PW.1 had clearly stated that the last that she had seen the Appellant and the deceased were going to their house together from the house of the said witness at 10.00 P.M on 06.04.2015 and the return of the Appellant to her house in the wee hours of the next day i.e., at 3.30 A.M on 07.04.2015. These facts are sufficient to hold that the deceased was in the company of the Appellant from 10.00 P.M of 06.04.2015 upto 3.30 A.M on 07.04.2015.

45. The other factors also would establish that soon before the death of the Nagalakshmi, the Appellant was in her company because it is the Appellant who came in the wee hours of 07.04.2015 i.e., about 3.30 A.M to inform PW.1 that he beat the deceased and she had fallen down and she is unconscious and that the Appellant had requested the witness to go and attend on the deceased. This also indicates that during the final moments of the deceased, the deceased was in fact in the

company of the Appellant and none else was present at that time. Hence, the prosecution has clinchingly proved that the deceased was only in the company of the Appellant from 10.00 P.M on 06.04.2015 upto 3.30 A.M on 07.04.2015.

CIRCUMSTANTIAL EVIDENCE

46. This Court has agreed with the findings of the Sessions Judge as regards 'motive' and the 'last seen together'. This apart, the other circumstances to prove the guilt of the Appellant are as follows:-

i. The Post-mortem Report is to the effect that the cause of death of the deceased is due to shock and hemmorage due to throttling. The Post-mortem Report (Ex.P.20) also indicates that the injuries have been caused on the body of the deceased in a brutal manner. As regards the description with regard to neck, larynx, thyroid, Hyoid-bone and other structures, the finding of the Doctor (PW.13) is to the effect that the neck structures are congested and that there is fracture of right horn of the hyoid-bone, thereby corresponding to the injuries caused in the neck region including fracture of right horn of hyoid- bone, with several injuries on face, the back of the head and neck. This clinches the issue with regard to the fact that the death of the deceased was not natural and that the same has been caused due to external factors

and that too, between 10.00 P.M on 06.04.2015 and 3.30 P.M on 07.04.2015. The brutality with which the assailant had attacked the deceased can be gathered and understood from other injuries including lacerations on upper lip and lower lip, contusion beside left eye, contusions on left cheek (black in colour) and more prominently, the fracture of eight ribs on the left side, abrasion on the left side of ear, abrasion in the area below the chin, right eye being black in colour. The description of these injuries would go to show that the deceased suffered the brutality at the hands of the assailant before her death.

ii. This Court has noticed that the Doctor (PW.13), who had conducted Post-mortem Report, had filled-up the standard-form in a very casual manner. As regards the Post-mortem Report, while he had stated that the deceased had suffered fracture of eight ribs on the left side in the description given under the sub-heading "***ANTE MORTEM INJURIES***", whereas, as regards the description of the specific body parts, he (PW.13) had casually and carelessly stated about the Ribs and Chest Wall: "Nothing particular, Ribs No fracture". While in the *Ante mortem* Injuries, the Doctor (PW.13) had clearly opined as "Fracture of 8 ribs on the left side", the description given in the same Post-mortem Certificate with regard to the ribs and chest wall as "nothing particular" and that 'there is no fracture of ribs' would indicate that the

Doctor (PW.13) has been very careless and negligent in filing up the details. When this issue was confronted by the defence counsel, PW.13 (Doctor) had stated as under:

> *"Against the column Ribs and Chest Wall, I noted as nothing particular, ribs no fracture. I did not specifically mention against that column that there was no fracture on right side or left side. I did not specifically mention that left 1 to 8 ribs were fracture against the coloumn ante mortem injuries.*
>
> *I did not specifically mention the total number of small contusions on face and neck. Against injury No.8, I noted nail mark on left cheek. We cannot elicit finger prints and thumb marks over neck or any other part of body with naked eye.*
>
> *Contusion means – Blackish. Congested means – Red. I did not specifically mention the fracture of front or back side ribs. It is not true to suggest that I did not mention the external or internal injuries in Ex.P.20 post-mortem certificate.*
>
> *I did not find any external injuries over skin corresponding to fracture of ribs. It is not true to suggest that fracture of right horn of Hyoid bone is nothing but post-mortem injury and not ante mortem injury".*

iii. Exs.P.5 to P.18 are the photographs of the deceased which were taken at the time of Inquest. Exs.P.11, P.14 and P.16 are the photographs of the face and head of the deceased which were taken from a close range. On a close scrutiny of each of the photographs, they indicate that there is 'froth' from the nose (nostrils) of the deceased and that the froth is clearly 'pink' in colour. This would also indicate that there were internal bleeding injuries in the respiratory system. The suspicion thrown by the defence that the froth could be on account of poisoning and that the froth is white in colour and

that the froth was there from the parts of the nose as well as mouth cannot be accepted. The photographs which are particularly marked as Exs.P.11, P.14 and P.16 would dispel such contentions raised by the defence that the death could be on account of poisoning because there is pink coloured froth oozing only from the nostrils of the deceased and that there is no froth oozing from the mouth region at all.

iv. In fact, this Court is of the firm view that the 'pink coloured froth' as seen between the nose and the upper lip corroborates the version of the prosecution. Several *Ante-mortem* injuries on the face, neck, cheeks and head (both Internal and External) recorded by PW.13 would also support the prosecution version.

v. Circumstantial Evidence in this case is only pointing towards the guilt of the Appellant without any manner of doubt because he was the only person in association of deceased before her death in their residential house as can be seen from the evidence of PW.1. The Appellant, therefore holds great responsibility to offer explanation to the brutal injuries on the body of the deceased which he failed. The obvious conclusion is that the Appellant had caused those injuries and caused her death. This Court can safely infer that the prosecution successfully proved the guilt of the Appellant.

47. Three Judges of the Hon'ble Supreme Court in ***Manoj Pratap Singh Vs State of Rajasthan ((2022) 9 SCC 81)*** have considered the principles explained and enunciated in *Sharad Birdhichand Sarada Vs. State of Maharastra ((1984) 4 SCC 116).* The Apex Court, in the case of ***Sharad Birdhichand Sarada Vs. State of Maharastra***, had referred to an earlier decision of the Apex Court in *Hanumant Vs. State of M.P ((1952) 2 SCC 71) : AIR 1952 SC 343.*

48. The Apex Court in *Manoj Pratap Singh Vs State of Rajasthan ((2022) 9 SCC 81)* with the corum of three Hon'ble Judges, has held in Para Nos.51 and 52 as under:

> *"51. The principles explained and enunciated in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] remain a guiding light for the courts in regard to the proof of a case based on circumstantial evidence, wherein this Court referred to the celebrated decision in Hanumant v. State of M.P. [Hanumant v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343] and deduced five golden principles, panchsheel, of proving a case based on circumstantial evidence in the following passages : (Sharad Birdhichand Sarda case [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] , SCC pp. 184-86, paras 152-57)*
>
> > *"152. … It may be useful to extract what Mahajan, J. has laid down in Hanumant case [Hanumant v. State of M.P., (1952) 2 SCC 71 : AIR 1952 SC 343] : (SCC pp. 76-77, para 12)*
> >
> > *'12. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent*

only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'

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

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

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [Shivaji Sahabrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the following observations were made : (SCC p. 807, para 19)

> *'19. … Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.'*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,*
>
> *(3) the circumstances should be of a conclusive nature and tendency,*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*

> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*
>
> *154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.*
>
> *155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in R. v. Horry [R. v. Horry, 1952 NZLR 111] thus:*
>
> *'Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt : the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.'*
>
> *156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".*
>
> *157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction."*
>
> *52. Keeping the aforesaid principles in view, when we examine the contentions of the learned counsel for the appellant, we find nothing of substance therein."*

49. There is also another aspect that would require consideration of this Court. Based on the statement of the Appellant the body was found. On the night of 06.04.2015 at

about 10.00 P.M, the Appellant and the deceased have left the house of PW1. The Appellant again came back to the house of PW.1 in the wee hours i.e., at about 3.30 A.M on 07.04.2015 and woke her up and stated that he had beaten the deceased and requested PW.1 to go and see the deceased at his house. The evidence given by PW.1 to this extent could not be impeached by the defence, and therefore, it is based only on the statement made by the Appellant that the deceased is laying in their residence, and that PW.1 went to the house of the Appellant and found the deceased laying on the bed. Though, PW.1 initially presumed that the deceased was unconscious, however, had come to know that Nagalakshmi was already dead, when the ambulance personnel came and declared her to be dead. At this juncture, we have considered whether the factum of recovery of dead body on the own revelation of Appellant is relevant and admissible.

50. The Apex Court in ***Pappu Vs. State of Uttar Pradesh ((2022) 10 SCC 321)***, referring to the case of *Inspector of Police Vs. John David ((2011) 5 SCC 509)* had held at Para Nos.86 and 87 as under:

> *"86. In John David [Inspector of Police v. John David, (2011) 5 SCC 509 : (2011) 2 SCC (Cri) 647] relied upon by the learned counsel for the respondent, this Court has reiterated*

the principle that when there is a recovery of an object of crime on the basis of information given by the accused which provides a link in the chain of circumstances, such information leading to discovery is admissible. It has also been held that minor loopholes and irregularities in investigating process cannot form the crux of the case on which the accused can rely upon to prove his innocence, when there is strong circumstantial evidence deduced from the investigation which logically and rationally points towards the guilt of the accused.

87. This Court, inter alia, said as under : (John David case [Inspector of Police v. John David, (2011) 5 SCC 509 : (2011) 2 SCC (Cri) 647] , SCC p. 531, paras 72-73)

"72. It is well-settled proposition of law that the recovery of crime objects on the basis of information given by the accused provides a link in the chain of circumstances. Also failure to explain one of the circumstances would not be fatal to the prosecution case and cumulative effect of all the circumstances is to be seen in such cases. At this juncture we feel it is apposite to mention that in State of Karnataka v. K. Yarappa Reddy [State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715 : 2000 SCC (Cri) 61] this Court has held that : (SCC p. 720, para 19)

51. The ratio of the Hon'ble Supreme Court, as extracted above would become relevant in the light of the fact that the Appellant himself, in wee hours on 07.04.2015 came to the next lane and knocked at the residence door of the P.W.1 and informed P.W.1 that due to his beating, Nagalakshmi fell unconscious. This piece of evidence could not be impeached by the Defence, and therefore, has become admissible to prove the guilt of the Appellant.

52. The Apex Court has also dealt with the "last seen" evidence in Para No.107 in *Pappu Vs. State of Uttar Pradesh*, which is extracted hereunder:

> ***"****107. It is hardly a matter of doubt or debate that when "last seen" evidence is cogent and trustworthy which establishes that the deceased was lastly seen alive in the company of the accused; and is coupled with the evidence of discovery of the dead body of the deceased at a far away and lonely place on the information furnished by the accused, the burden is on the accused to explain his whereabouts after he was last seen with the deceased and to show if, and when, the deceased parted with his company as also the reason for his knowledge about the location of the dead body. The appellant has undoubtedly failed to discharge this burden. Applying the principles enunciated in Kashi Ram [State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254 : (2007) 1 SCC (Cri) 688] , we have no hesitation in endorsing the view [Pappu v. State of U.P., 2017 SCC OnLine All 2461] of the High Court that the appellant having been seen last with the deceased, the burden was upon him to prove as to what happened thereafter, since those facts were within his special knowledge. For the appellant having failed to do so, it is inevitable to hold that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides another strong link in the chain of circumstances against the appellant."*

CONCLUSION:

53. In view of the above discussion, this Court holds that the instant Criminal Appeal is devoid of any merit, and therefore, it does not warrant any interference by this Court. Hence, the Criminal Appeal is dismissed confirming the conviction and sentence recorded by the IV Additional District

and Sessions Judge, Nellore, dated 21.10.2016 in S.C.No.184 of 2015.

Disciplinary Proceedings against the Medical Expert (PW.13) for his grossly negligent conduct

54. Before parting with the case, this Court would be failing in its solemn duty, if the lopsided Report of Post-mortem Examination (Ex.P.20) that has been prepared by PW.13, is not addressed in Public Interest.

55. PW.13 is one Dr. Sasikanth, the then Assistant Professor, Department of Forensic Medicine, A.C.S.R Government Medical College, Nellore. He is the Expert Witness, who prepared the Report of Post-mortem Examination (Ex.P.20) on 07.04.2015. For the present purpose, the Ex.P.20 in its entirety would be of material relevance and hence the whole document is extracted hereunder:

EXHIBIT P.20

"GOVERNMENT OF ANDHRA PRADESH
A.C.S.R. Govt. Medical College, Nellore.
(Department of Forensic Medicine)

REPORT OF POSTMORTEM EXAMINATION

P.M. No: 216 /15 Dated : 7-4 -15
Cr. No.:74 / 15 , P.S.: 2 Town, Nellore.
Body sent by: C.I of P.S. 2 Town, Nellore.
Body identified by Name : Uvakumar, P.C. No.: 2446,
P.S: 2 Town,Nellore.
Date and time of receipt of requisition : 7-4-15,4.00 pm

Autopsy Started at : 4.00 pm Autopsy concluded at:5.00 pm

Name : BADDALA NAGALAKSHMI , female, Aged about 26 Years
Height : 155 cms Physique : Normal Weight : ----
Identification marks : 1) A black mole present on Right elbow
Condition of cloths and jewellary : Body wrapped in bed sheet present.
External appearance : Eyes closed , mouth partly opened, froth present.
P.M. Lividity : Present on back of body,
Rigor Mortis : Present in lower limbs , Putrefaction : -----

Ante-Mortem Injuries

1.	:-	A laceration on upper lip of size 2 x 1 C.Ms lower lip 2 x 1 C.Ms present.
2.	:-	A contusion beside left eye of sixe 2 x 1 C.M., present.
3.	:-	Another contusion of size 4 x 0.5 C.M., on left cheek black in colour
4.	:-	***Fracture of 8 ribs on left side present.***
5.	:-	Abrasion on left side ear present of size 6 x 1 C.M., red in colour
6.	:-	An abrasion below the chin present.
7.	:-	Right eye is black eye present.
8.	:-	Several other, small contusions of 4-5 present on face and neck, including a nail mark left cheek of size 0.5 C.M.,

Scalp and Skull	:-	Nothing particular
Brain and menninges	:-	Congested
Neck, Larynx, Thyroid Cartliege, Hyoid bone, other structures	:-	Neck structures congested, fracture of right horn of Hyoid bone present
Ribs and Chest Wall	***:-***	***Nothing particular, Ribs no fracture***

Lungs and Plural cavities	:-	Lungs congested, no free fluid in plural cavities
Trachea, Bronchi, media-stenum heart and other structures and abdominal wall and peritoneal cavity	:-	Nothing particular
Stomach contents	:-	100 ML Liquid present, mucosa – Normal
Viscera of the abdomen as liver, spleen, pancreas, kidneys, adrenals	:-	Nothing particular
Pelvic bones	:-	No fracture
Genital Organs	:-	Nothing particular
Spinal Column and Spinal Cord	:-	No fracture
Additional Observations	:-	Uterus is bulky and 20 x 20 C.Ms size with dead fetus inside.

OPINION AS TO THE CAUSE OF DEATH

1. Approximate time of death : Died between 12 to 24 hrs prior to PME.
2. The cause of Death to the best of my knowledge and belief was due to :

SHOCK AND HEMORRAGE DUE TO THROTTLING

Sd/----
Assistant Professor
Department of Forensic Medicine,
A.C.S.R. Govt. Medical College,
NELLORE".

56. As can been seen from the above content, under the sub-heading "*Ante-MortemInjuries*", PW.13 at Sl.No.4 has clearly mentioned that eight ribs on the left side of the chest sustained

fractures. Whereas, in the below content of the same document, where the condition of each organ is to be specifically described, the same witness noted against the body parts *"Ribs and Chest Wall : Nothing Particular, Ribs No fracture"*. This is a glaring inconsistency/discrepancy.

57. It is also noticed that the defence has tried its best to take advantage of this inconsistency/discrepancy created by this Medical Expert (PW.13). However, this Court ignored this inconsistency/discrepancy since the cause of death is due to other factors.

58. This inconsistency/discrepancy which is occasioned by PW.13 is in the nature of *resipsaloquitur* (things speak to themselves) inasmuch as it reflects the lopsided and callous manner in which he has prepared the Report of Post-mortem Examination. Needless to state that this is a Rule of Evidence, where, in the given set of circumstances, the negligent conduct of PW.13 is so apparent, glaring and visible to the naked eye, that, it does not require further enquiry. This inconsistency/ discrepancy in Ex.P.20 prepared by Dr. Sasikanth (PW.13), squarely falls under this Doctrine.

59. Therefore, this Court would have no hesitation to hold that PW.13 was grossly negligent in preparing the Report of

Post-mortem examination dated 07.04.2015 (Ex.P.20) which has the propensity to put the case of the prosecution in peril. The Hon'ble Supreme Court, while dealing such situations has laid down a road-map to the Courts to proceed in such situations in Para Nos. 21 to 26 in ***Dayal Singh and Others Vs. State of Uttaranchal ((2012) 8 SCC 263).***The said Para Nos.21 to 26 are usefully reproduced hereunder:

> *21. The investigating officer, as well as the doctor who are dealing with the investigation of a criminal case, are obliged to act in accordance with the Police Manual and the known canons of medical practice, respectively. They are both obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation. Where the default and omission is so flagrant that it speaks volumes of a deliberate act or such irresponsible attitude of investigation, no court can afford to overlook it, whether it did or did not cause prejudice to the case of the prosecution. It is possible that despite such default/omission, the prosecution may still prove its case beyond reasonable doubt and the court can so return its finding. But, at the same time, the default and omission would have a reasonable chance of defeating the case of the prosecution in some events and the guilty could go scot-free. We may illustrate such kind of investigation with an example where a huge recovery of opium or poppy husk is made from a vehicle and the investigating officer does not even investigate or make an attempt to find out as to who is the registered owner of the vehicle and whether such owner was involved in the commission of the crime or not. Instead, he merely apprehends a cleaner and projects him as the principal offender without even reference to the registered owner. Apparently, it would prima facie be difficult to believe that a cleaner of a truck would have the capacity to buy and be the owner, in possession of such a huge quantity i.e. hundreds of bags of poppy husk. The investigation projects*

the poor cleaner as the principal offender in the case without even reference to the registered owner.

22. Even the present case is a glaring example of irresponsible investigation. It, in fact, smacks of intentional mischief to misdirect the investigation as well as to withhold material evidence from the court. It cannot be considered a case of bona fide or unintentional omission or commission. It is not a case of faulty investigation simpliciter but is an investigation coloured with motivation or an attempt to ensure that the suspect can go scot-free. This can safely be gathered from the following:

22.1. The entire investigation, including the statement of the investigating officer, does not show as to what happened to the viscera which was, as per the statement of PW 3, handed over to the constable PW 7, who, in turn, stated that the viscera had been deposited in the police station malkhana. In the entire statement of the investigating officer, there is no reference to viscera, its collection from the hospital, its deposit in the malkhana and whether it was sent to the FSL at all or not. If sent, what was the result and, if not, why?

22.2. Conduct of the investigating officer is more than doubtful in the present case. In his statement, he had stated that he noticed three injuries on the body of the deceased. He also admitted that in the post-mortem report, no internal or external injuries were shown on the body of the deceased. According to him, he had asked PW 3 in that regard but the reply of the doctor was received late and the explanation rendered was satisfactory. Firstly, this reply or explanation does not find place on record. There is no document to that effect and secondly, even in his oral evidence, he does not say as to what the explanation was.

22.3. In his statement, PW 3 Dr C.N. Tewari, stated that he did not find any external or internal injuries even after performing the post-mortem on the body of the deceased. This remark on the post-mortem report apparently is falsified both by the eyewitnesses as well as the investigating officer. It will be beyond apprehension as to how a healthy person could die, if there were no injuries on his body and when, admittedly, it was not a case of cardiac arrest or death by poison, etc., more so, when he was alleged to have been assaulted with dandas (lathis) by four persons simultaneously. In any case, the doctor gave no cause for death of the deceased and prepared a post-mortem report which ex facie was incorrect and tantamounts to abrogation

of duty. The trial court while giving the judgment of conviction, noticed that medico-legal post-mortem examination is a very important part of the prosecution evidence and, therefore, it is necessary that it be conducted by a doctor fully competent and experienced.

22.4. The court also commented adversely upon the professional capabilities and/or misconduct of Dr C.N. Tewari, as follows:

> *"Whatever may have been the reasons but it is quite evident that Dr C.N. Tewari failed in his professional duty and he did not perform the post-mortem examination properly after considering the inquest report and the police papers sent to him. If his finding deferred from the finding of the panchas he should have informed his superior officers in that regard so that another opinion could have been obtained before the disposal of the dead body. The evidence leaves no room for doubt that Shri Pyara Singh was attacked with lathis as alleged by the prosecution and he received three injuries already referred to above which were mentioned in the inquest report (Ext. Ka-6)….*
>
> *The case of the prosecution cannot be thrown on account of the gross negligence and apathy of the Medical Officer Dr C.N. Tewari who had performed autopsy on the dead body of Shri Pyara Singh. Since the Medical Officer Dr C.N. Tewari had conducted in a manner not befitting the medical profession and prepared the post-mortem report against facts for reasons best known to him and was negligent in his duty in ascertaining the injuries on the body of the deceased, hence it is just and proper that the Director General, Medical Health U.P. be informed in this regard for taking necessary action and for eradicating such practices in future."*
>
> *(emphasis supplied)*

23. From the record, it is evident that the learned counsel appearing for the State was also not aware if any action had been taken against Dr C.N. Tewari. On the contrary, Mr Ratnakar Dash, learned Senior Counsel appearing for Dr C.N. Tewari, informed us that no action was called for against Dr C.N. Tewari as he had authored the post-mortem report and

given his evidence truthfully and without any dereliction of duty. He also informed us that since Dr C.N. Tewari is now retired and is not well, this Court need not pass any further directions. We are not impressed with this contention at all.

24. We have already noticed that PW 3 Dr C.N. Tewari, certainly did not act with the requisite professionalism. He even failed to truthfully record the post-mortem report, Ext. Ka-4. At the cost of repetition, we may notice that his report is contradictory to the evidence of the three eyewitnesses who stood the test of cross-examination and gave the eye-version of the occurrence. It is also in conflict with the statement of PW 6 as well as the inquest report (Ext. Ka-6) prepared by him where he had noticed that there were three injuries on the body of the deceased. It is clear that the post-mortem report is silent and PW 3 did not even notice the cause of death. If he was not able to record a finding with regard to the cause of death, he was expected to record some reason in support thereof, particularly when it is conceded before us by the learned counsel for the parties, including the counsel for Dr C.N. Tewari that it was not a case of death by administering poison.

25. Similarly, the investigating officer has also failed in performing his duty in accordance with law. Firstly, for not recording the reasons given by Dr C.N. Tewari for non-mentioning of injuries on the post-mortem report, Ext. Ka-4, which had appeared satisfactory to him. Secondly, for not sending to the FSL the viscera and other samples collected from the body of the deceased by Dr C.N. Tewari, who allegedly handed over the same to the police, and their disappearance. There is clear callousness and irresponsibility on their part and deliberate attempt to misdirect the investigation to favour the accused.

26. This results in shifting of avoidable burden and exercise of higher degree of caution and care on the courts. Dereliction of duty or carelessness is an abuse of discretion under a definite law and misconduct is a violation of indefinite law. Misconduct is a forbidden act whereas dereliction of duty is the forbidden quality of an act and is necessarily indefinite. One is a transgression of some established and definite rule of action, with least element of discretion, while the other is primarily an abuse of discretion. This Court in State of Punjab v. Ram Singh [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] stated that the ambit of these expressions had to be construed with reference to the subject-matter and the context where the term occurs, regard being given to the scope

of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires maintenance of strict discipline. The consequences of these defaults should normally be attributable to negligence. Police officers and doctors, by their profession, are required to maintain duty decorum of high standards. The standards of investigation and the prestige of the profession are dependent upon the action of such specialised persons. The Police Manual and even the provisions of Cr.P.C. require the investigation to be conducted in a particular manner and method which, in our opinion, stands clearly violated in the present case. Dr C.N. Tewari, not only breached the requirement of adherence to professional standards but also became instrumental in preparing a document which, ex facie, was incorrect and stood falsified by the unimpeachable evidence of the eyewitnesses placed by the prosecution on record. Also, in the same case, the Court, while referring to the decision in Awadh Bihari Yadav v. State of Bihar [(1995) 6 SCC 31] noticed that if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcement agency but also in the administration of justice.

60. While dealing with such situations, the Hon'ble Supreme Court in *Dayal Singh and Others Vs. State of Uttaranchal* case (cited supra) held at Para Nos.27 to 29 as under:

27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. [(1972) 3 SCC 613 : 1972 SCC (Cri) 659] this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab [(2004) 3 SCC 654 : 2004 SCC (Cri) 851] , held: (SCC p. 657, para 5)

> *"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would*

> *tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."*

28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104 : AIR 1999 SC 644] enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In Zahira Habibullah Sheikh (5) v. State of Gujarat [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] , the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42)

> *"42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play."*

61. The Hon'ble Supreme Court in *Dayal Singh and Others Vs. State of Uttaranchal* case (cited supra) further held at Para No.39 as under:

> *"39. The Indian law on expert evidence does not proceed on any significantly different footing. The skill and experience of an expert is the ethos of his opinion, which itself should be reasoned and convincing. Not to say that no other view would be possible, but if the view of the expert has to find due weightage in the mind of the court, it has to be well authored and convincing. Dr C.N. Tewari was expected to prepare the post-mortem report with appropriate reasoning and not leave everything to the imagination of the Court. He created a serious doubt as to the very cause of death of the deceased. His report apparently shows an absence of skill and experience and was, in fact, a deliberate attempt to disguise the investigation."*

62. In the final analysis, the Hon'ble Supreme Court in Dayal Singh's case, had directed the Director General of Police and the Medical Services, Uttar Pradesh to conduct enquiry and initiate prosecution against the Medical Expert, notwithstanding the fact that he has superannuated from service.

'ZERO' TOLERANCE ZONE:

63. Criminal Justice, not only in India but in the World over, cannot afford to tolerate even the acts of negligence or inadvertence muchless fraud and connivance, which endanger the credibility of the Prosecution case. Be it an Investigator or any Expert Witness who has the statutory-duty of performing their functions/tasks to the best of their ability in bringing the guilty to book, cannot and shall not, in any manner, either by

acts of negligence or by inadvertence, derail the cause, for such a situation shall lead to Miscarriage of Justice in the nature of either letting a criminal escape from the clutches of law or an innocent being wrongfully punished. In either case, the consequence that emanates from such Miscarriage of Justice is rather very grave.

64. Therefore, there can be 'no tolerance to any degree' whatsoever, when it comes to the pardoning of any person for his lapses in the administration of criminal justice. Anyone who, either deliberately or unwittingly weakens the bed-rock of any given criminal case shall be sternly dealt with under the law, lest it may weaken the administration of the Criminal Justice. This is the underlying philosophy in the 'concern expressed' by the Hon'ble Apex Court in *Dayal Singh's case***.**

65. By adhering to the dictum of the Hon'ble Supreme Court in *Dayal Singh's case*, after taking into account the grossly negligent conduct of PW.13, this Court deems it appropriate to direct the concerned Medical Department to initiate Disciplinary Proceedings against PW.13, Dr. Sasikanth for dereliction of duty that could have resulted in the miscarriage of justice by way of endangering the credibility of the prosecution case. The Departmental Proceedings shall be

concluded within two months from today and the Report of Compliance shall be submitted by the appropriate authority within a period of 12 weeks from today before this Court through the Registrar (Judicial). Though not in this case, the possibility of any Medical Expert being criminally charged and prosecuted, cannot be ruled-out in situations akin to ***Dayal Singh's case***.

Directions to Usher-in Reforms in Medico-legal Post-Mortem Dissections and Examinations *(Forensic Autopsies)* :

66. The *Forensic Autopsy*, in the modern day usage, is referred to as Medico-Legal Post-Mortem Dissection or Examination. Its indispensability and significance in Criminal Justice System and for establishing the 'Rule of Law' cannot be understated in this contemporary era.

> *"Taceant colloquia. Effugiat risus. Hic locus est ubi mors gaudet succurrere vitae".*
>
> **"Let conversation cease. Let laughter flee. This is the place where death delights to help the living"**

This Latin Proverb is specific to the Forensic Autopsies.

67. While dealing with several Criminal Appeals, this Court has noticed that certain areas of Criminal Investigation Procedures, Techniques and Methods used for collection and evaluation of evidentiary material by the Forensic Medical

Experts is found to be very much wanting. Sometimes, the shortcomings in the criminal investigation on account of shoddy collection of investigative material (specimens for Forensic Examination), preservation of dead bodies or the body parts recovered from scenes of crime or occurrence or places of retrieval, the norms adopted by the Forensic Medical Experts in conducting medico-legal post-mortem dissections and examinations *(forensic autopsies)* and recording the findings are giving undue advantage to the real culprit in getting away from the clutches of law.

68. In the *Knight's Forensic Pathology* (Authored by Pekka Saukko and Bearnard Knight – Fourth Edition), it is critically stated about the Forensic Autopsies as:

> *"When quality assurance measures do not exist or fail, systemic errors may remain undetected for longer periods of time. When eventually detected the repercussions can be serious; they can be costly to society, not only in terms of money but also in loss of confidence as to the rule of law, and involve personal tragedies for those affected"*

69. More often than not, this Court has noticed the Forensic Medical Experts using the same obsolete and out-dated stereo-type methods and techniques in *Forensic Autopsies* of human cadavers without keeping themselves updated with the contemporary technology, knowledge and infrastructure.

Formulation of Standard Operation Procedures and check-lists would not only lead to harmonization of investigation procedures in Medico-Legal Post-Mortem Dissections and Examinations *(Forensic Autopsies)* but also helps to reduce the accidental or callous omissions and commissions which have a bearing on the Criminal Trials in the Courts of Law.

70. It is the opinion of this Court that, after adopting Standard Procedures relating to the opinion formed by the Forensic Medical Experts as regards the cause of death and other related history, further examinations should have to be conducted depending on the nature of the cause of death. For example, criteria and the autopsy procedure to be adopted for examination of a person suspected of death by drowning has to be entirely different, as compared a person's death due to burns. This is only an illustration and it is not exhaustive.

71. In the *Knight's Forensic Pathology* (Fourth Edition) it is stated that:

> - *The medico-legal or forensic autopsy, which is performed on the instructions of the legal authority responsible for the investigation of sudden, suspicious, obscure, unnatural, litigious or criminal deaths. This legal authority may be a coroner, a medical examiner, a procurator fiscal, a magistrate, a judge, or the police, the systems varying considerably from country to country.*

In most systems the permission of the relatives is not required, as the object of the legal investigation would be frustrated if the objections of possibly guilty persons could prevent the autopsy.

In many jurisdictions the medico-legal autopsy is often further subdivided into:

- *those held on apparently non-criminal deaths, such as accidents, suicides, deaths from sudden natural causes, or associated with medical and surgical treatment, industrial deaths, and so on*
- *the truly forensic autopsy held on suspicious or frankly criminal deaths, usually at the instigation of the police. These deaths comprise murder, manslaughter, infanticide and other categories that vary in different jurisdictions".*

72. The Common Objectives for an Autopsy, which, as stated in *Knight's Forensic Pathology (Fourth Edition),* are as under:

- *To make a positive identification of the body and to assess the size, physique and nourishment.*
- *To determine the cause of death or, in the newborn, whether live birth occurred.*
- *To determine the mode of dying and time of death, where necessary and possible.*
- *To demonstrate all external and internal abnormalities, malformations and diseases.*
- *To detect, describe and measure any external and internal injuries.*
- *To obtain samples for chemical, toxicological or genetical analysis, microbiological and histological examination, and any other necessary investigations.*

- *To retain relevant organs and tissues as evidence.*
- *To obtain photographs and video for evidential and teaching use.*
- *To provide a full written report of the autopsy findings.*
- *To offer an expert interpretation of those findings.*
- *To restore the body to the best possible cosmetic condition before release to the relatives.*

73. Keeping the above mentioned objectives in mind, this Court is of the opinion that while taking into account, the contemporary advancements in Forensic Science coupled with technology explosion, the Departments dealing with Forensic Medicine which are endowed with the bounden statutory-duty, should formulate mandatory Standard Operation Procedures (SOPs). *The requirement of keeping-in pace with the contemporary science and technology in Forensic Medicine is not just a wishful-thought, but, it is an indispensible statutory requirement for establishing the Rule of Law through forensic investigations.*

74. For this purpose, it is desirable to constitute an expert body consisting of all the stake-holders that include, but not limited to, the Investigators, best Forensic Medicine Experts, the Directors of the Forensic Labs, the Prosecutors etc.,.

75. It is, therefore, directed that an Expert Body be constituted by the Principal Secretary, Home Department

consisting of all the stake-holders as mentioned above and also any other Experts whose opinion can contribute to the Forensic Medical Science in relation to Medico-Legal Post-Mortem Dissections and Examinations (Forensic Autopsies). The Committee shall be headed by the Principal Secretary, Department of Home as the Convenor; and, shall also include Director General of Police (Investigations), Director of Medical and Health, the Public Prosecutor for the State of Andhra Pradesh, Two Expert Doctors in Forensic Medical Science having the distinction of scholarly contribution to the field of Medico-Legal Post-Mortem Dissections and Examinations (Forensic Autopsies) and a retired District Judge having experience in the field of criminal trials etc. The Expert Body is free to include any other Expert Member in the field of Bio-Chemistry, Pathology, Genetics or any other Expert, who would be useful in rendering expert inputs for the present purpose.

76. This Expert Body shall prepare Standard Operation Procedures and Check-lists, including but not limited to the following subjects:

i) Upgradation and Standardisation of the infrastructure in every Laboratory which conducts Medico-Legal Post-Mortem Dissections and Examinations (Forensic Autopsies). This

upgradation and standardisation of Infrastructure shall also include coloured photography and videography of the entire process;

ii) Medico-Legal Post-Mortem Dissections and Examinations (Forensic Autopsies) procedure which is common to all deaths shall be reduced into Standard Operation Procedures and check lists;

iii) Apart from the general Standard Operation Procedures common to all Forensic Autopsies, special SOPs shall be prepared basing on the suspected nature/cause of death. For example, special standard operation procedure and check-list would be different for death caused by drowning and death caused by burning;

iv) To prepare general Standard Operation Procedures for reducing the findings in the forensic autopsy into writing. Special Standard Operation Procedure shall also be prepared for reducing the findings/observations in the forensic autopsy depending on the suspected cause of death into writing.

77. For all the above purposes the Expert Body shall cause a detailed study of various domestic and international scientific and technological advancements, procedures and techniques adopted in the form of 'best-practices' in conducting Medico-Legal Post-Mortem Dissections and Report Writing.

78. In case of unnatural deaths, the Medico-Legal process varies from one to another as regards the cause of death. The Court is desirous of obtaining Standard Operation Procedures (SOPs) in respect of each one of the above Heads. This apart, the Principal Secretary, Department of Home, shall also be responsible for periodical review of the above mentioned Check-Lists, SOPs and Special SOPs (atleast once in every six months) for the purpose of updating the Procedures keeping in tune with the latest developments in technology and science.

79. The Principal Secretary, Department of Home shall be responsible in completing this exercise, as per the directions given above, as expeditiously as possible, in any case within three months from today. The Principal Secretary, Department of Home is directed to submit the Report along with the Standard Operation Procedures and Check-lists in terms of above directions, in the 13th week from today before the Registrar (Judicial).

80. Upon receipt of this information from the Principal Secretary, Department of Home, the Registrar (Judicial) shall place the same before this Court for further consideration within a week thereafter. The Registrar (Judicial) is directed to transmit a copy of this Judgment forthwith to the: (i) Principal

Secretary, Department of Home, Government of Andhra Pradesh; (ii) Director General of Police (HoPF) and (Head of Investigations), Government of Andhra Pradesh; (iii) Director of Medical and Health, Government of Andhra Pradesh; (iv) Office of the Ld. Advocate General for the Government of Andhra Pradesh; and (v) Office of the Ld. Public Prosecutor, Government of Andhra Pradesh.

U. DURGA PRASAD RAO, J

G. RAMAKRISHNA PRASAD, J

Date: 07.08.2023.
JKS/SDP

L.R Copy to be marked.

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HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

AND

HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

CRIMINAL APPEAL NO.326 of 2017

07.08.2023

JKS/SDP