
(2022) 11 TEL CK 0109

High Court For The State Of Telangana:: At Hyderabad

Case No: Criminal Appeal No. 267 Of 2015

Kona Vbalamallaiah

APPELLANT

Vs

P.P., Hyd

RESPONDENT

Date of Decision: Nov. 29, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 379, 397, 404
- Code of Criminal Procedure, 1973 - Section 209, 313, 374(2)
- Evidence Act, 1872 - Section 21, 24, 25, 26

Hon'ble Judges: A.Abhishek Reddy, J; Juvvadi Sridevi, J

Bench: Division Bench

Advocate: Srinivas Kapatia

Final Decision: Allowed

Judgement

1. This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the appellant/sole

accused, aggrieved by the judgment, dated 02.01.2015, passed in S.C.No.415 of 2013 by the learned IX Additional Sessions Judge, Wanaprthy,

whereby, the Court below convicted the appellant/accused for the offence under Sections 302 and 379 of IPC and sentenced him to undergo rigorous

imprisonment for life and pay fine of Rs.2000/-, in default, to undergo simple imprisonment for six months for the offence under Section 302 of IPC;

and to undergo rigorous imprisonment for five years and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months for the

offence under Section 379 IPC. Both the sentences were directed to run concurrently.

2. We have heard the submissions of Sri Srinivas Kapatia, learned counsel for the appellant/accused, learned Public Prosecutor appearing for the respondent-State and perused the record.

3. The case of the prosecution, in a nutshell, is as follows:

On 12.11.2012 at about 10:00 AM, PW.1-Pokala Rama Krishna went to Siddpaur Police Station and lodged Ex.P1-report stating that he was residing

at Hyderabad and her mother (deceased-Pokala Sakkubai) was residing at Siddapur village alone. In the night hours of 11.11.2012, some unknown

offenders beat her mother to death and committed theft of gold ornaments, i.e., one gold pusthela tadu and four gold bangles, from the person of her

mother. The value of the gold ornaments was approximately Rs.2,50,000/- and requested to take legal action against the culprits.

4. Basing on Ex.P1-report, PW.8-Head Constable of Siddapur Police Station registered a case in Crime No.27 of 2012 for the offences under

Sections 302 and 379 of IPC and issued Ex.P5-Express FIR and sent to Committal Court, recorded the statement of PW.1 and handed over the CD

file to PW.10-Inspector of Police for further investigation. PW.10 rushed to the scene of offence, secured presence of PWs.2 to 4 and examined them,

prepared Ex.P2-Crime Details Form in the presence of PW.6 and another, collected blood stains from the scene of offence with the help of MO.5-

cotton in the presence of same panch witnesses, prepared a rough sketch of scene of offence, got photographed the scene of offence, conducted

inquest over the dead body of the deceased under Ex.P3 in the presence of PW.6 and another, collected MOs.6 to 9 from the dead body of the

deceased, sent the dead body for Post-mortem examination. On 13.11.2012, he secured the presence of PW.5 and four others and examined them.

On 27.11.2012, he handed over the CD file to PW.11-Inspector of Police, who returned from leave. PW.11 took up further investigation, apprehended

the accused on 28.11.2012, recorded the confession of the accused under Ex.P4 in the presence of PW.7 and another, recovered MOs.1 to 4, 10 and

11, affected the arrest of the accused and sent him to Court along with Remand Report, sent the Material Objects except MOs.1 to 4 to Forensic

Science Laboratory for examination and report, handed over the CD file to his successor in office, who after receiving the FSL report under Ex.P8

and PME Report under Ex.P6, laid charge-sheet before the committal Court, i.e., Judicial Magistrate of First Class, Achampet, for the offences under

Sections 302 and 379 of IPC.

5. The Learned Magistrate had taken cognizance against the appellant/accused for the offences under Sections 302 and 404 of IPC, registered the

same as PRC No.13 of 2013 and committed the same to the Sessions Division under Section 209 of Cr.P.C., since the offence under Section 302 of

IPC is exclusively triable by the Court of Session. On committal, the Court of Session numbered the case as S.C.No.415 of 2013 and made over to the

Court below for disposal, in accordance with law.

6. On appearance of the appellant/accused, the Court below framed charges against him of the offences under Sections 302 and 379 of IPC, read

over and explained to him, for which, the appellant/accused pleaded not guilty and claimed to be tried.

7. To prove the guilt of the appellant/accused, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P8, besides case properties, MOs.1 to

11.

8. PW.1-P.Ramakrishna is the complainant. PW.2-L.Jagapathi, PW.3-K.Chinna Naraiah, PW.4-Ashok Goud and PW.5-P.Anjaneyulu are

circumstantial witnesses. PW.6-Boppi Ashok is a panch witness for Inquest and Scene of Offence panchanama. PW.7-P.Swamidas is a panch

witness for Confession and Recovery Panchanama of the accused. PW.8-A.Hussain is a Head Constable, who issued Ex.P5-Express FIR. PW.9-

Abdullah is the doctor who conducted autopsy over the dead body of the deceased and issued PME Report under Ex.P6. PWs.10 and 11 are the

investigating officers. Ex.P1 is the report. Ex.P2 is Crime Details Form. Ex.P3 is Inquest Panchanama. Ex.P4 is Confession-cum-Seizure

Panchanama. Ex.P5 is FIR. Ex.P6 is PME Report. Ex.P7 is (six) photographs. Ex.P8 is FSL Report. MOs 1 to 3 are gold bangles. MO.4 is a gold

chain. MO.5 is blood cotton. MO.6 is jacket. MO.7 is petticoat. MO.8 is Kerchief. MO.9 is sari. MO.10 is towel and MO.11 is iron rod.

9. When the appellant/accused was confronted with the incriminating material appearing against him and was examined under Section 313 of Cr.P.C.,

he denied the same and claimed to be tried. No evidence, either oral or documentary, was adduced on behalf of the appellant/accused.

10. The trial Court, having considered the submissions made and the evidence available on record, vide the impugned judgment, dated 02.01.2015,

convicted the appellant/accused of the offences under Sections 302 and 379 of IPC and sentenced him as stated supra. Aggrieved by the same, the

appellant/accused preferred this appeal.

11. Learned counsel for the appellant/ accused would submit that the whole prosecution case is based on circumstantial evidence. There are no direct

witnesses to connect the appellant/accused with the subject death of the deceased. The Court below erroneously convicted the appellant/accused for

the offences under Sections 302 and 379 of IPC, without there being any substantial evidence on record to prove his guilt for the said offences beyond

all reasonable doubt. PW.7, the person before whom the appellant/accused alleged to have made extra judicial confession, was pressed into service to

speak about false recovery of MOs.1 to 4, 10 and 11. Moreover, PW.7 is an interested witness. The motive on the part of the appellant/accused for

the commission of the subject offence could not be proved by the prosecution. The Court below relied on the evidence of PWs.2 and 3 who stated

that the appellant/sole accused used to visit the house of the deceased, but failed to appreciate the fact that the very same witnesses also deposed that

some other villagers also used to visit the house of the deceased. The evidence of PW.9-doctor could not lend support to the case of prosecution,

inasmuch as he stated in his cross-examination that the subject death of the deceased could also be due to fall from considerable height. Further, on

MO.11-iron rod, which is allegedly used for commission of the subject offence, neither there were finger prints of the appellant/accused nor human

blood was found on the same. The evidence of the prosecution witnesses is not reliable and trustworthy and do not inspire confidence to act upon. The

Court below was swayed away with the non-corroborative evidence of prosecution witnesses and erroneously convicted and sentenced the

appellant/accused basing on their testimony. The circumstances from which an inference of guilt is sought to be drawn against the appellant/accused

are not cogently and firmly established by the prosecution. The chain of events is not so complete to rule out the reasonable likelihood of innocence of

the appellant/accused and ultimately, prayed to allow the appeal by setting aside the conviction and sentence recorded against the appellant/accused

by the trial Court.

12. Per contra, the learned Public Prosecutor would submit that an innocent, helpless, age old woman was mercilessly beaten to death by the

appellant/accused. The evidence let in by the prosecution amply proves the guilt of the appellant/accused of the offences under Sections 302 and 379

of IPC. PW.9-doctor opined that the death of the deceased was due to "cardio respiratory arrest due to chromatic subarachnoid Hemorrhage".

The appellant/accused had free access to the house of the deceased. Since the appellant/accused incurred lot of debts and as there was pressure

from the creditors to clear off the debts, the appellant/accused was waiting for an opportunity to eliminate the deceased and commit theft of the gold

ornaments of the deceased and clear off his debts by selling the gold ornaments. In furtherance of his plan, on 11.11.2012 at about 08:00 PM, he had

hit the deceased on her head with MO.11-iron rod while she was having her supper, due to which, the deceased succumbed to the injuries on the spot.

The confession made by the appellant/accused and recovery of material objects pursuant to his confession clinchingly proves the guilt of the

appellant/accused beyond all reasonable doubt. There are no inconsistencies and contradictions in the evidence of prosecution witnesses. All the

circumstances brought out against the appellant/accused are of conclusive nature and definite tendency and they exclude every possible hypothesis of

innocence of the appellant/accused. The chain of evidence led by the prosecution is complete and do not leave any reasonable ground for the

conclusion inconsistent with the guilt of the appellant/accused. The Court below is justified in convicting and sentencing the appellant/accused of the

offences under Sections 302 and 379 of IPC and ultimately prayed to dismiss the appeal, by confirming the conviction and sentence recorded against

the appellant/accused vide the impugned judgment.

13. In view of the above submissions made by both sides, the points that arise for determination in this appeal are as follows:

1) Whether the appellant/accused had caused the subject death of the deceased-Pokala Sakkubai on 11.11.2012 at her house situated at Siddapur

Village of Achampet Mandal?

2) Whether the prosecution is able to prove the guilt of the appellant/accused of the offences under Sections 302 and 379 of IPC beyond all

reasonable doubt?

3) Whether the conviction and sentence recorded against the appellant/accused of the offences punishable under Sections 302 and 379 of IPC is liable

to be set aside?

4) To what result?

POINTS:-

14. Undisputedly, the whole prosecution case is based on circumstantial evidence. In a case based on circumstantial evidence, the settled law is that

the circumstances from which the conclusion of guilt is drawn should be fully proved, and such circumstances must be conclusive in nature. Moreover,

all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be

consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. The question whether chain of circumstances

unerringly established the guilt of the accused needs careful consideration. The proof of a case based on circumstantial evidence, which is usually

called 'five golden principles', have been stated by the Apex Court in Sharad Birdhi Chand Sarda Vs. State of Maharashtra AIR 1984 Supreme

Court 1622, which reads as follows:-

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

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on

any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused

and must show that in all human probability the act must have been done by the accused.

15. Keeping the above principles in mind, we would now venture to analyze the evidence on record.

16. PW.1 is the son of the deceased. He deposed that his mother and she died on 11.11.2012. His mother Sakku Bai (deceased) was alone residing at

Siddapur village. On 12.11.2012 at about 07.30 AM, he received a phone call from LW.6-Ashok Goud informing that his mother was beaten to death

in the night hours and her gold ornaments were committed theft. His mother was wearing gold pusthela thadu and bangles. Soon after receipt of the

said information, himself, his sister (LW.2-Bharathi) and other relatives went to Siddapur Village. He saw the injuries on the dead body of his mother

on the back of the neck and that her gold ornaments were missing. Then he went to the police station and lodged Ex.P1-complaint. He identified

MOs.1 to 3 as 3 gold bangles and MO.4 as the gold chain belonging to his mother. He further deposed that he do not know the appellant/accused.

17. PW.2 is a circumstantial witness. He deposed that he knows the deceased and she died on 11.11.2012. He knows the accused, as he belongs to

their village. Accused is an auto driver. The deceased normally used to be found in front of her house in the morning hours regularly. On 12.11.2012,

she was not found in front of her house. Thereupon, himself and LW4-Brahmaiah went to her house and found the door on the western side closed.

Then they went to eastern side door. In the mean while LW.5-Chinna Naraiah also came. The door on the eastern side of the house was partially

found opened. Then all the three of them entered into the house and there was a grill before entering inside the house. From the grills, they found the

dead body of the deceased on the floor with blood on the floor. Then they came out of the house. Thereafter police arrived in the village. When the

villagers gathered, accused also came to that place and after arrival of the police, he fled away. Accused used to visit the house of the deceased

regularly and attend her works. He has seen the accused at the house of the deceased on the previous night at 7.30 PM. Their house is adjacent to

the house of the deceased. PW.2 was cross examined at length, wherein he stated that like the accused, other villagers also used to visit the house of

the deceased.

18. PW.3 is another circumstantial witness. He deposed that he know PWs.1, 2 and the deceased. On the next day of death of the

deceased, in the morning hours, he went towards the bus stand in the village. At that time, he noticed PW.2 and LW.4-Brahmaiah peeping into the

house of the deceased. As they could not see anything, they called him and all three went towards the eastern door of house of deceased Sakku Bai.

The front room of the eastern side was found opened and on entering into it, they saw the deceased lying on floor and blood on the floor. They went

and informed the same to LW.6-Ashok. The accused is an auto driver. He used to bring the kirana saman to the house of the deceased and attend her

works. On the previous evening at about 7.30 p.m., he has seen the auto of the accused parked by the side of the house of the deceased. Accused

was there in the village and saw the dead body of the deceased along with others and on hearing about the arrival of police, he went away from the

village. Though PW.3 was cross examined at length, nothing was elicited to disprove his testimony in his examination-in-chief.

19. PW.4 is another circumstantial witness. He deposed that he know PWs.1 to 3, the deceased and the accused, as all of them belong to same

village. About two years back, on one day, at about 07:00 AM in the morning, PW.3 came and informed him that he, PW.2 and another person, found

the deceased dead in her house. Then, he went to the house of the deceased saw her dead body and informed to PW.1 over phone.

20. PW.5 is another circumstantial witness. He deposed that he knows PWs.1 to 4, the deceased and the accused, as they are all belong to same

village. On 11.11.2012, at about 5.00 PM, while he was at the bus stand of Siddapur village, LW.9-Venkatesh came and met him at the bus stand.

While they were talking to each other, accused came with his auto and asked him to bring the coolies from Padmaram Thanda in his auto and handed

over the auto to him. Accordingly, he went to Padmaram Thanda with the auto of the accused, brought the labour and dropped them at Siddapur.

After dropping the labour, accused met him at Peerlabavi agricultural well and he handed over the auto to him. Thereafter, accused went with his auto

to his house, whereas himself and LW.9-Venkatesh went to the house of Narsimha, the maternal uncle of Venkatesh. After that, himself and LW.9

sat at the shop of Sala Mallaiah and watched a movie in the TV at his shop. Thereafter at about 09.00 PM, himself and LW.9 went to the house of his

paternal grandmother and as she was not found at her house, both of them went to the house of the accused and found his house locked and auto was

parked in front of the house. Then, both of them sat in the auto of the accused. Ten minutes thereafter, accused arrived at his house and gave him

Rs.200/-asking him to bring two beer bottles. At that time accused was found in tension mood. Himself and LW.9 went in the auto of the accused to a

kirana shop where beer bottles were also being sold and bought two bottles of beer and went to the house of the accused. As LW.9 said that he

cannot drink one complete beer bottle, he telephoned to LW.8-Kiran for taking beer. Thereafter, LW.8 came and they four sat together. After

completing the drink, LW.8 went away. Thereafter, himself and LW.9 went to sleep in the house of the accused on the floor and the accused went to

his bed to sleep. On the next day morning at about 7Â¢â,~â,,¢o clock, he woke up and by that time accused also woke up. One Padmamma informed that

the deceased was found dead in her house. Then himself, LW.9 and accused went to the house of the deceased and saw her dead body. After that,

the accused asked him to bring his auto, which was at his house. Then he has brought the auto and the three of them, Gopal and Suresh, went in the

auto to Mysamma Canal. There, they attended nature calls and washed face. Gopal and Suresh got down the auto at Rachabanda in return and he got

down at the house of Basheer, whereas Venkatesh and accused together went in the auto. The villagers were saying that since accused was bringing

provisions, vegetables etc., to the deceased, he might have killed her. The accused, having heard that the sniffer dogs will be brought to the village,

fled away with his auto from the village. PW.5 was cross examined at length, wherein nothing was elicited to discard his testimony in his examination-

in-chief.

21. PW.6 is a panch witness for Inquest and Scene of offence panchanama. He deposed about the police conducting Ex.P2-Crime Details Form and

Ex.P3-Inquest Panchamama in his presence and collection of MO.5-cotton, MO.6-Jacket and MO.7-Petty Coat, MO.8-Hand Kerchief and MO.9-

Sari by the police in his presence.

22. The evidence of PW.7 is crucial. He is the person before whom, the accused alleged to have confessed about the commission of subject offence.

He deposed that he knows the accused, as he belongs to their village. Fifteen days of the death of the deceased, himself and LW.15-Niranjana were

called by the police near the house of the accused in the evening hours at about 04.00 PM. Accused was present at his house and police asked them

to enquire the accused. Accordingly, when they enquired the accused by taking away from the police, he told them that he incurred debts to a tune of

Rs.3 lakhs; since he was working with the deceased by attending her works, he intended to commit her murder to take away her ornaments and

accordingly he committed her murder in her house by beating her with an iron rod in the night hours and took away gold chain and three bangles; By

the time he reached his house, two persons were found in his auto and hence, he tied the gold ornaments of the deceased and in a towel and threw it

and iron rod on the roof of his old house and thereafter he gave Rs.200/- to two persons who were present in his auto asking them to bring two beer

bottles; after bringing the beer bottles, they consumed it and he slept in his house and on the next day morning he went to the house of deceased with

the said persons saw the dead body of the deceased, later went to canal, washed the face and later himself and one Venkatesh went to Devarakonda

in the auto and from there, Venkatesh went to Nalgonda; he received a phone call from his brother-in-law informing that sniffer dogs were brought to

the village and it went to his house and the villagers were saying that he committed the murder of the deceased; On hearing the said information from

his brother-in-law, he went to Hyderabad in a bus and kept his auto in the shed at Devarakonda; after the money with him was exhausted, he returned

to the village and went to his house to take the gold articles of the deceased from the top of the roof police caught him there. PW.7 further deposed

that the accused took them to the old house, went on to its roof with the help of ladder, and brought the gold articles and the iron rod with the towel

and same were collected by police. MO.10 is the towel, MO.11 is the iron and produced by the accused along with gold articles under MOs.1 to 4 and

seized by the police. Ex.P4 is the confessional and recovery panchanama prepared by the police and obtained their signatures.

23. PW.8 was working as Head Constable at Police Station, Siddapur, at the relevant point of time. He deposed that on 12.11.2012 at about 10:00

AM, PW.1 lodged Ex.P1-report, which was registered as Crime No.27 of 2012 for the offences under Section 302 and 379 of IPC. Ex.P5 is the

original FIR which was sent to committal Court. Thereafter, he recorded the statement of PW.1. Thereafter, while he was proceeding to village

Siddapur, the Inspector of Police met him and took up CD file.

24. PW.9 is the doctor who conducted autopsy over the dead body of the deceased. He deposed that he found the following external injuries on the

dead body of the deceased:

1. A split laceration 8x2 cms, with relatively sharp margin on the scalp behind the right ear.

2. Laceration 7x2 cms. On the occiput.

3. Laceration 3x1 cms above the right eyebrow

4. Fracture of the occipital bone.

On opening the body, he found the following internal injuries.

1. A contusion and hemorrhage in the occipital lobe of the brain and splashes of sub arachnoid hemorrhage over the area of contusion and also over

the greater part of both cerebral hemisphere.

He further deposed that the death of the deceased was due to Æ¢â,¬Ëœcardio respiratory arrest due to chromatic subarachnoid hemorrhage Æ¢â,¬â,,¢ within 12

to 24 hours prior to PME. Ex.P6 is the PME report issued by him with final opinion as to the cause of death of deceased. He further deposed that the

injuries noted by him are possible by means of MO.11-iron rod. PW.9 was cross examined, wherein he categorically stated that the injuries found on

the deceased are possible by a fall from a considerable height.

25. PW.10 is the investigating officer. He deposed that on 12.11.2012 he received information about the subject crime from PW.8 on phone and

rushed to the place of offence at Siddapur. He spoke about examination of PWs.2 to 4, preparation of detailed panchanama of scene of offence,

collection of blood strains from the scene with the help of cotton, preparation of rough sketch to scene in the panchanama, taking photographs of the

dead body of the deceased, conduct of inquest on the dead body of deceased, collection of MOs.6 to 9 from the dead body of the deceased, sending

the dead body of the deceased for PME Examination, and then handing over the CD file to PW.11.

26. PW.11 is another investigating officer, who laid charge-sheet before the committal Court. He deposed that he took up the investigation of this

crime from PW.10 on 27.11.2012. On 28.11.2012 he apprehended the accused at his residence in the village Siddapur at 02.30 PM, and on

interrogation he confessed the offence in the presence of PW.7 and another and recorded his confession in their presence under Ex.P4 and in

pursuance of confession and at his instance, recovered MOs.1 to 4 ornaments and MO.10-blood stained towel and MO.11-blood strained iron rod,

which were brought by him from the roof of his dilapidated house and same were seized. On the same day, he secured the presence of LW.10-

Padma and LW.11-Balachandri. Thereafter, the accused was brought to the police station and his arrest was effected. All the material objects, except

MOs.1 to 4, collected during the course of investigation were sent to the FSL with a letter of advice of examination and report. Thereafter on his

transfer he handed over the CD file to his successor-in-office, who after receiving the FSL report under Ex.P8 and PME report under Ex.P6, laid

charge-sheet before the committal Court.

27. Admittedly, there are no direct witnesses to the subject incident and the entire prosecution case is based on circumstantial evidence, mainly on the

extra judicial confession made by the accused to PW.7 and recovery of MOs1 to 4, 10 and 11, pursuant to his confession. The evidence of PW.7 is to

the effect that he and LW.15-Niranjan were called by the police and the accused was present at his house and the police asked them to enquire the

accused and accordingly, they enquired the accused by taking him 20 to 25 feet away from police.

28. Here, it is apt to state that admissions made by a person or his representative in interest, though in the ordinary sense of the term in the nature of

hearsay evidence, would be admissible admission to the extent provided in Section 21 of the Indian Evidence Act, 1872 (for short, "the Act").

Every confession is an admission, but every admission is not a confession. In other words, admission is a genus and confession is a species. It is

settled law that a confessional statement, if not made by accused under inducement, threat or promise, is admissible in evidence. However, an extra

judicial confession, though admissible, is considered a weak piece of evidence and ordinarily, the Courts would look for corroboration to such evidence,

for recording conviction on the strength of such extra judicial confession. Under the Act, to guard against coerced or coaxed confessional statement,

in addition to the safeguards provided in Section 24 of the Act, any confession made to a police officer under any circumstances is also considered

inadmissible in evidence, as per Section 25 of the Act. Section 26 of the Act goes a step further and provides that no confession made by any person

whilst in custody of a police officer, unless such confession is made in the immediate presence of a Magistrate, can be proved against such person.

Thus, Sections 24 to 26 of the Act forms a trio containing safeguards against an accused person, being coerced or induced to confess guilt. One

important question, in regard to which the Court has to be satisfied with, is whether, when the accused made the confession, he was a free man or his

movements were controlled by the police, either by themselves or through some other agency employed by them, for the purpose of securing such a

confession. Police custody, in real perspective, commences from the time when the movements of the accused are restricted or controlled and he is

kept in direct or indirect police surveillance. It is not necessary that there should have been a formal arrest. It is not the presence of one particular

person or officer or of any one of these circumstances that would by itself decide the question as to whether the accused was in police custody; it is,

on the other hand, the concomitance of the various facts and circumstances, which are relevant and material, immediately preceding the making of the

statement by the accused that has to be taken into account in making a proper assessment as to whether the statement alleged to have been made by

the accused is not hit by Section 26 of the Act. The paramount consideration of the Court should be to see that the statement is not hit by any of the

provisions contained in Sections 24 to 26 of the Act and it was made voluntarily and was a true statement, which could be acted upon, even when

found admissible in evidence.

29. Tested in the light of the above broad principles, though in the instant case the accused is stated to have been apprehended at 02:30 PM on

28.11.2012, we find it difficult to hold that the statement was made by the accused to PW.7 voluntarily, as a free agent and that it is not hit by the

provisions of Section 26 of Evidence Act, for the application of which, it makes little difference, whether the statement was made directly to the police

officer or to any agency employed by the police for securing the confession. PW.7 categorically deposed that police asked him and another panch

witness to enquire the accused, whereupon, they took the accused 20 to 25 feet away from police and enquired. In the facts and circumstances of the

case, we are of the view that it was at the instance of PW.11-investigating officer that the questioning of the accused was made by PW.7 and that it

would tantamount to a statement made by the accused whilst in custody of the police. Further, a perusal of Ex.P4-confession panchanama gives an

indication of the attempt of the prosecution to build a case against accused. The extra judicial confession allegedly made by the accused is full of facts

and gives a graphic description of what happened in his life all the years and to the nature of his act on the day of occurrence and also mentioned

about names of persons in his Village. Thus, the extra judicial confession allegedly made by the accused could hardly be the natural conduct of an

accused, if he is voluntarily making such a confession and thereby, makes the extra judicial confession unbelievable. In view of these discrepancies,

we are of the view that it is not safe to act upon the extra judicial confession made by the accused to PW.7.

30. Yet there are other circumstances which render the prosecution case doubtful. PW.2, in is examination-in-chief stated that the accused used to

visit the house of the deceased regularly and attend her works. But in his cross-examination, he categorically stated that like the accused, other

villagers also used to visit the deceased at her house. In view of the same, the accused need not necessarily be the person to assault the deceased,

inasmuch as according to PW.2, other villagers also used to visit the deceased at her house. Further, it is the case of prosecution that pursuant to the

alleged confession of the accused, MOs.1 to 4, 10 and 11 were recovered. MO.11 is the iron rod which is allegedly used in commission of offence. As

rightly pointed out by the learned counsel for the appellant/accused, there are no fingerprints of the accused on MO.11-iron rod. In fact, the

prosecution did not even bother to obtain the fingerprints of the accused in this case. Further, PW.11-investigating officer deposed in his evidence that

“MOs.1 to 4 ornaments and MO.10-blood stained towel and MO.11-blood stained iron rod which were brought by him from the roof of his

dilapidated house and same were seized.” However, as per the FSL Report under Ex.P.8, there is a categorical finding that blood was not detected

on MO.10-towel and MO.11-iron rod. These circumstances render the usage of MO.11-iron rod by the accused in the alleged incident doubtful and

lead to an inference with regard to false implication of the accused in the subject crime. Further, PW.9-doctor stated in his cross-examination that the

injuries found on the dead body of the deceased are possible by a fall from a considerable height. In the absence of any cogent and convincing

evidence that the accused beat the deceased to death using MO.11-iron rod, the possibility of the death of deceased by falling from a considerable

height, which is possible according to PW.9-doctor, cannot be completely ruled out. Further, merely because the accused was moving closely with the

deceased and rendering domestic help to her; merely because the accused was seen at the house of the deceased on the previous night as deposed by

PW.2; and merely because the accused was seen in tension mood as deposed by PW.5, it is not appropriate to arrive at a conclusion and hold that the

accused caused the subject death of the deceased. True it is, evidence as to motive would, no doubt, go a long way in cases wholly dependent on

circumstantial evidence and such evidence would form one of the links in the chain of circumstantial evidence in such a case. However, in the instant

case, a critical and analytical reading of the evidence led by the prosecution reflects that the prosecution could not prove motive of the accused with

certainty in committing the alleged offence. The evidence led by the prosecution, at the most, leads to a suspicion that the accused might have

committed the subject offence. It is settled law that suspicion, however strong it may be, cannot take place of legal proof and a conviction should not

and cannot be based upon suspicion.

31. The circumstances taken cumulatively do not form a chain so complete to establish that in all human probability the subject death was caused by

the accused and none else. There is no evidence, much less cogent and convincing evidence, to arrive at a conclusion, which is consistent with the

guilt of the accused. In view of the above findings and the discussion, we are of the considered opinion the prosecution failed to prove the guilt of the

accused by leading cogent and convincing evidence. In our view, it is a fit case to extend benefit of doubt in favour of the accused and acquit him of

the offences charged against him.

32. In the result, the conviction and sentence recorded against the appellant/accused of the offences under Sections 302 and 397 of IPC vide

judgment, dated 02.01.2015, passed in S.C.No.415 of 2013 by the learned IX Additional Sessions Judge, Wanaprathy, is set aside. Consequently, the

appellant/accused is acquitted of the offences under Sections 302 and 379 of IPC. The appellant/accused shall be released forthwith, if he is not

required in any other case. Fine amount, if any, paid by the appellant/accused, shall be refunded to him.

33. The Criminal Appeal is, accordingly, allowed.

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