**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE NARSAPUR**

Present: Sri P. Kalyan Rao,

Additional District Judge, Narasapur,

**SESSIONS CASE No.86/2015**

Wednesday, this the 17th day of February, 2016.

(On committal made by the Additional Judicial Magistrate of I Class, Narasapur

Through the order dated 24.02.2015 in P.R.C. No.10/2014.)

Name of the Complainant **:** State represented by the Inspector of Police,Rural

Circle in Crime No. of P.S..

Name of the accused **:** Dasari Kanaka Rao S/o.Late Satyanarayana

37 years, Kapu, Private Electrician, r/o. Pedasarva village of Narasapuram Mandal.

Nature of Offence **:** Under Section 302, 201 I.P.C

Plea of the accused **:** Pleaded not guilty.

Finding of the Judge **:** **Found Guilty**

Sentence Order : **IN THE RESULT, the accused is found guilty for the offences under section 302 I.P.C. with which he is charged, and therefore, he is convicted under section 235(2) Cr. P.C. for the offence under section 302 I.P.C. The accused is sentenced to rigorous imprisonment for life and fine of Rs.5,000/- in default, to suffer simple imprisonment for period of 1 year for offence under section 302 I.P.C. The remand period i.e., from 18.10.2013 to 03.02.2014 (108 days) which was already undergone shall be given set off under section 428 Cr. P.C. M.O.1 shall be destroyed after appeal time is over.**

Prosecution Conducted by : **Smt. Donga Manga Tayaru,**

Addl. Public Prosecutor,

Additional District & Sessions Judge Court, Narasapur.

Name of the Defense Counsel : **Sri Y.Phani Kumar**

**Advocate for the Accused.**

**This case coming on 08.02.2016 before me for final hearing in the presence of Additional Public Prosecutor for the state and of Sri Balaji and Sri Y.Phani Kumar, Advocate for the Accused, and having stood over this day for consideration, this court delivered the following:**

J U D G M E N T

1. The gravemen of the charge against the accused, as alleged by version of the prosecution is that on the receipt of the report of P.W.1 Dasari Surya Ambika, P.W.13 the then S.I of Police, Narasapur P.S has registered a case in crime No.141 of 2013 under section 302 I. P.C,, 17.11.2010 P.W.8 V.R.O has recorded confession of accused and he is one of Panchayatdars with Kharar Ali and Ratna mala and also signed the inquest and scene of offence, during the course of investigation, P.W.I3 Inspector of police has visited scene of offence, got photographed the dead body of Dasari Madhavi (deceased) by P.W.9, he has observed scene of offence in the presence of P.W.1 and P.W.8, got drafted scene observation report, recorded statements of P.Ws 1 and 2, held inquest over dead body of Dasari Madhavi (deceased) in the presence of P.Ws 1, P.W.8, P.W.9 and Kharar Ali, sent the dead body to the Government Hospital, Narasapur for post mortem examination to know cause of death, then P.W. 13 has recorded statements of P.Ws 3 to 5 and, P.W.11 Dr Murali held post mortem over the dead body of deceased and issued P.M. certificate to show that she was throttled to death and later hanged her to doorframe, P.W.12 S.I. of police, Narasapur Rural P.S took up investigation, therefore, it shows the deceased was murdered by throttling by the accused with a saree and hanged her wife to a doorframe with a saree and absconded and later he has turned up before and confessed, P.W.8 recorded his statement as extra judicial confession and P.W.13 Inspector has arrested the accused at Poduru P.S , on the strength of confession by the accused, P.W13 Inspector has seized the accused was sent to Court for judicial custody, thus, it is alleged that the accused thus, the accused has murdered the his wife (deceased) by throttling and hanged her to doorframe with a saree in their house and absconded, after completion of investigation, Inspector of Police, Rural has filed charge- sheet against the accused for the alleged offences under sections 302 I.P.C.

2. The learned Addl. Judicial Magistrate of First Class, Narasapur after compliance of all the formalities under section 207 has committed the case under section 209 Cr P C to the Principal Sessions Judge, West Godavari, Eluru who has taken on file the case for the offences under sections 302 I.P.C. and made over the case to this Court for disposal according to Law.

**3**. On appearance of the accused person before this Court, he was examined under section 228 Cr P.C and charges for the alleged offences under sections 302 I.P.C. were framed against Accused, for which he pleaded not guilty and claimed to be tried.

4. In order to prove its case the prosecution has examined P.Ws 1 to P.W.13 and got marked ExsP.1 to P.11 and M.O1.

**5.** P.W.1 who is defacto complaintant has stated that he is working as Teacher in Private School at Narsapur, Dasari Manoj Raghava is his son, the accused person is her husband, Dasari Madhavi (deceased) is her daughter, her husband has killed her daughter, shealleges that her husband addicted drinking and harassing her and her children daily, her husband has not provided food to her and children also., her husband always demanding money for his habits, her brothers giving some money to their welfare, for which amount only she along her children are surviving, she has no financial status for that she has joined her daughter in Government school for studying 7th class, at Peechupalem, on 07.10.2013 (Monday) at about 8.00 AM She along her son went to Gowthami school where she working as teacher, his son also studying in Gowthami School, he is studying 5th class, she alleges that her husband replied her that he has no money for having drink, how he can provide food to them and your children, the accused has harassed her and also children by not providing proper food and demanded the amounts. When she came house she found her daughter lying on ground by hanging to neck and putting legs, they saw ligature marks on her neck, the accused has killed her daughter, informed, by neighbours, she gave complaint, Ex.P.1 is complaint containing her signature, body sent to Government Hospital for conducting post mortem, police seized silk saree, M.O.1 is saree.

6. P.W.2 speaks that he is studying 7th class in Gowtami School at Narasapur, accused is his father, P.W.1 is his mother, Dasari Madhavi (deceased) is his sister, his sister studying 7th class in Peechupalem High School, his father was addicted to drinking and his father used to beat his mother for money for drinking, prior to the incident, before 3 days they did not eat anything in their house, on 07.10.2013, he along with his deceased daughter asked his father to provide meals to them, but he did not reply to them, after that he along with his mother went to Gowtami School, his sister has not went to school she remained in the house, on the same day, he returned from school to his house, his sister was died in their home and she is hanging to roof, he found some black spots on her neck and one saree was tied to her neck, his father killed his sister, as he also proclaimed prior to 3 days that he will kill us, as they asked him for meals.

7. P.W.3 Says that Dasari Madhavi Devi (deceased) is the daughter of his sister, his brother-in-law addicted to bad vises like drinking and he harassed his sister for money, on 07.10.2013 while he was in shop at about 5.30PM or 6.00 PM, he received phone call from the villagers of Sarava stating that the accused killed the deceased Dasri Madhavi by pressing her neck and absconded from the village, then, he along with his brother went to the house of accused and we noticed the dead body was lying on floor, they noticed blackened marked on the neck of the deceased, on their enquires they came to know that his sister and his son went to the Gowtami school and his sisters daughter and his brother-in-law were present in the house, on the same day they asked the deceased to go to work and he threatened them and told them that he will kill his wife and children, so saying the accused throttled the deceased to death and later, he hanged her in his house.

8. P.W.4 has stated in evidence that he is the brother of P.W.1, Dasari Mdhavi Devi (deceased) is the daughter of PW.1 and accused, his brother-in-law addicted to bad vices like drinking and harassed his sister, deceased and my nephew, his sister informed him that the accused do not go to work and he harassed her for money for consuming alcohol, they informed the same to the mother of the accused and brother of the accused, but in vain, Rural police also gave counseling to the accused and my sister, the deceased studying 5th class in Peechupalem Municipal high school, his sister is working as a teacher in Gowtami High School, her son also studying in the same school, prior to 3 days of the incident, his brother-in-law beaten his sister, deceased and my nephew, on 06.10.2013 he and his brother (PW.3) went to the house of accused and provided food and some money to his sister for food, on 07.10.2013 while he was in the shop, at about 5.30 PM to 6 PM, he received phone call from the villagers of Sarava stating that the accused killed the deceased by pressing her neck and absconded from the village, then, he along with his brother went to the house of the accused and they noticed the dead body was lying on floor, they noticed blackened marked on the neck of the deceased

9. P.W.5 stated in his evidence that about 2 years back, on the date of incident, while he was present before his shop and he saw the Gowtami Shool bus and PW.1 and PW.2 get down and went to their house and after 5 minutes later, he heard the shouting’s of PW.1 from her house, all the villagers went to the house of PW.1 after hearing her shoutings, on that he also went to the house of PW.1 and he noticed PW.1 is weeping, and he found a cloth was around the neck of the deceased, he opened the cloth and the dead body was lying on the floor.

10. P.W.6 and P.W.7 did not co-operate with prosecution.

11. P.W.8 speaks stated in his evidence that he is working as V.R.O., Lakshmaneswaram II from 2012 to till date, on 08.10.2013 at about 7.30 A.M. Circle Inspector of Police, Narsapur telephoned him and informed that came to Pedasarva Village i.e., Scene of offence, he observed Scene of offence and drafted Scene observation report, containing signatures of himself, G.V.Ramanjaneyulu and Circle Inspector of Police, Narsapur, Ex.P.4 is Scene observation report, on 08.10.2013 at 9.30 A.M, he conducted inquest over the dead body at Government Hospital, Narsapur, Ex.P.5 is inquest, on 17.10.2013 at 2.30 PM the accused came to his office, then he brought the accused to police station and prepared confession statement at Police Station.

12. P.W.9 stated in his evidence that he is running own photo studio under the name and style of Munna Studio, at Old Bazar, Narsapur, on 07.10.2013 at about 4.00 PM police telephone him and requested to come scene of offence, he went to Scene of offence at Pedasarva village, Narsapur Mandal, he took four photos at Scene of offence, on the next day he took one photo at Government Hospital, Narsapur, Ex.P.6 is bunch of 5 photos and 2 C.D’s, then he handed over the photos and C.D’s to Inspector of Police, Narsapur.

13. P.W10 stated in his evidence that he is working as Private Compounder inSai Dental Hospital, Narsapur, he stated that the accused working as Electrician, he was worked two or three times electrical works in his house, the accused came to him and took amounts some times for his drinking habit and some days after he returned money to him, on 17.10.2013 accused came to his hospital at about 11.30 AM and he informed that he killed his daughter on 07.10.2013, the accused stated to him that the Police and villagers are searching for him, so accused requested him to handed over to him to police for avoiding beating by the police, he wrote statement and report of accused and he handed over statement, report and accused to police.

14. P.W.11 stated in his evidence thathe is working as Civil Assistant Surgeon at Government Hospital, Narsapur from 2013 to till date. On 08.10.2013 at 2.00 PM he conducted post mortem of deceased Dasari Madhavai and he found the following external injuries:

1. Scratch marks present over both sides of neck skin over the neck and upper part of chest is congested with redness with prominent vein.

Internal Examination:

1. Head and neck Skull intact, Brain-congested. O/s Normal. Frothing from mouth, Trachea, Larynx and Pharynx – congested. O/s.Normal. Hyoid bone appears to be intact.
2. Chest: Ribs and chest wall –intact, Lungs – Congested. O/s. Normal. Diaphrgam – Normal. Heart Congested. O/s. Normal.

Abdomen: distended, stomach, congested O/s. Normal and large intestine – congested. O/s.Normal. Liver and spleen congested. O/s. Normal. Kidney – congested. O/s. Normal.

Pancreas– Normal. Gallbladder – congested O/s Normal.

Urinary bladder – empty. Uterus normal.

Genital organ normal, spine –intact.

The following Materials preserved for R.F.S.L. Vijayawada for analysis:

1. Brain. 2. Kidney, 3. Small intestine. 4. Spleen and liver 5. Heart and lung. 6. Salt for preservation.

Postmortem approximate time of death is 14 to 16 hours prior to post mortem. Ex.P.7 is Post Mortem report.

In continuation of his preliminary opinion issued by them with reference to R.F.S.L. Vijayawada, File No.VJA/TOX/1424/2013, Dt.26.12.2013, report received from Dr. Shaik Haseena Parvin, Scientific Officer, R.F.S.L. Vijayawada, the above items are analyzed, but no poisonous substance is NOT found in all of them. They gave final opinion that the deceased would appears to have died of ASPHYXIA due to STRANGULATION about 14-16 hours prior to postmortem examination.

Final Opinion: The deceased would appear to have died of asphyxia due to strangulation (Manual). Ex.P.8 is final opinion.

15. P.W.12 S.I. of Police stated in his evidence that Presently he is working as Inspector of Police, Chintalapudi, previously he worked as Sub Inspector of Police, Narsapur Rural from 29.11.2012 to 26.01.2013, on 07.10.2013 at 10.15 pm when he was present in police station, he received one written complaint from Dasari Suryambika, he registered the same in Crime No.141/2013 Under Section 302 IPC, he submitted express F.I.R to the Hon’ble Additional Judicial Magistrate of I Class, Narsapur and copies submitted to the higher authorities, as it is grave case for that he handed over F.I.R. to Inspector of Police, Narsapur for further investigation.

16. P.W.13 Inspector of Police stated in his evidence that presently he is working as Inspector of Police, Eluru Rural circle, from 26.12.2014 to till date, Previously he worked as Inspector of Police, Narsapur from 15.04.2012 to 03.02.2014, on 07.10.2013 at 10.15 pm he received information from Sub Inspector of Police, Narsapur Rural, when he was out of station, mid night 1.00 pm he came and received C.D. file from Sub Inspector of Police, Narsapur Rural, on 07.10.2013 when Sub Inspector of Police, Narsapur Rural intimated about the crime, he instructed Sub Inspector of Police to shift the dead body to Government Hospital, Narsapur for conducting post mortem, on 08.10.2013 at 7.30 am he visited Scene of offence along with mediators at Pedasarva village, he drafted Rough sketch, he prepared Scene observation report in the presence of mediators’ i.e., P.W.8, GaliVenkataRamanjaneyulu, he seized M.O.1 at Scene of offence, then he visited the Government Hospital Mortuary, Narsapur, he took photographs with photographer and conduct inquest over the dead body, he examined P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 at the time of inquest, inquest panchayatdars are P.W.8, MeerzaKararali and BallaRatnamala, inquest completed at 9.30 AM on 08.12.2013, then he again visited the Scene of offence and examined P.W.6 and P.W.7, on 17.10.2013 P.W.10 came to police station along with report and accused, at about 2.30 pm after confession of the offence P.W.8 along with P.W.10 and on the basis of confession statement he arrested the accused and sent to Hon’ble Magistrate for judicial remand, on the basis of confession he filed memo to add Under Section 201 IPC also, he received Post Mortem certificate on 16.10.2013, and on 03.11.2013 he sent viscera to R.F.S.L., Vijayawada, he received R.F.S.L., Vijayawada report on 02.01.2014, Ex.P.11 is R.F.S.L., Vijayawada Report, on 08.01.2014 he received final opinion from medical officer, Government Hospital, Narsapur and on the same day he examined P.W.11, he also examined P.W.9 who is private photographer on 08.01.2014, after completion of the investigation he filed charge sheet against accused under section 302 and 201 IPC and P.W.6 and P.W.7 stated before him as in Ex.P.2 and Ex.P.3.

17. After completion of evidence on behalf of prosecution, he accused is examined under section 313 Cr. P.C. to explain incriminating circumstance in the evidence of prosecution for which he denied the same and reported no defence.

18. Now, the points for determination are:

a. Whether the prosecution has able to bring home the guilt of accused persons beyond all reasonable doubt for offences under sections 302, I.P.C.?

b. Whether the ingredients of the offences under sections 302, I.P.C. are made out by the prosecution?

19. Heard learned A.P.P and learned counsel for the accused.

20. The learned Additional Public Prosecutor has argued that on the receipt of the report of P.W.1 Dasari Surya Ambika, P.W.13 the then S.I of Police, Narasapur P.S has registered a case in crime No.141 of 2013 under section 302 I. P.C,, 17.11.2010 P.W.8 V.R.O has recorded confession of accused and he is one of Panchayatdars with Kharar Ali and Ratna mala and also signed the inquest and scene of offence, during the course of investigation, P.W.I3 Inspector of police has visited scene of offence, got photographed the dead body of Dasari Madhavi (deceased) by P.W.9, he has observed scene of offence in the presence of P.W.1 and P.W.8, got drafted scene observation report, recorded statements of P.Ws 1 and 2, held inquest over dead body of Dasari Madhavi (deceased) in the presence of P.Ws 1, P.W.8, P.W.9 and Kharar Ali, sent the dead body to the Government Hospital, Narasapur for post mortem examination to know cause of death, then P.W. 13 has recorded statements of P.Ws 3 to 5 and, P.W.11 Dr Murali held post mortem over the dead body of deceased and issued P.M. certificate to show that she was throttled to death and later hanged her to doorframe, P.W.12 S.I. of police, Narasapur Rural P.S took up investigation, therefore, it shows the deceased was murdered by throttling by the accused with a saree and hanged her wife to a doorframe with a saree and absconded and later he has turned up before and confessed, P.W.8 recorded his statement as extra judicial confession and P.W.13 Inspector has arrested the accused at Poduru P.S , on the strength of confession by the accused, P.W13 Inspector has seized the accused was sent to Court for judicial custody, thus, it is alleged that the accused thus, the accused has murdered the his wife (deceased) by throttling and hanged her to doorframe with a saree in their house and absconded, after completion of investigation, Inspector of Police, Rural has filed charge- sheet against the accused for the alleged offences under sections 302 I.P.C, thus, the accused has murdered the deceased by throttling. Thereby there is supporting evidence to prove the case of prosecution, the case rests on direct as well as circumstantial evidence and the prosecution has examined P.W.1 to P.W.13 and Ex.P1 to EX.P.11 and M.O1 to prove its case, so, the prosecution has proved the case beyond all reasonable doubt for offences under 302 I.P.C. and therefore, Accused is liable to be convicted for alleged offence under section 302 I.P.C.

21. The learned APP has also argued that the case rests on the last scene theory and also supported by medial evidence and that minor discrepancies in evidence of witnesses cannot be ground to absolve the accused from the criminal liability and the court can safely form opinion about credibility of witnesses and the accused can be convicted. In support of such submission, a reliance as been placed on the decision reported in Darbara Singh Vs State of Punjab (2012 ACR 801) the Hon’ble Supreme Court has held at Para 10 and 15

10. “Motive in criminal cases based solely on the positive, clear, cogent and reliable ocular testimony of witnesses is not at all relevant. In such a fact-situation, the mere absence of a strong motive to commit the crime, cannot be of any assistance to the accused. The motive behind a crime is a relevant fact regarding which evidence may be led. The absence of motive is also a circumstance which may be relevant for assessing evidence.(Vide: Gurcharan Singh & ant. Vs. State of Punjab, AIR 1956 SC 460; Rajinder Kumar & anr. Vs. State of Punjab, AIR 1966 SC 1322; Datar Singh vs. State of Punjab, AIR 1974 SC 1193; and Rajesh Govind Jagesha Vs. State of Maharashtra, AIR 2000 SC 160)

15. The ‘failure of justice’ is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavor to find the truth. There would be ‘failure of justice’; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be over emphasized to the extent of foregetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under Indian Criminal Jurisprudence. ‘Prejudice’, is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court. (Vide: Rafiq Ahmed @ Rafi vs State of U.P., AIR 2011 SC 3114; Rattirak & ors. Vs State of M.P., AIR 2012 SC 1485; and Crl Appeal No.46 of 2005 (Bhimanna vs. State of Karnataka) on 4.9.2012).

22. The A.P.P also placed reliable on the decision C.M.Sarma vs. State of A.P. (2011 ACR 160) wherein, the Hon’ble Supreme Court has observed, para 12

“12. Further corroboration of evidence of a witness is required when his evidence is not wholly reliable. On appreciation of evidence, witnesses can be broadly categorized in three categories viz., unreliable, partly reliable and wholly reliable. In case of a partly reliable witness, the Court seeks corroboration in material particulars from other evidence. However, in a case in which a witness is wholly reliable, no corroboration is necessary. Seeking corroboration in any circumstance of the evidence of a witness forced to give bribe may lead to absurd result. Bribe is not taken in public view and, therefore, there may not be any person who could see the giving and taking of bribe. As in the present case, a shadow witness did accompany the contractor but the appellant did not allow him to be present in the chamber. Acceptance of this submission in abstract will encourage the bribe taker to receive illegal gratification in privacy and then insist for corroboration in case of prosecution. Law cannot countenance such situation. In our opinion it is not necessary that the evidence of a reliable witness is necessarily to be corroborated by another witness.

Not only this corroboration of the evidence of a witness can be found from the other materials on record. Here in the present case there does not seem any reason to reject the evidence of the contractor P.W.1, M.Venkata Reddy. His evidence is further corroborated by the evidence of the shadow – witness P.W.2 , G.T.Kumar. The shadow-witness has stated in his evidence that when he entered in the chamber, appellant was asked by the Inspector as to whether he had received any amount from the contractor, he denied and then removed the currency notes from his trouser’s pocket and threw the same. He had further stated that sodium carbonate test was conducted in which the solution turned pink when the appellant’s fingers and the right side trouser’s pocket were rinsed. From the aforesaid one can safely infer that the evidence of the contractor is corroborated in material particulars by the shadow-witness.

23. The Learned A.P.P. also placed on the decision reported in State of U.P. vs Naresh and others (2011)A.C.R 370 ) wherein a division bench of Hon’ble Supreme Court held at Para 25,

“25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the Court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. “Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount not contradictions in material particulars, i.e., got to the root of the case/materially affect the trial or core of the prosecution’s case, render the testimony of the witness liable to be discredited. (Vide: State represented by Inspector of Police vs. Saravanan and another, AIR 2009 Sc 152; Arumugam vs. State, AIR 2009 SC 331; Mahendra Pratap Singh vs. State of Uttar Pradesh, (2009) II SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra, JT 2010 (12) SC 287).

24. The learned APP has also placed reliable on the decision reported in State of U.P. vs. Satish (2005 IND Law SC 83), in so far as **last seen aspect** is concerned, it was noted as follows:

“The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses P.W.s 3 and 5, in addition to the evidence of P.W.2.

In Ramreddy Rajeshkhanna Reddy Vs. State of A.P. 2006(10) SCC 172 it was noted as follows: The last seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration”.

25. Sri Ch.R.R.M.S. Balaji, the learned counsel for the accused has argued that the accused person is innocent and he is falsely implicated in the case that there was no direct evidence of prosecution as such, the ingredients of the offence are not made out by the prosecution and also there is no evidence from the witnesses for the alleged offences and, therefore, the accused person is entitled to be acquitted of the charges for the alleged offences under sections 302 I.P.C.

26. The learned counsel for the accused has also argued that the accused person is innocent and he is falsely implicated in the case that there was direct evidence of prosecution and also even circumstantial evidence is not connecting against accused since there is no evidence from the witnesses for the alleged offences, as such, the ingredients of the offence are not made out by the prosecution and also and, therefore, the accused person is entitled to be acquitted of the charges for the alleged offences under sections 302 I.P.C.

27. In support of his submission, he placed reliance on the decision reported in SK.YUSUF V.STATE OF WEST BENGAL(2011(3) CRIMINAL COURT CASES 308(SC), wherein it was held, “mere abscondance of accused is not a circumstance warranting adverse interference against him and last seen theory comes into play where the time gap between the point of time when the accused and deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible.”

28. The learned counsel for accused has further placed reliance on the decision reported in RAM ASHRIT AND VS. STATE OF BIHAR (A.I.R 1981 SUPREME COURT 942) THE SUPREME COURT has held that, “When all the material witness in a murder case were either related or otherwise interested in the prosecution, their testimony had to pass the test of close and severe scrutiny before their testimony could be safely acted upon. In the absence of corroboration to a material extent in all material particulars, it was extremely hazardous to convict the accused persons on the basis of the testimony of these highly interested, inimical and partisan witnesses, particularly when it bristles with improbable versions and material infirmities.”

29. He also placed reliance on the decision reported in THULIA KALI VS. STATE OF TAMIL NADU (1972 CRL. L.J. 1296) THE Supreme Court has held, “F.I.R in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the case was committed. When an occurrence is not reported for more than 20 hours after the occurrence even though the police station is only two miles from the place of occurrence it is unsafe to base conviction upon the evidence.”

30. The learned counsel for the accused has strenuously argued that the alleged confessed of accused is inadmissible evidence and basing on such statement of accused no conviction can be made and last seen theory has failed to the present case. In support of his submission, he placed reliance on the decision reported in CHANDA VENKATESWARLU V. STATE OF A.P REP. P.P.HIGH COURT OF A.P (2011(1) A.L.T(Crl)165 (DB)(A.P)) wherein the Hon’ble High Court of Andhra Pradesh has held,

“Para 17.It is rather difficult for P.W.7 to identify either the accused or the deceased as the driver of the auto and as a passenger. This is evident from the fact that P.W.7 deposed that he could identify the accused only in view of the light in the auto. I therefore, consider that the evidence of P.W.7 cannot be accepted regarding the identification of either the accused or the deceased by P.W.7. Thus, the evidence of P.Ws 7 to 9 who spoke about the deceased being seen alive for the last time in the auto of the accused has not been established clinchingly and beyond reasonable doubt by the prosecution. The question of the accused being considered guilty on the last seen theory, therefore, failed.”

31. The learned counsel for the accused has further argued that the prosecution designed a false version that accused was having motive to commit murder of deceased, and placed decision in HANUMAN VS. STATE OF RAJASTHAN (2016 (1) criminal court cases 019 (Rajasthan) D.B, wherein it was held, “Accused and deceased were seen in the field, not an incriminating circumstance since both were residents of same village, chain of circumstances against the accused is not sufficient to connect with crime., benefit of doubt must be given to the accused.

32. Now, it is necessary to scrutiny and scan the entire oral and documentary evidence available on record before the Court in order to ascertain and determine whether the prosecution has able to bring home the guilt of accused beyond all reasonable doubt for the offences under section 302 I.P.C.

33. P.W.1 who is the complainant stated in her cross examination that she is working as teacher in Gowthami School, she denied the suggestion that the Narsapur to Vemuladeevi road is very busy road, she also denied the suggestion that it took one hour time journey from school to home, her husband working as Electrician, generally morning he goes to work and he will return by evening, her daughter also goes to school morning and came back to home by evening, she stated that get down from threshold her daughter was died, she telephoned to police at 6.00 P.M. and they came to her home immediately, she gave Ex.P.1 report to police and P.W.2 stated that his mother placed the matter regarding to harassment of his father, but he don’t know the elders names, he denied the suggestion that he did not state before police as prior to the incident before 3 days we do not eat anything in his house and on 07.10.2013, he, his deceased daughter asked his father to provide meals to them, he found some black spots on his sister neck and one saree was tied to his sister neck, P.W.3 stated that he cannot say the name of the person who telephoned to him, the person telephoned to him on the same day at about 5.30 or 6 PM, his brother-in-law working as electrician, there is no thumb marks around the neck and no blood was oozing, but there are some finger marks on the dead body, he denied the suggestion that the accused looked after his sister, daughter and his nephew very well and the deceased died due to her ill health by committing suicide, P.W.4 stated that his sister gave report to the police at about 8 PM on the same day, he do not observe whether any thumb marks on the dead body, but there were some finger marks observed, no blood was oozing from the mouth and ears of the deceased, he denied the suggestion that he stated before the police as his brother-in-law was addicted to bad vices and not attending any work and beaten his sister, his son and his daughter, and they placed the matter before the mother and brother of the accused, he admitted that Kadalai Kutumba Rao Clinic is situated towards East to the house of accused and there is no doors or window to that house.

34. P.W.5 stated in his cross examination he do not know who is the person helped him to open the cloth from the neck of the deceased, cloth was a curtain, P.W.8 stated that police did not issue any summons to him for conducting Scene observation report and inquest, Tahasildar also not issued any summons to go Scene of offence and conduct inquest and Scene observation report, M.O.1 did not contain any slips, he did not issue any summons to mediators and blood relatives, he admitted that the deceased adorned ear studs, he admitted that he has not mentioned in confession statement that accused came to his office and he brought the accused to police Station, P.W.9 stated that police were not issued any summons to him for taking photos at Scene of offence, Ex.P.6 did not contain any stamp and signature, P.W.10 stated that he is working as Compounder in Sai Dental clinic at Narsapur, the statement and report are written in his hospital, the contents of the statement and report are written in his own, he denied the suggestion that he prepared the statement and report on the dictation of Inspector of Police, Narsapur, he admitted that he has no personal acquaintance with the accused, P.W.11 stated that strangulation may be either suicidal, homicidal or accidental. Congested upper part of chest and heart is possible in suicidal cases, in case of homicidal as well as suicidal may possible, Hyoid bone may be fracture or intact in case of suicidal or homicidal cases also, in case of hanging trachea larynx may be congested, in rare cases of hanging ligature marks may not be appear, in this case there are no hand marks on the neck, thumb marks and finger marks are not present, witness volunteers that as the age of the patient is less the force required to cause asphyxia death may be less and may be cause even before marks are imprinted on the neck, in case of homicidal strangulation the victim tries to protect herself and injuries may be present both on the victim and accused he has not found injuries on the muscles and the neck, wind pipe is not compressed in this case, P.w.12 who is S.I. of Police stated that he received written complaint at 10.15 pm on 07.10.2013 and P.W.13 who is Inspector of Police stated that ear studs were present on the dead body as per Ex.P.6, he has not seized the ear studs, he admitted that P.W.1 not stated before him as when P.W.1 came back to house, she found her daughter lying on ground by hanging and putting legs, he denied the suggestion that he never visited Scene of offence and he made table investigation and never prepared Scene observation report and rough sketch and he filed charge sheet.

35. In a decision which is relied upon by the learned A.P.P reported in State of U.P. vs Naresh and others (2011)A.C.R 370 ) wherein a division bench of Hon’ble Supreme Court held at para 25 ,

“25. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the Court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. “Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount not contradictions in material particulars, i.e., got to the root of the case/materially affect the trial or core of the prosecution’s case, render the testimony of the witness liable to be discredited. (Vide: State represented by Inspector of Police vs. Saravanan and another, AIR 2009 Sc 152; Arumugam vs. State, AIR 2009 SC 331; Mahendra Pratap Singh vs. State of Uttar Pradesh, (2009) II SCC 334; and Dr. Sunil Kumar Sambhudayal Gupta and others vs. State of Maharashtra, JT 2010 (12) SC 287).

36. In a decision reported in State of Rajasthan Vs Devilal (2013 CRL L J 1963) A Division Bench of Rajasthan High Court has held at para 24, “No straight jacket formula can be prepared for application of the doctrine ‘rarest of rare” situation. The contingencies for application of the doctrine aforesaid may differ circumstances to circumstances and time to time, but in any event the court while considering the case for awarding severest punishment, which as a matter of fact akin to divine authority, is required to be extremely cautious with absolute vigilance about factual circumstances, objective conditions and the relevant factors applicable to the society wherein the crime is committed. The Indian Society is a multilayer, multi dimensional, multi class, multi caste and multi cultural society with several virtues and several ills of every variant. An individual living in such society carries these virtues and ills with him. The Courts cannot ignore all these factors while making necessary consideration for getting a severest sentence.

37. In a decision reported in MUJEEB AND ANOTHER VS. STATE OF KERALA (2000(1) A.L.D(CRL)104 S.C.) the Hon’ble Supreme Court has held at Para 7 and 19,

“When a case rests on circumstantial evidence such evidence must be cogently and firmly established. These circumstances should form a chain pointing towards the guilt of the accused and the same should be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. If any link in the chain is missing the guilt of the accused cannot be established.

In our opinion such a statement by the accused cannot be treated as statement of the accused leading to recovery.”

38. Hon’ble Sri Justice P.Sathasivam, the then Hon’ble Chief Justice of India, speaking on behalf of a Division Bench in a reported decision in a latest case in PRAKASH VS. STATE OF RAJASTHAN (2013 CRL.L.J.2040) HAS held at Para 4,11,12,13 and 15,

“In a leading decision of this Court in Sharad Birdhichand Sarda Vs State of Maharashtra (1984) 4 S.C.C. 116, this Court has elaborately considered the standard of proof required for recording a conviction on the basis of circumstantial evidence and laid down the golden principles of standard of proof required in a case sought to be established on the basis of circumstantial evidence which are as follows:

“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 VS. STATE OF MAHARASHTRA (1973) 2 S.C.C.793 where the observations were made: (S.C.C. Para 19 page 807):

“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 and 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 so, constitute the panch sheel of the proof of a case based on circumstantial evidence.”

11) Apart from the evidence of P.Ws 1 and 7 with regard to the last seen theory, prosecution has examined three persons, (P.W.3),(P.W.4) and (P.W.10). In his evidence, P.W.3 has stated that he was known to Leeladhar, Ramesh and Prakash. He further stated that on the date of the incident, in the afternoon at about 12 he had seen all the accused persons moving towards Panchapati Circle Road on a scooter. He had also seen the son of Leeladhar sitting in between the three accused persons on the scooter.

Goutam Chand (P.W.4), who is also a goldsmith, in his evidence has stated that on the date of the incident at about 12.15 he had seen the accused moving in a scooter along with the small boy. Though both P.Ws3 and 4 did not identify the accused persons in the identification parade, in view of their assertion, we are satisfied that the prosecution has succeeded in establishing the circumstance of last seen theory.

12) The next witness relied on by the prosecution to support the last seen theory is Bijlaram (P.W.10). In his evidence, he stated that on 15.04.1998, he had gone to Sujesar Hillock for collecting firewood. While he was returning on Gelu Road, he saw the accused along with a boy moving towards the Hillock. The boy was wearing black pant and white shirt and black shoes. He further narrated that all the three accused and the child moved towards the Hillock. He identified all the accused in the Court. He also admitted that he was known to all the three accused persons and the child. He was cross- examined at length but nothing was elicited disproving his statement relied on by the prosecution. The prosecution very much relief on by P.Ws.3, 4 and 10 to prove the last seen theory and the courts below rightly accepted their version.

13) The analysis of the above evidence discussed so far clearly show that the prosecution has succeeded in establishing that the relations between the family of Leeladhar and the appellants-accused were hostile. In fact, Ramesh khatri, one of the accused has threatened Leeladhar and his wife of finishing their family. We are satisfied that the prosecution has proved motive on the part of the appellants for committing the murder of Kamlesh, sons of P.Ws1 and 7.

15) In the course of investigation and in pursuance of the information given by A-1, pant and shit stained with blood of Ramesh were recovered from his house in the presence of P.Ws 21 and 23. The pant and shirt were seized and sealed in a packet marked as S.8. It is further seen that as per FSL Report, Es.P.86, the presence of blood on the pant and shirt are of human origin.”

39. In a Book of Medico Legal Manual by Dr K.S.Narayana Reddy at Page 16, in Chapter Medical-Legal Autopsy it is stated, “The medico-legal autopsy is an examination performed under law for the protection of its citizens and its objectives: (1) To find out the cause of death, whether natural or unnatural, (2) To find out the manner of death, whether accidental, suicidal or homicidal. (3) To find out the time since death. (4) To establish identify when not known. (5) To identify, collect, and preserve evidentiary material (physical evidence) in order to identify the object causing death and identify the criminal. (6) To provide factual, objective information to law enforcement agencies, etc., (7) To provide interpretation of facts and circumstances related to death (8) To protect the innocent by separating death due to disease from death due to external causes. The autopsy report to consist of (1) The preamble: This should mention the authority ordering the examination, time of arrival of dead body at the mortuary, the date and place of examination, the name, age, sex of the deceased and the means by which the body was identified. (2) The body of the report: This consists of a complete description of the external and internal examination of the body. (3) Conclusions: The conclusion as to cause of death must be given, based on the post-mortem findings. This is followed by the signature and the qualification of the Doctor.

40. Criminal Justice System safeguards of the rights of accused of crime. Victimologists of modern period believe that more emphasis is given to a person who is accused of crime and it is unfair on the part of the victims, an unfortunate recipient of injury, loss and real sufferer of loss to life and property. The victim of crime set the criminal justice mechanism in motion by giving information to the Police. Justice V.S. Malimath Committee after making extensive recommendations to ensure that the criminal Justice System must focus on justice to victims. In Criminal Amendment Act, 2008 the Government has defined the victim and provided that the State Government in co-ordination with Central Government shall prepare victim compensation scheme.

41. The evidence is the major tool through which, prosecution helps the Court in arriving at right conclusion regarding guilt of the accused. The prosecution can discharge this burden only on the basis of concrete and strong evidence against the accused; which is a herculean task. Though this evidence may be direct, or circumstantial, still the court emphasizes on direct evidence. There is no hard and fast rule that conviction is possible only on the basis of strong and direct evidence it may also be based on circumstantial or other type of evidences in the absence of direct evidence. But, as a general and obvious rule, the availability of direct evidence strengthens grounds of conviction which includes statement of the witnesses as per the Evidence Act, 1872. Direct evidences include victims as well as witnesses of a crime. Victim of a crime plays an important role in criminal trials. Witnesses, who may also be victims of a crime, play a major role in administration of criminal justice ; hence it is important that they should depose the truth and the crucial information and knowledge about the commission of crime before the court fearlessly. (Witnesses could support the case of either the prosecution or the accused with the sole object of discovering the truth). But, as a matter of fact, many witnesses as well as victims turn hostile due to fear or threat to their life, limbs, kins either by the prosecution or accused. If this phenomenon of hostility of witness continues, then the obvious result will be failure of administration of criminal justice. When the law is so considerate about the rights of accused due to the presumption of innocence which might ultimately lead to injustice, it should also be equally considerate about the right of the victims and witnesses of the crimes. This manifestation of the rights of victim and witnesses was a potential lacuna in our legal system which is attempted to be cured through recent amendment to Criminal Procedure in 2008.

42. In ***“***A.I.R. August 2014 in journal at page 138, at conclusion, it is observed justice is the quest of man and sense of injustice breeds contempt to system and finally to rebellion. It can neither be denied nor justice is must. It can neither be denied nor delayed for long time. All the stakeholders should strive to secure justice to its seekers and the recipient society should be viligant and should not sleep over denial of justice either by delay or otherwise.”

43. The Government of India, Law Commission is 239 observed “inordinate delays in the investigation and prosecution of Criminal Cases involving serious offences and in the trial of such cases in courts is a blot on justice system. The objective of penal law and societal interest in setting the criminal law in motion against the offenders with reasonable expedition is hereby frustrated. The adverse effect of delay on the society at large is immeasurable. The fear of law and paid in the criminal justice system is eroded irretrievably.” It was also mentioned 1(3) “ people get frustrated in the system if at every stage there is delay and the process of justice is not allowed to take its normal polls, more so when delivered attempt or made to subvert and delay the process. Further, with the long passage of time, whatever evidence is there, it will vanish or eclipse.

44. Fair trial breaking of silence

It is generally accepted principle that the suspect/ accused cannot be forced to incriminate him/ herself. Therefore, any coercion exerted by the authorities with the aim of compelling the suspect/ accused to make a statement or confess guilt is prohibited during all stages of the proceeding. The right to be presumed innocent is impaired if authorities draw inferences from the silence of the suspect/accused.

45. In the Book “FAIR TRIAL MANUAL” a Hand Book for Judges and Magistrates, in Chapter 1 page 14, it is stated “Trials that continue for long periods of time severely prejudice at least one party or the other. The Judge is King of his Court. A trial is a process by which Court decides on the innocence or guilt of accused person. But the entire trial process is governed by the Procedural Laws and underpinned by principles laid down by the Constitution. Chapter 3 ( From the Investigation to the Trial Stage) at page 1, it is mentioned, “The manner in which a crime is investigated is not merely a matter for the police; it has an effect on the way the trial is conducted and its fair outcome. This is the reason courts have independent powers to inquire into the manner of investigation. Many of the rights implicated during the investigated stage emanate from Article 21 of the Constitution. In order to ensure a fair trial, it is imperative to follow strict procedural safeguards embedded in the Constitution and the Criminal Procedure Code from the moment the police receive information about an offence and initiate criminal investigation to the first production of the accused at Court. But, in practice, police conduct, the prosecution’s role and judicial oversight of fair trail norms are riddled with breaches which have become so routine, that they are no longer paid attention to as being vital elements that must not be disobeyed. Yet non-implementation of fair trial principles in these early stages of criminal proceedings can and does jeopardize the possibility of just outcomes. The Courts provide the single most effective check on police malpractice. They are the first and foremost important means by which both victim and accused can be assured of a level playing field which the essence of maintaining the balance between individual liberties and state power, to bring justice to the people. It is for this reason that the independence of the Judiciary is held sacred and Judges and Magistrate are expected to follow every protected safeguard and protect every assurance provided by Law to all parties. In RAMCHANDER VS. STATE OF HARYANA (AIR 1981 SC 1036) the Hon’ble Supreme Court has held, “ If a Criminal Court is to be an effective instrument in dispensing Justice, the Presiding Officer must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain truth. This requires to be done for arriving just conclusion to do real Justice.”

…….

46. In STATE OF UP vs. NARESH AND OTHERS (2011 A.C.R 370), the Hon’ble Supreme Court has held at Para 27,

“The Court has to scrutinize the facts of the case cautiously and knowing the parameters fixed by the Supreme Court. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right subject to the statutory exceptions. The said principle forms the basis of criminal jurisprudence in India. The law in this regard is well settled that while dealing with a judgment of acquittal, an appellate Court must consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable. An appellate Court must consider whether the Court below has placed the burden of proof incorrectly or failed to take into consideration any admissible evidence or had taken into consideration evidence brought on record contrary to law? In exceptional cases, whether there are compelling circumstances and judgment in appeal is found to be perverse, the appellate Court can interfere with the order of acquittal. So, in order to warrant interference by the appellate Court, a finding of fact recorded by the Court must be outweighed evidence or such finding if outrageously defies logic as to suffer from the vice of irrationality.

The Court has to strike a balance in the interest of all the parties concerned. Thus, there is an obligation on the Court neither to give a long latitude to the prosecution, nor construe the law in favour of the accused. In view of the aforesaid analysis of the facts and evidence on record, we reach the inescapable conclusion that the High Court has gravely erred in discarding evidence of P.W.1 and P.W.5 as a result of merely being relative of the deceased. The High Court further fell into error in not giving due weight age to the deposition of P.W.5, stamped witness, who had suffered gunshot injuries. The High Court made too much of insignificant discrepancies, which were made the basis for acquittal. Thus, we are of the considered opinion that the findings recorded by the High Court are perverse and cannot be sustained in the eyes of law.”

47. It is more pertinent to note that the responsibility for adhering to due process rests on everyone involved including the police in the Criminal Administration of Justice system. Nevertheless, the Judge, because he has absolute control of his court, has a paramount consideration and responsibility to ensure that the Judicial process inspires confidence of the public, ensures impartial treatment and is seen as transparently fair by all who approach it.

***48. IT May not be out of place to mention here “Women in Vedic Culture”, and “Status of Women in Vedic and Post –Vedic period”,ie.,***

***Male and Female, the two basic components of our human Society, depends upon each other and each one of them constitutes about half of the population.We find that man and woman have established as the two wheels of a Chariot. The Rig-Vedic Society was a free society. The Aryans evidently preferred male child to female child. However, Education was equally open for boys and girls and Girls studied the Veda and fine arts.***

***What do the Vedas say about women?***

***Women had a very significant and reversed stature as per the Vedas. Manusmiriti says “Wherever women are given their due respect, even the deities like to reside, and where they are not respected, all action remain unfruitful.”***

***“Throughout the many years of Vedic culture, women have always been given the highest level of respect and freedom, but also protection and safety. There is saying, “Where women are worshipped, there the Gods dwell” Or where the women are happy there will be prosperity. In fact the direct quotes from the Manu-smriti explains as follows:***

***Women must be honoured and adorned by their Fathers, brothers, husbands, and brothers-in-law,who desire their own welfare. Where women are honored, there the Gods are pleased; but where they are not honored, no sacred rite yields rewards. Where the female relations live in grief, the family soon wholly perishes; but that family where they are not unhappy ever prospers. The houses on which female relations, not being duly honoured, pronounce a curse, perish completely, as if destroyed by magic. Hence men who seek (their own) welfare, should always honour women on holidays and festivals with gifts of ornaments, clothes and (dainty) food” (Manu Smriti III 55-59).***

***In a similar way that would foretell the future if women are no longer honoured, Grandfather Bhishma explained: “O ruler of earth (Yuddisthira) the lineage in which daughters and the daughters-in-law are saddened by ill treatment, that lineage is destroyed. When out of their grief these women curse these households, such households lose their charm, prosperity and happiness.” (Mahabharata, Anushashhanparva, 12 ,14).***

***The Devi Sukta hymn of Rigveda, a scripture of Hinduism, declared the feminine energy as the essence of the universe, the one who creates all matter and consciousness, the eternal and infinite, the metaphysical and empirical reality (Brahma), the soul (supreme self) of everything. In smritis, such as Manusmrithi, “as a girl, she should obey and seek protection of her father, as a young woman of her husband, and as a widow her son.” The texts recognize eight kinds of marriage, ranging from father finding a marriage partner for his daughter and seeking her consent(Brahma marriage, to the bride and groom finding each other outout parentel participation (Gandharva marriage). The Goddess is viewed as central in Shakti and Saiva Hindu traditions.” The father must give affection and protection to daughter, husband need to give affection and protection to wife and son must give love and affection to mother.***

49. In the instant case, there is no plausible explanation forthcoming from the accused who is father of his daughter (deceased) as to how his daughter of young age of 12 years having a lot of dreams for a good life died in unnatural manner within his house and nothing has been elicited during cross examination of witnesses that she was having any affair and having failed in such affair, she had committed suicide, therefore, the father who is natural protector of his daughter had killed his own daughter.

50.  **In a very recent decision in DURYODHAN VS STATE OF ORISSA (2014 CRL. L. J 4172), the Hon’ble Supreme Court has held at Para 17 and 26,**

**17. Imprisonment for life is not confined to 14 years of imprisonment. A reading of section 55 I.P.C and Section 433 and 433A Cr P.C would indicate that only the appropriate Government can commute the sentence for imprisonment of life for a term not exceeding fourteen years or exceeds the release for such person unless he has served at least fourteen years of imprisonment.**

**Section 57 of the Indian Penal Code lists punishments to which offenders are liable under the Code which reads as under-**

**“First-Death,**

**Secondly-Imprisonment for life;**

**Fourthly-Imprisonment, which is of two descriptions, namely:**

**(1)Rigorous, that is , with hard labour;**

**(2) Simple Fifthly-Forfeiture of property;**

**Sixthly-Fine”.**

**Therefore, a person sentenced to life imprisonment is bound to serve the remainder off his life in prison unless the sentence is commuted by the Government in terms of Sections 55, 433, and 433A of the Code of Criminal Procedure.”**

51. In the instant case, nothing has been elicited from the cross examination of witnesses to discredit their testimony and their evidence is quite convincing and trustworthy. Moreover, there is no plausible explanation forthcoming from the accused for the death of his wife in his house, as such an irresistible inference can be drawn that the accused is alone liable for the death of his wife. The Doctor after conducting post mortem opined that the deceased died due to throttling and hanging and after completion of investigation, Inspector of Police has filed the charge-sheet against the accused person for the alleged offence under sections 302 I.P.C.

52. As seen from the evidence of witnesses and above circumstances, there is chain of evidence so complete as to not leave of any reasonable ground for conclusion consistent with innocence of the accused and it shows that in all human probability the act must have been done by the accused, the evidence of P.Ws 1 to 5, 7 to 9, P.W.11 (Doctor) and P.W.16 Investigating Officer is convincing, natural and trustworthy. Hence, it can be held that on the conspectus of entire scanning of evidence on record, it gives to an irresistible and only conclusion that the accused had hatched premeditated plan to do away life of his wife (………………….name (deceased) with a motive and intention of doing her away to remarry fro dowry and harassed the deceased demanding for additional dowry. Accordingly, this Court finds that the prosecution has proved the guilt of the accused beyond all reasonable doubt for the offences under sections 302 I.P.C. and the ingredients of the offences under sections 302 I.P.C are made out by the Prosecution. Hence, Points 1 and 2 are held in favour of the Prosecution.

53. The charge against the accused by version of the prosecution is on the receipt of the report of P.W.1, P.W.12 S.I of Police, Narasapur Rural Police Station has registered a case in crime No.141 of 2013 under section 302 I. P.C and on 17.11.2010 P.W.8 V.R.O has recorded confession of accused and he is one of Panchayatdars with Kharar Ali and Ratna Mala and also signed the inquest and scene of offence, during the course of investigation, P.W.13 Inspector of Police has visited scene of offence, got photographed the dead body of Dasari Madhavi (deceased) by P.W.9, and observed scene of offence in the presence of P.W.1 and P.W.8 and got drafted scene observation report, recorded statements of P.Ws 1 and 2, held inquest over dead body of Dasari Madhavi (deceased) in the presence of P.Ws 1, P.W.8, P.W.9 and Kharar Ali and sent the dead body to the Government Hospital, Narasapur for post mortem examination to know cause of death, and also P.W.13 has recorded statements of P.Ws 3 to 5. P.W.11 Dr Murali who conducted post mortem over the dead body of deceased and issued postmortem certificate to show that the deceased was throttled to death and later hanged her to doorframe. P.W.12 S.I. of Police, Narasapur Rural Police Station took up investigation, therefore, it shows the deceased was murdered by throttling by the accused with a saree and hanged her to a doorframe and absconded and later he has turned up before and confessed, P.W.8 recorded his statement as extra judicial confession and P.W.13 Inspector has arrested the accused at Poduru Police station on the strength of confession by the accused, P.W13 Inspector has seized the MO 1 and accused was sent to Court for judicial custody, thus, it is------ alleged that the accused thus, the accused has murdered the his wife (deceased) by throttling and hanged her to doorframe with a saree in their house and absconded, after completion of investigation, Inspector of Police, Rural has filed charge- sheet against the accused for the alleged offences under sections 302 I.P.C.

54. It is more pertinent to note that the responsibility for adhering to due process rests on everyone involved including the police in the Criminal Administration of Justice system. Nevertheless, the Judge, because he has absolute control of his court, has a paramount consideration and responsibility to ensure that the Judicial process inspires confidence of the public, ensures impartial treatment and is seen as transparently fair by all who approach it.

55. In a very recent decision in DURYODHAN VS STATE OF ORISSA (2014 CRL. L. J 4172), the Hon’ble Supreme Court has held at Para 17.

“17. Imprisonment for life is not confined to 14 years of imprisonment. A reading of section 55 I.P.C and Section 433 and 433A Cr P.C would indicate that only the appropriate Government can commute the sentence for imprisonment of life for a term not exceeding fourteen years or exceeds the release for such person unless he has served at least fourteen years of imprisonment.

56 Section 57 of the Indian Penal Code lists punishments to which offenders are liable under the Code which reads as under-

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(1) Rigorous, that is , with hard labour;

(2) Simple Fifthly-Forfeiture of property;

Sixthly-Fine”.

Therefore, a person sentenced to life imprisonment is bound to serve the remainder off his life in prison unless the sentence is commuted by the Government in terms of Sections 55, 433, and 433A of the Code of Criminal Procedure.”

57. In the result, the accused is found guilty for the offences under section 302 I.P.C. with which he is charged, and therefore, he is convicted under section 235(2) Cr. P.C. for the offence under section 302 I.P.C.

**Sd/xxx**

Additional District & Sessions Judge,

Narsapur

58. In regard to the quantum of sentence the accused has been question, the accused has stated that he is having son and mother and his wife is staying with her brothers house and a lenient view may be taken. Section 302 provides punishment for murder, whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.

59. HAVING REGARD TO THE SUBMISSION OF ACCUSED and taking into consideration of section 302 which provides for punishment with death or imprisonment for life and fine, this Court feels that this is not a rarest of rare case for imposing capital punishment of death, and therefore, this court feels it would meet the ends of justice, if the accused is sentenced to imprisonment for life and fine of Rs.5,000/ and accordingly, accused is sentenced to rigorous imprisonment for life and fine of Rs.5,000/- in default, to suffer simple imprisonment for period of 1 year for offence and under section 302 I.P.C. The remand period i.e., from 18.10.2013 to 03.02.2014 (108 days) which was already undergone shall be given set off under section 428 Cr. P.C. M.O.1 shall be destroyed after appeal time is over.

**SD /XX**

ADDITIONAL DISTRICT & SESSIONS JUDGE,

N A R A S A P U R

Typed directly by me personally directly on laptop, corrected and pronounced by me in the open Court on this the 17st February, 2016.

**SD/XXX**

ADDITIONAL DISTRICT & SESSIONS JUDGE,

N A R A S A P U R

APPENDIX OF EVIDENCE

WITNESSES EXAMINED

FOR THE PROSECUTION FOR THE DEFENCE:NIL

P.W.1. Dasari Surya Ambica

P.W.2. Dasari Manoj Raghava

P.W.3. Kola Venkata Satya Surya Kiran

P.W.5. Medidi Ganeswara Rao

P.W.6. Dasari Nageswara Rao

P.W.7.Kadali Kutumba Rao

P.W.8 Lakku Venkta Swamy

P.W.9. Sahik Munna

P.W.10 Mathum Mani Prasad

P.W.11.Dr. Balla Murali

P.W.12 Sri G.Dasu, SI of Police,

P.W.13 Sri A. Naga Murali, CI of Police

EXHIBITS MARKED

Ex.P.1 , Dt.07-10-2013 complaint of Dasari Surya Ambica

Ex.P.2,Dt.08-10-2013 161 Cr.P.C. statement of Dasari Nageswara Rao

Ex.P.3,Dt.8-10-2013 161 Cr.P.C. statement of Kadali Kutumba Rao

Ex.P.4, Dt.8-10-2013 scene observation repoet

Ex.P.5, Dt.8-10-2013 Inquest report

Ex.P.6,Dt.—Bunch of Photos with CD

Ex.P.7, Dt.16-10-2013 Postmortem certificate

Ex.P.8.,Dt.8-1-2014 Final Opinion

Ex.P.9, Dt.7-10-2013 FIR in Cr.No.141 of 2013 of Narsapur Rural PS

Ex.P.10, Dt.8-10-2013 Rough Sketch

ExP.11, Dt.—RFSL Report

MATERIAL OBJECTS MARKED

MO.1 is cement coloured saree with black design.

ADDITIONAL DISTRICT & SESSIONS JUDGE,

N A R A S A P U R