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Ramanattukara

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INTERNAL MOOT PROPOSITION- 2018-19

Back ground of the proposition

Molly and her daughter Jolly lived in a single-room house beside the Hasthina Canal porampoke area, at Kalinga Panchayath, Kaalahasthi district of Mahismathi state in Indiana. Jolly was a law student and she was brought-up by her mother alone by doing domestic work in and around Kaalahasthi district.

On 27.04.2016, when Molly and Jolly were about to view the television, they heard somebody throwing sand and pelting stones on the asbestos sheet. They remained silent for some time. However, after sometime, the house was pelted again with stones. They came out and switched on the light. They found no one outside.

On 28 April 2016 morning, when Molly went outside the house to brush, she noticed beedi and cigarette lighter on the top of the tiles kept at the backside of the house under suspicious circumstances. Realizing that staying beside the canal porampoke was unsafe, the family thought of constructing a house of their own. After taking breakfast, Molly went outside the house around 10 a.m. for seeking help from well-wishers, by that time 'Jolly was inside the house and was wearing a churidar. Molly sought financial help from a DMP a major political party in Kalahasthi and several other private persons for the construction of house, none of them offered any help at last, she reached the house of one Johny, where she had worked for a long time while she was young, extended financial help and asked the whereabouts of her daughter. Thereupon, Molly handed over the number of Jolly to Johny and requested him to call her personally over the phone. Though Johny tried to contact Jolly thrice, the calls were not attended. Thereafter Molly went to a butcher's shop at Kalinga in order to return the money, purchased some groceries and dry fish from Kaalahasthi and came down to Kalinga by bus. She reached her residence between 8 p.m. and 8.30 p.m.

She noticed that her house was closed and the lights were switched off. Though she knocked at the door several times, there was no response from inside. She tried her level best to get

Jolly's response, but failed. Thereafter, she went to Finahas residence. On hearing her cries, others also came towards her house. Although all others tried their level best to call Jolly, there was no response. Thereupon, one of the neighbours rang-up the police at 8.45 p.m. and the police reached the spot immediately.

When the police came to the spot Bharath Chandran, Inspector of Police, saw that Molly was crying in front of her house on the side of the canal bund road. On being asked, she replied that there was no response from inside the house and the door could not be opened. The Police Inspector went to the back portion of the house and noticed that the door on the backside was half open. When he opened the door in the dark and with the help of a torch light, he saw the dead body of a girl fully drenched in blood. He noticed that the front door was closed from inside. The police summoned Pushkaran, who is the ward member of Kalinga Panchayat. He reached the spot and the sub-inspector showed the body to him with the help of a torch and thereafter he reported the matter to the Kalinga police station.

Pushkaran deposed that on 29th April 2016, the police conducted inquest and thereafter dead body of Jolly was taken to the Medical College Hospital, Kalahasthi for post-mortem. The post-mortem examination was conducted by Dr. Sudharma and it commenced at 3 p.m. on 29th April 2016 and concluded at 6 p.m. on the same day.

The main findings of the doctor who conducted the Autopsy were as follows:-

The death was due to combined effects of smothering, strangulation; multiple injuries sustained to neck, abdomen and external genitalia and also confirmed evidence of sexual assault. Injuries noted in post-mortem report cannot be self-inflicted which clearly stands proved that the death of the deceased was homicidal.

During the post-mortem, the doctor had collected viscera of the deceased, which was forwarded for chemical examination and received chemical examination report from the chemical examiner. During post-mortem examination, Dr. Sudharma had collected series photographs of the dead body referring to injuries of the deceased, Dr. Sudharma stated that the injuries were different forms of blunt injuries produced on the face of the victim in and around nostrils and mouth due to application of a blunt force.

Dr. Sudharma opined that these injuries were mainly nail mark injuries and the contusions produced by the fingertips and palms during the act of smothering the victim who was consciously and actively resisting when such forces were applied on her. Typical injuries

produced during the attempt of smothering and during the process of forcefully preventing or quieting the victim while silencing her from making any cry or sound. , Dr. Sudharma further opined that injury could have been caused if something was forcefully put into the mouth of the victim.

After the post-mortem, the body as suggested by Molly and daughter Dolly, it was agreed to conduct Jolly's last rites in the 'public crematorium, Kalinga'. Burial was not usually done at the 'public crematorium, Kalinga' and instead burning was done there. As requested by Dolly, the President of Kalinga Panchayat, Urmila requested the Panchayath to burn the dead body on the same day itself as a special case. Hence, the dead body was incinerated at about 7.30 p.m., on 29th April 2016 in the presence of the elected representatives of the Panchayat and the relatives of Jolly. Thereafter the police conducted investigation and arrested the accused on 16th June 2016.

Prosecution case and the findings of the Sessions Court

Jolly, a Dalit law student was found dead in her house on 28th April, 2016, around 8.30 p.m with grievous wounds and her intestines pulled out and with 38 wounds, at her residence at Hasthina kanal porampoke area, at Kalinga Panchayath, Kaalahasthi district of Mahismathi state in Indiana. 'Jolly was living with her mother, who worked as a casual labourer. Her house was made of unpolished bricks and roofed with asbestos sheet, located on the side of an irrigation canal owned by the Government. Her father, Kattappa had abandoned the family when she was a small child. Jolly's father is a member of the Scheduled Caste and her mother is a Hindu, Ezhava by birth. Jolly was born as a Scheduled Caste and was a member of the Scheduled Caste community as per records.

On getting information that Jolly died under suspicious circumstances, Pushkaran, who was the nineteenth ward member of the Kalinga Grama Panchayat, lodged First Information Statement before the Kalinga Police Station.

Accused is not a Scheduled Caste and is a migrant labourer, born and brought up as a Muslim, hailing from Kalakeya state. He came to Mahishmathi to eke-out his livelihood and was doing labour works at Kalinga.

Knowing that Jolly was a member of the Scheduled Caste, the accused, who had been residing near the residence of Jolly, was eagerly waiting for an opportunity to get her alone. On 28th April 2016, between 5.30 p.m. and 6 p.m., while Jolly was alone at her residence and waiting

for her mother, the accused barged into her residence fully drunk, with a bottle of liquor and knife (a dangerous weapon in his possession) with an intention to commit rape and to satisfy his lust.

Jolly resisted his attempts to coerce her forcefully to satisfy his evil intentions. Predetermined to subjugate her, no matter what, he covered her nose and mouth, pushed her to the floor of the house, and attempted to rape her. Jolly vehemently resisted the act of the accused and while so, he bit her on her left shoulder below by strangulating her with the churidar shawl on her neck to overpower her. When the victim persistently resisted the attempt of rape, the accused became frustrated and out of frustration and vengeance, the accused mercilessly attacked Jolly with the knife in his possession. In the struggle to escape from his clutches, Jolly sustained 38 injuries on her body. The accused also inflicted a grievous penetrating injury deep inside her genitals by inserting the knife through her vagina to the extent of taking her internal organs out. Her chest sustained a deep injury. When the accused attempted to overpower the victim, the accused also sustained a bleeding bite injury on his right hand index finger allegedly bitten by Jolly. It is alleged that when Jolly begged for water, the accused mercilessly poured liquor into her mouth. After committing rape and murder, the accused washed and cleaned knife came out through the back door of the house, walked towards the canal and threw away the knife on the northern property, which was totally covered with shrubs and herbs.

Thereafter, the accused climbed from the canal to the southern side of canal bund road. While so, the accused left knife and chappals on the northern side of the canal bund road and escaped to his home State, Kalahasthi, by train from Kalinga railway station. When the accused was proceeding to Kalahasthi by train, he also threw away the blood-stained clothes worn by him at the time of occurrence and thereby destroying one of the evidences connected with the crime.

On 30 September 2016, after serving all the copies of documents sessions court framed charges against the accused for the offences punishable under Sections 449, 342, 376, 376(A), 302 and 201 of IPC and u/s 3(1)(a), 3(1)(w)(i) & (ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended by Act (1) of 2016.

The sessions Court by relaying on the statement of an independent witness Sreekala, she is a neighbour of the deceased. She deposed before the court that, she attended a phone call from her sister and immediately thereafter, around 5.30 p.m., she heard a loud cry from a woman from the northern side. At that time, Prmeela another neighbour came towards Sreekala's house and asked if she also heard the scream from the residence of Molly. While she was talking to

Prameela, she heard the sound of a door slamming shut in Molly's house. She further stated that while she was looking at the front of the residence of Molly, she saw a person walking towards the canal. The person so seen was a youth, short in height. He was wearing a yellow shirt. Sreekala identified the accused as the person she had occasion to see on the date of occurrence. she further added that she went to the Klalahasthi District Jail, to identify the accused on 20th June 2016 and identified the accused in the presence of the Magistrate on that day. She confirmed that the person so identified was physically present before court.

Another independent witness, Leela, who the neighbour of Jolly deposed that, she saw someone bending down and getting up at the rear side of Jolly's house on April 28 evening.

The knife suspected to be used for committing the murder was recovered by the police from the northern part of the property of Molly.

Prior to the occurrence, the accused had resided along with his friends and stepson at Kalinga for rent. The roommates of the accused deposed before the court that the accused came to their room around 6.30 pm on April 28 in a perplexed mood. He was sweating profusely and he left the room hastily stating he had some problems. He told his friends he would tell them the reason later.

The step son of the accused, Sujal, deposed before the court that, Ladhan was wearing black chappals when he left Kaalahasthi on 28.4.2016. He also identified MO21 and MO21(a) chappals as that of Ladan's. He also stated that Ladhan was in the habit of smoking Ajith beedi. MO1 and MO2, beedi and lighter respectively were also identified by Stepson Sujal. The knife was identified by suj, that belonging to Ladan. He stated that this knife was usually being kept in the bag of Ladhan. Rubel, friend of the accused, Anthas, Sujal and Asadulla adduced evidence to show that the accused was in the habit of consuming liquor very often.

Dr. Biju James, District Police Surgeon examined the accused and issued wound certificate. According to the doctor, the accused admitted certain matters before him. The doctor noted circular, crater shaped (depressed) scar (healthy) of 0.5cm diameter at the left aspect of the middle crease of right index finger. The doctor stated that the accused disclosed to him that on 28.4.2016, when he attempted to shut the mouth of a girl, the girl bit on his right index finger.

Forensic expert located bloodstains on the portion of the handle of the knife where blade is inserted and fixed. Forensic experts collected bloodstains from the portion with the help of a scraper from item churidar top of the deceased. Forensic expert noticed DNA of both the deceased Jolly and Ladan, the accused in this case. Bloodstains examined from the right and left churidar sleeves were found to be a mixture of bloodstains belonging to the deceased person Jolly and that of Ladaan.

On examination of nail clippings of the deceased which was collected during post-mortem examination it contained DNA belonging to the deceased person Jolly and that of the accused. The bloodstains in the chappal of the accused was also examined by the forensic experts and they submitted that the DNA of both the accused and Jolly was found in the chappals of the accused.

The forensic experts in their report and examination before the court explained that from the churidar top of the deceased they got the DNA of both the accused and the victim. From the handle of suspected knife got the DNA profiles of the victim. From the nail clip of the deceased the forensic experts got the DNA of both accused and the victim.

From the serology examination of the churidar top of the deceased seen the presence of blood of both the accused and the victim. Finger print of the accused was extracted from the door handle of the victim's residence.

Based upon the above circumstantial and scientific evidence the trial court found that the accused was liable under section Sections 449, 342, 376, 376(A), 302 and 201 of IPC And awarded capital punishment against the accused. Hence this appeal before the High court of Kalahasthi. All laws of kalahasthi and Indiana are similar to the laws in India.