

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.353 OF 2011

JUDGMENT: (per Hon'ble Sri Justice T.Aarnath Goud)

By Judgment dated 8.3.2011 in S.C.No.203 of 2009, the learned Principal Sessions Judge, Medak at Sangareddy (for short, Court below), found the sole accused guilty of the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 and convicted him under Section 235(2) of the Criminal Procedure Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default, simple imprisonment for six months for the offence punishable under Section 302 of IPC and further sentenced to suffer simple imprisonment for three months and to pay fine of Rs.500/-, in default, simple imprisonment for one month for the offence punishable under Section 201 of the Indian Penal Code. Aggrieved by the convictions and sentences imposed upon him by the Court below, the sole accused preferred this appeal under Section 374(2) of Criminal Procedure Code.

2. The case of the prosecution in brief, was as under:-

On 02.09.2008 in the early hours around 6.00 to 6.30 A.M., in the outskirts of Sadshivanagar Colony, Hamlet of Kulangoor village, the accused killed the deceased by stabbing with a knife over throat and by pushing his head to the ground repeatedly and twisting his testicles and that the accused also

committed the offence of causing disappearance of evidence by concealing the knife used in the commission of offence and by washing blood stained cloths, which is punishable under Section 201 IPC.

3. On committal, the learned Sessions Judge framed charges under Sections 302 and 201 IPC and when the accused pleaded not guilty of the said charges and claimed to be tried, the trial Court examined Pws.1 to 15 and got marked Exs.P1 to P12 and Mos.1 to 7. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. On consideration of the oral and documentary evidence, the trial Court convicted the accused and sentenced him to suffer punishment for the aforesaid offences. Aggrieved by the said Judgment, the appellant preferred the present appeal.

4. Heard the learned counsel appearing for the appellant-accused and the learned Public Prosecutor appearing for the respondent-State.

5. The learned counsel appearing for the appellant would contend that the Court below grossly failed to appreciate the evidence on record; that the conviction suffers from material irregularities, manifest error and illegality which resulted in miscarriage of justice; that the Court below failed to note that P.W.1 in his cross examination stated that the deceased and accused had no disputes with regard to construction of

Pochamma Temple; that P.W.2 the wife of the deceased stated that the accused and deceased were having good terms; that there was no motive for the accused to kill the deceased and that the Court below failed to observe that P.W.1 in his cross examination stated that the house of P.W.1 is at a distance of 1000 yards away from the scene of offence and as such there is no scope for P.W.1 to hear the cries from the scene of offence.

6. The salient points emerging from the evidence may now be noted:

In the cross examination P.W.1 deposed that his house is 1000 yards away from the scene of offence and there is a tank in between the scene of offence and house of the deceased and there are bushes and trees on the bund. P.W.1 lodged a complaint vide F.I.R.No.212 of 2008 dated 2.09.2008 at 10.00 A.M., and the complaint was filed after consultation with the police. P.W.1 could not identify the signature of the scribe on Ex.P1. P.W.1 in his complaint or in his statement under Section 161 Cr.P.C., did not mention that the accused was present by the side of the deceased and after he went there, the accused ran away. P.W.1 also did not state about the identity of the accused, his descriptive particulars and the dress wore by him.

According to the cross examination of P.W.3 who is a resident of same village and who is engaged to release water from the tank to the villagers stated that on the date of offence he opened water from the tank at about 6.30 A.M and that a

person near the water tank can hear the galata from the scene of offence than the persons in the village as the water tank is nearer to the scene of offence. It was also little dark in the morning hours on the date of incident. P.W.3 did not hear any sound and galata from the scene of offence. The land of Shanthamma where the offence said to have been taken place is having bushes all around and there is no possibility of seeing incident from the village or from the water tank.

P.W.4 is father of the deceased and he knows the accused. In his cross examination he deposed that the accused was going on his cycle through bye-pass road and thereafter galata took place and he learnt that the deceased was injured and died and that the body was found in the land of Shanthamma.

The statement of P.W.5 Sarpanch coupled with the statement of P.W.1 that the villagers wanted to construct a Pochamma Temple in the site assigned by the Government to the son of the accused and thus there was a dispute and in that process, the accused injured the deceased Venkanolla Balaiah, causing his death.

M.O.5 is the knife and M.O 6 is the cycle and M.Os. 3, 4 and 7 are blood stained clothes.

P.W.7 is the Civil Assistant Surgeon, working in Government Hospital, Guntur. Pw.7 conducted autopsy and opined that cause of death of the deceased is due to asphyxia by smothering following injuries to brain the vital organ and injury

on the neck. She confirmed that the injury is possible by M.O.5 knife.

P.W.14 is the Sub Inspector of Police and he stated that on receiving the information at 6.00 A.M., he along with one Constable and Driver reached the scene of offence around 8.30 A.M., and received complaint EX.P1 from P.W.1 and that he endorsed on Ex.P1 directing the S.H.O., to register a case under section 302 IPC.

7. As seen from the evidence of prosecution witnesses more particularly the evidence of P.W.1 shows that he never saw the accused killing the deceased. He did not identify the person running away as accused and that the incident took place in the early hours and that it was bit dark and there was no proper sun light. P.W.3 has categorically stated that he did not hear any hue and cry of the deceased and he did not see the accused along with the deceased. It is not explained as to how P.W.1 could hear from a long distance and saw the incident beyond the bushes and houses when P.W.3 who was within the vicinity near the tank and close to the scene of offence has failed to observe. The intention of the villagers to construct Pochamma Temple in the assigned lands of the son of the accused and a Civil Suit being decreed in favour of son of the accused in this regard, cannot be brushed aside. There were no blood stains on the material objects and there is no circumstantial evidence to link the chain of events leading to draw an inference that the accused has committed the alleged offence. Further, the blood

group of the accused and blood stains on the material objects were not tested and there was no corroboration to say that the blood sample is one and the same and belong to the deceased.

8. The prosecution has not made out any case against the accused beyond reasonable doubt and the benefit of doubt is in favour of the accused. The Court below failed to appreciate the oral and documentary evidence available on record properly and erred in coming to the conclusion that the charges framed against the accused have been proved. In the light of the above discussion, the convictions and sentences passed by the learned sessions Judge, Medak at Sangareddy are liable to be set aside.

9. The Criminal Appeal is accordingly allowed and the Judgment dated 8.3.2011 in S.C.No.203 of 2009 passed by the learned Principal Sessions Judge, Medak at Sangareddy is set aside. The appellant shall be present before the Superintendent Central Prison, Cherlapalli, Ranga Reddy District, for completion of necessary formalities in accordance with the due procedure in the light of his acquittal. The bail bonds furnished at the time of his securing conditional bail shall stand discharged. The fine amounts, if any, paid by him shall be refunded.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: -10-2017
Shr