

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CRL.A.NO. 1636 of 2010

Date of Order: 5.6.2017

Between:

The State of A.P. represented by Public Prosecutor

...Appellant

And

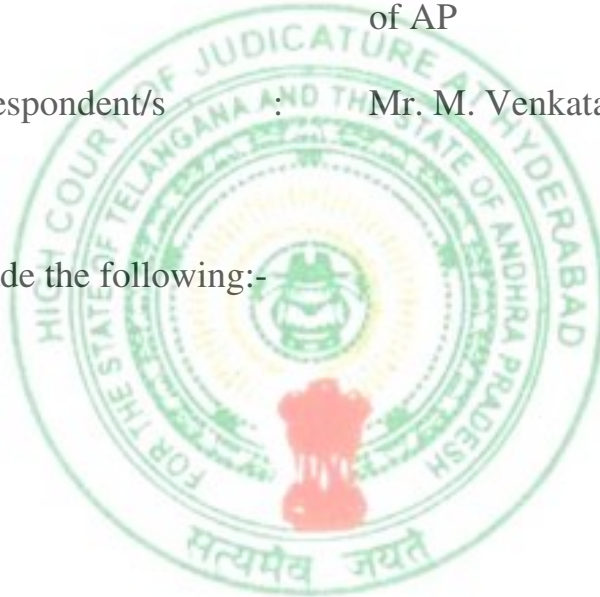
Gosula Sudhakar Reddy and others

..Respondents

Counsel for appellant : Public Prosecutor for the State
of AP

Counsel for respondent/s : Mr. M. Venkatanarayana,

The Court made the following:-



THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CRL.A.NO. 1636 of 2010

JUDGMENT: (Per Hon'ble Ms. Justice J. Uma Devi)

This Criminal Appeal is filed by the State of Andhra Pradesh represented by its Public Prosecutor challenging the judgment, dated 16.6.2009 passed by the *I-Additional Sessions Judge, Nellore* in Sessions Case No. 193 of 2005 acquitting A1 to A6 of the offences under Sections 120-B (i), 302 and 201 of the Indian Penal Code.

The case of the prosecution, in brief, is that the deceased Velamuri China Sankar Reddy and A1 to A6 belonged to *Krishnapadu* village of *Jaladanki Mandal, Nellore district*. A1 and A2 are brothers, A3 and A4 are cousins of A1 and A2 and A5 and A6 are relatives of A1 and A2. The deceased Velamuri Sankar Reddy was having wet land near *Somavarapadu Kaluju Vagu* and A1 and A2 were having land by the side of deceased's land. It was alleged by the prosecution that there were disputes between the deceased Velamuri China Sankar Reddy and A1 and A2 regarding drawing of irrigation water to their fields. The deceased belonged to Congress-I party, whereas A1 to A6 were strong supporters of Telugu Desam Party. The dispute that arose between the deceased Velamuri China Sankar Reddy and the accused regarding drawing of water to their respective fields and the political rivalry existed among them were the main reason that made them to grind axe against each other. These are the assertions made by the prosecution to plead that the accused were

having sufficient motive to kill the deceased and that they were waiting for a chance to cause his death.

The specific case of the prosecution was that on the evening of 9.2.2005 at about 7.30 P.M. the deceased Velamuri China Sankar Reddy left his house for watering his field by carrying a '*Kathuva Karra*'. At that time all the accused were found by Vasipalli Padmanabha Reddy (P.W.9) near the house of A2, that this fact was informed by P.W.9 to the elder brother of the deceased i.e., Velamuri Sambasiva Reddy (P.W.1), and that he also told him that he is suspecting danger to the life of the deceased in the hands of the accused, but P.W.1, did not take it seriously. On the same day at about 8.00 P.M. Cherukuri Krishnaiah @ Mangali Krishnaiah (P.W.7) found A1 to A6 sitting on the pial of the house of A2 and discussing among themselves. P.W.7 also noticed the deceased going towards his field by carrying a '*Kathuva Karra*' and found A1 to A6 going in the same direction in which the deceased went towards his field. On the same day night at about Dronadula Madhava Reddy (P.W.3) saw the deceased proceeding towards his fields by carrying '*Kathuva Karra*' and 15 minutes thereafter he saw A1 to A6 proceeding in the same direction.

It was also the specific case of the prosecution that A1 to A6 who followed the deceased waylaid for him near neem tree at *Gudur Donka* situated on the eastern bund of the fields of Velamuri Madhusudhan Reddy (L.W.15), that when the deceased reached near the neem tree situated on the eastern bund of the fields of Velamuri Madhusudhan Reddy (L.W.15) during his return to his house, A5

went opposite to him and pushed him to the ground; that A3 snatched '*Kathuva Karra*' from the hands of the deceased and stabbed him with it on the right side of his chest and face, that A1, A2, A4 to A6 kicked the deceased indiscriminately; A5 caught hold of the legs of the deceased firmly, while A1 and A2 caught hold of his hands by folding them towards his back; and that A1 and A2 squeezed the neck of the deceased firmly while his hands were tied by A4, as a result of which, the deceased died on the spot. That A1 to A6, after causing the death of the deceased, took the dead body to a well situated in the field of Madhusudhan Reddy (L.W.15) and threw it in it after tying it to a stone with a plastic rope to screen the evidence of causing his death.

The prosecution case was also that A1, A2, A4 and A5 were seen by Boddukuru Venkateswara Reddy (P.W.5) when they were carrying '*Kathuva Karra*' and he also found A6 carrying a pair of '*Chappals*'. It was also the specific case of the prosecution that all the accused were identified by P.W.5. while they were proceeding with the dead body of the deceased by focusing torchlight towards them, but P.W.5 did not disclose the same as he was threatened by the accused and that he ran away from that place due to fear of the accused.

The specific case of the prosecution was also that the accused concealed '*Kathuva Karra*' and '*Chappals*' of the deceased in the bushes situated on the southern side of the wet land of Gosula Ramana Reddy, that all the accused were noticed by Chundi Brahma Reddy (L.W.7) while he was present in his field on the intervening night of 9/10.2.2005 and that he also heard from them that they killed the

deceased as he was creating troubles to them in connection with their lands and interfering in their personal affairs, that on 11.2.2005 at about 7.30 A.M. while Annareddy Chandrasekhar Reddy (P.W.4) was answering calls of nature in a 'Vagu' near *Somavarappadu* village, he saw A1 to A6 proceeding on the road by talking among themselves that they finished the deceased, and that he passed such information to Velamuri Srinivasulu Reddy (P.W.6) on the same day at about 11.00 A.M.

As per the version set out in the charge sheet, on the night of 9.2.2005, the wife of the deceased Velamuri Padmamma (P.W.2) went to the house of V. Sambasiva Reddy (PW-1) - the elder brother of her husband, along with Vasipalli Bhaskar Reddy (L.W.10) and informed him that her husband Velamuri China Sankar Reddy did not return home on that night, and upon receiving such information from her, all of them went in search of the deceased, but they could not find him anywhere. That on the next day morning i.e., 10.2.2005, P.W.1, Vasipalli Bhaskar Reddy (L.W.10), P.W.9, Hari Babu (L.W.12) and D.Lakshmi Reddy (P.W.8) and some others went in search of the deceased and while searching for him, they went near the well in the field of Madhusudhan Reddy (L.W.15) where they noticed the dead body of the deceased Velamuri China Sankar Reddy, retrieved the same from out of the well with the help of Hari Babu (L.W.12) and P.W.8 and thereafter P.W.1 went to the police station at Jaladanki and lodged a complaint that he suspected A1 to A4 and Gosula Subbarami Reddy s/o. Ramana Reddy and some others as responsible for the death of the deceased.

Based on the report given by P.W.1, the Sub-Inspector of Police, Jaladanki Police Station, (P.W.13) registered a case in Cr.No. 7/2005 under Sections 302 and 201 r/w. 34 IPC and handed over investigation to Inspector of Police, Kavali (P.W.15), who during the course of investigation, visited the scene of offence and prepared the scene of offence panchanama in the presence of mediators, and seized the material objects. The Inspector of Police also held inquest over the dead body of the deceased on 11.2.2005 in the presence of mediators and sent the dead body for post mortem examination. Dr. P. Jayakumar (P.W.12) and another doctor, on holding autopsy over the dead body of the deceased, issued Ex.P-14-post mortem certificate opining that the deceased Velamuri China Sankar Reddy died due to “*cardio respiratory failure due to pressure over the neck*”. The Inspector of Police recorded the statements of all the material witnesses during the course of investigation, arrested A1 to A6 on 1.3.2005 and recorded their confessional statements in the presence of mediators. Pursuant to the statements made by the accused, PW-15 recovered ‘*Kathuva Karra*’ and a pair of ‘*Chappals*’ belonging to the deceased out of the thorny bushes situated on the southern side of the land of Gosula Ramana Reddy near ‘*Somavarappadu Kaluju vagu*’ and prepared a panchanama in this regard. After completion of investigation, the Inspector of Police, Kavali laid the charge sheet against A1 to A6 for the offences under Sections 120-B, 302 and 201 IPC.

The learned I-Additional Sessions Judge, Nellore framed charges under Sections 120-B (i), 302 and 201 IPC against all the six

accused, read over and explained the charges to them in their vernacular language. The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 15 witnesses and marked Exs.P1 to P17 and produced M.Os.1 to 17. The accused were examined under Section 313 Cr.P.C. The accused, though refuted the correctness of the circumstances with which they were confronted, did not choose to examine any defence witness.

The learned I-Additional Sessions Judge, Nellore on appreciation of oral and documentary evidence available in the case record, found the accused not guilty of the charges framed and acquitted them. Aggrieved by the judgment of acquittal passed by the learned Sessions Judge, the State of Andhra Pradesh has filed the present appeal.

Sri Posani Venkateshwarlu, learned Public Prosecutor appearing for the State of Andhra Pradesh, has contended that there were disputes between the deceased and the accused regarding drawing of water to their fields, apart from political rivalry, that the deceased belonged to Congress-I party, whereas the accused belonged to Telugu Desam Party, that cases and counter cases were filed and pending against each other which made the accused to develop animosity against the deceased. The learned Public Prosecutor further contended that the evidence of P.W.3 clinchingly establishes the fact that on the night of the alleged incident, he saw the deceased proceeding towards his field and some time thereafter the accused proceeding in the same direction, that P.W.5 deposed that he saw the accused carrying the dead body of the deceased, that when PW-9 went

to the fields in search of the deceased on his motor cycle, he saw the accused coming in his opposite direction and that the learned Sessions Judge, without appreciating the aforementioned crucial evidence available in the case in a proper perspective, ordered acquittal of the accused, instead of convicting them. He further contended that the material objects viz., '*Kathuva Karra*' (M.O.12) carried by the deceased at the time of his proceeding towards his field and the '*Chappals*' (M.O. 11) worn by him at the material point of time, were recovered at the instance of the accused. That though the cumulative effect of the circumstantial evidence brought on record by the prosecution unerringly points towards the guilt of the accused, the learned Sessions Judge acquitted the accused of all the charges framed against them. He further contended that the evidence given by the prosecution witnesses also established the motive i.e., the accused developing animosity or ill-will towards the deceased over the issue of drawing of water to their fields and also on yet another ground that he was causing troubles to them. Therefore, contended the learned Public Prosecutor, that the evidence adduced by the prosecution is clear and categorical on the aspect that the deceased was murdered by the accused.

Sri M. Venkatnarayana, learned counsel appearing for the respondents/accused contended that the prosecution, in the present case, failed to establish the motive and since no reliable or cogent evidence was adduced by the prosecution to connect the accused with the offences alleged against them. He contended that the entire prosecution case rested on circumstantial evidence, that the chain of

circumstances established by the prosecution were not complete, and that though the prosecution was having the onerous duty of establishing the motive which would play a significant role in cases of this nature, no whisper was made in the evidence of any of the witnesses as to the dispute that arose between the accused and the deceased in respect of drawing of water to their respective fields. He has further contended that the crucial circumstances through which an inference could be drawn against the prosecution case was that in Ex.P1-complaint, P.W.1 suspected A-1 to A-4 and some others as having committed the offence, but in the charge sheet A-5 and A-6 were incriminated by deleting the name of Gosula Subbarami Reddy and that considering the abovementioned aspects which were borne by record in a proper perspective, the learned Sessions Judge had rightly entertained a doubt about the prosecution case. The learned has further contended that P.Ws.1, 5 and 9 who claimed that they saw the accused coming opposite to them with the aid of torchlight and the headlight of motor cycle, did not say about this crucial aspect in their statements made before the police, that if really the accused were seen by them when they went to the field in search of the deceased, they would not have omitted to state these crucial aspects to the police at the initial point of time. Therefore, the learned Counsel contended that the learned Sessions Judge, on appreciation of the entire evidence on record, found that no reliable or trustworthy evidence was adduced by the prosecution to believe that the accused killed the deceased, that the learned Sessions Judge had thoroughly appreciated the evidence of each and every witness examined by the prosecution and recorded

sound reasons while acquitting the accused of the charges framed against them and that there are no legally valid reasons to interfere with the Judgment of the trial Court.

We have heard the elaborate submissions made by both sides. We are ably assisted by the learned counsel for the respective parties in going through the depositions of the prosecution witnesses and the documents marked. The only question that arises for our consideration is, whether the judgment of acquittal passed by the trial Court is erroneous or contrary to law and is likely to result in injustice, as contended by the State?

Since it is the prime contention of the State that serious miscarriage of justice is caused due to the erroneous findings recorded by the trial Court while ordering acquittal of the accused, we feel it appropriate to undertake the task of reappraisal of the evidence on record.

The Medical Officer – Dr. P. Jayakumar (P.W.12) and another medical officer who conducted autopsy over the dead body of the deceased on 11.2.2005, noticed the following external injuries:-

- 1) An abrasion of size 1 x 1 cm below the right eyelid. Multiple abrasions over the forehead present and right cheek congested.
- 2) A graze about 5 x 3 cms over the right cheek present. Abrasion over the left cheek present. Multiple abrasions over the shoulder region present.
- 3) A lacerated injury of size 1 x 1 cm over the right chest present. Laceration with loss of left ear lobule.
- 4) Bluish black discolouration with swollen of face, neck, upper part of chest, upper part of back and

both shoulders. On cut section of neck, there were deep purple coloured blood clots present in and around the neck structures.

During the course of internal examination, the medical officers found fracture of both horns of hyoid bone and opined that the deceased died due to '*cardio respiratory failure due to pressure over the neck*'. The post mortem certificate-Ex.P14 issued by P.W.12 and another medical officer and the evidence given by P.W.12 would clearly establish that the death of the deceased was homicidal in nature.

The prosecution case entirely rests on circumstantial evidence. In cases of this nature it has to be examined by the Court whether the evidence produced by the prosecution establishes the chain of circumstances, and if so, the chain of circumstances so established are complete and rule out the possibility of any other person committing the offence alleged other than the accused.

In a case based on circumstantial evidence, motive plays a vital role. In *Shivaji Genu Mohite v. State of Maharashtra*¹, the Supreme Court held that the evidence as to motive would go a long way in cases wholly dependent on circumstantial evidence and that such evidence would form one of the essential links in the chain of circumstantial evidence in such a case.

In the instant case, all the material witnesses examined by the prosecution were closely related to the deceased. Though it was alleged that the accused developed animosity towards the deceased on account of the disputes ensued between them regarding drawing of

¹ AIR 1973 SC 55

water to their respective fields, it failed to elicit through the witnesses examined by it, even a single instance of quarrel or exchange of words between the accused and the deceased regarding drawing of water to their respective fields. Though it was the specific case of the prosecution that cases and counter cases were filed by the deceased and the accused against each other, the details of the cases registered against each other were not referred to in the charge sheet. The witnesses examined by the prosecution also did not choose to state the details of the cases filed against each other. A criticism was rightly made by the defence counsel that no substantial oral and documentary evidence is adduced by the prosecution to buttress the factum of the disputes between the accused and the deceased on the issue of drawing of water or regarding the political rivalry between the accused and the deceased. Since no substantial material was found in the case record to arrive at a conclusion as to the animosity or ill-will between the accused and the deceased on the issue of drawing of water to their respective fields or with regard to the alleged political rivalry, the learned Sessions Judge has rightly found that the motive alleged by the prosecution was not established by it.

The evidence of Velamuri Sambashiva Reddy (P.W.1), the elder brother of the deceased, is that on the intervening night of 9/10.2.2005, PW-2-the wife of his deceased brother, came to him and informed that her husband did not return home in the night, whereupon he along with PW-9 and LW-10-Vasupalli Bhaskar Reddy searched for the deceased in the entire village including the fields of the deceased, but could not find him anywhere, that he returned home

at 2.00 A.M. and informed the same to the wife of the deceased, that on the next day morning again he went in search of the deceased along with his relatives and reached the fields of LW-15-Madhusdan Reddy where he found struggling marks, four or five crushed Apollo beedies and one crushed match box, and that on suspicion, they proceeded further and went near the well situated in the field of Madhusudan Reddy and found the dead body of the deceased in the well. The above evidence given by P.W.1 indicates that the dead body of the deceased was traced out on the next day of the alleged incident, when he along with others went in search of the deceased. According to P.W.1, when the dead body of the deceased was found, it was about 2.00 P.M. Though the distance between the village of P.W.1 and the police station Jaladanki was about 15 kilometers, Ex.P-1-complaint was lodged at 5 p.m. i.e., three hours after noticing of the dead body of the deceased. The delay of three hours in lodging of the complaint was not explained properly by the prosecution. The unexplained delay in lodging of the complaint would raise a suspicion that deliberations between P.W.1 and his relatives took place before lodging of the complaint and that Ex.P-1 is not free from embellishments.

The prosecution case is that P.W.1 saw the deceased proceeding towards his field by carrying '*Kathuva Karra*', but in the entire statement made by P.W.1 before the police, we do not find a mention to that effect. It was also the case of the prosecution that P.W.1 saw his deceased brother proceeding towards his field at 8.00 P.M. while he was going into the village to supply milk and that 15 minutes thereafter he saw the accused proceeding in the same direction. It was

also the evidence of PW-1 that by the time he saw the deceased at 8.00 P.M., he was already having intimation through P.W.9 that he saw all the accused talking to each other in front of the house of A-2 and that he suspected danger to the deceased in the hands of the accused. If really the disputes between the accused and the deceased went to the extent of grinding an axe against each other, PW-1 would have certainly followed the accused who were found by him going in the same direction just 15 minutes after the deceased went to his fields. According to P.W.1, he saw A-1 to A-6 coming opposite to him near *Musalareddy Kaluva* while he was going towards the field of the deceased along with LW-10-Bhaskar Reddy and others in search of his deceased brother, but this crucial aspect was not found anywhere in Ex.P1 and so also in the statement made by P.W.1 before the police. During the cross-examination of PW-13-the Investigating Officer, it was elicited that PW-1 has not mentioned the names of A-5 and A-6 specifically in Ex.P-1, that PW-1 mentioned the name of Gosula Subbarami Reddy s/o. Ramana Reddy, in Ex.P-1 and that he was not shown as an accused in the charge sheet. No plausible explanation was rendered by the prosecution, as to why the names of the persons who were suspected at the initial point of time were deleted and A-5 and A-6 were incriminated subsequently. These omissions and contradictions found in the evidence of P.W.1 and the insertion of names of A-5 and A-6 by deleting the names of Gosula Subbarami Reddy s/o. Ramana Reddy and others are the strong circumstances through which an irresistible adverse conclusion could be drawn as to the credibility of the prosecution case, and to hold that

it came up with a false story to implicate the accused in the present case. The improved versions made by P.W.1 by giving a go-bye to the statement made by him before the police at the earliest point of time are fatal to the case of the prosecution.

The incident is stated to have taken place on the night of 9.2.2005. It was deposed by P.W.3 that he saw A-1 to A-6 going towards Badavachenu 15 minutes after the deceased going to his fields, but the fact that he did not disclose the same to anybody till he was examined by the police, raises a suspicion on the veracity of his evidence.

A feeble attempt is made by the prosecution by examining PW-4 to connect the accused with the offence. PW-4 deposed that while he was answering the calls of nature at about 8.30 A.M. on 11-2-2005, he saw the accused going towards the field by talking to each other that they murdered the deceased and there would not be any problem to them. It was elicited during the cross-examination of PW-4 that there is a latrine in his house. It was also elicited that the place where he was answering the calls of nature was 1 K.M. from his house and at a distance of 70 to 80 yards from the road. In the Re-examination, PW-4 deposed that the latrine at his house would be used by ladies and he answers the calls of nature outside. As rightly observed by the trial Court, if the accused were the real culprits, they would not discuss about the crime committed by

them so loudly as to be audible from a distance of 70 or 80 yards where PW-4 was allegedly answering the calls of nature. The evidence of PW-4 that there is a latrine in his house but yet he goes to a distance of 1 K.M. to answer the calls of nature, casts a doubt on the credibility of his testimony.

In his evidence, PW-5 deposed that his land is near the land of the deceased, that on 9-2-2005 at about 7.00 p.m., he went to his field to water the same, that after watering the field he guarded the field from forest pigs till 9.30 p.m. and that he reached home after 9.30 p.m. He further deposed that when he reached a neem tree which is in the field of one Madhusudhan Reddy (LW-15), he saw some people coming in a group in the opposite direction, that he recognised the said group of persons with the help of the charging torch light as A-1 to A-6, that A-1, A-2, A-4 and A-5 were carrying the deceased in their hands and that A-3 and A-6 were following them. He has also deposed that when he questioned the accused, they have threatened him that if he discloses what he saw to anyone, he meets the same fate, that having been afraid he went home, changed his shirt and left the house informing his wife that he was going to the house of her elder brother at Budamgunta and that he would return home in the morning. In his cross-examination, it was elicited from PW-5 that the last bus to go to

Kavali from his village was at 8.00 p.m. and that to go to Budamgunta village, one has to board the Kavali bus. However, PW-5 has not explained as to how he visited Budamgunta on that night after returning home from the fields at 9.30 p.m. when the last bus from his village to the said place leaves at 8.00 p.m.

In *Bodhraj V. State of Jammu & Kashmir*², the Supreme Court held as follows:

“It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other persons. (See *Hukam Singh v. State of Rajasthan*, AIR (1977) SC 1063), *Eradu and Ors. v. State of Hyderabad*, AIR (1956) SC 316, *Earabhadrapa v. State of Karnataka*, AIR (1983) SC 446, *State of U.P. v. Sukhbasi and Ors.*, AIR (1985) SC 1224, *Balwinder Singh v. State of Punjab*, AIR (1987) SC 350, *Ashok Kumar Chatterjee v. State of MP* AIR (1989) SC 1890. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab*, AIR (1954) SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

We may also make a reference to a decision of this Court in *C Chenga Reddy and Ors. v. State of A.P.*, [1996] 10 SCC 193, wherein it has been observed thus:

"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn would be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and

² (2002) 8 SCC 45

there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.....”

In *Trimukh Maroti Kirkan V. State of Maharashtra*,³ where the prosecution was based on circumstantial evidence, the Apex Court held as follows :

“In the case in hand there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

The circumstantial evidence brought on record by the prosecution is not inspiring the confidence of the Court. The trial Court, on appreciation of each and every aspect of the evidence available in the case record meticulously, has held that the prosecution has failed in its attempt to prove its case as against the accused beyond all reasonable doubt. The discrepancies and lacunae pointed out in the case of the prosecution are enough to hold that the prosecution failed to prove the chain of circumstances establishing the guilt of the accused beyond all reasonable doubt. On re-appreciation of the entire evidence available on the case record, we have not noticed any substantial material to hold that it is the accused who were responsible for the death of the deceased and therefore we find no

³ 2007 (1) ALT (Cri) 84 (SC) = (2006) 10 SCC 681

tangible reasons to deviate from the conclusion reached by the trial Court.

In the result, the appeal is dismissed and the judgment of acquittal passed by the trial Court in SC No. 193 of 2005 is hereby confirmed.

Dt. 5.6.2017
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C.V.NAGARJUNA REDDY, J

J. UMA DEVI, J

