

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE P.KESHAVA RAO
CRIMINAL APPEAL No.560 of 2011

Between:

Arjun Prasad Chowdary

.....

Appellant

VERSUS

State of Andhra Pradesh, rep.by its P.P.

....

Respondent

Date of Judgment Pronounced: **10.11.2017**

SUBMITTED FOR APPROVAL:

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals?
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

C.PRAVEEN KUMAR ,J

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE P.KESHAVA RAO
CRIMINAL APPEAL No.560 of 2011

JUDGMENT: (Per Justice C.Praveen Kumar)

%Dated 10.11.2017

Between:

Arjun Prasad Chowdary Appellant

VERSUS

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..... Respondent

! Counsel for Petitioners : Smt R.Paghamma

^ Counsel for Respondent : Public Prosecutor

< GIST :

> HEAD NOTE :

? Cases referred :

¹ AIR 1959 SC 1012

2. 2015(2) ALD (CrI) 533 (SC)



HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.560 of 2011

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) The sole accused in Sessions Case No.144 of 2010 on the file of the II Additional District and Sessions Judge (Fast Track Court) at Sangareddy is the appellant herein. He was tried for the offences punishable under Sections 302, 307 and 380 IPC (for causing death of Prakash Rawoot (D.1) and Rasanand Nayak (D2), for causing injuries to one Pradeep Kumar Pradan (PW.21) and also for committing theft of two mobile phones, a bag of D.1 containing clothes and cash of Rs.4,100/-). By its judgment dated 24.02.2011, the Sessions Judge convicted the accused and sentenced to undergo 'imprisonment for life' and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for 15 days for the offence punishable under Section 302 IPC; further sentenced to undergo rigorous imprisonment for 10 years and also sentenced to pay a fine of Rs.200/-, in default to suffer simple imprisonment for 15 days for causing injuries to PW.21 for the offence punishable under Section 307 IPC; and also sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for 15 days, for the offence punishable under Section 380 IPC.

2) The facts as borne out from the record are as under:

i) PW.1-Ram Singh was working as a Contractor, for security Guards, in the name and style of Jai Bhavani Security Contract at Sadasivpet. PW.3-Gangadara Raju was working as Security Guard at ASO Patancheru Steel Company and PW.4-Peer Mohammad was working as Security Guard in Prathap Steels along with D1 and D2, PW.21-Pradeep Kumar, the accused and PW.6-Kotha Gachi Shankarappa were also working as Security Guards at Patancheru Company. All these persons were working as security guards under PW.1.

ii) The evidence on record would show that D.1, D2, PW.21 and the accused were living together under the same roof and mess, in the premises of Pratap Steel Company, Ramachandrapuram. On the date of incident at about 06.00 am PW.2 asked D.1 to get ready to change his uniform to go to the company for working in second shift. Thereafter, he went into his room to change his dress and at about 7 a.m., he again went back to the room of D.1 along with Anjaneyulu. He noticed D.1, D.2 and PW.21 with bleeding injuries on their heads. Immediately, he informed the said incident to PW.1 over phone. The evidence of PW.1 discloses that he also received a message from PW.3 to the effect that D.1, D2 and PW.21 sustained injuries. Pursuant thereto, PW.1 rushed to the scene of offence and found D.1, D.2 and PW.21 with bleeding injuries. The evidence of PW.4 is also to the effect that while he was washing his face in his room, in the premises of Prathap Steel Company, Anjaneyulu came and enquired whether D.1-Prakash was getting ready to go to duty. PW.4 went

to the said room and found D.1, D.2 and PW.21 with bleeding injuries over the head. The same was informed to Anjaneyulu, who in turn informed to PW.1. But, however, PW.21, who is an injured eye witness states that on the date of incident while himself, D.1 and D.2 were sleeping in the room, the accused came to the room at 05.00 am along with a granite stone and killed D1 and D.2 by throwing it on their heads. On hearing their cries, he woke up. Pursuant thereto, the accused also threw the said stone on his head, which he warded off by his hands by raising an alarm. As a result of which, PW.21 is said to have sustained injuries to his both hands. Thereafter, the accused is said to have been taken away the cell phone of D.1 and also the bag of D.2 containing clothes and cash. He claims to have identified the objects in the Court. Immediately, thereafter PW.1 called the 108 ambulance and took the injured to Sai Durga Hospital at Chandanagar and later to Prasad Hospital, Kukatpally for better treatment. But one of the deceased by name Prakash died after he was taken to Prasad Hospital, while D.2-Rasanandam died on the second day, after being shifted to Gandhi Hospital. PW.21-Pradeep was also shifted to Gandhi Hospital for better treatment. But it is to be noted here that none of the witnesses more particularly PWs.1 to 4, who came to the scene of offence immediately after the offence and took the injured to the hospital, did not enquire from PW.21 as to how the incident happened. The evidence shows that while himself and police were enquiring about the incident, they noticed that the

accused absconding and so they suspected the involvement of the accused in the attack.

3) On 20.07.2009 at 12.00 noon, PW.19, the Sub-Inspector of Police, R.C.Puram received information from Prasad Hospital, Kukatpally about the admission of two persons in their hospital with hear injuries. Immediately, he proceeded to the said hospital, found PW.1 in the hospital and recorded his statement. Basing on the statement of PW.1, which is marked as Ex.P.1, PW.19 registered a case in Crime No.321 of 2009 for the offences punishable under Sections 302 and 307 of IPC. Ex.P.12 is the First Information Report. Thereafter, he handed over the investigation to the Inspector of Police for further investigation. After receiving the copy of FIR, PW.20- the Inspector of Police, Narsingi rushed to the scene of offence and in the presence of PW.8 and 9, conducted a panchanama of the scene of offence. He also recorded the statements of PWs.2 to 4 on the same day. Later he went to Prasad Hospital, Kukatpally and shifted the dead body of D.1 to Gandhi Hospital for post mortem examination and also shifted the injured PW.21 to Gandhi Hospital for better treatment. On 21.07.2009, he sent a requisition to the S.P., Medak District and after obtaining permission, sent a party consisting of A.S.I, Thulsiram and two constables to Madhya Pradesh to arrest the suspect i.e. Arjun Prasad. On 22.07.2009, PW.20 recorded the statements of PWs.7 and 17 and also that of PW.21. On the same day, in the presence of PW.10, he conducted inquest over the dead body of D.1 and then sent the body for post mortem examination.

4) PW.16, the Asst. Professor of Gandhi Medical College conducted autopsy over the dead body of D.1 on 22.07.2009 at 03.00PM and issued Ex.P.16-report. On receipt of information that D.2 also died in Gandhi Hospital, while taking treatment, PW.20 instructed PW.18 to inform the relatives of D.2 at Orissa about his death. But, however, the parents of D.2 requested the police to cremate the body of D.2 at Hyderabad itself, as they are unable to come to Hyderabad, due to poverty. On 24.07.2009, PW.18, the Inspector of Police visited Gattipiri Village of Denkanar District of Orissa, examined and recorded the statements of the father of D.2 and brother of D.2. They refused to visit the place of offence, and take the dead body. However, they asked the police to perform the last rites of D2. PW.15, the Assistant Professor, Department of Forensic Medicines, Gandhi Medical College, Hyderabad conducted autopsy over the dead body of D2 and issued Ex.P.10-the postmortem report. According to him, the cause of death was due to head injuries. On 31.07.2009, on reliable information and on intimation of PW.20, PW.19 apprehended the accused Arjun Prasad Chowdary, at IDI Pashamailaram and produced him before PW.20. On interrogation, the accused is said to have confessed about the commission of offence. Pursuant there to, two Nokia cell phones belonging to D1 and D.2 and Rs.1500/-, which was stolen from D.1 were seized. Later, the accused led them to police party to the outskirts of R.C.Puram and near old Railway track showed the place where he threw the bag containing clothes etc. Thereafter, the accused was arrested and remanded to judicial custody. After

obtaining Ex.P.13-FSL report and incoming and outgoing call details from the Managers of Idea Cellular Limited and Airtel, he filed a charge sheet, which was taken on file as P.R.C.No.14 of 2010 on the file of Judicial Magistrate of First Class, Sangaredd. After compliance of Section 207 of Cr.P.C. and as the offences alleged are triable by the Court of Sessions, the case was committed to the Court of Sessions, which came to be numbered as S.C.No.144 of 2010.

5) Charges under Sections 302, 307 and 380 of IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

6) To substantiate their case, the prosecution examined PWs.1 to 21 and got marked Exs.P1 to P18 and M.Os.1 to 14. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused, in support of his defence.

7) On appreciation of the entire evidence on record, the Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

8) Learned counsel for the appellant/ accused would submit that the very framing of charge under Section 302 of IPC is defective. It is urged that when there are two deaths, the prosecution should have framed two different and distinct charges for the death of

two persons. In the absence of the same, he submits that the entire trial gets vitiated. Coming to the merits of the case, learned counsel for the appellant would submit that when PW.21, the injured was in a conscious state, the prosecution made no effort to question him as to who the assailant was. In the absence of any such effort being made, and since the injured eye witness came to be examined at the fag end of the trial i.e. after the examination of Investigating Officer, a doubt would arise as to whether the version of PW.21 can be relied upon to show the complicity of the accused in the crime. He would further submit that though D2 was alive for a period of two days, no effort was made to get his statement recorded by a Magistrate. According to him, when the prosecution party was able to shift the deceased from Prasad Hospital to another Hospital at Kukatpally and then to Gandhi Hospital, they could have as well taken steps to record the statement of D2 through a magistrate. In other words he pleads that when there is no record to show that either D2 or PW.21 were unconscious during the said period, every effort should have been made to get the dying declaration of D2 recorded. He would further submit that when the Investigating Officer claimed to have recorded the statement of PW.21 on 22.07.2009 and if really he spoke about the complicity of the accused in the commission of offence, there was no justification for the prosecution to examine him at the fag end of the trial i.e. after the evidence of the Investigating Officer. It is further submitted that if PW.21, who is now projected as eye witness to the case was examined at the

earliest point of time, definitely the accused would have got an opportunity to confront him with his earlier version and put the omissions and improvements to the Investigating officer, to find out the truth in his statement. In the absence of the same, he would submit that great prejudice has been caused to the accused, when the entire case rests on the evidence of PW.21.

9) It is further contended by the learned counsel for the appellant that there is any amount of doubt with regard to the identity of the accused and the appellant as the person who attacked the deceased. According to him, the name of the accused is Arjun Prasad Chowdary, but PW.21 stated the name of the accused as Arjun Serveher, when the investigating officer questioned him. The explanation which is sought to be given by the prosecution that PW.21 may not know the name of the accused cannot be accepted since all of them were living in one room and it will be very difficult to believe that PW.21 does not know the correct name of his room-mate.

10) On the other hand, learned Additional Public Prosecutor would submit that there is no reason to disbelieve the testimony of PW.21, who is an injured witness in the case. According to him, PW.21 gave detailed description about the manner in which the incident took place. It was further submitted that no prejudice would be caused to the accused, if PW.21 was examined at the fag end of the trial, as there is no procedure or any prescribed rule, which state that eye witness has to be examined only at the

beginning. He also submits that since the condition of D.2 was very serious and as he was not in a position to talk, no effort was made to get the dying declaration of D2 recorded. He submits that the argument of the learned counsel for the appellant that the prosecution ought to have examined the doctors, who examined the injured at the earliest point of time, may not be of much relevance, for the reason that in both the hospitals PW.21 was treated and then he was shifted to Gandhi Hospital. PW.21 was examined by PW.14-Dr A.Balraj in the Gandhi Hospital and issued Ex.P.8-injury certificate. According to him, PW.21 was unconscious and as such he was referred to duty Surgical Officer. The evidence of PW.21 coupled with the medical evidence which supports the version of PW.21, amply establishes the participation of the accused.

11) From the evidence available on record, it is clear that the entire case revolves around the evidence of PW.21. Before proceeding further, it would be useful to note that the prosecution failed to prove any motive for the accused to kill D1 and D.2 and also to cause injuries to PW.21. No enmity or ill was established or pleaded between the accused and D1 and D2 and PW.1. Further the accused is a known person and all of them were living under one roof and mess, in the premises of Pratap Steel Company, R.C.Puram and all of them used to work under PW.1.

12) The evidence of PW.21 would show that as on the date of incident, himself, D1 and D2 were sleeping in their room and at

about 05.00 am, the accused entered the room with a granite stone and killed D1 and D2 with that stone, by throwing it on their heads. On hearing the sound, PW.21 woke up and then the accused threw the said stone on his head, which he warded off by raising his hands. From the evidence of PW.21, it appears that the incident occurred in their room at 05.00 am. But the evidence of PW.2 is otherwise. According to him, on that day at about 06.00 am he went to the room of D1, woke him up and asked him to get ready by changing his uniform for working in second shift and when he returned back to the said room at 07.00 am, he noticed D1 and D2 and PW.21 with injuries. The evidence of PW.6 is to the effect that himself and the accused were working as security guards on the date of incident, till early hours, at S.R.Drugs. The accused left the duty at 05.30 am and went to his room stating that he has to prepare food. The charge which has been framed by the prosecution, does not anywhere indicate the time as to when the incident took place. In view of the varying version of the prosecution witness a doubt arises as to when and how the incident took place.

13) PW.20, the Investigating Officer in his evidence admits that he examined PW.21 for the first time on 22.07.2009. Though the doctor who treated PW.21 at Gandhi Hospital stated that PW.21 was unconscious on 21.07.2009, but PW.20 claims to have examined PW.21 on 22.07.2009. The evidence of PW.20 show that PW.21 did not categorically stated that the appellant as the person, who was responsible for the incident. If really PW.21 was

aware about the person, he could not have missed to mention the name of the accused, as the assailant, since the appellant was a known person. When the Investigating Officer was confronted with the earlier statement of PW.21, he admits that, when he examined PW.21, he was in a semi conscious state and was repeatedly referring to the name of the accused, but he did not state that the accused beat him and killed the two deceased. PW.20 in his evidence admits that PW.21 did not state to him, as to who beat him. He was only referring to the name of one Arjun Seveher, as the person, who beat him. He tried to explain the version of PW.21 by stating that probably PW.21 may not know the name of the accused person. At the same time, he admits that there is no person by name Arjun Seveher and as such he never made any effort to arrest or record the statement of Arjun Sever. It would be useful to extract the relevant portion in the cross examination of PW.20, with reference to the earlier statement of PW.21, which is as under:

"I did not mention specifically injured an eye witness. When I recorded the statement of PW.21, he was in hospital and was in semi conscious and was repeatedly saying the name of the accused but he did not state specifically that the accused beat and killed the two deceased persons. The witness adds the medical certificate also discloses the witness is in drowsy condition. PW.21 stated to me that he sustained injuries but he did not state specifically who beat him.

PW.21 stated the names of Arjun Seveher when I questioned him who beat him. Probably the PW.21 does not know the full name of the accused person. There is no

person by name Arjun Serveher as such I have not recorded the statement of Arjun Serveher. PW.21 belongs to the Orissa State and the accused belongs to Madhya Pradesh State as such he might have stated the name as Arjun Serveher. I did not mention in the charge sheet about the Arjun Serveher. I did not seize the I.D. card of the accused."

14) This statement of PW.21, runs contra to his version in the Court. As stated earlier when PW.21 was examined on 22.07.2009, he did not disclose the name of the assailants. Though PW.21 failed to mention the name of the person who caused injuries to him and others, the accused was taken into custody for interrogation and produced before PW.20 on 25.07.2009. He was interrogated, but as there was no strong evidence against him, he was let off. The said fact is admitted by PW.20. Therefore, even by 25.07.2009 i.e. even after recording the statements of PW.21 by PW.20, the complicity of the accused in the commission of offence was not established. From the above, it is clear that till 25.07.2009, even PW.21, the injured eye-witness, who lives with the accused, D.1 and D.2, was not aware about the assailant. His statement does not throw a needle of suspicion against the accused. Hence, the police interrogated the accused and left him as there was no strong material against him. But however, on 31.07.2009, the very same person was again arrested without their being any fresh material. On that day, he is said to have made a confession, which lead to recovery of cell phones of D1 and D2 and cash of Rs.1500/- belonging to D1 apart from a bag containing clothes. Since no such information was furnished, though he was

interrogated on 25.07.2009, a doubt arises as to whether the accused would have confessed about the same, a week later and produce cell phones and a bag belonging to D.1, before the police. Though the prosecution claims that the cell phone and the bag containing clothes are that of D.1 and D2, but none were examined to identify those objects. They were subjected to identification only through PW.21, for the first time in the Court. There are no special marks of identification on the cash and the two cell phones, which enabled PW.21 to identify the same, as belonging to D.1. Apart from that, PW.21 in his evidence admits that he does not remember whether he stated in his earlier statement about the accused committing theft of these articles from their room. To a suggestion, he admits that it is not true whether he has stated to the police that the accused has taken away the cell phone, clothes and cash bag belonging to D1 and D.2.

15) The record further discloses that PWs.2 to 4 informed about the injuries on D1, D2 and PW.21 and thereafter proceeded to the scene of offence. As per the evidence on record, PW.1 came to the spot at about 8 am, called the ambulance and took the injured to the hospital. The evidence of PW.3 discloses that at that time D.1 and D.2 were alive and PW.21, who was also injured in the incident was taken to the Sai Durga Hospital in the ambulance and later to Prasad Hospital where D.1 died and subsequently D2 died in the Gandhi Hospital. The injured PW.21 took treatment in Gandhi Hospital, but no evidence has been adduced by the prosecution, as to the condition of PW.21, right from the time of

incident till he was shifted to Gandhi Hospital. None of the witnesses, who reached the spot at the earliest point of time deposed about the condition of PW.21, namely as to whether he was conscious or unconscious. Further, the doctors, who are said to have treated the injured-PW.21 at Sai Durga Hospital and Prasad Hospital, Kukatpally, were not examined and no document has been placed on record to show the health condition of the injured. The only document which has been placed on record to show the health condition of PW.21 is the certificate issued by PW.14, the causality medical officer at Gandhi Hospital. He examined the injured at 9 PM on 20.07.2009. He observed that the patient was in unconscious state. But, however, he described the injuries sustained by PW.21 as simple in nature. As observed earlier, none of the witnesses, who reached the spot at the earliest point of time, stated that PW.21 was unconscious and no effort was made by any of the witnesses to find out the name of the accused. Even PW.21 never made any effort to disclose the name/s of the assailant.

16) Hence, it would be necessary to discuss the evidence of PW.21, who is the star witness to the prosecution, and who was examined after the evidence of the Investigating Officer.

17) Section 161 Cr.P.C., provides for oral examination of a person by the Investigating Officer, when the said person is acquainted with the facts and circumstances of the case. Section 162 Cr.P.C., explains the manner in which the police statement

recorded under Section 161 Cr.P.C., can be used at any trial. A perusal of Section 162 Cr.P.C., bars use of the said statement recorded by the police, except for the limited purpose of contradiction of such witness, as indicated therein.

18) The word “contradiction” means to affirm the contrary and therefore, the accused is entitled to put a witness any part of his previous statement made to a Police Officer, which affirms the contrary of what he has stated in evidence in the Court.

19) Section 145 of the Indian Evidence Act reads as under:

“145. Cross –examination as to previous statements in writing:- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

20) The above section indicates the manner in which contradiction is to be brought out in the cross examination. Hence, the counsel shall put relevant portion of the statements which affirms the contrary to what is stated in evidence. This indicates that there is something in writing that could be set against the statement made in the evidence. If the statement before the police officer and the statement given or deposed before the Court are so inconsistent or

irreconcilable with each other, it can be said that they are contradictory to each other.

21) The word “duly proved” used in Section 162 Cr.P.C., came up for consideration before the Apex Court in V.K.Mishra’s case. Dealing with the same, the Court held the words ‘duly proved’ used in Section 162 Cr.P.C., clearly show that the record of the statements of the witnesses, cannot be admitted in evidence straightaway nor can be looked into, but they must be duly proved for the purpose of contradiction by eliciting admissions from the witnesses during cross-examination and also during the cross-examination of the Investigating Officer. Statement before the Investigating Officer can be used for contradiction, but only after strict compliance of Section 145 of the Evidence Act i.e., by drawing attention to the parts intended for contradiction.

22) The intention of legislature in framing Section 162 was to protect the accused against the use of the statements of witnesses made before the police during investigation, at the trial, presumably on the assumption that the said statements were not made under circumstances inspiring confidence. The section as well as proviso is intended to serve the interest of the accused. The section, while, it enacts an absolute bar against the statement made before a Police Officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided under Section 145 of the Evidence Act by drawing his attention to parts of

the statement intended for contradiction. It is to be noted here that the said statement cannot be used for corroboration for prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence witness or a court witness. (Tahasildar Singh and another v. State of UP¹).

23) Therefore, the statement of witness made before the Investigating Officer under Section 161 Cr.P.C., can be used for the purpose of contradiction, but not for corroboration. The statement recorded under Section 161 Cr.P.C., is expressly made inadmissible except to contradict the maker thereof, as envisaged under Section 145 of the Evidence Act. The procedure that is to be followed, which would be in conformity with Section 145 of the Evidence Act i.e. to contradict the evidence given by the prosecution witness at the trial, with the statement made by him before the police during the investigation. That is, to draw the attention of the witness to that part of the contradictory statement, which he made before the police and question him whether he in fact made the statement. If the witness admits, having made the particular statement of the police, that admission will go into the evidence and will be recorded as part of the evidence of the witness and can be relied upon by the accused for establishing the contradiction. However, if, on the other hand, the witness denies to have made such a statement before the police, the particular portion of the statement recorded should be marked for identification and when the Investigating Officer comes into the

¹ AIR 1959 SC 1012

witness box he should be questioned as to whether such a statement was made to him by the witnesses during the course of investigation. The answers given would prove the statement and the same shall be treated as evidence.

24) In *V.K.Mishra and another v State of Uttarakhand and another*², the Apex Court held as under:

“15. Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.”

25) From the record, it appears that the omissions and contradictions in the statement of PW.21, which were elicited through the investigating Officer were sought to be filled up by examining PW.21 at a later point of time. It is not the case of the prosecution that PW.21 was not available to be examined prior to the examination of the Investigating Officer. It appears that since the statement of PW.21 recorded under Section 161 Cr.P.C. was not of much help to the prosecution, so to connect the accused with the crime, he was examined after the examination of the

² 2015(2) ALD (CrI) 533 (SC)

investigating officer, who recorded the 161 Cr.P.C. statement of PW.21. It appears that an effort was made by the prosecution to establish the guilt of the accused by examining PW.21 after the examination of the investigating officer, to get over the admissions elicited from PW.20-the Investigating Officer. Otherwise, there was no reason for the prosecution to examine PW.21 after the evidence of PW.20, the Investigating Officer. Hence, the omissions, contradictions and improvements in the evidence of PW.21 could not be elicited through the evidence of the investigating officer-PW.20 and get them marked as defence documents. Unless these contradictions and improvements are elicited and marked, the accused will not be in a position to establish his defence, more so when the entire case rests on the solitary testimony of PW.21.

26) In view of the judgment referred to above and having regard to the circumstances stated above, a doubt arises as to whether really the appellant/ accused was responsible for the death of D1 and D2 and for injuries to PW.21. Hence, the conviction and sentence imposed by the trial Court are liable to be set aside.

27) Accordingly, the criminal appeal is allowed setting aside the conviction and sentences recorded against the appellant herein for the offences punishable under Sections 302, 307 and 380 of IPC by the II Additional District and Sessions Judge, (FTC), Sanga Reddy in S.C.No.144 of 2010. Consequently, the appellant/ accused shall be

set at liberty forthwith, if not required in connection with any other case.

28) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

10.11.2017

Note: L.R. copy to be marked
b/ o kvrm

