

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.242 OF 2011

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

1. This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.') is filed by the appellant/accused questioning the judgment dated 09.12.2010, passed in Sessions Case No.139 of 2008 by the Principal District and Sessions Judge, Vizianagaram (for brevity, 'the trial Court'), whereby the trial Court convicted the accused under Section 235(2) Cr.P.C. and sentenced him to undergo Rigorous Imprisonment for life and also to pay a fine of Rs.1,000/- (Rupees one thousand only) for the offence under Section 302 of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.'), and to undergo Rigorous Imprisonment for a period of two (2) years and also to pay a fine of Rs.1,000/- (Rupees one thousand only) for the offence under Section 201 I.P.C., by holding that both the sentences shall run concurrently and the accused is entitled to the benefit of set off under Section 428 Cr.P.C.

2. Heard Sri Challari Nageswara Rao, learned counsel appearing for the appellant-accused, and Sri Posani Venkateswarlu, learned Public Prosecutor, appearing for the respondent-State (A.P.).

3. The case of the prosecution, in brief, is D.Srihari Raju (P.W.13), Inspector of Police, Vizianagaram Rural Circle, laid charge sheet against the accused alleging that accused, resident of Siripuram village, and Kotla Jampayya (hereinafter referred to as 'the deceased'), resident of Malicharla village, were working as masons under Pathivada Krishna (P.W.3), a masonry contractor, and by the date of offence, both the accused and deceased, who are friends, used to attend the works in B.C. Colony, Vanthithadi Agraharam in Vizianagaram. One month prior to the offence, accused gave Rs.200/- to the deceased requesting him to take a room or house for rent; as the deceased failed to do so, the accused started demanding the deceased to return the said amount, ten days prior to the offence, differences arose between them. On 08.03.2008, the accused and deceased, after completion of their works in the B.C. Colony, took an advance from P.W.3 and went to Swapna Bar in V.T. Agraharam, which was by the side of Vizianagaram to Visakhapatnam Road. When the accused and deceased were in the bar, Korukonda Srinu (P.W.5) and Pitta Prasad (L.W.3), who were also masons, witnessed them. At about 10:00 p.m., the accused and deceased came out of the Bar and on the request of deceased, both of them proceeded to the house of deceased towards Malicharla and on the way, they stopped their cycles at the house of Baditamanu Pydamma (P.W.6) near Sunkaripeta, wake her up and consumed toddy. Further, on their way towards Malicharla, accused and deceased entered into a drunken brawl

at a distance of 100 yards from the house of P.W.6, which was near the dry land of Sunkari Ramu Naidu, and the wordy altercation snowballed into physical assault; wherein, the accused threw his towel around the neck of the deceased, twisted and caused death. Thereafter, the accused to avoid detection of crime, pulled the dead body towards the Palmyra hedge and dumped it in the bushes along with the cycle of the deceased; in that process, the accused sustained a small injury on his left hand and his shirt buttons fell at that place and thereafter the accused went away from the scene of offence. When Kotla Ramulamma (L.W.4), Kotla Jyothi (P.W.4) and Korada Swamy Naidu, mother, wife and brother of the deceased were worrying about the non-return of deceased, Suvvada Rama Krishna (P.W.8) sent a word to them the presence of a dead body at Palmyra hedge; accordingly, they went to the spot. K.Tirumala Rao (P.W.1), village secretary of Malicharla gave report to M.Papa Rao (P.W.12), Sub-Inspector of Police, Vizianagaram Rural police station, who registered the same as a case in Crime No.30 of 2008 initially under Section 174 Cr.P.C. and later altered the same to Section 302 I.P.C. Thereafter, P.W.13 took up investigation in the matter, rushed to the scene of offence, got photographed the scene of offence, prepared mediatorsnama, conducted inquest over the dead body of deceased, recorded the 161(3) Cr.P.C. statements of the witnesses and sent the dead body for conducting post-mortem examination and arrested the accused on 17.03.2008, basing on

the report of Kotla Srinu (P.W.7), Panchayat Secretary of Siripuram village, before whom the accused is alleged to have made an extra judicial confession about his commission of the offence, and sent him to judicial remand.

4. The learned Magistrate committed the case to the Court of Principal District and Sessions Judge, Vizianagaram, and after hearing both sides framed charges against the accused for the offences under Sections 302 and 201 I.P.C., for which he denied the charges and claimed to be tried. The prosecution to substantiate its case examined P.Ws.1 to 13, marked Exs.P.1 to P.17 and M.Os.1 to 8. The accused was examined under Section 313 Cr.P.C., denied the incriminating evidence, did not adduce any evidence to defend his case. The trial Court, on appreciation of the entire evidence on record, convicted and sentenced the accused as stated above. Aggrieved by the conviction and sentence recorded, the present appeal is preferred by the accused.

5. The learned counsel for the accused would submit that there are no direct witnesses to the alleged offence. The entire case of the prosecution is based on the circumstantial evidence, which is weak evidence. There is no evidence to hold that there was a drunken brawl between the deceased and the accused. The whole case of the prosecution is based on the last seen theory. The evidence of P.Ws.2 and 6 is inconsistent. The evidence of P.W.5 is also doubtful. The prosecution failed to prove the motive for commission of the offence. The trial Court

ought not to have placed reliance on the evidence of P.Ws.2, 3, 5 and 6. The extra judicial confession said to have made by the accused is not supported by P.W.7. The proximate time of death stated by P.W.9, Dr.B.Ajay Kumar, is not coinciding and tallying with the time of death alleged by the prosecution. There are two views possible. P.Ws.8 and 10 punch witnesses did not support the recovery of material objects. The prosecution failed to prove the guilt of the accused beyond all reasonable doubt and ultimately prayed to allow the appeal setting-aside the conviction and sentence recorded against the accused.

6. On the other hand, the learned Public Prosecutor would contend that P.Ws.2, 5 and 6 are all independent witnesses; they have specifically stated they saw the accused and deceased together on 08.03.2008; there is no inconsistency in the oral and medical evidence. The prosecution proved the motive; the trial Court appreciated the entire case of prosecution and rightly convicted and sentenced the accused for the offences under Sections 302 and 201 I.P.C. There are no material omissions and contradictions; there is nothing to take a different view. The accused failed to rebut the circumstances appearing against him. The prosecution proved the guilt of the accused beyond all reasonable doubt and ultimately prayed to sustain the conviction and sentence recorded against the accused by dismissing the appeal.

7. In view of the contentions put forth by both the counsel, the following **points** have come up for determination:

1. Whether the accused caused the death of Kotla Jampayya (deceased)?

2. Whether the conviction and sentence recorded against the accused is liable to be set-aside?

8. **POINT Nos.1 and 2:** In view of the contentions put forth by both sides, it is apt to refer the evidence on record. The evidence of P.W.1 K.Tirumala Rao, who is the de-facto complainant in this case, reveals that he found the dead body with bleeding injuries from nose and lodged Ex.P-1 report to the Police. In his report, he identified the dead body as Kotla Jampayya of Malicharla village.

9. The evidence of P.W.2 Badithamani Suri reveals that he is a toddy tapper and P.W.6 is his wife. He is having a toddy stall at Sunkari Ramu Naidu's dry land, situated in Sunkaripeta village and his shop is at a distance of 200 yards from Sunkaripeta junction. He knows the deceased and accused who are masons by profession and used to visit his shop for purchasing toddy. He found the dead body of the deceased about one year ten months back prior to his deposition at about 06:00 or 07:00 a.m. on Monday in the palmyrah hedges of Sunkari Ramu Naidu's dry land of Malicharla village. He found blood oozing from nose of the dead body. He found M.O.1 - cycle, M.O.2 - steel carriage with plastic bag. P.W.2 has also specifically stated that two days prior to noticing the dead body *i.e.*, on Saturday at 10:00 p.m. the accused and deceased came to his shop and purchased toddy from his shop. At that time,

his wife was also present in the shop. The accused and deceased consumed two bottles of toddy on that day without paying money to him.

10. The evidence of P.W.3 Pathivada Krishna reveals that he is a resident of B.C. Colony, V.T. Agraharam, Vizianagaram. He is a mason and knows the deceased and accused who worked under him for some time. On 08.03.2008 at about 09:00 a.m. the accused and deceased came to him to work under his control; both of them worked under him in B.C. Colony, Vizianagaram till 06:00 p.m. on 08.03.2008 and after completion of work, the accused and deceased requested him to provide Rs.600/- and he paid Rs.600/- and thereafter both of them went away. On the next day morning, wife of the deceased telephoned him stating that the deceased did not return to his house and requested him to enquire into the matter. On 10.03.2008 morning, he came to know that the deceased died and his dead body was lying at the palmyrah hedge, situated at the outskirts of Sunkaripeta village. Immediately, he went and saw the dead body of deceased. He also noticed M.Os.1 and 2 there.

11. The evidence of P.W.4 Kotla Jyothi, wife of deceased, reveals that the deceased and accused used to work together under P.W.3 and her husband died one year eight months prior to her deposition. On Saturday, her husband left the house and did not return home, then she enquired the whereabouts of her husband; on the next day morning she telephoned to P.W.3 and

enquired the whereabouts of her husband; P.W.3 told her that the deceased and accused left him on Saturday evening after completion of their work by taking Rs.600/- from him. On Monday morning at about 08:00 a.m., she came to know about the death of her husband and finding his dead body at palmyrah hedges in Sunkaripeta village; she went there and saw the dead body of her husband.

12. The evidence of P.W.5 Korukonda Srinu reveals that he is a resident of Malicharla village; he is a mason by profession and knows the deceased and accused as all of them used to work under P.W.3. There are many persons who also used to work under P.W.3. One year eight months prior to his deposition, the deceased died. He along with the deceased and accused worked in the B.C. Colony at V.T. Agraharam, Vizianagaram on one Saturday and they completed the work at 05:30 p.m. on that day and thereafter three of them left the work place. On the same day, at about 08:00 p.m. he saw the deceased and accused taking liquor in Swapna bar, Vizianagaram. He was there for half an hour and left there. On the next day morning P.W.3 informed him that the deceased did not return to his house and on Monday morning at about 08:00 a.m., he saw the dead body of deceased at palmyrah hedges, situated at the outskirts of Malicharla village.

13. The evidence of P.W.6 Baditamanu Pydamma reveals that she is a toddy tapper by profession. P.W.2 is her husband; they are having a toddy shop at Sunkaripeta junction; she was

selling toddy to customers; her husband (P.W.2) is tapping toddy and collecting toddy from the trees. She knew the accused and deceased in this case; both of them are masons; they used to purchase toddy from her shop. One year nine months prior to her deposition, the deceased died. In those days on one Saturday at about 10:00 p.m., the deceased and accused came to her shop; at that time P.W.2 and her husband were present. The deceased and accused purchased toddy for Rs.20/-, both consumed the toddy and later they left the shop. On next day after Sunday *i.e.*, Monday, P.W.2 went to the Sunkari Ramu Naidu's dry land, found the dead body of deceased in the palmyrah hedges, situated in the land of Sunkari Ramu Naidu, and P.W.2 informed the same to her and later went to the house of P.W.8 and informed the same to him. P.W.6 also saw the dead body there.

14. The evidence of P.W.7 Kola Srinu reveals that he was Panchayat Secretary of Siripuram village and accused did not confess about the commission of offence in his presence. On 17.03.2008, one police constable asked him to come to Police Station to record the confession of a person. In the police station, he examined the accused and recorded his statement, which is Ex.P-2; wherein the accused confessed the commission of offence and signed thereon. Thereafter, he signed Ex.P-2 statement recorded by him. As per the evidence of P.W.7, the alleged confession was made and reduced in

writing in the presence of police personnel. So it has no evidentiary value.

15. The evidence of P.W.8 Suvvada Rama Krishna, Sarpanch of Malicharla village, reveals that on 10.03.2008 at about 11:30 a.m. he visited the scene of offence, situated at Thatipendi in the land of Sunkari Ramu Naidu and found the dead body of deceased. He found the injuries over the chin and backside of the neck of the deceased. There, the police seized M.Os.1 and 2, black plastic chappals, one iron nail, one shirt button and one towel. The police prepared Ex.P-4 observation panchanama and P.W.10 B.Nageswara Rao drafted the observation panchanama and he attested the same. M.O.3 is the big iron nail. M.O.4 is one pair of black plastic chappals. M.O.5 is one white colour shirt button and M.O.6 is the towel red and blue in colour. Ex.P-5 is the inquest panchanama.

16. The evidence of P.W.10 B.Nageswara Rao reveals that police took him and P.W.8 to the land of Sunkari Ramu Naidu; wherein they found a male dead body with injuries and blood stains and found M.O.1 cycle there. Police prepared the observation panchanama Ex.P-4. On 17.03.2008 he was in the Police station, P.W.8 was also there at 12 noon the confession made by the accused was reduced into writing; during interrogation, the accused stated his clothes stained with blood and he would show the same to the police if they follow him. Ex.P-11 is the relevant portion of confessional statement of the accused. The accused led them to his house situated near

Ramamandiram and produced M.O.7 shirt, M.O.8 pant stained with blood; police seized them under the cover of panchanama and he signed on the panchanama along with P.W.8.

17. The evidence of P.W.11 N.Adinarayana reveals that he is working as Assistant Director in R.F.S.L., Visakhapatnam and on receipt of property, after conducting analysis, issued Ex.P-12 R.F.S.L. report specifically stating that in item Nos.1, 2, 3 and 4 he found ethyl alcohol.

18. The evidence of P.W.12 M.Papa Rao, Sub-Inspector of Police, Vizianagaram Rural Police Station, reveals that on receipt of Ex.P-1 report from P.W.1 on 10.03.2008 at 09:00 a.m., he registered the same as a case in Crime No.30 of 2008 for the offence under Section 174 Cr.P.C. and issued Ex.P-13 F.I.R., and handed over the investigation to P.W.13, Circle Inspector of Police, Vizianagaram Rural Circle, and assisted him during the conduct of investigation in this case.

19. The evidence of P.W.13 D.Sreehari Raju, reveals that on 10.03.2008 at 09:00 a.m. on information, he reached to the police station, took up investigation in this case. His evidence further reveals the conduct of scene of offence panchanama and inquest panchanama in the presence of P.Ws.8 and 10 and seizure of M.Os.1 to 6 during investigation. Ex.P-14 is the rough sketch of the scene of offence. He further deposed about finding of injuries over the dead body and recording statements of witnesses in this case. He further deposed about the

confession made by the accused in the presence of P.Ws.8 and 10 and recovery of blood stained clothes of the accused *i.e.*, M.Os.7 and 8 under Exs.P-11 and 16 and further stated that he forwarded the material objects through S.D.P.O. Vizianagaram to R.F.S.L., Visakhapatnam and Ex.P-12 is the R.F.S.L. report received by him and altered the Section of law to 302 I.P.C.

20. The prosecution mainly relied on the evidence of P.Ws.2, 3, 5 and 6; though P.W.7 is introduced to prove the extra judicial confession alleged to have made by the accused, he did not support the case of prosecution. P.W.7 specifically stated that Ex.P-2 statement was recorded by him in the presence of police. So the evidence of P.W.7 is of no use to the prosecution. It is required to be seen whether the evidence of P.Ws.2, 3, 5 and 6 is reliable. P.Ws.2 and 6 are husband and wife, who own toddy shop at Sunkari Ramu Naidu's dry land, situated 200 yards from the Sunkaripeta junction. Both these witnesses have stated that they know the accused and deceased, prior to the death, in this case, both used to visit their shop to consume toddy. There is also specific evidence of these witnesses that two days prior to the death of deceased *i.e.*, on Saturday night at 10:00 p.m. the accused and deceased purchased toddy from their shop and consumed toddy in their shop. Thereafter, both of them left the shop. Two days later the dead body of the deceased was found at palmyrah hedges of Sunkari Ramu Naidu's dry land. P.W.2 has stated about the presence of injuries over the dead body and oozing of blood. P.W.6 also

stated that she was informed the finding of dead body by P.W.2 and then she went and saw the dead body. In cross-examination both the witnesses reiterated what they have stated in their chief-examinations. Both of them denied that they were deposing false, have also stated that their statements were recorded by the Police. Further, P.W.2 had given the details with regard to the scene of offence and the other details of his toddy shop. No animosity or grudge or reason is suggested to these witnesses to depose falsely against accused. There is specific evidence of these witnesses that on Saturday night at 10:00 p.m. the accused and deceased purchased toddy from their shop and later they found the dead body of deceased on Monday morning around 07:00 a.m. that too at the palmyrah hedges situated at Sunkari Ramu Naidu's dry land. As per the evidence of P.Ws.2 and 6 their toddy shop is also situated at Sunkari Ramu Naidu's dry land, which goes to show the dead body was found near the shop of P.Ws.2 and 6. There is no evidence that after leaving the toddy shop of P.Ws.2 and 6 the deceased was not seen alive. There is also specific evidence of P.W.5, who is also a mason and co-worker of deceased and accused, that he found the accused and deceased together in Swapna bar on Saturday night at 08:00 p.m. P.W.5 also specifically stated that he found the deceased and accused taking liquor in Swapna bar and he was there for half an hour. There is also evidence of P.W.4 wife of deceased that her husband did not return home on Saturday night;

thereafter, he started searching for him along with others and telephoned to P.W.3. The evidence of P.W.3 corroborated with the evidence of P.W.4. P.W.3 in turn telephoned to P.W.5 with regard to the deceased not returning to his home on Saturday night. P.W.5 categorically deposed the same in his evidence, which establishes that the deceased did not return to home on Saturday night; thereafter, on Monday morning *i.e.*, 10.03.2008 at 07:00 a.m., his dead body was found near the toddy shop of P.Ws.2 and 6. There is also evidence of P.W.3, who is also a mason and supervisor, under whose control the deceased, accused and P.W.5 used to work, that the accused and deceased took Rs.600/- from him at about 06:00 p.m. on 08.03.2008 and left the work place. On the very same night at about 08:00 p.m. the accused and deceased were seen in Swapna bar by P.W.5.

21. The evidence of P.W.9, doctor, reveals that bleeding from nose was present; blood mixed whitish froth present in mouth; tongue protruded out black in colour; mouth opened; right eye red in colour; bleeding from right eye present; semen present over penis; fecal matter present over anal; face was swollen; an abrasion over right side chin region size of 1 x 1 c.m.; multiple abrasions over neck, chest, abdominal wall present; a band congestion present over thyroid region encircling the neck size of 2 x 2 c.m. black in colour; cut section bleeding spots present in subcutaneous tissue; swelling of chest present; an abrasion over back of chest size 1 x 1 c.m.; an abrasion size of 1 x 1 c.m.

below and back of both ears; scalp, skull, thyroid, ribs, chest wall, spine and abdominal wall are intact; brain meninges normal size, cut section congested; hyoid bone fractured on both sides of horns; plural cavity, lungs normal size; cut section congested; heart normal size, cut section congested; stomach small intestine normal size, cut section; partially digested food particles present in side stomach; liver, spleen, kidneys normal size, cut section congested; urinary bladder empty; scrotal swelling present, cut section bleeding are found on the dead body of deceased. P.W.9 further opined that the death of deceased is homicidal and the deceased appears to have died 36 to 48 hours prior to his examination due to mechanical asphyxia due to throttling and consumption of alcohol. There is also evidence of P.W.9, doctor, that ethyl alcohol is found in the stomach and no poisonous substance was found. Ex.P-8 post-mortem examination report and Ex.P-9 R.F.S.L. report reveals the same. As per the medical evidence on record, the death was caused 36 to 48 hours prior to post-mortem examination, which clearly establishes that the death was caused after 10:00 p.m. on 08.03.2008. There is no inconsistency with regard to the time of death. P.W.11 the Assistant Director, R.F.S.L. Visakhapatnam, issued Ex.P-12 report stating that ethyl alcohol is found in Items 1, 2, 3 and 4, sent for analysis. It establishes that the deceased consumed alcohol prior to his death. These circumstances corroborates with the evidence of P.Ws.2, 5 and 6. The oral evidence is consistent and corroborated with the

medical evidence. There is also evidence that M.O.7 shirt and M.O.8 pant were seized pursuant to the confession made by the accused, were subjected to forensic science examination. Ex.P-9 is the R.F.S.L. report issued by one K.Arun Jyothi, Assistant Director. It is evident from Ex.P-9 that on examination of Item Nos.1 to 3 *i.e.*, each bottle labeled as “K.JAMPAYYA” contains stomach and a piece of intestine in brownish turbid liquid, pieces of liver, spleen and kidney in brownish turbid liquid and pieces of lung in brownish turbid liquid, blood was detected on item Nos.1 and 2 and the origin of blood stains on item No.1 is of human origin. Item No.2 is M.O.8 pant seized pursuant to the confession made by the accused, where blood is detected, which is also incriminating circumstance against the accused. When the accused was examined under Section 313 Cr.P.C. with regard to the entire incriminating evidence appearing against him, he simply denied the same stating false and he did not commit the offence and falsely implicated in this case, did not choose to examine any witness to rebut the same.

22. As per Section 106 of the Indian Evidence Act, 1872 (for short, ‘the Act’), the accused is required to explain the facts within his knowledge. Section 106 of the Act reads as follows:

“106. Burden of proving fact especially within knowledge – When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

23. In ***State of M.P. Vs. Ratan Lal***¹, the Hon'ble Supreme Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with his innocence, the absence of such explanation itself is an additional link which completes the chain. Similar are the circumstances in the case on hand. The answers given by the accused *i.e.*, did not commit the offence will go a long way in completing the chain of circumstances in establishing his guilt.

24. Learned counsel for the accused has relied on a decision of the Hon'ble Supreme Court in ***State of M.P. Vs. Sanjay Rai***², wherein the Hon'ble Supreme Court held that the opinion of authors given in textbooks has persuasive value cannot always be considered to be authoritatively binding. Such notions cannot be elevated to or placed on a higher pedestal than opinion of expert examined in Court. In the instant case, there is specific evidence of P.W.9, doctor, with regard to the cause of death. The death is not due to consumption of any poisonous substance. As per the evidence on record, the deceased was

¹ AIR 1994 SC 458

² AIR 2004 SC 2174

beaten and thereafter throttled to death. The evidence of doctor cannot be discarded. In ***State of U.P. Vs. Satish***³, the Hon'ble Supreme Court observed that the name of the accused was not found in First Information Report, there was delay in examining the witnesses by the Investigating Officer, the prosecution established the presence of accused nearby the place of scene of offence, it leads only suspicion. Those circumstances make punishment unjustifiable. In ***Ramreddy Rajeshkhanna Reddy and another Vs. State of Andhra Pradesh***⁴, the Hon'ble Supreme Court observed that it was extremely difficult to purport the exact time of death of the deceased, more so when no sufficient reason was assigned in the post-mortem report. The case is based on circumstantial evidence; there was lot of time gap between the point of time when the accused and deceased were last seen together alive and held that the prosecution cannot be said to have established the guilt of the appellants beyond all shadow of doubt, set-aside the conviction and sentence recorded against the appellants. In the case on hand, there is evidence of P.Ws.2 and 6 at night about 10:00 p.m. they saw both the accused and deceased at their shop, who purchased toddy bottles in their shop. On the next day morning at 07:00 a.m. near their shop they found the dead body of the deceased. The time gap between the last seen theory is very short. Merely because the name of the accused is not found in the First Information Report, the prosecution case

³ AIR 2005 SC 1000⁴ AIR 2006 SC 1656

cannot be discarded. There is no delay in recording the statements of witnesses by the Investigating Officer. Therefore, no reliance can be placed on the decisions **Satish³** and **Ramreddy Rajeshkhanna Reddy⁴**.

25. There is no reason to discard the testimony of P.Ws.1 to 6 and other witnesses; all these witnesses are truthful witnesses. P.Ws.2, 5 and 6 have got prior acquaintance with the deceased and the accused. There is no animosity or grudge or any reason for these witnesses to depose falsely against the accused and implicate him for the death of deceased. Though there are no direct witnesses to the alleged offence, the circumstances placed on record taken cumulatively form the complete chain and there is no escape from the conclusion that, in all human probability, the death of the deceased was caused by the appellant/accused and none else. The circumstantial evidence is amply clear to sustain the conviction and incapable of explanation of any other hypothesis than that of not guilty of the accused. The evidence adduced by the prosecution is consistent, cogent and reliable unerringly pointing towards the guilty of the accused and it is not inconsistent with his innocence.

26. It is evident from the medical evidence placed on record that the manner in which the deceased was attacked, assaulted, caused injuries and ultimately put an end by throttling establishes the clear intention on the part of the accused to kill the deceased. The trial Court has rightly

analyzed the entire evidence on record and came to the just conclusion; no other conclusion is possible; there is no infirmity in the impugned judgment. It cannot be said that some unknown person/persons have committed the offence in this case. All contentions raised on behalf of the accused deserve no consideration. The prosecution has proved the guilt of the accused beyond all reasonable doubt of the charges framed against him for the offences under Sections 302 and 201 I.P.C. Therefore, the appeal is devoid of merits and is liable to be dismissed.

27. In the result, the Criminal Appeal is dismissed and the conviction and sentence recorded against the appellant/accused by the trial Court in Sessions Case No.139 of 2008, *vide* the judgment dated 09.12.2010, is confirmed.

28. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall also stand dismissed.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 06-10-2017
Dsh

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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CRIMINAL APPEAL No.242 OF 2011

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 06-10-2017

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