

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL NO.550 OF 2012

ORDER: (*Per Hon'ble Sri Justice M.Satyanarayana Murthy*)

The accused in Sessions Case No.230 of 2011 on the file of V Additional District and Sessions Judge (FTC), Khammam at Kothagudem, preferred this criminal appeal under Section 374(2) Cr.P.C, challenging the conviction and sentence passed in calendar and judgment dated 14.03.2012.

One Jalli Bhadraiah (P.W.1), the defacto complainant and the accused Jalli Radha Krishna are the residents of Jallivarigudem. P.W.2 Jalli Chandramma is the wife of Jalli Bhadraiah. Kalluri Muthaiah, the deceased is the sister-in-law's son of P.W.1-Jalli Bhadraiah. P.W.3-Karam Bojji is the brother of the deceased and resident of Kaiguru Village of Chintoor Mandal. P.W.4-Jalli Chinnathamaiah, P.W.5-Punam Chandraiah, L.Ws. 6 to 11 i.e. Jalli Somaiah, Jalli Pullarao, Jalli Subbamma, Jalli Nagaiah, Jalli Laxman Rao and Jalli Raju are also residents of Jallivarigudem, all are closely related to one another.

The facts of the case in nutshell are that, on 05.01.2011 at about 07:00 P.M, the accused went to the house of P.Ws.1 & 2 and Kalluri Muthaiah (deceased) and took away Kalluri Muthaiah (deceased), offering feast, went to their fields, had toddy at their fields. After that, the accused invited Kalluri Muthaiah (deceased) for dinner in his house, then the accused and Kalluri Muthaiah

(deceased) had dinner in the house of the accused. At that time, Kalluri Muthaiah (deceased) enquired about the wife of the accused repeatedly. Further, it is alleged that Kalluri Muthaiah (deceased) used to visit the house of the accused frequently in this absence. On repeated enquiry, the accused suspected that Kalluri Muthaiah (deceased) might have developed illicit intimacy with his wife and decided to do away the life of Kalluri Muthaiah (deceased). Then, on the same day at about 22:00 hours, after dinner, the accused took spade which was available in the house and bet Kalluri Muthaiah (deceased) on his head. Later, the accused took an axe and bet Kalluri Muthaiah (deceased) on his head with butt of axe. On that, the accused under the impression that Kalluri Muthaiah (deceased) died, left him in the house by hiding axe and spade in the backyard of the house. During the early hours, on 06.01.2012, wife of the accused found Kalluri Muthaiah (deceased) in pool of blood and struggling for life. Thereupon, she went to the house of P.W.4 and informed about the incident and in turn, P.W.4 informed the matter to Jalli Pulla Rao-L.W.7. Immediately, Jalli Pulla Rao-L.W.7 visited the house of the accused and found Kalluri Muthaiah (deceased) in unconscious state in pool of blood. Immediately, Jalli Pulla Rao-L.W.7 made a telephonic call to P.W.2. On that, P.W.2, along with P.Ws 1 & 3 went to the house of the accused found Kalluri Muthaiah (deceased) in pool of blood, struggling for his life. Then, L.Ws 1 to 3 and others questioned the accused about the incident and the accused confessed that he had committed the offence, as Kalluri Muthaiah (deceased) had illicit

relationship with his wife. Then, Kalluri Muthaiah (deceased) was shifted to Government Hospital, Chintoor and after first aid, he was shifted to Government Area Hospital, Bhadrachalam, where he succumbed to injuries on 07.01.2011 at 23:00 hours. On the report-Ex.P-1 by Jalli Bhadraiah (P.W.1), the Station House Officer, V.R. Puram registered a case in Crime No.1 of 2011 for the offence punishable under Section 302 IPC, issued F.I.R-Ex.P-16 and investigated the matter.

During the course of investigation, the Investigating Officer visited the Government Area Hospital, Bhadrachalam, examined the witnesses, got photographed the dead body of Kalluri Muthaiah (deceased)-Ex.P-5 to P-8, held inquest over the body of Kalluri Muthaiah (deceased) in the presence of mediators and blood relatives-Ex.P-2 and referred the dead body for post-mortem examination-Ex.P-15 is the Post Mortem Report. Later, Circle Inspector of Police, Chintoor (L.W.20) took up investigation, verified the investigation done by the Sub-Inspector of Police, Kunvaram, I/c V.R. Puram Police Station. Later, the Circle Inspector of Police examined L.Ws. 7 to 11 and observed the scene of offence in the presence of mediators, drawn rough sketch of the scene of offence and crime details form-Ex.P-4 and also took photographs of the scene of offence-Exs.P-10 to P-13. Later, the accused was arrested on 08.01.2011 at 03:00 P.M and on interrogation, in the presence of mediators, the accused confessed that he had committed the offence and on the confession made by the accused, spade (M.O.1) and axe (M.O.2) were seized from the possession of accused under

the cover of panchanama in the presence of P.W-8, sent to Forensic Science Laboratory for examination along with letter of advice, received of FSL Report-Ex.P17.

After collecting the entire material including, post-mortem examination report-Ex.P-16 and FSL Report-Ex.P-17, Circle Inspector of Police, Chintoor filed charge sheet against the accused/appellant and cognizance of the case was taken for the offence under Section 302 IPC by the Judicial Magistrate of First Class and registered the same as PRC No.16 of 2011. The Judicial Magistrate of First Class committed the case to the Sessions Division, Khammam, as the offence under Section 302 IPC is exclusively triable by Court of Sessions. The Principal Sessions Judge, Khammam, registered the same as Sessions Case No.230 of 2011 and later made over the same to V Additional District and Sessions Judge (FTC), Khammam at Kothagudem.

On production of the accused, on execution of N.B.W, the accused was remanded to judicial custody. Upon hearing, the learned Additional Prosecutor and the Defence Counsel, the Sessions Court framed charge against the accused/appellant for the offence punishable under Section 302 IPC, read over and explained to him in Telugu, he pleaded not guilty and claimed to be tried.

During trial, the prosecution has examined PWs. 1 to 12 and got marked Exs.P-1 to P-17, M.Os.1 & 2 to substantiate the case of the prosecution. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C, explained the

incriminating material that appeared against him in testimony of prosecution witness and he denied the same, wife of the accused was examined as DW.1 and Dr. P. Rama Rao was examined as DW.2, got marked Exs.D-1 and D-2 in defence of the accused.

Upon hearing argument of learned Additional Prosecutor and Defence Counsel, the Court below found the accused guilty for the offence punishable under Section 302 IPC, convicted and sentenced him to undergo rigorous imprisonment for life and to fine of Rs.10,000/- with default sentence of Rigorous Imprisonment for six months. Aggrieved by the conviction and sentence passed by the Court below in Sessions Case No.230 of 2011, the present appeal is preferred through legal-aid-counsel.

The gist of main grounds urged in the grounds of appeal is as follows:

- a) Except evidence of P.Ws 1 to 4 & 6, who are highly interested, no other independent corroborative evidence is available on record and even there are discrepancies and inconsistency in the testimony of P.Ws. 1 to 4 & 6. But, the Court below, based on the testimony of P.Ws. 1 to 4 & 6 recorded conviction of the accused for the offence punishable under Section 302 IPC and committed an error in recording such finding.
- b) The Court below failed to consider the extra judicial confession allegedly made by the accused before P.W.6 and such confession is inadmissible in evidence.

- c) The Court below also failed to consider, inordinate delay in lodging report with the police-Ex.P-1 and unexplained delay is fatal to the case.
- d) The Court below failed to consider the motive behind false implication of the accused/appellant for the grave offence punishable under Section 302 IPC and therefore, committed an error and prayed to allow the appeal, setting-aside the conviction and sentence passed by the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem in Sessions Case No.230 of 2011, finding him not guilty for the offence punishable under Section 302 IPC.

During hearing, learned legal aid counsel Sri B.S. Venkat Ramesh appearing for the accused/appellant would contend that the evidence of P.Ws. 1 to 4 & 6, though inconsistent, when they admitted about the disputes between the accused and P.Ws. 1 to 4 & 6 with regard to immovable property i.e. agricultural land. As they decided to eliminate the accused/appellant, they implicated the accused/appellant in grave crime. But, the motive behind his implication coupled with inordinate delay in lodging F.I.R was not appreciated by the Court below in proper perspective, based on such testimony of such highly interested witness, recording such conviction is illegal, added to that, it is contended that the Court below failed to accept such contention that the prosecution was unable to establish each and every linking circumstances to complete the chain of circumstances, without giving any scope for

any other hypothesis, thereby committed grave error in finding the accused/appellant guilty, prayed this Court to set-aside the findings recorded by the Court below and acquit the accused for the offence punishable under Section 302 IPC.

Whereas, the learned Public Prosecutor Sri Pratap Reddy for the State of Telangana would contend that, when the prosecution proved each and every circumstance of the case, more particularly, all the links in chain of circumstances, the Court can record conviction of the accused/appellant. That apart, the disputes between P.Ws. 1 to 4 and the accused were not subsisting as on that day of incident, even according to the evidence on record and those disputes were resolved long prior to the incident. P.W.1 being a fostered father of Kalluri Muthaiah (deceased) was in hurry to save the life of Kalluri Muthaiah (deceased) who was struggling for his life due to grave injuries received allegedly in the hands of the accused/appellant and thereby, the delay was properly explained before the Court below. In such case, the delay is not fatal, as no suggestion was put to any of the witnesses that due to consultation, the accused/appellant was implicated. In the absence of any suggestion, for the first time of such defence before the Appellate Court cannot be accepted.

Learned Public Prosecutor Sri Pratap Reddy for the State of Telangana placed reliance on the judgment of the Supreme Court in **Dilip Mallick v. State of West Bengal**¹, wherein the Supreme Court held that the approach to be adopted in appreciation of

¹ AIR (SC) 2017 (0) 1133

evidence in cases of circumstantial evidence is settled. The facts in cases of circumstantial evidence should be consistent only with the hypothesis of guilt of the accused and the circumstances should be of conclusive nature and tendency. Further, it is also held that the evidence in the chain of circumstances should be complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Learned Public Prosecutor contends that the theory of last seen the deceased in the company of accused, soon before his death is sufficient to find the accused/appellant guilty for the offence punishable under Section 302 IPC. Therefore, the proved facts before the Court completed the links in the chain of circumstances and in such case, conviction of the accused for the offence punishable under Section 302 IPC cannot be faulted. Therefore, this Court cannot interfere with the fact findings recorded by the Court below, unless the findings are manifestly perverse or without any evidence by exercising power under Section 374(2) Cr.P.C and requested this Court to confirm the conviction and sentence imposed against the accused/appellant for the offence punishable under Section 302 IPC.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are:

- 1. “Whether the accused/appellant caused injuries on the body of Kalluri Muthaiah (deceased), which lead to his death after a day. If so, whether the accused/appellant***

is liable for punishment for the offence punishable under Section 302 IPC, for causing death.

2. Whether the conviction and sentence recorded by the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem in Sessions Case No.230 of 2011, be sustained?"

P O I N T N O . 1 :

Section 374 Cr.P.C conferred a substantive right of appeal on the accused who is convicted by the Trial Court and this Court while exercising power under Section 374(2) Cr.P.C is bound to re-appraise entire evidence to come to an independent conclusion, uninfluenced by the findings recorded by the Court below and decide the legality of conviction and sentence passed by the Sessions Court. Therefore, it is the duty of this Court to re-appraise entire evidence recorded by the Court below after giving an opportunity to both the parties, i.e accused and the respondent, unless the Court finds manifest perversity in the calendar and judgment or such findings were recorded without evidence, normally, this Court cannot interfere with such fact findings in appeal, while exercising jurisdiction under Section 374(2) Cr.P.C. It is the sacrosanct duty of the appellate court, while sitting in appeal against the judgment of the trial Judge, to be satisfied that the guilt of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the

conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate court to be undertaken and when that is not done, the cause of justice is not sub-served, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt (vide **Kamlesh Prabhudas Tanna & Anr v. State Of Gujarat**²). Keeping the scope of Section 374(2) Cr.P.C we would like to re-appreciate entire evidence on record to come to an independent conclusion, uninfluenced by the findings recorded by the Court below.

The case of prosecution is totally based on circumstantial evidence, since the incident allegedly took place in the house of the accused/appellant and it is never the case of the prosecution that the incident was witnessed by any witness. It is the obligation of prosecution to establish each and every circumstance to complete the chain of circumstances pointing out the guilt towards the accused/appellant and inconsistent with the innocence.

When the case is based on circumstantial evidence, burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent with hypothesis of guilt of accused and any circumstance consistent with innocence of accused, he is entitled to benefit of doubt. (vide **Kishore Chand v. State of Himachal Pradesh**³)

² (2013) 15 SCC 263

³ AIR 1990 S.C. page 2140

The Apex Court while discussing the scope of Section 3 of the Evidence Act, more particularly, circumstantial evidence held that, in a case of murder when the prosecution relying on circumstantial evidence, it is for the prosecution to prove all the incriminating facts and circumstances and the circumstances which are incompatible with innocence of the accused to draw inference of guilt and such evidence should be tested by touchstone of law relating to circumstantial evidence laid down by Supreme Court (vide **Syed Hakkim & another v. State**⁴)

Similarly, in **G.Parshwanath v. State of Karnataka**⁵, the Supreme Court is of the view, when the case of the prosecution is based on proof of circumstantial evidence on the basis of which conclusion of guilt is drawn must be fully established fully, individual chain of circumstances must be complete pointing out the guilt of accused, all proved facts must lead to inference of guilt of the accused alone and court has to draw distinction between primary and basic facts while appreciating the circumstances and regard must be had to common course of natural events and human conduct and finally the facts established should be consistent only with hypothesis of guilt of accused and it does not mean that each and every hypothesis suggested by the accused must be excluded by proved facts. In **Rukia Begum Vs. State of Karnata with Issaq Sait and another v. State of Karnataka with Nasreen v. State of Karnataka**⁶; **Jagroop Singh Vs. State**

⁴ 2009 Cr.L.J. page 1891

⁵ AIR 2010 S.C. page 2914

⁶ AIR 2011 SC page 1585

of Punjab, Inspector of Police, Tamil Nadu Vs. Balaprasanna⁷
Shaik Khadar Basha v. State of Andhra Pradesh⁸, the same principle was reiterated.

The Supreme Court in **Trimukh Maloti Kikran v. State of Maharashtra⁹**, wherein the Supreme 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

In view of the settled principle of law, the prosecution made a sincere attempt to prove each and every circumstance, pointing out the guilt of the accused that the offence punishable under Section 302 I.P.C by drawing inference from the proved facts and circumstances which are consistent only with hypothesis of guilt of accused before the Trial Court and inconsistent with innocence.

The prosecution in this case relied on the following circumstances:

- 1. Kalluri Muthaiah (deceased) was found alive in the company of the accused/appellant soon before receipt of injuries;**
- 2. Finding injured Kalluri Muthaiah (deceased) in a pool of blood in the house of the accused/appellant and informing the same to P.W.4 by D.W.1**
- 3. Confessions made by the accused leading to discovery in the presence of mediators and seizure of M.Os.1 & 2;**
- 4. Death of Kalluri Muthaiah (deceased) on 07.01.2011 at 23:00**

⁷ 2009(1) ALD (CrI.) page 113

⁸ 2009(1) ALD (CrI.) page 859 (AP)

⁹ (2006) 10 SCC 681

hours while undergoing treatment due to fatal injuries he received;

5. Observations of scene of offence i.e. house of the accused, found blood stains.

6. Motive to cause death

As stated above, the case of the prosecution is totally based on circumstantial evidence. As the prosecution relied on circumstances which are enlisted above, we would like to decide the circumstances which the prosecution relied on, to find out whether the findings recorded by the Court below are based on the circumstantial evidence is supported by material and in accordance with law.

In view of the circumstances stated above, to connect the accused/appellant with the offence punishable under Section 302 IPC, we deal with the circumstances in the order of circumstances hereinafter.

The accused/appellant, Kalluri Muthaiah (deceased) and P.Ws. 1 to 4 are closely related. P.W.3 is the uterine brother of the accused/appellant, whereas, P.Ws 1 & 2 who are the wife and husband, are the junior paternal uncle and aunt of the accused. According to the prosecution, on 05.01.2011, the accused/appellant-Jalli Radha Krishna took Kalluri Muthaiah (deceased) from the house of P.Ws.1 & 2 at about 07:00 PM to consume toddy in a feast. The said fact was spoken by P.Ws. 1 & 2 specifically that, on 05.01.2011, accused/appellant-Jalli Radha Krishna took Kalluri Muthaiah (deceased) at about 07:00 PM to consume toddy in a feast or party. On the next day morning at about 06:00 A.M, coming to know about the injuries caused to

Kalluri Muthaiah (deceased), Pulla Rao s/o Jalli Bhadraiah telephoned to the wife of the accused and informed that Thammaiah (P.W.4) telephoned him, informed that the accused and Kalluri Muthaiah (deceased) quarrelled with each other, in the incident the accused/appellant bet Kalluri Muthaiah (deceased) with a spade on the left ear. Then, Jalli Bhadraiah (P.W.1), his wife and his son went to the house of the accused, found that Kalluri Muthaiah (deceased) in pool of blood in the house of accused/appellant, sustained bleeding injuries. The consistent evidence of P.Ws 1 & 2 regarding company of Kalluri Muthaiah (deceased) with the accused/appellant soon before receiving injuries is not disputed in the cross-examination of P.Ws.1 & 2. But, a plea of alibi was set up to contend that the accused and his wife were at Narsingapet i.e. at in-laws house of the accused. The accused examined his wife as D.W.1 to prove that he was in his in-laws house at Narsingapet. D.W.1 supported the case of defence, while denying information by her to P.W.4 and stated that she was carrying 9th month pregnancy by the date of alleged incident. In the cross-examination, D.W.1 was unable to disclose the distance between Narsingapet (in-laws house of the accused) and Jallivarigudem (where the house of the accused i.e. scene of offence is situated). But, D.W.1 i.e wife of the accused admitted that she used to travel to Narsingapet by paying Rs.10/- as auto fare and also pleaded ignorance of death of Kalluri Muthaiah (deceased).

The distance is too short and the fare for undertaking journey between Narsingapet and Jallivarigudem is Rs.10/-. The possibility of the accused coming from Narasingapet to Jallivarigudem cannot be ruled out. Even assuming for a moment that D.W.1 along with accused went to her parents house at Narasingapet, as she was carrying 9 months pregnancy, when the distance is too short, the plea of alibi set up by the accused has to be proved by adducing satisfactory evidence that there was no possibility for the accused/appellant to come to Jallivarigudem which is at a short distance from Narasingapet to commit the offence. Unless, there is no possibility to reach the scene of offence within the limited period, it is difficult to sustain such contention, when plea of alibi is set up, burden of proof is only on the accused who set up such plea. The evidence of D.W.1 is relevant under Section 11 of the Indian Evidence Act to prove that the accused was at Narasingapet. But, such evidence, though admitted, unless it is proved by cogent and satisfactory evidence to rule out the possibilities of reaching the scene of offence during the intervening night, it is difficult to believe the case as set up by the accused/appellant.

When the evidence of D.W.1 is not credible and the accused/appellant failed to establish that the defence set up by him i.e. plea of alibi, the contention of P.Ws.1 & 2 finding Kalluri Muthaiah (deceased) in the company of the accused/appellant soon before receiving injuries by Kalluri Muthaiah (deceased) is to be accepted. More curiously, in the cross-examination of P.Ws 1 &

2, no suggestion was put to the witnesses that the accused was away from the scene of offence and staying at Narasingapet at his in-laws house. Similarly, in the examination of the accused/appellant under Section 313 Cr.P.C, the accused did not state anything that he was away from the scene of offence and staying at in-laws house at Narasingapet on the relevant date and there was no possibility to reach the scene of offence within half a day. In the absence of specific evidence and cross-examination of P.Ws 1 & 2 who testified about taking Kalluri Muthaiah (deceased) by the accused on the pretext of consuming toddy by arranging feast is accepted by the Court below.

P.Ws. 1 to 4 & 6 are the witnesses who found the dead body of Kalluri Muthaiah (deceased) in a pool of blood, in the house of the accused/appellant. The accused is admittedly the owner of the house wherein the scene of offence is located by the investigating agency. P.W.4 is the person who received information from D.W.1 wife of accused on 06.01.2011 during early hours. He testified that the accused bet Kalluri Muthaiah (deceased) and Kalluri Muthaiah (deceased) was in pool of blood, struggling for his life. Immediately, P.W.4-Jalli Chinna Thammaiah telephoned to Pulla Rao about the information he received from D.W.1. Then, P.W.4-Jalli Chinna Thammaiah went to the house of the accused and found Kalluri Muthaiah (deceased) lying in the pool of blood. On enquiry, the accused informed that, during late hours on 05.01.2011, the accused himself and Kalluri Muthaiah (deceased) consumed toddy and had dinner at his house. After that, Kalluri Muthaiah

(deceased) enquired about the wife of the accused repeatedly. On suspicion that the wife of the accused and Kalluri Muthaiah (deceased) developed illicit relationship, bet Kalluri Muthaiah (deceased) with spade and axe and caused injuries. In the cross-examination, P.W.4 admitted that the marriage between accused and his wife D.W.1 was love marriage and suggested that, on the date of incident, the accused and his wife-D.W.1 were at Narasingapet i.e. his in-laws place and the same was denied by the witnesses flatly.

Similarly, P.W.5-punem Chandraiah also testified that on being called by Jalli Bhadraiah-P.W.1 in the early hours of 06.01.2011, informing that Kalluri Muthaiah (deceased) appears to have died in the house of the accused, then P.W.5 along with P.W.1 went to the house of the accused and found Kalluri Muthaiah (deceased) with bleeding injuries in pool of blood. Even in the cross-examination of P.W.5, nothing was elicited to disprove the finding of injured Kalluri Muthaiah (deceased) in pool of blood in the house of the accused.

Similarly, P.W.6-Jalli Subbamma w/o Jalli Nagaiah supported the factum of finding the injured in the pool of blood in the house of the accused/appellant. In the cross-examination, a suggestion was put to her that the accused and D.W.1 were in their in-laws house at Narasingapeta and the same was denied by the witness. The tenor of the cross-examination of PWs.1 to 6, coupled with evidence of D.W.1 indicates that, due to disputes between the accused/appellant and P.Ws.1 & 2 regarding property, the accused

was falsely implicated and the accused was in his in-laws house at Narasingapet. But, the plea of alibi is not established by adducing cogent and satisfactory evidence, except putting a suggestion to the witnesses P.Ws. 4 & 6 that the accused was at his in-laws house at Narasingapet.

But, putting a suggestion to the witness and getting denial by the witness is no evidence. The statement of fact recorded by the Trial Judge as to what had happened is conclusive and the conviction shall be placed on accused by considering all relevant circumstances and evidences of case. At the same time, it is the duty of the defence counsel to suggest P.Ws. 1 & 2 who spoke about taking Kalluri Muthaiah (deceased) by the accused on 05.01.2011 at 07:00 P.M to consume toddy is another strong circumstance to disbelieve the case set up by the defence. When a specific defence is set up by the accused, it must be put to the witness who testified about the facts, more particularly, about finding Kalluri Muthaiah (deceased) in the company of the accused soon before receiving injuries. In the absence of any suggestion, it is difficult to accept the contention of the petitioner and the defence set up by the defence is to be rejected, in view of the law laid down by the Apex Court in **M.B. Ramesh (D) by L.Rs. v. K.M. Veeraje Urs (D) by L.Rs. and Ors**¹⁰ and Calcutta High Court in **A.E.G. Carapiet v. A.Y. Derderian**¹¹. Therefore, failure to put a suggestion to the witnesses who testified about the company of Kalluri Muthaiah (deceased) with the accused soon after receiving

¹⁰ AIR 2013 SC 2088

¹¹ AIR 1961 Cal 359

injuries is suffice to disbelieve the plea of alibi set up by the accused/appellant. The consistent evidence of P.Ws.1 & 2 taking Kalluri Muthaiah (deceased) by accused on 05.01.2011 at about 07:00 PM on the pretext of consuming toddy in feast is to be accepted.

Coming to the scene of offence, admittedly, the scene of offence is inside the house of the accused/appellant. When Kalluri Muthaiah (deceased) is found in pool of blood, inside the house of the accused, it is for the accused to explain as to how Kalluri Muthaiah (deceased) entered the house of the accused and who caused injuries, since the accused was in possession and enjoyment of the house, as on the date of incident.

Where the evidence of witness shows that the accused have motive to kill the deceased and where there is no possibilities of any other person committing murder, conviction of the accused to be confirmed.

It is the duty of the accused to explain the cause of injuries when he was found in pool of blood in the house, which is exclusively in the possession of the accused/appellant. It is not the case of the prosecution that the house was kept open accessible to anyone, when the accused himself allegedly was at Narasingpet. In normal case, when a person leaves the house and goes to another village, the house must be kept under lock and key. Keeping open the house, permitting access to everyone is improbable to the natural circumstances and conduct of human being. All the more, it is not his case that the house was kept open permitting access to

anyone. Thus, in the absence of such plea, it is for the accused/appellant to explain as to how Kalluri Muthaiah (deceased) entered into the house and received injuries in his house, which is in his exclusive possession. But, the accused/appellant did not explain the reason for finding Kalluri Muthaiah (deceased) in such state in pool of blood in the house of the accused/appellant.

In respect of cases where the offence took place in privacy and if the accused alone was in the house, the burden is on him to explain under what circumstances the dead body was in his house. The observation of the Supreme Court in **Trimukh Maroti Kikran**⁹ is relevant in this regard.

"if an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to place and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of s. 106 of the evidence act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer long explanation. In case of no explanation. In case if no explanation or false explanation from the accused, it would cause an additional link in chain of circumstances."

(emphasis supplied)

In view of the judgment of the Supreme Court in **Trimukh Maroti Kikran**⁹, if the offence takes place in the house of the accused, then, the burden is upon him to explain under what circumstances the offence has taken place in view of Section 106 of Indian Evidence Act, since it is within his exclusive knowledge. In the absence of any explanation, it can safely be concluded that the accused/appellant was responsible for commission of offence.

In the present facts of the case, the scene of offence is admittedly inside the house of the accused and he is in exclusive possession and enjoyment of the same. The prosecution examined the Investigating Officer and Panchayatdar who was present at the time of observation of the scene of offence as P.W.8. P.Ws. 1 to 4 & 6 categorically testified that Kalluri Muthaiah (deceased) was found in pool of blood inside the house of the accused, with bleeding injuries, struggling for life. P.W.8 is panch witness present at the time of observation of scene of offence by Inspector of Police-P.W.12. In the evidence of P.W.8, nothing could be elicited to discredit his evidence, as to the presence at the time of observation of scene of offence and recording the crime details vide Ex.P-4. The Inspector of Police was examined as P.W.12, he categorically testified that he observed the scene of offence in the presence of P.W.8 and Punem Mohan Rao (LW.16), and prepared crime details form including rough sketch of the scene of offence, which is marked as Ex.P-4. Photographs of the scene of offence were taken which are marked as Exs.P-10 to P-13 and Ex.P-14 is the compact disk of the photographs of the scene of offence. In the cross-

examination of P.W.12, no suggestion was put to him disputing the scene of offence. Moreover, in the entire cross-examination of P.Ws. 1 to 4 & 6, no suggestion was put to them disputing the scene of offence. Therefore, the consistent evidence on record clinchingly established that the scene of offence is inside the house of the accused. Apart from that, on examination of the clothes, inner wear of Kalluri Muthaiah (deceased), spade & axe that caused injuries to him, blood stained and controlled earth seized from the scene of offence which are marked as items 1 to 6 respectively. The Forensic Science Laboratory in its report vide Ex.P-17, detected human blood on item nos.1,3,4 & 5. But, no blood stains were detected on item nos.2 & 6. The samples of controlled earth and blood stained earth were seized from the scene of offence by the Investigating Agency and the said fact was spoken by P.W.12. In the cross-examination of P.W.12, no suggestion was put to him denying seizure of controlled earth and blood stained earth. Therefore, it is clear from the testimony of P.Ws. 1 to 6, 8 to 12 that scene of offence is inside the house of the accused, which is in his exclusive possession. In such circumstances, in the absence of any explanation by the accused, the Court can draw an inference that the accused is responsible for causing injuries on the body of Kalluri Muthaiah (deceased), in view of the law declared by the Courts consistently referred supra. Thus, the prosecution proved the circumstances by cogent and satisfactory evidence.

The other circumstances relied on by the prosecution is confession leading to discovery and the extra judicial confession.

The accused/appellant allegedly made an extra judicial confession to P.W.4 & 6 when they visited the scene of offence, the accused informed that on the previous night i.e. in the late night on 05.01.2011, the accused/appellant himself and Kalluri Muthaiah (deceased) consumed toddy and had meals at his house. Thereafter, Kalluri Muthaiah (deceased) enquired about the wife of the accused repeatedly. On that, the accused suspected illicit relationship between his wife and Kalluri Muthaiah (deceased). So, the accused bet Kalluri Muthaiah (deceased) with spade and axe. Similar statement was given to P.W.6. But, none of the witnesses before whom the accused allegedly made an extra judicial confession, did not reduce the confession into writing. The law is consistent that, while appreciating the evidence with regard to extra judicial confession, the Court has to find out whether there is any possibility to make such confession before such person depending upon the closeness, relationship, etc. here, P.Ws 4 to 6 are related to Kalluri Muthaiah (deceased) and the accused/appellant is also related to them. When the witnesses did not reduce the extra judicial confessions into writing, the same cannot be accepted, as a matter of routine, since there is every possibility of creating such evidence, so as to rope the accused/appellant with the offence.

In Baldev Singh v State of Punjab¹², the Supreme Court held that extra judicial confession is a weak type of evidence and that by itself is not sufficient to record the judgment of conviction

¹² 2009(3) Supreme Court Cases (CrI.) page 66

against accused, unless the same is corroborated and in the absence of any disclosure before a particular person, a conviction cannot be recorded.

In **State of A.P. v. Kanda Gopaludu**¹³, the Division Bench of the Apex Court held that extra judicial confession is admissible even if it inspired confidence and made voluntarily and basing on that, court can record conviction of the accused. Undoubtedly, if the extra judicial confession is believed and made voluntarily, the same can be made basis for recording conviction.

In **Balbir Singh and another v. State of Punjab**¹⁴, the Apex Court held as follows:

“Extra judicial confession alleged to have made by the accused to the Municipal Commissioner having friendship with the accused, cannot be accepted as trustworthy and basing on such evidence, accused cannot be convicted.”

In **K.Brahmachari @ Kammari Brahamachari v. State of A.P**¹⁵, the Division Bench of this Court held that, when there was no relationship between the accused and the person before whom he made a confession, it is highly improbable to believe the confession of accused made before the third party and conviction cannot be relied.”

Extra Judicial confession, if inspires confidence of the Court and the true version of the accused is mentioned on extra judicial confession, conviction can be recorded, if corroborated by other

¹³ 2005(6) Supreme Court Cases page 551

¹⁴ 1996 Supreme Court Cases (CrI.) page 1158

¹⁵ 2004(1) ALT (CrI.) page 1 (A.P.)

circumstances. But, extra judicial confession itself alone cannot form the basis for conviction and such conviction is illegal. Before touching evidentiary value of extra judicial confession, the court must look into various circumstances like prior acquaintance with the person to whom the accused gave statement and whether it is voluntary in nature.

In view of the law declared by the Apex Court and this Court in the above judgments, in the present case, it is difficult to accept the extra judicial confession allegedly made by the accused/appellant to P.Ws. 4 & 6. But, the Court below accepted the extra judicial confession, though not reduced into writing by P.Ws.4 & 6. In such case, it is difficult to place implicit faith on the testimony of P.Ws 4 & 6 with regard to making extra judicial confession by the accused/appellant before them. Hence, placing reliance on extra judicial confession by the Court below is erroneous and contrary to the law declared by the Apex Court.

The other circumstances relied on by the prosecution is the confession of the accused, which lead to the recovery of weapon used in commission of offence. In the present facts of the case, according to the prosecution, Inspector of Police-P.W-12 arrested the accused at his house and interrogated the accused/appellant in the presence of P.W.8 and Punem Mohan Rao (L.W.16). During interrogation, the accused stated that he will show the spade and axe which he concealed in the heap of sticks behind his house, which were used for causing injuries on the body of Kalluri Muthaiah (deceased), if anybody accompany him. The same was

reduced into writing. The accused/appellant led P.W.12 and the panchayatdars, P.W.8 and Punem Mohan Rao (LW.16) to the heap of sticks behind the house of the accused. In the presence of panchayatdars, P.W.8, Punem Mohan Rao (LW.16) and P.W.12-Inspector of Police, the accused picked out M.Os.1 & 2 and produced by mediators and P.W.12, P.W.12 seized the same under the cover of Ex.P-3, the admissible portion of panchanama on the basis of the confession leading to discovery. Immediately, identification slips were affixed to M.Os.1 & 2 bearing signature of P.W.12, P.W.8, Punem Mohan Rao (L.W.16). In the cross-examination of P.W.8, 12 a suggestion was put to him that the accused never made any confession while denying seizure of M.Os. 1 & 2. Moreover, as discussed in the earlier paragraphs, putting a suggestion to the witness and getting denial by the witness is no evidence. The statement of fact recorded by the Trial Judge as to what had happened is conclusive. Therefore, the suggestion put to the witness denying the factum of making confession leading to discovery and seizure of M.Os. 1 & 2 remained un rebutted. Though, in the examination of accused/appellant under Section 313 Cr.P.C, this specific fact was put to him, he denied the same flatly as usual. P.W.8 along with Punem Mohan Rao (L.W.16) are panch witnesses in whose presence the confession leading to discovery was made and seized M.Os. 1 & 2, the evidence of P.W.8 is consistent with regard to interrogation, making confession leading to discovery and seizure of M.Os.1 & 2. Thus, the evidence of P.W.8 corroborated the testimony of official witness P.W.12 on

the material aspects of making confession leading to discovery and seizure of M.Os.1 & 2. P.W.8 is native of the same village of accused/appellant i.e. Jallivarigudem and he is related to the accused and also to P.Ws 1 & 2. Moreover, the surname of P.W.8 and the accused/appellant is one and the same. In the cross-examination, no suggestion was put to him that he was testifying false and that too, he was a student studying B.A. II year at Palvanha and during holidays, he visited his village and the question of enmity between the accused/appellant and P.W.8 does not arise and no such suggestion was put to P.W.8. More curiously, the witness even testified about the boundaries of the house also. Hence, P.W.8 is wholly reliable witness and the testimony is in support of evidence of P.W.12 on material aspects. Therefore, the evidence on record established seizure of M.Os.1 & 2 based on confession made by the accused, leading to discovery vide Ex.P-3.

Section 27 of the Indian Evidence Act is an exception to Sections 25 and 26. The conditions necessary for invoking the aid of the Section are as follows:

- a) there must be a discovery of a fact albeit relevant fact in pursuance of an information received from a person in police custody;**
- b) the discovery of such fact must be deposed to ;**
- c) at the time of giving information the accused must be in police custody;**

Then the effect is that so much of the information as relates distinctly to the fact thereby discovered is admissible. What is allowed to be proved is the information or such part thereof as related distinctly to the fact thereby discovered.

Discovery evidence is not substantive evidence (vide **Dinakar v. State**¹⁶).

Similarly, in **Inspector of Police, Tamil Nadu Vs. Balaprasanna**¹⁷, the Apex Court held as follows:

“Law is well settled that the prosecution while relying upon the confessional statement leading to discovery of articles under Section 27 of the Evidence Act, has to prove through cogent evidence that the statement has been made voluntarily and leads to discovery of the relevant facts. The scope and ambit of Section 27 of the Evidence Act had been stated and restated in several decisions of the Supreme Court. However, in almost all such decisions reference is made to the observations of the Privy Council in *Pulukuri Kotayya vs. Emperor*, AIR 1947 PC 67. At one time it was held that the expression 'fact discovered' in the second is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in *Pulukuri Kotayya's* case. The various requirements of the section can be summed up as follows:-

- 1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- 2) The fact must have been discovered.
- 3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.
- 4) The person giving the information must be accused of any offence.
- 5) He must be in the custody of a police officer.
- 6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- 7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.”

¹⁶ AIR 1970 Bombay page 438

¹⁷ 2009(1) ALD (CrI.)(SC) page 113

In view of the principle laid down in the above decision, when a fact is discovered in pursuance of confession leading to discovery is only relevant piece of evidence, but it is not a substantive piece of evidence.

Even otherwise, in **Brijesh Mavi Vs. State of NCT of Delhi**¹⁸, the Apex Court, held that recovery evidence, when not sufficient to prove culpability of accused and no direct evidence connecting accused to murder. Recovery of weapon of offence at the instance of accused two years after incident is not believable. Mere recovery of weapon, therefore, not sufficient to convict the accused for the offence of murder under Section 302 of I.P.C.

In view of the law declared by the Apex Court in the judgments referred supra, the confession leading to discovery marked as Ex.P-3 and seizure of M.Os.1 & 2 is another strong link in the chain of circumstances. Therefore, the Court below rightly appreciated the evidence of P.W.12 & 8 with regard to proof of Ex.P-3 and seizure of M.Os.1 & 2 and the conclusions arrived by the Court below cannot be interfered by this Court while exercising power under Section 374(2) Cr.P.C.

P.Ws 1 to 4 & 6 found the injured Kalluri Muthaiah (deceased) in a pool of blood, struggling for life inside the house of accused/appellant, thereafter, shifted to Government Area Hospital on reference made by D.W.2-Dr.P. Rama Rao. Ex.D-2 is the referral letter. Ex.D-1 is the case sheet where D.W.2 noted the injuries found on the body of Kalluri Muthaiah (deceased) and treatment

¹⁸ 2012 (2) ALD (Cri.) page 865 (SC)

given to him. Ex.D-2 is the referral letter of D.W-2. On admission of Kalluri Muthaiah (deceased) in Government Area Hospital, he was treated by doctors in the area hospital and he succumbed to the injuries while undergoing treatment. Ex.P-15 is the post-mortem report received by P.W.12 and P.W.10 is the doctor who held autopsy over the dead body of Kalluri Muthaiah (deceased). According to the evidence of P.W.10, who has been working as Deputy Civil Surgeon in Government Area Hospital, Bhadrachalam, conducted autopsy on 07.01.2011 over the body of Kalluri Muthaiah (deceased), Male, Age 25 years, on requisition from Station House Officer, V.R. Puram and found the following external injuries:

1. Sutured wound with black thread about 6 cms extending left cheek to scalp above the left ear.
2. Small lacerated injury about 3 in number are seen right parital region one above the other size of upper injuries 3 cm x $\frac{1}{2}$ cm into bone deep, middle of the size is 2 cm x $\frac{1}{2}$ cm into bone deep, size of inferior bone is 2 $\frac{1}{2}$ cm x $\frac{1}{2}$ bone deep.

Similarly, the following are the Internal Injuries:

1. On opening the scalp there is a fracture of right parital bone which is 'L' shaped and haematoma seen over the right cerebrum and opening of the haematoma there is a lacerated injury size about 1cm x 1cm with irregular margins seen in right cerebrum.
2. There is a compound fracture of left parital bone multiple pieces and with irregular lacerated injury seen over left cerebrum. Haematoma is seen over the left cerebrum.

P.W.10 opined that all the above injuries are anti-mortem injuries caused by blunt weapon with sharp margin and that the deceased appeared to have died due to 'Haemorrhagic shock and due to injury to vital organ i.e. brain', 12 to 36 hours prior to the post mortem examination. Ex.P-15 is the Post Mortem Examination Report of Kalluri Muthaiah (deceased) issued by

P.W.10. P.W.10 also opined that the stomach contained 250 milli grams of solid food with alcoholic smell. Curiously, in the cross-examination, it is elicited that the alcoholic smell in the food content present in the stomach may absorb within 24 hours in living persons, whereas in case of dead persons, it will be intact till putrefaction. But, P.W.10 could not say whether the alcohol content observed in the food is of I.D. liquor or made from government distilleries. These facts elicited are of no avail to prove that cause of death was otherwise, since it is not the case of defence at any stage of the case that Kalluri Muthaiah (deceased) died due to road accident or due to fall on sharp edged stone. Mere eliciting the fact that there could be a possibility of sustaining such injuries in the road accident or otherwise, without suggesting anything to any of the witness is of no assistance. Strangely, Kalluri Muthaiah (deceased) was found in pool of blood inside the house of the accused. If, really, Kalluri Muthaiah (deceased) sustained injuries in a road accident, question of finding him in pool of blood, struggling for life inside the house of the accused does not arise. Further, there were no sharp edged stones or objects to have contact with them in the house, as per the case of prosecution or defence. Therefore, the possibility of sustaining injuries in road accident or due to contact with sharp edged stone or object is ruled out. Kalluri Muthaiah (deceased) after receiving injuries survived for one day and later died while undergoing treatment at Government Area Hospital. Therefore, the prosecution could establish that the case of death was due to injuries found on

the body of Kalluri Muthaiah (deceased) and the said fact is supported by the inquest panchayatdars. Therefore, the conclusion arrived by the Court below that the death of Kalluri Muthaiah (deceased) was homicidal, is based on satisfactory evidence and the same cannot be disturbed by this Court even after re-appreciation of entire evidence on record.

One of the circumstances relied by the prosecution is the motive. But, motive is not a substantive piece of evidence, it is only a corroborative piece of evidence to complete the links in the chain of circumstances. Here, in fact, no motive was attributed to the accused to kill Kalluri Muthaiah (deceased). Even if, the prosecution failed to prove the motive part, it is not a strong circumstance to disbelieve the entire case of the prosecution, since motive is only a corroborative piece of evidence. Enmity may be one of the circumstances, but that itself is not a substitute for proof.

In **Anil Rai v. State of Bihar**¹⁹, the Apex Court held that the admitted position of law is that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the Courts are required to scrutinize their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon.

¹⁹ 2001(2) ALD (Cri.) page 446

Bitter animosity held to be a double edged weapon may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime. Testimony of eye-witnesses, which is otherwise convincing and consistent, cannot be discarded simply on the ground that the deceased were related to the eye-witnesses or previously there were some disputes between the accused and the deceased or the witnesses. The existence of animosity between the accused and the witnesses may, in some cases, give rise to the possibility of the witnesses exaggerating the role of some of the accused or trying to rope in more persons as accused persons for the commission of the crime. Such a possibility is required to be ascertained on the facts of each case. However, the mere existence of enmity in this case, particularly when it is alleged as a motive for the commission of the crime cannot be made a basis to discard or reject the testimony of the eye-witnesses, the deposition of whom is otherwise consistent and convincing.

From the principle laid down by the Hon'ble Apex Court, enmity by itself is not a ground to conclude that the accused is the person who perpetrated the murder. After developing enmity, the accused must develop motive to commit murder. However, motive by itself is not a ground to convict the accused and proof of motive is not the substitute for proof.

When the case of prosecution is depending upon circumstantial evidence, last seen together deposed by natural witness about 'last seen' only after 5 years in Court and made improvements makes his evidence unreliable without corroboration. Fact that one of accused did not like his sister's affair with deceased and, therefore, had motive, creates suspicion but cannot be substitute of proof. Thereby, the accused is entitled to be given benefit of doubt (**Sampath Kumar v. Inspector of Police, Krishnagiri**²⁰)

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something mere establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide (In **Mohibur Rahman and Another v.. State of Assam**²¹)

In view of the law declared, motive is not a substantive piece of evidence, it is only a corroborative piece of evidence. According to Section 8 of the Indian Evidence Act, motive is relevant fact and it is one of the circumstances to complete the chain of circumstances. Motive is double-edged weapon. It may be a

²⁰ AIR 2012 SC pg 1249

²¹ AIR 2002 SC page 3064

ground for committing a crime and it may also be a ground for falsely implicating the accused. Proof of motive may lend additional support to the prosecution, but it cannot make good the deficiency of the prosecution case.

In **Suresh Chandra Bahri Vs. State of Bihar**²², the Apex Court held that, sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of offence.

The defence set up by the accused/appellant before the Court below is that, he was away from the place of occurrence, as he, along with his wife who was carrying 9th month pregnancy went to Narasingapet which is away from the scene of offence. Though, the wife of the accused-D.W.1 did not disclose the distance between Narasingapet and Jallivarigudem, the auto fare between

²² AIR 1994 S.C. page 2420

the two villages is only Rs.10/-, which will hardly be not more than 10-15 kms and the possibility of the accused coming over to Jallivarigudem, though he was staying at Narasingapet on the relevant date cannot be ruled out. When the accused set up such plea, it is for him to adduce cogent and satisfactory evidence to establish conclusively that there was no possibility to come over to the scene of offence covering a short distance. In the absence of such evidence, it is difficult to believe such plea. Though, the defence examined D.Ws.1 & 2, the evidence of D.W.1 is highly interested who is none other than wife of the accused. The evidence of D.W.2 is of no assistance to the defence of accused/appellant, as he did state nothing regarding stay of the accused/appellant at his in-laws house at Narasingapet.

Turning to the evidence on record, according to the evidence of P.Ws.4 & 6, when they visited the scene of offence, the accused was present at the scene of offence and made an extra judicial confession before them. A suggestion was put to P.W.6 that P.Ws. 1 & 3 hatched a plan to implicate the accused in the serious offence due to property disputes. So, the suggestion put to P.W.6 in the cross-examination indicates that the accused attributed motive to P.Ws 1 & 3 and did not put any suggestion about his absence in village as on the date of occurrence of the incident. Even in the examination of the accused/appellant under Section 313 Cr.P.C, he did not state anything about his absence, except denying the commission of offence. The Court below observed that, when the auto fare between the two villages is Rs.10/-, certainly,

the distance between the two villages should be around 7 kms. In the cross-examination, D.W.1 stated that she does not know P.W.2, but she stated that P.W.2 is the wife of P.W.1. The evidence of D.W.1 is not reliable, for the reason that, she is not accepting the relationship between P.Ws. 1 & 2, though she is closely related to them. Therefore, D.W.1 is not a wholly reliable witness and based on the testimony of D.W.1, plea of alibi cannot be accepted.

According to Section 11 of the Indian Evidence Act, the facts though not relevant become relevant, if they are inconsistent with any fact in issue or relevant fact and if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. Therefore, plea of alibi falls and evidence adduced in support of such plea is relevant under Section 11 of the Indian Evidence Act and the accused is entitled to adduce evidence to prove a fact which is not relevant to prove the guilt of the accused. Merely because, the accused took a false plea of alibi, would not positively prove that he is responsible for the offence. Even if the alibi is not proved, the Court shall not record judgment of conviction unless the prosecution found to have established the case by cogent and satisfactory evidence. (vide **Ritesh Chakravarti v. State of M.P.**²³). If a plea of alibi is set up by the accused and is discarded, that does not take away the duty of the prosecution to prove beyond reasonable doubt that the accused persons were guilty. It is certainly the duty of the persons who pleaded an alibi

²³ (2006) 12 SCC 321 (329)

to prove it beyond reasonable doubt. Merely because, the accused was not able to prove his defence, it cannot be presumed that the prosecution case is proved against him (vide. **State of Kerala v. Anilachandran**²⁴). In the case where the plea of alibi taken by the accused is found false, it is an additional link in the chain of circumstantial evidence against the accused (vide **Ramesh Kumar v. State**²⁵). In the present facts of the case, the accused failed to prove the plea of alibi beyond reasonable doubt that he was not present in the village at Jallivarigudem as on the date of occurrence. Though, it is not a ground to record conviction, but, it is an additional link to complete the chain of circumstances when the case of prosecution is based on circumstantial evidence. thus, the accused miserably failed to establish his absence in the village, as on the date of occurrence, failed to rule out the possibility of reaching the scene of offence.

The other plea raised by the accused is, delay in lodging F.I.R. Ex.P-1 is the report lodged with the police and Ex.P-16 is the original F.I.R. According to P.W.1, on 07.01.2011 at about 07:00 AM, he reported the incident to V.R.Puram Police Station. It is evident from the testimony of witness that, P.W.1 is an illiterate tribal and he is a marksman. Curiously, he made a statement that some police persons have taken his thump impressions on blank paper and asked him to go, but, he clarified that he does not know as to what was written in the paper, as P.W.1 is an illiterate person and he is not able to say what instructions were given and there is

²⁴ (2009) 13 SCC 565 (569)

²⁵ 2010 CrI.J 85 (91) (Del-DB)

a minor discrepancy about lodging report with the police. But, this discrepancy would not go to the root of the case. Moreover, such minor discrepancy is a guarantee of truth, as P.W.1 is an illiterate tribal and marksman. The F.I.R reached the Magistrate Court at 06:15 PM in Crime No.1 of 2011. P.W.11 is the then Sub Inspector of Police of V.R. Puram Police Station. According to P.W.11, at 10:00 A.M, P.W.1 came to the police station and lodged report and the same was registered as Crime No.1 of 2011 for the offence punishable under Section 302 IPC and forwarded the original F.I.R to the Judicial First Class Magistrate Court, Bhadrachalam. But, in the cross-examination, a suggestion was put to P.W.11 that after obtaining thumb impression on blank white paper, Ex.P-1 was got prepared through one person. But, the suggestion was denied. In any view of the matter, it is clear that there is a delay of one day after finding Kalluri Muthaiah (deceased) in pool of blood inside the house of the accused. Since, P.W.1 is an illiterate tribal and he must be in hurry to save the life of Kalluri Muthaiah (deceased), shifting him to Tribal Hospital initially and from there to Government Area Hospital, in such case, it is difficult to conclude that the delay is fatal to the case of prosecution, as no suggestion was put to P.W.1 that report was lodged due to consultation.

The Apex Court in **Shivlal and Anr. vs. State of Chhattisgarh**²⁶ held that an unexplained inordinate delay in sending the copy of the FIR to Magistrate may affect the

²⁶ AIR 2012 SC 280

prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case. While dealing with **Shivlal**¹⁸ case, the Apex Court relied on the judgment of the Supreme Court in **State by Inspector of Police, Tamil Nadu v. N. Rajamanickam and Ors**²⁷, observed as under:

“Delay in receipt of the FIR and the connected documents in all cases cannot be a factor corroding the credibility of the prosecution version. But that is not the only factor which weighed with the High Court. Added to that, the High Court has noted the artificiality of the evidence of PW 1 and the non-explanation of injuries on the accused persons which were very serious in nature. The combined effect of these factors certainly deserved consideration and, according to us, the High Court has rightly emphasised on them to hold that the prosecution has not been able to establish the accusations. Singularly, the factors may not have an adverse effect on the prosecution version. But when a combined effect of the factors noted by the High Court are taken into consideration, the inevitable conclusion is that these are cases where no interference is called for.”

(emphasis supplied)

Here, the delay is both in lodging F.I.R and sending the original F.I.R to the Magistrate. The Court below discussed the delay in detail. Ex.D-1 is the case sheet marked through D.W.2 revealed that P.W.1 took the injured Kalluri Muthaiah (deceased) to hospital and at the same time, he stated that Kalluri Muthaiah (deceased) sustained head injuries as he was beaten with spade and butt of axe. In Ex.D-2 referral letter, it is stated that the injured was beaten by unknown person. But, P.Ws.1 to 6 consistently stated that Kalluri Muthaiah (deceased) was beaten by the accused/appellant and the injured Kalluri Muthaiah (deceased) was shifted to tribal hospital initially on the forenoon of

²⁷ (2008) 13 SCC 303

06.01.2011, thereafter he was referred to the Government Area Hospital at 11:20 AM. from Tribal Hospital, Chintoor. When the injured was shifted from one hospital to another for better medical assistance, as his condition was critical, the Court cannot except prompt lodging of F.I.R and therefore, the Court below rightly concluded that there was no embellishment or consultation among PWs. 1 to 6 to implicate this accused/appellant in the above crime. As such, the delay in lodging the report was properly explained by PW.1 and the circumstances of the case. Therefore, the conclusion of the Court below that delay was properly explained, does not call for interference of this Court.

The other ground raised by the defence is that there were disputes between P.W.1 and the accused with regard to immovable property, thereby, he was falsely implicated. In the cross-examination of P.W.1, the learned counsel for the defence could elicit that P.W.1 owned Ac.10.00 of land and the accused owned Ac.5.00 of land. The parents of the accused died when the accused was 10 years. So, P.W.1 used to cultivate the land of the accused also for the last 4 to 5 years. The accused brought one woman and started leading conjugal life and they were blessed with one son. Thereafter, at the instance of his relatives, P.W.1 delivered the landed property to the accused. The disputes were settled long prior to the date of alleged occurrence of incident. Even otherwise, the alleged disputes existed between them long prior to the incident, cannot be made as a cause for implicating him. Therefore, whatever elicited in the cross-examination of P.Ws.1 & 2

with regard to property disputes regarding division of property equally is not a proximate cause to the alleged implication of the accused/appellant in the crime. Therefore, the defence set up by the accused/appellant that due to property disputes, he was implicated falsely is without any basis. The prosecution proved all the circumstances to complete the chain of circumstances, except motive and extra judicial confession. The proved circumstances unerringly pointed out the guilt of accused and inferences drawn from the proved circumstances lead to guilt of accused and consistent with hypothesis of guilt and inconsistent with innocence.

When the Court re-appreciated entire evidence and tested by touchstone of law relating to circumstantial evidence, we find no error in the finding recorded by Trial Court, we concur with the finding recorded by Court below. Accordingly, the point is answered in favour of prosecution and against the accused/appellant.

P O I N T N O . 2

It is the consistent case from the beginning that Kalluri Muthaiah (deceased) and the accused were moving closely with each other and Kalluri Muthaiah (deceased) was only fostered son of P.Ws. 1 & 2, as he lost his parents during his early childhood. In view of their close movement, the accused took Kalluri Muthaiah (deceased) with him to consume toddy in a feast or party and after consuming toddy, they both went to the house of the accused, had

dinner. Until then, the accused had no intention to kill Kalluri Muthaiah (deceased). But, when Kalluri Muthaiah (deceased) enquired about the wife of the accused repeatedly, the accused suspected that Kalluri Muthaiah (deceased) developed illicit relationship with his wife and suddenly caused injuries with spade and butt of an axe (M.Os.1 & 2). To constitute offence punishable under Section 302 IPC. The prosecution has to prove that the accused caused injury with an intention to kill him.

Section 300 IPC deals with 'Murder' and the following are the circumstances to constitute murder:-

Firstly Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing or-

Secondly- If it is done with intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-

Thirdly - If it is done with the intention of causing bodily injury to any person and the bodily intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-

Fourthly-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death of such injury as aforesaid.

In the present case, both the accused/appellant and Kalluri Muthaiah (deceased) consumed toddy, had dinner in the house of the accused and when Kalluri Muthaiah (deceased) started enquiring the whereabouts of the wife of the accused, the accused suddenly caused injuries on the head of Kalluri Muthaiah (deceased) with M.O.1 & butt of axe M.O.2. Till then, the accused had no intention to cause grave injuries or to kill Kalluri Muthaiah (deceased). In such case, when the accused had no intention to cause death of Kalluri Muthaiah (deceased), as the accused had no premeditation and cornered with a weapon, but suddenly in spur of moment, in grave and sudden provocation, suddenly, suspected and caused injury with M.O.1 and butt of M.O.2. Such act would attract exception No.1 of Section 300 and liable to be punished, it would fall within Section 300(1) IPC, though the injuries are on vital part.

The ingredient of intention mentioned under Clause (1) of Section 300 IPC give clue in a given case, whether the offence is murder or culpable homicide not amounting to murder. Here, it was not the case of the prosecution at any stage that the accused took Kalluri Muthaiah (deceased) with an intention to kill him. But, he has taken Kalluri Muthaiah (deceased) only with an intention to consume toddy and have dinner and accordingly, they consumed toddy and had dinner in the house of the accused. But, the only reason for causing fatal injuries on the body of Kalluri Muthaiah (deceased) which lead to his death is that Kalluri Muthaiah (deceased) enquired the whereabouts of the wife of the accused. In

such case, the case of prosecution would fall under Part-II of Section 304 IPC.

When accused had no pre-meditation to kill deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on some provocative utterances of deceased cannot be ruled out and in such case the accused is liable to be convicted under Sec.304 Part II instead of Section 302 of IPC (vide **Yomeshbhai Pranshankar Bhatt v. State of Gujarat**²⁸). In the facts of the above decision, the deceased was working in the house of accused as a maid. As she was absent from duties, accused visited her house asking her to rejoin duty and when she refused to join duty, altercation ensued between them. Then, accused allegedly picked can of kerosene lying nearby, poured kerosene on the deceased and lit fire on her body, which resulted in death of servant-maid. The incident occurred only due to utterances between the accused and deceased and not pre-meditated to kill the deceased or cause injury over the body of deceased, thereby the Apex Court concluded that the accused is liable to be convicted for the offence punishable under Section 304 Part-II of Indian Penal Code.

In **Veeran and others v. State of M.P**²⁹, the Apex Court had an occasion to decide the case with similar facts and held as follows:

“When there was a fight between parties not pre-meditated and the incident occurred at spur of moment following heated arguments and altercations between parties, such incident could be the result of grave and sudden

²⁸ 2011(2) ALD (CrI.) page 238 (SC)

²⁹ 2011(2) ALD (CrI.) page 344 (SC)

provocation without any intention in mind of accused to commit murder of deceased. The accused were not aware that injuries caused by them were sufficient in ordinary course of nature to cause death. Therefore, the case falls under Exceptions 1 and 4 of Section 300 of IPC and held guilty for the offence punishable under Section 304 Part-I of IPC.”

When the incident of murder preceded by some altercation taking place on deceased objecting to construction of drain by accused others in violation of an injunction order in operation, on which three appellants, one armed with Gandasi and other two with Dangs caused injuries to deceased. The weapons used were in fact implements of common use which are normally carried by villagers. Accused had used Gandasi from its blunt side, as would be clear from evidence of doctor. Therefore, prior intention to commit murder cannot be inferred and liable for the offence punishable under Section 304 Part-II of Indian Penal Code. (vide **Gurdial Singh and others Vs. State of Punjab**³⁰)

Thus, the view expressed by the Hon’ble Apex Court in **Yomeshbhai Pranshankar Bhatt**²⁷ and **Veeran and others**²⁸ referred supra, are a little bit conflicting, but the Larger bench judgment reported in **Gurdial Singh and others**²⁹ referred supra, is totally in consonance with the principle laid down in the decision **Yomeshbhai Pranshankar Bhatt**²⁷. However, the Larger bench judgment is binding on the Courts. In the facts of the present case, as discussed above, accused had no intention to kill till they had dinner in the house of accused, but suddenly the accused suspected Kalluri Muthaiah (deceased) about development of illicit

³⁰ 2011(2) ALD (CrI.) page 136 (SC)

contact with wife of accused/appellant, as Kalluri Muthaiah (deceased) repeatedly enquired about wife of accused. As such, the act of accused is not pre-meditated and the incident of beating ensued suddenly in grave provocation. Another aspect is, causing injury with butt of M.O.2. It is also another strong circumstance to believe that the accused had no intention to kill him. Therefore, we hold that the accused/appellant is guilty of offence punishable under Section 304 Part II of I.P.C.

In view of our foregoing discussion, the prosecution proved that the accused/appellant caused injuries on the vital parts of the body of Kalluri Muthaiah (deceased), which lead to his death, but not with an intention to kill him. Therefore, the conviction recorded by the Court below for the offence punishable under Section 302 IPC is set-aside, converting the conviction of the accused/appellant from Section 302 IPC to Section 304 Part-II IPC.

In the result, the criminal appeal is partly allowed, setting aside the conviction and sentence in Sessions Case No.230 of 2011 passed by the V Additional District and Sessions Judge (FTC), Khammam at Kothagudem, finding the accused not guilty for the offence punishable under Section 302 IPC, while finding him guilty for the offence punishable under Section 304 Part-II IPC, sentencing him to undergo rigorous imprisonment for a period of ten (10) years with fine of Rs.2,000/- (Rupees Two Thousands only) with default sentence to undergo simple imprisonment for three months, giving set-off under Section 428 of Cr.P.C.

Consequently, miscellaneous applications pending if any,
shall stand closed.

JUSTICE P. NAVEEN RAO

JUSTICE M. SATYANARAYANA MURTHY

Dated:30.11.2017

SP

