

HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No. 990 OF 2011

JUDGMENT: (per HON'BLE SRI JUSTICE N. BALAYOGI)

1. The appellant who is arrayed as Accused No.1 in S.C.No.144 of 2010 aggrieved by the judgment and order dated 25.05.2010 passed by the learned VI Additional District and Sessions Judge (FTC), East Godavari District, at Rajahmundry convicting him under Section 235(2) Cr.P.C. for the offence punishable under Section 302 read with Section 34 IPC and sentencing to suffer life imprisonment and also to pay a fine of Rs.500/-, in default to suffer R.I. for one month, preferred present Criminal Appeal.

2. Briefly stated the case of prosecution is that: The appellant/A.1, Nakka Sathibabu/A.2 (since died) and the deceased are the residents of Shanthinagar, Rajavommangi village. The deceased and A.1 used to cut the trees in forest, sell the same as firewood and maintain their families. There were disputes existing between the appellant/A.1 and deceased with regard to their business on one hand and boundary disputes between the appellant and A.2 on the other hand. Hence both the accused came to a conclusion to do away the life of the deceased and waiting for opportunity. While so at about 5.00 PM of 06.06.2009, the deceased left the house towards Rajavommangi centre. A.1 and A.2 met him. In furtherance of their common intention, the appellant/A.1 and A.2

said to have took the deceased to the pan shop of Bhojanapalli Venkateswara rao-P.W.4. At about 7.30 PM, the appellant and another (A.2) offered liquor to the deceased and he consumed the liquor heavily along with the appellant and another up to 11.00 PM. While returning to their respective homes, when reached Vattigadda canal bridge, the appellant and another beat the deceased with sticks indiscriminately resulting his death on the spot in pool of blood. The appellant and another went away with sticks used in the commission of offence. One Tripurala Sathibabu-P.W.3 at 6.30 AM on 7.6.2009 proceeded to canal for answering nature calls and noticed the deceased lying in pool of blood with injuries. He informed the same to P.W.1 who in turn informed to family members, proceeded to the scene of offence and found the dead body of the deceased-Panduri Aadinarayana. P.W.1 presented a report to the police.

3. P.W.12-Sub Inspector of Police received the report from P.W.1 and registered the same as a case in Crime No. 59 of 2009 for the offence punishable under Sections 302 read with 34 IPC on 07.06.2009 at about 9.00 AM. He submitted Ex. P.7-FIR to the Court and copies of the same to the concerned. Later handed over the CD file to P.W.13-Inspector of Police.

4. P.W.13 took up investigation and inspected the scene of offence on 07.06.2009 from 9.30 AM to 11.30 AM in the presence of P.W.10 and others. They identified the dead body of the deceased Aadinarayana and prepared Ex.P.8-rough sketch of offence, got

photographed the scene of offence vide Ex.P.9 and collected controlled earth—MO.7 and blood stained earth—M.O.8. Later observed the scene of offence and prepared scene of observation report vide Ex.P.3 and later conducted inquest-Ex.P.4 over the dead body of the deceased. During the inquest, he examined P.Ws.1,2,3,4,5,6 and others and recorded their statements. Later the dead body was sent to Government Hospital, Addateegala for autopsy.

5. On 12.06.2009 having received credible information about the accused, P.W.13 along with staff proceeded to Sarabavaram centre, near Ramalayam at about 2.00 PM, found the appellant/A.1 and another in suspicious circumstances and arrested them in the presence of mediators P.W.10 and other and recorded their confession.

6. The appellant/A.1 and another led the party to Santhinagar area i.e behind the house of appellant/A.1 and in the presence of P.W.10 and another, the appellant/A.1 and another brought articles—MOs 4 to 6 which were seized under Ex.P.5. Thus the confession of the accused leads to the recovery of M.O.4 to 6 under Ex.P.6-Seizurenama. Later both the accused were remanded to judicial custody.

7. P.W.17-Dr. V.Venkata Rao, Civil Assistant Surgeon, Government Hospital, Addateegala, conducted autopsy over the dead body of the deceased and issued Post mortem examination

report wherein he opined that the cause for death of the deceased was due to head injury with skull fracture and brain exposed and other injuries causing massive blood loss leading to cardio pulmonary failure.

8. P.W.14, who took up charge as Inspector of Police forwarded the material objects to the Regional Forensic Science Laboratory, Vijayawada for analysis and took up further investigation. He secured presence of P.Ws.7,8, 9 and others and recorded their statements. Later P.W.15 assumed charge as Inspector of Police and took up further investigation. Meanwhile, P.W.16 issued Ex.P.10-RFSL report whereunder he opined that blood is detected on items 1,3,4,5,6,7,8,9 and 10 only which is of human origin, but the blood group could not be determined. After receiving RFSL report, P.W.15 filed charge sheet which was taken on file as P.R.C.No.9 of 2009 by the learned Judicial First Class Magistrate, Addateegala. After compliance of Section 207 of Cr.P.C., and as the offences alleged are triable by the Court of Sessions, the case was committed to the Court of Sessions, which came to be numbered as SC.No.144 of 2010

9. A charge under Sections 302 read with 34 IPC has been framed, read over and explained to the accused, to which he denied and claimed to be tried.

10. To substantiate their case, the prosecution examined P.Ws.1 to 17 and got marked Exs.P.1 to P.11 & M.Os.1 to 8. After

the closure of evidence, the accused was examined under Section 313 Cr.P.C. with reference to incriminating circumstances appearing against him in the evidence of prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused in support of his defence.

11. On appreciation of the entire evidence on record, the learned Sessions Judge convicted and sentenced the accused in the manner referred to above. Challenging the same, the present Criminal Appeal came to be filed.

12. Now the point that arise of consideration is '*whether the conviction and sentence recorded by the trial Court is legal, valid and can be sustained*'.

13. The contention of the appellant is that the prosecution case rests purely on circumstantial evidence. The motive plays an important part, but no such motive is proved in the case. In support of his contention, he relied on the case in MAHAMADKHAN NATHEKHAN Vs. STATE OF GUJARAT {(2014) 14 SCC 589}, wherein the Apex Court observed and held :

“Firzbhai died of gunshot injury is established by the medical evidence. The trial Court elaborately considered the evidence and held that there was possibility of accidental death rather than homicidal death. In our view, the homicidal death has not been established in the facts of the case. It was further held that there was no motive for the occurrence. Though large amounts are said to be due from the customers at

Savarkundla, there is no evidence on record in the form of books of accounts. Practically there is no evidence on this aspect. In fact, according to P.W.3-Mohammed Usman, as per Ex.19 a sum of Rs.35,640 was due from Accused 3 and a sum of Rs.18,240 was due from Accused 1. In the cross-examination, he has stated the said amount is due from the clients of Savarkundla and not from Accused 3 Ismailbhai and there are no dues from him. *The law is well settled that when the prosecution case rests purely on circumstantial evidence, motive plays an important part in order to tilt the scale against the accused."*

In the case on hand, the undisputed fact is that P.W.1 is the son while P.W.2 is the wife of the deceased. P.W.7 is the brother of the appellant/A.1. P.W.8 is the close relative of the deceased. The evidence of P.W.1 is that the appellant/A.1 and his deceased father-P.Adinarayana used to cut the fire wood and maintain their families by selling the same. His specific evidence is that when the police enquired as to whether he doubted any body, he stated to the police the name of the appellant/A.1 on the ground that the appellant/A.1 bore grudge against his father due to caught in forest offence and killed him. Ex.P.1 is the report signed and presented by him.

14. P.W.2 is no other than the wife of the deceased and mother of P.W.1 and corroborated the evidence of P.W.1. In her words, she deposed " *due to my doubt on my husband that he informed to the forest department against A.1, A.1 may committed the offence. A.2 and my husband have disputes regarding the house site. A.1 and A.2 bore grudge against my husband."* Similarly P.W.1

also stated with regard to the dispute between the deceased and A.1. He also deposed that A.2 purchased house site behind their house and have some disputes and he also bore grudge against his father. Due to the same, A.1 and A.2 might have killed his father.

15. P.W.6 is the resident of Rajavommangi and was an agriculturist who knows both the accused and deceased. His clinching evidence is that prior to his (deceased) death, Nakka Sathibabu and deceased were having disputes regarding the house site. He had sold the house site of 15 cents to A.2. A.2 and deceased have disputes regarding the boundary of said site. One day A.2 came to his house in the mid night and complained against the deceased by saying that the deceased is obstructing the fencing. On the next day, he (PW.6) placed the dispute before the elders, who called the deceased and A.2. The deceased-Adinarayana came before the elders, but A.2 did not come before the elders. Then the elders admonished A.2. On that night, A.1 and A.2 brought the deceased Adinarayana to the road side and at about 8.00 PM they consumed alcohol near the Brandi shop. P.W.4 informed that they consumed liquor at 8.00 PM and again at 11.00 PM. On the next day, P.W.3 informed him about the death of the deceased. The only suggestion put to P.W.6 is that due to relationship with the deceased he is deposing falsehood and the same was stated before the police. Except that, there is nothing elicited from P.W.6.

16. P.W.7 is the brother of A.1 and he also knows the deceased as his sister's husband. Two years prior to his deposition,

his brother/A.1 and A.2 quarrelled with the deceased on the Saturday night and on the next day morning the deceased was found killed. A.1 and the deceased were quarrelled regarding the logs brought from the forest, and A.2 and deceased were quarrelled with regard to boundary dispute between their house sites. Hence, A.1 and A.2 bore grudge against the deceased. The suggestion put to him was that P.W.7 married the sister of the deceased-Adinarayana and got Ac.200 cashew nut garden from the deceased and therefore, he is deposing falsehood to get the said land from the deceased family.

17. The crucial witness is the Forest Beat Officer, at Rajavommangi, who was examined as P.W.9, whose evidence is that since 2007 he knows A.1 and the deceased, as they used to supply fire wood to the hotels etc. Prior to the two months of the incident, the deceased Adinarayana telephoned him and stated that some logs were kept in a place and accordingly he proceeded to the place and found eight teak wood logs kept secretly. He then prepared seizure report and seized the said logs, however, no accused was identified by him. A.1 was the accused in the fire-wood cases, registered by the Forest Department. During the cross examination, P.W.9 stated that he has not stated about the fire wood cases pending against A.1 when police examined under 161 Cr.P.C. and that he had not handed over any records pertaining to the seizure of eight teak wood logs that were kept in open place as was informed by the deceased. He further stated in the cross

examination that the police have not issued notice for production of records.

18. During the cross examination P.W.13 deposed that to his remembrance one requisition was sent to the Forest Officer for submission of criminal cases against A.1, but the said submission was not found in his CD file. P.W.13 denied the suggestion that being A.1 supported A.2 in respect of the dispute regarding the site between the deceased and A.2, at the instructions of the deceased family, he foisted the case against the accused. There is no specific suggestion to the Investigation Officer-P.W.13 regarding the boundary dispute between the deceased and A.2, and further, regarding arrest of A.1 by the Forest officials on the information furnished by the deceased in regard to teak wood logs secreted by A.1.

19. Thus the above discussion of evidence of P.Ws.1 to 3,4,7 and 13 well established the motive of the accused. Admittedly the deceased and A.1 used to cut the fire wood in the forest and sell the same to hotels etc and because of forest police registered the case against A.1 basing on the information furnished by the deceased regarding eight teak wood logs kept secretly, and, so also, because of the boundary dispute between the deceased and A.2 which is corroborated by the evidence of vendor of A.2 who was examined as P.W.6 who referred the dispute to caste elders, for which, the deceased attended, but A.2 did not attend, thereby A.2 was admonished, both A.1 and A.2 bore grudge against the

deceased. Thus it is clearly established that there are disputes between the A.1 and deceased on the account of forest offence registered against A.1 due to information furnished by the deceased, and, boundary dispute between A.2 and deceased on the other hand, and, thereby both A.1 and A.2 developed common intention to do away the life of the deceased and accordingly they hatch a plan to murder the deceased-Adinarayana. Hence the decision relied on by the learned Counsel for the appellant has no relevancy to the facts of the case.

20. The contention of the learned Counsel for the appellant is that in the absence of definite evidence with regard to the appellant/A.1 and the deceased were lost seen together, and when the time gap is long between the last seen and recovery of body, it would be unsafe to base the conviction against the appellant/A.1. In support of his contention, he relied on the decision of the Apex Court in NIZAM AND ANOTHER Vs. STATE OF RAJASTHAN {(2016) 1 SCC 550} wherein it was held that in the case of circumstantial evidence, the Court has to examine the entire evidence in its entirety and ensure that only inference that can be drawn from the evidence is guilt of the accused. If more than one inferences are drawn, then accused must have benefit of doubt. Moreover, all circumstances should be complete in forming a chain and there should be no gap left in the chain of evidence. In the said case, the dead body was recovered only after three days. The gap between time when deceased is alleged to have left in truck of appellants and recovery

of body is not so small to draw an inference against the appellants therein.

21. In the case on hand, the evidence of P.W.1 is that the accused and deceased used to cut fire wood and maintain their respective families by selling the same to hotels etc. On 6.6.2009 evening the accused called his father to collect the amounts. Accordingly the deceased went along with the accused, but he did not return. The search for the deceased remain futile. On the next day, i.e. on 7.6.2009 at about 7.00 AM, P.W.3 informed that the deceased was in pool of blood. Then P.Ws.1 and 2 along with other relatives proceeded to the bridge down and found the dead body of the deceased in pool of blood. P.W.2-wife of the deceased also corroborated the same that on the evening of 6.6.2009, her husband/deceased and the appellant/A.1 went out of the house, at that time, her husband took away torch light and one Nokia cell phone—M.Os. 5 and 6, but the deceased did not return to home. They awaited through out night. On the next day morning at about 6.30 AM, P.W.3 informed that the dead body of her husband was lying in pool of blood near the bridge, Later P.W.1, herself and other relatives proceeded to the bridge and found the dead body of the deceased.

22. According to the evidence of P.Ws.1 and 2, which is consistent and corroborated and not shaken in cross examination by the defence, on the evening of 6.6.2007, A.1 went to the house of deceased and took away the deceased along with him and on the

next day early morning hours i.e. between 6.30 AM and 7.00 AM, P.W.3 informed that the dead body of the deceased was found near the bridge in pool of blood. Therefore P.W.3 is the first person who seen the dead body of the deceased on 7.6.2009. His evidence is more crucial, who spoke that on 7.6.2009 morning when he gone to answer the nature calls found the person lying under the bridge. Villagers already gathered there. Then he also proceeded to there, identified the dead body of the deceased and informed the same to P.Ws.1 and 2 and their relatives. The only suggestion which is put to P.W.3 and admitted by him was that by the time he visited the dead body, all the villagers reached there. Pertinently it makes no difference and there is nothing to discard his evidence. Therefore the clinching evidence of P.Ws.1 to 3 is corroborated and it consistently proved that the appellant took away the deceased in the evening hours of 6.6.2009 and on the next day morning, it is P.W.3 who seen the dead body lying in pool of blood under the bridge and informed the same to P.Ws.1 and 2.

23. P.W.4 is the owner of pan shop at main road of Rajavommangi. He knows the accused, deceased and P.Ws.1 and 2. The unimpeachable evidence of P.W.4 is that on 6.6.2009 both the accused and deceased came to his pan shop and purchased water pockets and other items and went to the side of shop and drunk liquor and went away. His further evidence is that a liquor shop was situated opposite to his pan shop. The accused and appellant came to his shop at 8.00 PM and 11.00 PM before closing his shop. In the early morning of next day, he came to know that the

deceased Adinarayana was killed. His evidence was not shaken in the cross examination.

24. P.W.6 is an independent witness whose evidence is that at about 8.00 PM on 6.6.2009, A.1 and A.2 brought the deceased to the road side and they all consumed alcohol near the brandi shop. Later P.W.4 informed that they consumed liquor at 11.00 PM. On the next day i.e on 7.6.2009 P.W.3 informed about the death of the deceased. Thereafter he went and saw the dead body and found the major injury on the head of the deceased.

25. The evidence of P.W.4 corroborated the evidence of P.W.6 and it goes to suggest that the brandy shop is situated opposite to the pan shop of P.W.4, that the appellant/A.1, A.2 and deceased Adinarayana went to the pan shop at about 8.00 PM, purchased water pockets and consumed liquor by the side of the brandy shop at 8.00 PM and also at 11.00 PM of 6.6.2009.

26. P.W.7 is none other than the brother of the Appellant/A.1. His evidence is that prior to two years of his deposition, his borther/A.1 and A.2 quarrelled with the deceased Adinarayana on Saturday night and on the next day morning the deceased Adinarayana was found killed. The quarrel between A.1 and deceased was regarding the logs brought from the forest by A.1, and, quarrel between the deceased and A.2 was with regard to the boundary dispute between their house sites.

27. P.W.8 is the last person who had seen the deceased in the company of the accused. His evidence is that on that day, i.e. 6.6.2009, he along with his friends went to Cinema theatre. Later, the deceased, appellant and A.2 came to cinema theatre whereat they quarrelled at about 11.00 PM, then they were separated by him. He further deposed that Addepalli Veerababu, Maddi Rambabu and others witnessed the quarrel incident.

28. From the evidence of P.Ws.1,2,3,4,6,7,8 and 9 discussed hereinabove, it is seen that P.W.1 is the son, P.W.2, is the wife of the deceased and P.W.7 is the brother of A.1. P.Ws.3,4,6 and 8 are independent witnesses. P.Ws.1 and 2 are the persons who first seen the appellant/A.1 on evening hours of 6.6.2009, who took away the deceased from their house. P.W.4 is the owner of the pan shop, who had seen the deceased in the company of A.1 and A.2 at 8.00 PM and again at 11.00 PM of 6.6.2009. At the said two timings, the appellant and Accused went to the pan shop to purchase water pockets. P.W.6 is the person who had seen the appellant in the company of the accused/A.1 and A.2. According to them, A1 and A.2 brought the deceased to the road side at 8.00 PM and they all consumed alcohol near the Brandy shop, which is situated opposite of the pan shop of P.W.4. P.W.7 is the person who had seen the deceased quarrelling with A.1 and A.2 on the Saturday night. The motive of quarrel is that due to the information furnished by the deceased regarding keeping of eight teak wood logs secretly, the forest officials booked the case against A.1. Similarly there is a dispute between the deceased and A.2 with regard to boundary over

their site which was purchased by A.2 by the side of the house of the deceased. P.W.8 is the person who saw the deceased in the company of the accused at about 11.00 near cinema theatre. When they quarrelled with each other at cinema theatre, P.W.8 separated them. On the next day morning i.e. on 7.6.2009 at about 7.30 AM, P.W.3 witnessed the dead body of the deceased under the bridge and informed the same to P.Ws.1 and 2 other relatives, who thereafter proceeded to the bridge down. Thus the evidence clinches the chain of circumstances connecting the accused with the alleged offence.

29. Based on the evidence discussed hereinabove, we are of the opinion that the trial Court came to the conclusion considering the motive on the part of accused for committing the alleged offence because A.1 was doubting that the deceased might have informed the forest officials about his eight teak wood logs kept secretly, and A.2 was admonished by the cast elders when the boundary dispute was referred to them by the deceased. Further all the witnesses i.e. P.Ws.1 to 3,6,7 and 11 deposed with regard to the differences and disputes between the A.1 and deceased on one hand and A.2 and deceased on the other hand. The motive is thus well established. The Trial Court based the conviction on 'last seen theory' as stated by P.Ws.1 to 4 and 6 to 8. The prosecution by adducing corroborative and consistent evidence established the motive of offence and also chain of circumstances connecting the accused with the alleged offence.

30. Evidence of P.Ws.1 and 2 is that after coming to know at about 7.30 AM on 7.6.2009 through P.W.3 that the dead body of the deceased was lying under the bridge, they along with relatives rushed to the spot and found the dead body of the deceased Adinarayana lying in pool of blood with grievous injury on the head. Then P.W.1 drafted Ex.P.1, signed it and presented to the police. P.W.12-Sub Inspector of Police, Rajavommangi who worked from 20.11.2008 to 30.05.2010 deposed that on 7.6.2009 at 9.00 AM he received Ex.P.1 from P.W.1, basing on which, he registered the case in Crime No.59 of 2009 for the offence punishable under Sections 302 read with 32 IPC and submitted Ex.P.1 to the Court of JFCM, Addateegala and copies to all the concerned and informed the same to C.I. of Police, Rajavommangi over phone. The only suggestion put to P.W.12 is that the original FIR-Ex.P.7 was suppressed and submitted Ex.P.4 through P.C.283 to the Court on 7.6.2009 at about 11.10 AM and later created Ex.P.1. This suggestion was not proved by any other evidence. The consistent evidence of P.W.1 is that he got prepared Ex.P.1, signed and submitted to the police after they found the dead body of his father. According to him, P.W.3 is the first person who witnessed the dead body and intimated to him, P.W.2 and his relatives at about 7.30 AM and thereafter Ex.P.1 was presented.

31. P.W.13 is the Inspector of Police. His evidence is that he received a copy of FIR through P.W.12 and then, he along with staff visited the scene of offence. Before proceeding to the scene of offence, he instructed P.W.12 to guard the scene of offence and

gave other relevant instructions. He got photographed the scene of offence vide Ex.P.9.

32. P.Ws.10 and 11 are the mediators. The evidence of P.W.10 is that he was called by police. He along with police proceeded to Vattigadda Kaluva and found the dead body near culvert. They identified the dead body of the deceased as that of Adinarayana of Shanthinagar, Rajavommangi. Police prepared rough sketch of offence vide Ex.P.8, collected controlled earth—M.O.7 and blood controlled earth—M.O.8 under Ex.P.3 scene observation report.

33. Further the evidence of P.W.13 is that he secured the presence of mediators- P.Ws.10 and others and held inquest over the dead body of Adinarayana vide Ex.P.4. The inquestdars under Ex.P.4 opined that the death was due to the injuries sustained by the deceased. After conducting the inquest, dead was sent to the hospital for autopsy.

34. The evidence of P.Ws.10 and 11 corroborated the evidence of P.W.13-Investigating Officer who observed scene of offence under Exs.P.3, Rough sketch-P.8, got photographs -Ex.P.9 and it goes to establish that observance of scene of offence, inquest over the dead body were held on 6.7.2009 itself.

35. The evidence of Investigating Officer-PW.13 further establish that on 8.6.2009 he secured presence of P.W.6 and

another. On 12.062009 on credible information about the movement of the accused, P.W.13 along with PW.12 and staff proceeded to the Sarabavaram centre, near Ramalayam and found the appellant/A.1 and A.2 in suspension circumstances and arrested them. The confession of appellant/A.1 and A.2 was recorded in the presence of mediators-- P.W.10 and another, the relevant portion of which lead them for recovery of material objects. The relevant portion of confession leads for recovery under Ex.P.5 which reads thus: *"later we both (A.1 and A.2) get down and beat the deceased with sticks. The deceased found died in blood pool. Immediately we collected cell phone (MO.5), Torch light (MO.6) and sticks (MO.4) went towards Shantinagar. Thereafter the said two sticks, Cell phones and their blood stained shirts were kept in the bushes situated near their house at Kabalagadda canal". The appellant/A.1 and A.,2 lead the party, police and P.W.10, at their instances recovered MOs. 4 to 6 at the house of A.1 under Ex.P.6."* Accordingly MOs. 4 to 6 were recovered under Ex.P.6-mahazar in the presence of PW.10 and others. The only suggestion put to PW.10 is that Exs.P.3 to P.6 were drafted in the police station and they never proceeded to the scene of offence and drafted the inquest report, scene observation report, mediators report and seizure report. Except that there is nothing to discard the evidence of PW.13. The evidence of PW.13 further goes to establish that the material objects were sent to RFSL, Vijaywada. PW.16 is the Assistant Director, RFSL,Vijayawada who received the MOs in sealed condition and analysed them.

36. P.W.17 was the doctor who conducted Post-mortem examination over the dead body of the deceased Adinarayana. According to the evidence of PW.17, on 8.6.2009 at about 11.30 a.m., the dead body of the deceased Adinarayana was sent through PC. 383 with a requisition for post mortem examination, which was started at 11.00 noon on the same day. He found that decomposition of body was started already; skin was peeling off the body; post-mortem changes were present and rigorous mortis present. He found the injuries on the dead body, namely (1) fracture of both bones of right forearm mid shaft, (2) Contusion injury over right knee of 4 x 2 cms, (3) Laceration injury of 4 x 2 x 2 cms over the right fore head ; (4) wide extended, disturbed lacerations of 10 x 2 x 2 cms over back side of the head i.e. right side of occipital region of skull with skull fracture and brain exposed; (5) two laceration of each 6 x 1 x 1 cms over chin, and (6) cut injury over the upper part of the outer ear i.e. pinna. He opined that the cause for death was due to wide head injury with skull fracture and brain exposed and other injuries causing massive blood loss leading to cardio pulmonary failure leading to death. He concluded the PME examination at 2.00 PM and recorded that the approximate time of death was around 36 to 48 hours prior to PM examination. The injuries found on the dead body of the deceased during the PM examination and as mentioned in Ex.P.11 are corroborated by the evidence of P.Ws.1, 2, and 6 who clinchingly deposed that they observed the head injury.

37. P.W.16, the Assistant Director of Regional Forensic Science Laboratory, Vijayawada deposed that he received case

property in Cr.No.59 of 2009 on 1.7.2009 in properly packed under sealed condition. Totally ten items were furnished for chemical analysis and in his analysis vide report dated 18.8.2009 he detected blood on items 1,3,4,5,6,7,8,9 and 10 only , but not on Item No.2. Blood on the said items was of human origin, but the blood group could not be determined. There is no cross examination of PW.16.

38. Therefore, the clinching evidence on record proves that Ex.P.4—inquest report recorded in the presence of inquestdars which is corroborated by the evidence of PW.17 and Ex.P.11-Post Mortem Examination report establish that death was due to the wide head injury with skull fracture and brain exposed and other injuries causing massive blood loss leading to cardio pulmonary failure leading to death. The RFSL report vide Ex.P.10 also shows that human origin blood was detected on the material objects and other items sent for chemical analysis. The circumstantial evidence coupled with the opinion of inquestdars, seizure of material objects 4 to 6 at the instance of the appellant/A.1 and A.2 in the presence of PWs.10 and 11-inquestdars under Ex.P.6-seizurenama and relevant portion of confession under Ex.P.5 which leads to recovery of MOs4 to 6 evidently connect the accused with the alleged offence of killing the deceased Adinarayana.

39. As stated supra, it is the evidence of P.Ws.1 to 4 that the appellant and deceased used to cut fire wood and maintain their respective families by selling the same to hotels etc.,. The appellant/A.1 doubted that the deceased might have informed the

forest officials with regard to eight teak wood logs kept secretly and registration of crime against him in regard thereto. So also, there are disputes between A.2 and the deceased regarding the boundary disputes of site. Both A.1 and A.2 hatched a plan to do away the life of the deceased Adinarayana. To carry out their common intention, on the evening of 6.6.2009, the appellant/A.1 and A.2 went to the house of deceased and took him away from his house. Thereafter the deceased Adinarayana found not returned to home. It is P.W.3 at 7.00 AM of 7.6.2009 found the dead body of the deceased Adinarayana lying in pool of blood under the bridge and intimated the same to PWs.1 and 2 and their relatives, who rushed to the scene of offence and found the dead body of Adinarayana in pool of blood. Then P.W.1 presented Ex.P.1 report, basing on which, PW.12 registered the crime and P.Ws.13 and 14 took up investigation. During the investigation, P.W.13 secured the presence of P.Ws.10 and 11 drafted the inquest report, scene observation report, mediators report along with seizure report vide Exs.P.3 to P.6 and seized MOs 7 and 8—controlled earth and blood controlled earth. On 12.6.2009 at about 2.00 PM, on credible information, P.W.13, along with staff and mediators proceeded to Sarabavaram centre, near Ramalayam and arrested the accused and on their confession, recovered MOs 4 to 6 under Ex.P.6 as contemplated under Section 27 of the Indian Evidence Act. The doctor—P.W.17 who conducted Post mortem examination under Ex.P.11 opined that the death was due to wide head injury with skull fracture and brain exposed and other injuries causing massive blood loss leading to cardio pulmonary failure leading to death. Further, it

is to be noted that P.Ws.1 and 2 were the persons first seen the deceased Adinarayana on 6.6.2009 when A.1 and 2 came to their house and took away the deceased, who consumed liquor at 8.00 PM and again at 11.00 PM on the same day. P.W.4 was the pan shop owner, from whom the deceased Adinarayana and accused purchased water pockets and consumed liquor by the side of Brandy shop which was situated opposite to the pan shop of P.W.4. P.W.6 also seen A.1 and A.2 bringing the deceased Adinarayana to road side and consuming liquor at 8.00 PM of 6.6.2009. P.W.8 was the last seen person who deposed that the deceased Adinarayana and accused quarrelled with each other at Cinema theatre and he separated them. The vociferous motive of offence is thus well established as discussed supra.

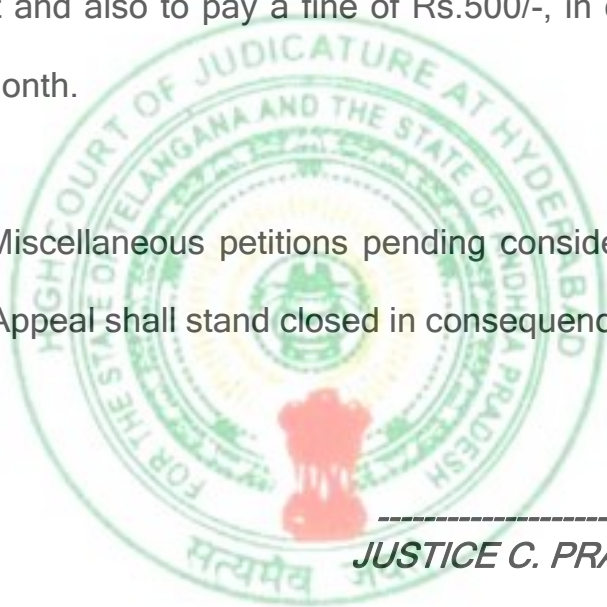
40. Thus we are of the considered opinion that the motive for the alleged offence is with regard to the forest offence dispute between the A.1 and deceased on one hand and boundary dispute between the deceased and A.2 on the other hand and in order to carryout their common intention, they hatched a plan and accordingly committed the offence of murdering the deceased Adinarayana.

41. The trial Court while marshalling the facts and circumstances, and appreciation of the evidence on record came to the right conclusion that the prosecution well established the motive, 'last seen theory' to base the conviction and chain of circumstances connecting the accused with the offence. In our considered opinion,

the judgment of the trial Court is legal, valid and tenable and does not suffer from any infirmities.

42. For the foregoing discussion and in the result, the criminal appeal is dismissed confirming the judgment and order dated 25.05.2010 passed by the learned VI Additional Sessions Judge (FTC), East Godavari District, at Rajahmundry convicting and sentencing him under Section 235(2) Cr.P.C. for the offence punishable under Section 302 read with Section 34 IPC to suffer life imprisonment and also to pay a fine of Rs.500/-, in default to suffer R.I. for one month.

43. Miscellaneous petitions pending consideration if any in the Criminal Appeal shall stand closed in consequence.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Dated 13th December, 2017.
Msnr_x