

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

**CRIMINAL APPEAL No.66 of 2013
AND
CRIMINAL APPEAL No.193 of 2013**

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

1) Crl.A.No.193 of 2013 is preferred by A-1 while A-2 preferred Crl.A.No.66 of 2013 against the judgment passed in S.C.No.156 of 2011 on the file of III Additional District Judge, Tirupati wherein the accused were tried on three charges. The first charge was under Section 302 IPC against A-1, while the second charge was under Section 302 read with 34 IPC against A-2 and the third charge was under Section 201 IPC against A-1 and A-2. Vide judgment dated 07.01.2013, the learned III Additional District Judge, Tirupati while acquitting both the accused for the charge under Section 201 IPC, convicted A-1 under Section 302 IPC and A-2 under Section 302 read with 34 IPC and sentenced both of them to suffer imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for a period of six months each. Challenging the same, the present appeals came to be filed.

2) The substance of the charge against the accused is that on the night of 22.05.2010 at Room No.470-D, Anjanadri Nagar Cottages (ANC), Tirumala, A-1 is said to have pressed the neck of one Malleswar Reddy (hereinafter referred to as "the deceased") with a

pillow, while A-2 caught hold of the hands of the deceased and thereby facilitating A-1 in causing the death of the deceased.

3) The facts as culled out from the evidence of prosecution witnesses are as under:-

A-2 is the wife of deceased, while A-1 is a resident of Siddamreddypalli village and used to work as a tiles mason. P.W.11 is the brother of the deceased while all other witnesses were examined to speak about the circumstances relied upon by the prosecution to connect the accused with the crime. As the case rests on circumstantial evidence and since most of the witnesses resiled from their earlier statements, we intend to narrate the basic facts as stated in the charge-sheet to understand the case. The accused is a native of Siddamreddypalli village, Peddajutur post, Vemula Mandal, Kadapa district and was eking out his livelihood as a tiles mason. He married one Lakshmid devi about seven years back and out of wedlock they were blessed with a daughter by name Sravanthi and son Ganga Kiran. The deceased married A-2 and was blessed with a daughter and a son and he was living at Thoundur village. During the year 2008, A-1 attended to some alteration work at the house of one Ramana Reddy at Thondur village. At that time, A-1 is alleged to have developed illegal intimacy with A-2 and thereafter he used to visit Thoundur village to meet A-2, which came to the notice of the deceased. It is alleged that since A-2 was very particular to live with A-1 only and as the deceased was sexually a weak person, the deceased is alleged to

have asked A-1 to marry A-2 and live with him at his house. It is stated in the charge-sheet that the deceased permitted A-1 to visit his house. Later the marriage of A-2 was performed with A-1 at Papanasanam, in the presence of deceased. On coming to know about the incident, one Pratap Reddy (P.W.11) quarreled with the deceased in allowing A-1 to continue his relationship with A-2. Due to this incident in the village, the deceased is alleged to have vacated the house and shifted his family to Yerraguntla, about seven months prior to the date of incident. It is alleged in the charge-sheet that at the time of occupying the house at Yerraguntla, the deceased introduced A-2 as his daughter and A-1 as his son-in-law to the neighbours. While things stood thus, A-1 came to know about the deceased having Ac.9.00 of land and as such he used to pressurize the deceased to register the land in the name of A-2. The said proposal was refused by the deceased and as such the plan of A-1 and A-2 to enjoy the fruits of the said land failed. Thereafter, A-1 and A-2 in collusion with one Prasad Reddy(juvenile) are alleged to have hatched a plan to do away the deceased. While the plan to eliminate the deceased was under way, one day the deceased himself expressed his desire before the accused, to visit Tirumala on a pilgrimage. Then, A-1 and A-2 decided to utilize the said opportunity in executing the plan.

It is the case of prosecution in the charge-sheet that on 19.05.2010 A-1 purchased six sleeping pills at Swetha Medical shop located at Yerraguntla. Thereafter on 20.05.2010 all of them

proceeded to Tirumala where the deceased took room No.470-D at ANC area and all of them stayed in the said room. On the same day evening at about 5.30 p.m., the accused with a common intention of eliminating the deceased are alleged to have administered 5 sleeping pills in the coffee given to the deceased to kill him, but he did not go to sleep due to insufficient dose. On the next day they attended the tonsuring of heads, had darshan and free meals, and thereafter slept in the room, which is evident from the pictures obtained through CC cameras. On the next day i.e., on 22.05.2010 A-1 and the deceased went to park where a wordy quarrel is alleged to have taken place between them with regard to Ac.9.00 of land. At that time, the deceased is alleged to have warned A-1 to discontinue his relationship with A-2. The averments in the charge-sheet show that on the same day, on the instructions of A-1, the juvenile Prasad Reddy, got 7 sleeping pills from the medical shop of P.W.10, administered the same to the deceased and thereafter caused his death by tying the hands and legs of the deceased with pieces of a saree. It is said that when A-2 caught hold the hands of the deceased, the juvenile caught hold the legs and thereafter A-1 is alleged to have smothered the deceased with a pillow till his death.

On 23.05.2010 at about 4.30 p.m., while P.W.22-the S.I. of Police, II Town Police Station, Tirumala, was in police station, P.W.1-Kasi Jayanna came to police station and gave Ex.P-1-a written report. Basing on which a case in Cr.No.29 of 2010 came to be registered

under Section 174 Cr.P.C. After registering the crime, he visited the scene of offence i.e., the room taken on rent in Tirumala along with mediators and noticed the dead body of Malleswara Reddy on a cot. He noticed blood oozing from the mouth and nose of the dead body. He also noticed blood stains on pillow and on the bed sheet (M.O.3). He also noticed one woolen shawl (M.O.9), one pair of chappal (M.O.4), meroon colour water bottle (M.O.10), green colour mud bangle piece (M.O.14), red colour thread with venkateswara swamy dollor (M.O.13), Sakshi daily news paper in a plastic paper, face powder (M.O.11) and three filter cigarette pieces (M.O.12). He further noticed one strip of Restyl 0.5 mg, having one tablet (M.O.7) and two strips of valium-10 tablets containing four and three tablets (M.O.8). He seized the said M.Os.1 to 4, 7 to 14, 18 and 19 under the cover of panchanama-Ex.P-21, in the presence of P.W.16. He also got photographed the scene of offence. Ex.P-4 is the photographs of the scene. Ex.P-32 is the rough sketch of the scene of offence. He posted a guard at the dead body, as it was night.

On the next day i.e., on 24.05.2010 he conducted inquest over the dead body of the deceased in the presence of same panchayatdars. Ex.P-5 is the inquests report. During the course of inquest, he examined P.Ws.2, 3 and another and thereafter sent the dead body for post-mortem examination. Since there were no claims to the body, he got published in the news paper about the death of a person with his photograph, which made the relatives of the deceased

i.e., P.W.5 and P.W.6 to come over to S.V. Medical college and identify the body as that of Malleswara Reddy. On 25.05.2010 he visited the ANC sub enquiry office at 12.30 p.m. and seized the accommodation register.

P.W.21, who is a Civil Assistant Surgeon in the Department of Forensic Medicine, S.V. Medical College, Tirupati, conducted autopsy over the dead body and issued Ex.P-28-the post mortem certificate. After receiving the FSL report-Ex.P-29, he opined that the deceased would appear to have died of Asphyxia due to smothering. The FSL report further discloses that diazepam sedative substance is found in items 1, 2, 3 and 5 of the FSL report.

Further investigation was taken up by P.W.23, the Inspector of Police. According to him, on 06.06.2010 at about 9.30 a.m., he received a phone call from P.W.7-V.R.O., Thondur stating that on that day at 7.30 a.m., A-1, A-2 and juvenile Prasad Reddy approached him and admitted to committed murder of Malleswara Reddy in ANC 470-D and requested him to help them. Then himself, P.W.22 and staff proceeded to the residence of P.W.7-V.R.O., in Muddanur and found A-1, A-2 and Prasad Reddy (juvenile). He apprehended them and on interrogation, the accused are alleged to have confessed about the commission of the offence, which lead to recovery of plastic bag containing the clothes on the footpath near Mokallamitta under Ex.P-35. While the confession of A-2 lead to recovery of a plastic bag containing the saree of A-2, by the side of foot path near

Mokallamitta, which was seized under Ex.P-36. Thereafter he altered the section of law to 302 IPC vide Ex.P-37. The objects which were recovered from A-1 and A-2 were marked as M.Os.15 to 17 respectively. After receipt of a requisition, the III Additional Judicial Magistrate of First Class, Tirupati conducted test identification parade on 19.06.2010 in Sub Jail, Tirupati. Ex.P-43 is the test identification proceedings. As per the proceedings, P.Ws.2 to 4, 8 and 10 identified A-1 as the offender among the row of suspects and non-suspects. After collecting FSL report and Post Mortem report, P.W.23 filed the charge-sheet, which was taken on file as P.R.C.No.20 of 2010 by the II Addl. Judicial Magistrate of I Class, Tirupati, who in turn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.156 of 2011.

4) Basing on the material available on record, charges under Sections 302, 302 read with 34 and 201 IPC came to be framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

5) To substantiate its case, the prosecution examined PWs.1 to 24 and got marked Exs.P-1 to P-43 and MOs.1 to 23. Out of the 24 witnesses, examined by the prosecution to prove their case, P.Ws.5, 6, 7, 13, 14, 17, 18 and 19 did not support the prosecution case and were treated hostile by the prosecution. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with

reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

6) Basing on the evidence of the prosecution witnesses, more particularly the circumstance of deceased being last seen alive in the company of A-1 and A-2; the conduct of accused being against the ordinary course of human probabilities, and the recovery of M.Os. pursuant to the confession of A-1 and A-2, the trial court convicted the accused. Challenging the same, the present appeals came to be filed through the legal aid counsel.

7) Learned counsel for the appellants mainly submits that there are no eyewitnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. According to him, though many facts are said in the charge-sheet, but there is absolutely no evidence on record to show the involvement of the accused in the commission of offence. It is pleaded that the version of the prosecution in the charge-sheet is not supported by the evidence adduced in the court.

8) On the other hand, the learned Public Prosecutor would contend that the circumstance of accused being last seen in the company of the deceased in Tirumala; purchase of sedatives at Tirumala coupled with the post-mortem report showing the time of death, is sufficient

to hold that the circumstances relied upon form a chain of events connecting the accused with the crime.

9) As seen from the record, there are no eyewitnesses to the incident and the case rests on circumstantial evidence. Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be closely connected with the principal fact sought to be inferred from those circumstances. **(Kanhaiya Lal v. State of Rajasthan (2014(0) AIJEL-SC 55111)**

10) Keeping in view the principles laid down by the Apex Court, it is to be seen whether the circumstances relied on by the prosecution are true and if true whether they can connect the accused with the crime?"

11) The circumstances, which the prosecution intends to rely upon are :- i) Motive; ii) Death of the deceased being homicidal in cottage No.ANC 470-D on 23.05.2010; iii) taking cottage on rent by the deceased in ANC 470-D at Tirumala Hills on 20.05.2010; iv) The deceased being found in the company of A-1, A-2 and juvenile Prasad Reddy in Tirumala on 20.05.2010; Identification of A-1, A-2 by P.W.2 to P.W.4, P.W.8 and P.W.10; v) Sleeping pills being purchased from the

medical shop of P.w.10 and administered to the deceased; vi) Last seen together; vii) extra judicial confession of A-1 and A-2 made to P.W.7; viii) Confession of A-1 and A-2 leading to recovery of M.Os.15 to 17.

12) Dealing with the first circumstance namely motive, the prosecution placed reliance on the evidence of P.Ws.11 and 13 in support of their plea. Since the evidence of these two witnesses does not anywhere indicate that the motive for the accused to commit murder was when the deceased refused to transfer Ac.9.00 of land and their being no evidence to show that accused ever demanded the deceased to part with Ac.9.00 of land, the trial court rightly held that the prosecution failed to prove motive for the commission of offence. However, the trial court observed that it does not signify its non-existence, which we are not able to agree. Having held that there is no evidence to prove motive for the offences, the court, in our view was not right in holding that it does not signify its non-existence. It is also to be noted that the trial court disbelieved the extra judicial confession said to have been made by A-1 and A-2 before P.W.7. However, the Court held that the accused are the persons who were responsible for the death of the deceased, as the death was homicidal in ANC 470-D; the accused were last seen in the company of the deceased; PWs.2 to 4, 8 and 10 identifying A-1 and A-2 as the persons in the company of the deceased prior to the incident; purchase of sleeping pills at Tirumala from the shop of P.W.10 by the

accused and that A-1 and A-2 along with juvenile verifying the strength of sleeping pills; administration of sleeping pills to the deceased; the evidence of Doctor evidencing administration of a sedative substance containing Alprazolam and thereafter executing their plan by killing the deceased.

13) The first circumstance, which prosecution relied upon was the cause of death?

The evidence on record, more particularly the evidence of the Post-mortem Doctor, which we have referred to earlier, clearly establish that it is a case of homicidal death. In fact it is not the case of the accused that the deceased committed suicide. The evidence of P.W.1 (Kasi Jayanna) is that on 23.05.2010 at 3.00 p.m., while himself and P.W.2 were checking over stay cottages in ANC area, Tirumala, went near cottage No.470-D and found the door bolted from outside. On suspicion they opened the bolt of the door and found dead body of a male person lying on the cot. He further deposed that the age of the said dead body was around 40 years and also found blood coming out from the nose and mouth. He also deposed that his verification in the ANC accommodation register revealed that ANC 470-D was allotted to one Malleswara Reddy. Similar is the evidence of P.W.2 and P.W.3. P.W.4 also deposed that he entered the name of allottee as Malleswara Reddy as a resident of Yeerraguntla village in the accommodation register, marked as Ex.P-2 and the relevant entry at Sl.No.167 at page 86 was marked as Ex.P-3. After verifying the dead

body with the photos he identified the said person as Malleswar Reddy. The evidence of P.Ws.5 and 6 disclose that they saw the dead body of Malleswara Reddy in the hospital in Tirumala Hills and identified the dead body as that of Malleswara Reddy. P.W.22, who is Investigating Officer, in his evidence deposed that he got the scene of offence photographed through photographer P.W.15. Therefore, the evidence of P.Ws.1 to 3 would establish that a male dead body was found in ANC 470-D on 23.05.2010 and PW.4 identified the dead body with the photos while evidence of P.Ws.5 and 6 would show that they identified the dead body as that of Malleswara Reddy. The evidence of P.Ws.15 and 22 categorically establish that the photo pertains to the dead body that was found in the cottage ANC 470-D on 23.05.2010. From the above, it stands established that the death was homicidal and the body found was that of one Malleswar Reddy.

14) The second circumstance is whether the deceased took a room on rent in Tirumala in his name?

P.W.4, who is working as an Attender in his evidence deposed that while he was on duty on 20.05.2010, in ANC reception, from 8.00 a.m., to 4.00 p.m. one male person aged 40 years along with another male person aged 30 years, one female, two male children and one female child came to him with an accommodation slip. He further deposed that after entering the address in the accommodation register, he asked the male person to go to the area Attender and collect the keys of cottage ANC 470-D. The accommodation register

for the period 15.05.2010 to 23.05.2010 is marked as Ex.P-2 and the relevant entry in page 86 at Sl.No.167. The evidence of P.W.2 shows that on 20.05.2010, while he was on duty from 8.00 a.m., to 4.00 p.m., in ANC Area, one person byname Malleswara Reddy along with one male person, one female person and three children, came with the receipt of allotment of cottage 470-D. Then he handed over the keys of cottage ANC No.470-D, to the person byname Malleswara Reddy. The evidence of these two witnesses establish that the deceased took a room in Tirumala in his name.

15) The third circumstance relied upon by the prosecution is with regard to the accused being last seen in the company of the deceased.

16) In order to prove the same, the prosecution relies upon the evidence of P.Ws.2 to 4 and P.W.8. P.W.2 in his evidence deposed that on 20.05.2010 at about 3.00 p.m., while he was on duty in ANC Area, one person by name Malleswara Reddy came with the receipt of allotment of cottage No.470-D and in all there were two male persons, one female person and three children. On seeing the receipt, he handedover the keys to the deceased. He further deposed that on 19.06.2010, in the Test Identification Parade, he identified A-1 and A-2 as the persons in the company of the deceased in the cottage No.470-D, on 20.05.2010. Further, P.W.3 who is also an Attender in T.T.D., in his evidence deposed that while he was on duty on 20.05.2010 in ANC area from 4.00 p.m., to 8.00 a.m., he saw A-1, A-2, deceased and three children on 20.05.2010 coming and going into

cottage No.470-D. On 22.05.2010 he found 470-D bolted from outside and later saw the dead body of a male person in 470-D on 23.05.2010. He also identified A-1 and A-2 in the Test Identification Parade as the persons who were in cottage No.470-D on 20.05.2010. P.W.4, who is also an Attender in ANC deposed that on 20.05.2010 he was on duty from 8.00 a.m., to 4.00 p.m. On that day at about 3.00 p.m., one person by name Malleswara Reddy along with one male, one female, two male child and one female child came to him along with accommodation slip. Then he entered the particulars in the accommodation register and asked Malleswara Reddy to go to the Area Attender to take the keys. On 24.05.2010 he came to know that Malleswara Reddy was murdered. Further, he identified A-1 and A-2 as the persons who accompanied Malleswara Reddy on 20.05.2010. P.W.8 who is also a Attender in ANC, deposed that on 21.05.2010 he informed the occupants of 470-D that they have to pay rent for the extension of room, since 24 hours have elapsed. At that time he found two male persons, one female person and three children. On 23.05.2010 evening he was informed that one person died in 470-D. He identified A-1 and A-2 as the persons, who were in the company of the deceased, in 470-D on 21.05.2010. The said evidence of P.Ws.2, 3, 4 and 8 would only establish that the deceased was found in the company of A-1, A-2 and juvenile-Prasad Reddy on 20.05.2010 and 21.05.2010.

17) The evidence of these witnesses do not show as to whether the deceased was alive on 22.05.2010 and also as to whether the accused were present along with the deceased from the afternoon of 21.05.2010 i.e., when P.W.8 has last seen them together. Only on 23.05.2010 after 4.00 p.m., while P.W.2 and P.W.1 were moving in ANC area to check over stay rooms, they noticed the door of cottage No.470-D bolted from outside. When they opened the door, noticed a male dead body with a tonsured head on the cot. They also found the dead body with Lungi and shirt and blood coming out from the nose and mouth.

18) The fourth circumstance relied upon in the purchase of sleeping pills from a medical shop in Tirumala?

19) At this stage, it is useful to refer to the evidence of P.W.10, who was working as a Salesman in Srinivasa Medical Stores, Tirumala. According to him, on 22.05.2010 at about 5.30 pm., one boy aged about 13 years came to their Medical shop and asked him to give tablets for leg pains and sleeping. When enquired as to whether the person to whom these tablets are to be given, is accustomed to consume sleeping pills, the boy replied in positive. Then he gave Valium 10 and collected Rs.15/-. Ten minutes later, the same boy came and asked for three more strips. Then he gave three more strips of Valium-10 and collected Rs.12/-. M.Os.7 and 8 are said to be the strips that were sold by him to that boy. Later the said boy along with a male and female person came to shop and enquired whether those are powerful pills. He

seems to have told them that if those pills are used in excess quantity, it is dangerous to life. P.W.10 is said to have identified A-1 and A-2 as the persons who came to his shop on 22.05.2010, in the Test Identification Parade. However, in the cross-examination he admits that sleeping pills cannot be sold at the Medical shop, without the prescription of a medical practitioner. He further admits that they maintain a computer to show the sales of medicines, but states that there is no computer in medical shop. He further states that he did not issue any bill for the sale of tablets to the boy. He further admits that number of pilgrims used to purchase medicines from his shop even without prescriptions and he cannot identify all those persons, who came to his shop to purchase medicines. He further admits that selling sleeping pills to a minor, without any prescription is an offence and that he sold the medicines knowing that the same if used in excess dose, would lead to the death of a person. Through the evidence of P.W.10, the prosecution wanted to prove that the accused purchased these tablets to be administered to the deceased, so as to make him unconscious and then kill him. Though P.W.10 in his evidence in chief deposed about selling the medicine "Valum-10" to a child and thereafter both the accused coming to his shop and enquiring about the potency of the said tablets, but in the cross-examination he admits that they are not supposed to sell those tablets in Tirumala and even if sold the same can be only with a proper prescription. He further states that daily many pilgrims come to his shop and that he

cannot identify the persons who purchased the medicine. The evidence of P.W.10 does not anywhere indicate any special features which made him to identify A-1 and A-2 in the Test Identification Parade which was held a month after the incident, moreover, when he himself admits that he cannot identify every customer who visits his shop. Further, there is no proof that strips of tablets seized in the cottage was sold by P.W.10. In the absence of any bill or the stock register, it cannot be said that the medicine with that batch was sold by P.W.10. It is also difficult to understand as to how the prosecution was able to connect the medicine seized with the sale made by P.W.10. There is no other evidence to establish the said link except the evidence of P.W.10, who on his own never came forward as a witness till he was examined by police. It appears that only after the confession of the accused, the prosecution tried to collect the evidence by examining P.W.10. Hence, the above mentioned circumstances, creates a doubt in the evidence of P.W.10 and he identifying A-1 and A-2 at a later point of time.

20) At this stage, it would also be useful to refer to the evidence of Post-mortem Doctor, who was examined as P.W.21. He is said to have conducted post-mortem on 24.05.2010 between 11.30 a.m., to 2.00 p.m. According to him, the approximate time of death of the deceased was 36 to 48 hours prior to post mortem examination and the deceased would appear to have died of Asphyxia due to smothering. The stomach contains 300 grams of semi digested food, with no specific

smell, Mucosa nil, small intestine distended with gas and large intestine distended with gas and faecal matter. The FSL report discloses presence of Diazepam, a sedative substance, in items 1, 2, 3 and 5 of FSL report i.e., A piece of stomach and intestine in brownish turbid liquid, A piece of Liver and Kidney in brownish turbid liquid, Reddish turbid liquid and whitish powdery substance. Therefore, the fact that the deceased was having sedative substance in his body stands established through FSL report. Mere presence of a sedative substance cannot lead to an inference that the same was administered by the accused, more so when the purchase of the same is held to be doubtful. Further, the last circumstance which will be discussed hereunder, will also falsify the said aspect as well.

21) As stated earlier, A-1, A-2 and their son were moving very freely in Tirumala till the afternoon of 21.05.2010. As observed by us earlier the deceased got tonsured his head on 21.05.2010 and thereafter there is absolutely no material on record to show that these accused were seen along with the deceased till the body was found in the evening of 23.05.2010. P.W.3 who is working as an Attender, in his evidence deposed that his duty on 23.05.2010 was from 8.00 a.m., to 4.00 p.m. and has seen the cottage locked from outside during that period. It would be useful to extract the evidence of P.W.3, which is as under:

"My duty on 22.05.2010 was from 8.00 a.m, to 4.00 p.m. On 23.05.2010 after 4.00 p.m., I came to know that a dead body

was found in 470-D. I went to 470-D. I found the dead body of a male person on the cot. He was aged about 35 to 40 years. We found that blood coming out from the nose and ears. I saw A-1, A-2, Deceased and three children on 20.05.2010 while coming and going to the cottage No.470-D. On 22.05.2010 I found 470-D locked from outside. Again I saw the dead body of a male person in 470-D."

22) From this evidence, it is clear that the cottage, which was taken on rent by the deceased, was locked from 8.00 a.m., to 4.00 p.m. There is no evidence on record to show that the said cottage was opened after 4.00 p.m. on 22.05.2010. If the evidence of P.W.3 is taken into consideration, it indicates the death of the deceased would be prior to 8.00 a.m., on 22.05.2010 since the door of the cottage was never opened till 4.00 p.m. on that day nor is there any evidence to show that accused along with deceased were moving in Tirumala together on that day or that someone was in the cottage after 4.00 p.m., on 22.05.2010. But the evidence of P.W.10 is otherwise. It shows that the accused came to their shop and purchased sleeping pills after 5.30 p.m., on 22.05.2010. If the evidence of P.W.10 and the case of the prosecution is to be believed, the deceased must have been alive by then and that he was done to death on the night of 22.05.2010, which cannot be accepted in view of the evidence of P.W.3 and the finding given above with regard to the evidence of P.W.10.

23) Coming to the Test Identification parade in which P.Ws.2, 3 and 8 identified A-1 and A-2, the same in our view does not connect the accused with the crime. As there is no dispute with regard to accused

and deceased going to Tirumala on 20th and as all of them were seen till the morning of 21.05.2010, their identification by the attenders who saw them on 20th and 21st cannot be found fault with. But the issue is whether the accused and the deceased were together till the night of 22.05.2010, for which as observed by us earlier, there is no legal evidence.

24) Coming to the recovery of M.Os.15 to 17, the same relates to recovery of the clothes and no special features are noticed in the recovery, to connect them with that of the deceased.

25) Therefore, the only question now would be whether the circumstance of last seen on 20.05.2010 and 21.05.2010 by itself would be sufficient to connect the accused with the crime.

26) In **Anjan Kumar Sarma and others V. State of Assam¹**, the Apex Court held as under:

"It is clear that in a case where the other links have been satisfactorily made out and the circumstances point to the guilt of the accused, the circumstance of last seen together and absence of explanation would provide an additional link which completes the chain. In the absence of proof of other circumstances, the only circumstance of last seen together and absence of satisfactory explanation cannot be made the basis of conviction."

27) As held by us that the other circumstances relied upon by the prosecution are not proved and the prosecution was able to establish

¹ (2017) 14 SCC 359

the accused being last seen with the deceased on 20.05.2010 and on 21.05.2010. There is no evidence on record to show as to what happened later. The time when the accused and the deceased were seen together and the time when the body was recovered cannot be said to be too proximate to hold that it was the accused alone who are responsible for the death of the deceased. Even otherwise, in the absence of any other circumstance being proved, the link of last seen by itself may not be sufficient to hold the accused responsible for the incident. Having regard to the above, we are inclined to acquit the accused as the prosecution failed to prove its case beyond reasonable doubt.

28) In the result, both the Criminal Appeals are allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 07.01.2013 passed in S.C.No.156 of 2011 on the file of the III Additional District Judge, Tirupati, for the offence punishable under Section 302 IPC against A-1 and under Section 302 read with 34 IPC against A-2 are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime. Miscellaneous Petitions, pending if any in these Criminal Appeals, shall stand cancelled.

JUSTICE C.PRAVEEN KUMAR

JUSTICE P.KESHAVA RAO

Dt: 27.07.2018
GM