

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL Nos.43 of 2013 and 145 of 2013

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

Criminal Appeal No. 145 of 2013 is filed by A1, while Criminal Appeal No. 43 is filed by A2 to A5 against the judgment in Sessions Case No. 577 of 2008 on the file of the V Additional District and Sessions Judge, (Fast Track Court), Ranga Reddy District of 2013. They were tried for the offences punishable under Sections 302, 201 and 120-B IPC read with Section 34 IPC, alleging that on 15.07.2007, at about 4.15 p.m., they caused the death of one Sddala Srisailam @ Raju. By its judgment dated 31.12.2012, the learned Sessions Judge, while acquitting A1 to A3 for the offence punishable under Section 201 IPC, found them guilty for the offence punishable under Section 302 read with 34 IPC and sentenced them to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/- each. The learned Judge also convicted A4 and A5 for the offences punishable under Section 302 read with 120-B IPC, and sentenced them to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/- each.

2. The case of the prosecution, as culled out from the evidence of the prosecution witnesses, is as under:

PWs 1 and 2 are the parents of the deceased, while PW3 is the brother-in-law of the deceased. A4 is the wife of PW2, while PW1 is the second wife of PW2. A5 and A6 are the sons of A4, born through PW2. A4 was having three sons, including A5 and A6 and a daughter. PW1 was having four daughters and a son (deceased). After the marriage of PW1 with PW2, all the family members, including A4 lived together at Brahmanapally village. At that time, PW1 gave birth to her first daughter. On one day, while PW1, her elder daughter along with A4 and other family members were sleeping in their house, A4 poured kerosene on them, and in the process, the elder daughter of PW1 sustained burn injuries. Immediately, PW1 took her injured daughter into her fold and started raising cries. Though she thought of lodging a report against A4, the villagers convinced her not to do so and pacified the matter. On the request of the elders, PW1 dropped the report. In order to save herself from future attacks, PW1, on the advice of the village elders, shifted her residence from Brahmanapally to Ramdasapally, along with her husband. However, A4 continued to reside at Brahmanapally. Six months thereafter, A4 started quarrelling with PW1, on the ground that her husband was not looking after her. A panchayat was held in the village, in which PW1 and her family members were advised to stay at Brahmanapally and A4 was advised to live at Ramdasapally. Little later, A4 left the house and came back after two days. The village elders scolded her, pursuant to which she came back to Brahmanapally and stayed separately.

3. The son of PW1, who is the deceased, studied upto X Class and used to look after the agriculture work and also graze the cattle. On the date of incident, at about 11 a.m., PW5 went to a stream to enable his cattle to drink water. There, he found the deceased with a lamb in his hand. He talked with the deceased for some time and in the meanwhile, PW6 joined him. All three of them chit-chatted with each other. Thereafter, PW14 also joined them. Later, PW14 left the place with his cattle. At about 2.30 or 3 p.m., PW5 claims to have left the company of the deceased and PW6. While he was leaving the place, he noticed three persons roaming nearby, who started talking with the deceased. It is now stated that A1 to A3 are the said three persons. PW5 claims to have left the place, requesting the deceased to look after his cattle also.

4. The evidence on record further shows that by the time PW5 returned to his house, the cattle of the deceased, along with his cattle, returned to the village. PW5 tied his cattle in the cattle pound and the cattle of the deceased in his pound. Then he telephoned to the deceased to enquire about his whereabouts, but his cell phone was switched off. As it was getting dark, he informed PW4 about the deceased not responding to his call and asked him to try. PW4, who was having a telephone booth, called the deceased, but the cell phone of the deceased was switched off. PW5 claims to have enquired PW6 and PW14, but, they were also not aware about the whereabouts of the deceased. When some of the villagers enquired about the deceased, PW5 told them

that he found the deceased talking with three persons, when he left the said place. Thereafter, PW5, along with other villagers, went to the place where the three persons were talking with the deceased. When PW5 reached the place, he noticed some blood stained clothes and also found some traces of blood, which led them to a nearby bush, where they noticed the body of the deceased. All of them returned back to the village, raising hue and cries and informed PW4 about the same, who, in turn, informed the family members of the deceased.

5. On the next day, at about 5 a.m., PW1 lodged a report before PW15-the Sub Inspector of Police, Ibrahimpatnam, basing on which a case in Crime No. 149 of 2007 came to be registered under Section 302 IPC. Exhibit P15 is the FIR. During the course of investigation, PW15 examined PWs 1 and 2 and recorded their statements. Later, he visited the scene of offence situated at the outskirts of Ramdasally village, and in the presence of PW9 and LW14, conducted a panchanama of the scene, which is placed on record as Ex.P2. He also prepared a rough sketch of the scene, which is marked as Ex.P3. He also seized M.Os 1 to 3 from the scene of offence. Thereafter, he conducted inquest over the dead body in the presence of PW9 and LW14. Ex.P4 is the inquest report. During inquest, he examined PWs 3 to 5 and recorded their statements. Thereafter, he sent the dead body for post mortem examination.

6. PW12-the Civil Assistant Surgeon, Government Civil Hospital, Ibrahimpatnam conducted autopsy over the body of the deceased on 16.07.2007 and issued Exhibit P11-the Post Mortem Report. According to him, the cause of death was due to head injury leading to death.

7. According to PW15, on 25.07.2007, on receipt of credible information, he arrested A1, A2, A4 and A5 and recorded their confession in the presence of PW10 and LW15 and seized three cell phones and one knife, about 20 inches with wooden handle, i.e., M.O.5 at the instance of A1, which was seized under Ex.P9-the seizure panchanama.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 87 of 2007 on the file of IV Metropolitan Magistrate, Ibrahimpatnam. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions, which came to be numbered as S.C.No.577 of 2008 on the file of Court of the V Additional District and Sessions Judge, (Fast Track Court), Ranga Reddy District. Basing on the material on record, charges for the offences punishable under Sections 302, 201 and 120-B of IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

9. To substantiate their case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P14 and M.O.1 to 8. After the closure of 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 on behalf of the accused, in support of their defence.

10. Basing on the evidence of PWs 5 and 6, coupled with the recovery of the knife which contained blood stains, and taking into consideration the existence of a motive, the trial Court convicted the accused for the offences punishable under Sections 302 and 120-B IPC and sentenced them to suffer imprisonment for life. Challenging the same, these two appeals came to be filed. It is stated that pending appeal, A2 died.

11. The learned counsel for the appellants mainly submits that there are no eye witnesses to the incident and the case rests on circumstantial evidence, and that the circumstances relied upon by the prosecution are not proved, and even if proved, do not form a chain of events connecting the accused with the crime. He further submits that though PWs 1 and 2 speak about motive, the same is not reflected in the First Information Report or in their earlier statements, and even if there is a motive, the same cannot clinchingly establish that the accused alone are responsible for the death of the deceased, more so, when A6 was acquitted of all the charges. The learned counsel for the appellants submits that even the theory of last seen, which has been sought to be established through the evidence of PWs 5 and 6, is not proved beyond reasonable doubt, in view of the discrepancies in the investigation.

He further submits that even if the evidence of PWs 5 and 6 is believed, the only circumstance which the prosecution was able to establish was that A1 and A3 were seen talking with the deceased. But, that by itself, will not enable the court to invoke Section 106 of the Evidence Act, as urged by the learned Public Prosecutor, since the deceased was never seen in the company of the accused.

12. On the other hand, the Public Prosecutor would contend that the three circumstances, viz., motive, last seen and the recovery of the blood stained knife conclusively establish the involvement of the accused in the commission of the offence. He submits that since PWs 5 and 6 are independent witnesses, there is no reason to discard their testimony. Hence, he would plead that the findings of the trial court warrant no interference.

13. The point for consideration is: whether the accused are responsible for the death of the deceased.

14. As seen from the record, there are no eye witnesses to the incident and the case rests on circumstantial evidence. The three circumstances which are relied upon by the prosecution relate to the enmity between the family members, the deceased being last seen in the company of A1 and A3, and the recovery of knife pursuant to the disclosure statement made by the accused after his arrest on 25.07.2007. In order to establish the same, the prosecution relied upon the evidence of PWs 1, 2 and 8. PW1 is none other than the mother of the deceased. In her evidence, she states that PW3 is her son-in-law and her daughter was given in

marriage to him. A4 is the first wife of her husband, and A5 and A6 are the sons of A4 through her husband. At the time of her marriage, the first wife of her husband was residing at Brahmanapally village. It is stated that on one day, while herself, her elder daughter along with A4, who is the second wife of PW2, were sleeping in the house, A4 is said to have poured kerosene on them. However, no report was given to the police due to the intervention of elders, who pacified the matter. However, on the advice of elders, PW1, along with her daughter and husband, shifted to Ramdasapally, while A4 stayed at Brahmanapally. About six months later, A4 started quarrelling on the ground that her husband is not looking after her, for which a panchayat was convened, where the elders advised PW1 and her family members to stay in Brahmanapally, while advising A4 to shift to Ramdasapally. The deceased, who is the son of PW1, was looking after the agricultural work as well as grazing of the cattle.

15. Apart from lodging of the report on 16.07.2007, PW1 states that prior to the present incident, there were number of incidents which took place in the village and she lodged reports twice in Hayathnagar and in Ibrahimpatnam Police Stations, which were withdrawn due to interference of village elders. Her version is also to the effect that her husband divided the property into four equal shares in favour of all his sons, in which the deceased and A4's sons got 30 acres. However, she states that due to frequent quarrels, she could not enter into the agricultural lands. It is further stated that a week prior to the date of incident, the deceased is said to

have informed her about the threat in the hands of A1 and other persons. She also states that a week prior to the death of the deceased, she noticed A1 to A3 along with A5 in the village. In the cross-examination, she admits that after partition of the property, the sons of A4 are enjoying their allotted lands, but, the land allotted to her son was not being cultivated as it was fallow. Insofar as the incident of pouring kerosene is concerned, it is stated that the same took place about 25 years prior to the incident. She also admits that she did not file any complaint to the police in respect of the said incident. The reports referred to by her in chief examination, viz., those lodged in Hayathnagar and Ibrahimpatnam relate to A4 raising a dispute with her husband, as he was not looking after her. She further admits that on the date of incident, she, along with her husband and daughter went to Cheruvugattu temple in Nalgonda district. They started from their house at 3 p.m., and by 4 or 5 p.m., reached the temple. She further states that her son left the house along with the cattle at about 10 a.m., with a tiffin box. She further admits that they returned to the village at about 1 a.m., on receipt of the news about the death of the deceased, and lodged a report at about 7 a.m. on the next day. The report is said to have been scribed by one of her relations, whose name she does not know. She further admits that by evening, police apprehended A1 to A6. However, in her earlier statements made before the police, she failed to mention that about a week prior to the date of incident, the deceased informed to her about A1 along with A2 and others

threatening to kill him. She also did not mention in her earlier statement about the alleged reports made before Hayathnagar and Ibrahimpatnam Police Stations.

16. From the evidence of PW1, it is clear that on the date of incident, they received information on telephone, stating that her son was killed and dragged to some distance and thrown into the bushes. Basing on the said information, she lodged a report before PW14, setting the law into motion. In the said report, it is stated that on 15.07.2007, at about 10 a.m., the deceased by name Sddalla Srisailam @ Raju went to the hillocks on the outskirts of Ramdasally village for grazing the cattla, and thereafter, at about 9 p.m., PW4 informed to PW3 that some unknown persons killed her son in the vacant land of Ramdasally village, pursuant to which, herself, along with her husband and other villagers went there and found the deceased with his head hacked. She stated that she is suspecting that the sons of A4 by name Sddala Venkatesh (A5) and Sddala Mallesh (A6), along with others killed her son due to previous disputes in the partition of the property. The report further discloses that A1 along with two others were with the deceased earlier to the incident.

17. The evidence of PW1, coupled with the contents of Ex.P1, report given by her basing on the information given by PWs 4, 5 and 6 show that she suspected the involvement of A4, A5 and A6 in the commission of the offence, due to previous disputes and also

the presence of A1 and two others along with the deceased in the fields.

18. The evidence of PW2, who is the husband of PW1, is in line with the evidence of PW1. In the cross-examination, he admits that in the year 1994, the partition of the lands took place and pattas were also granted on that basis. He further admits that he used to go and see his first wife and children at Brahmanapally. He further admits in the cross-examination that he owns about 40 acres of land and the said land was partitioned among the four sons through his first and second wife. He further admits that the deceased got $\frac{1}{4}$ share, out of which 9 acres of land was sold under registered Sale Deed dated 04.02.2004, and the remaining 1 acre 6 guntas of land is in the name of the deceased. He further admits that the share which fell in favor of the deceased was sold by his second wife in the capacity of natural mother in favour of three persons, and the said sale took place in the year 2010.

19. PW3, who is the son-in-law of PWs 1 and 2, in his evidence, refers to the quarrel between both the wives of PW2, and states that on the date of incident, he received a phone call from PW4, stating that the deceased was murdered at Koyagundla Yena. He further admits that he does not know when the villagers have informed the police, but, by the time, he reached the dead body, A4 and A6 were also present there. He further admits that they were there till the dead body was lifted for cremation, and

thereafter, the police apprehended and took them to the police station.

20. From the evidence of these three witnesses, it is clear that none of them have seen the actual incident. Their evidence discloses existence of disputes between PW2 and his two wives, which led to partition of the property about 25 years prior to the incident. The record also discloses that out of the 10 acres of land which fell to the share of the deceased, 9 acres were already sold by PW1 as natural mother and only 1 acre and 9 guntas of land still remained with the deceased. From the evidence of PW2, it is further clear that after partition of the land, entries were made in the records and pattas were also granted on that basis, and that he used to regularly go to the house of his first wife at Brahmanapally. Therefore, the version which is now set out by the prosecution that the deceased was done to death because of the disputes on account of division of the property, appears to be incorrect, since none of the three witnesses speak about the existence of any disputes between the children or the two wives of PW2 with regard to any share in the property. Further, PW2 categorically states about division of his 40 acres of land into four equal shares and also giving one acre of land each to his three daughters. Therefore, we find that the motive for the incident, which is now sought to be projected by the prosecution, may not be correct.

21. Coming to the theory of deceased being last seen in the company of the accused, the prosecution mainly pressed into

service, the evidence of PWs 5 and 6. In his evidence, PW5 deposed as under:

“In the year 2007 I took my cattle to Koyagudlayene kancha around 11.00 am. I went near to stream for drinking of water by cattle. There I found the deceased Srisailam with a lamb in his hand. I talked with Srisailam. Meanwhile Sriramulu LW6 also came there. We all three talked chit-chat to each other. Thereafter LW5 Janjaiah joined with us. After a while LW5 Jangaiah left that place with his cattle. Thereafter LW6 Sriramulu also left that place with his cattle. I also left that area around 2.30 or 3.00 pm. While I was leaving that place I found three persons roaming nearby. A1 to A3 are the said persons. They started talking with deceased Srisailam. Since I got some urgent work I left that place requesting Srisailam to look after my cattle also. I was returning from my house to the cattle after a while and found my cattle along with cattle of Srisailam returning home. Then I tied my cattle in my cattle pound and the cattle of Srisailam in his pound. Then I called Srisailam by cell phone. The reply is his cell phone is switched off. As it was getting dark I returned and asked PW4 stating that Srisailam is not responding on cell phone and asked him to make a call. Accordingly he made a call and told me that the cell of Srisailam was switched off. I also enquired with Sriramulu and Jangaiah. They also stated they could not find Srisailam. Some of the villagers of Ramdaspally enquired me about Srisailam. I told them that I found three

persons talking with Srisailam when I left him. Then myself some of the villagers went to the place where I found the three persons talking with Srisailam. When we reached that place we found some blood stained cloths. We found some traces at that place and those traces led us near to bushes where we found the dead body of the deceased Srisilam with his head hacked. Then we returned to village by rising hues and cries. We informed PW4. In turn he telephoned to the relations of the deceased.”

22. In the cross-examination, PW5 states that he knows the deceased for the past ten years prior to the offence, but, however, he does not know whether the father of A1 worked under PW2. He also admits that he does not know A1 coming to the village for hunting purpose. In his evidence, he states that he found the deceased with a lamb in his hand at about 2 or 2.30 p.m., talked with him for half an hour, and within five minutes after meeting the deceased, PWs 4 and 6 came there. At about 3 p.m., he left the company of PW6, PW14 and the deceased. While leaving the place, he searched for his cattle and then left to his house. In his cross-examination, he states that he noticed the deceased talking with A1 to A3 under a tree. At about 3.30 p.m., he reached the house. However, he admits that does not know the discussion that went on between A1 to A3 and the deceased. He further admits that does not know whether the deceased met any other person between 3.30 p.m. and 5.30 p.m. However, he admits that he saw A1 to A3 in the police station on the next day of incident, and that

police showed them to him, but did not record any statement. The suggestion that he did not notice A1 to A3 talking to the deceased, was denied by him.

23. Coming to the evidence of PW6, he states that he took his cattle to Koyagudayene kanche for making them to drink water, where he noticed the deceased, PW5 and PW14 talking to each other. He also joined them and chit chatted with them. After some time, PW14 left the place and he also left that place. However, he states that he noticed A1 to A3 under a tree while he was returning from the place. Later in the evening, there was a whisper in the village about the death of the deceased. Himself, along with the villagers went to the said place and found some blood traces on the earth and also found the dead body of the deceased in the bushes. The suggestion that he never saw A1 to A4 talking to the deceased, was denied.

24. The evidence of PW4 further discloses that PW5 asked him to furnish the telephone number of the family members of the deceased and he claims to have informed PW3 about the incident. The evidence of PW5 would show that he knows A1 since ten years and that he, along with PW6 and PW14, talked with the deceased for some time and later the deceased also talked with A1 to A3. This was at 3 p.m. Initially, PW14 left the company of PW5, 6 and the deceased, and later, PW5 and PW6 left. While leaving, they claim to have seen A1 to A3 talking with the deceased under a tree/ roaming nearby.

25. There is any amount of doubt with regard to the accused being last seen in the company of the deceased. PW5, in his evidence, states that by 3.30 p.m., he reached his house and noticed his cattle in his cattle pound and the cattle of the deceased entering the village. He claims to have made a call to the deceased, and as his cell phone was switched off, he requested PW4 also to make a call to the deceased. Though PW4 claims to have made a call, he also got the message stating that the phone was switched off. However, PW4 does not refer to this fact in his evidence. At that time, he is said to have enquired PW6 and PW14, who also stated that they could not find the deceased. When some of the villagers of Ramdasally enquired about the deceased, he told them that he found three persons talking to the deceased when he left him. When A1 was known to PW5 since ten years, there was no reason for PW5 to inform the villagers that he noticed three persons talking with the deceased when he left him. If really A1 was present along with A2 and A3 and if really he has seen A1 and two others, PW5 would not have failed to mention the presence of A1 along with A2 and A3 in his evidence. This conduct of PW5 in not informing the name of A1 to the villagers who enquired with him about the whereabouts of the deceased, throws any amount of doubt as to whether PW5 has seen A1 along with two others. Admittedly, A2 and A3 were strangers to him, and no identification parade was conducted for identifying them as A1 to A3.

26. As stated earlier, the source of information for PW1 when she went to the police station to lodge a report, was the information furnished by PW5 to PW4. PW4, in his evidence avers and states that PW5 informed him about seeing A1 to A3 along with the deceased. His evidence is only to the effect that on the date of incident, PW5 asked him the telephone numbers of the family members of the deceased, and that PW4 verified his telephone book and found the number of PW3 and informed him about the incident. He never says in his evidence the information that was furnished to him by PW5. Even PW3, in his evidence, never states about the involvement of the accused in the crime. He only says that on the date of incident, he received a call from PW4, stating that the deceased was murdered on 15.07.2007 and he informed the same to his in-laws. He never speaks about any of the accused being present at the scene of offence or PWs 5 and 6 seen in the company of the accused.

27. PW1, in her evidence, categorically states that on that day, she received a phone call from somebody that her son was killed, dragged to a distance and thrown into the bushes. This information appears to have been given on a telephone, and on the next day, at about 7 a.m., PW1 lodged a report. The information received by her does not disclose the presence of A1 to A3, but, strangely, in the report given by her on the next day, while referring to the earlier disputes with A4 to A6, she also refers to A1 and two others as suspects.

28. As stated earlier, PW5 informed PW4 about the incident, who, in turn, informed PW3. If really PW5 has seen A1 to A3 and deceased together and as A1 was known to him since last ten years, and if the very same information was furnished to PW4, who, in turn, informed the family members of the deceased, the contents of the F.I.R given by PW1, basing on the information furnished by PW3, would have been different. If PW1 was aware of the fact that the accused 1 to 3 were last seen in the company of the deceased on the evening of 15.07.2007, which was witnessed by two witnesses, the first information report would have disclosed the same, or atleast the report would have disclosed that the information was furnished by PW4. Strangely, a reading of the F.I.R does not, anywhere, disclose the presence of the deceased along with A1 to A3. Further, if A1, who is a known person, talked with the deceased, there was no reason for PW1 to say in her evidence that the deceased was killed by somebody. Definitely, PW5 would have furnished at least the name of A1 to PW4, who, in turn, would have informed the same to the family members of the deceased. Strangely, the said aspect was not spoken to by PW1 in her evidence. Be that as it may, it is to be noted that in the evidence in chief itself, PW5 states that while leaving the place, he noticed three persons roaming nearby. Strangely, he says that A1 to A3 are the said three persons. But, admittedly, A2 and A3 are strangers to PW5 and no identification parade was conducted for identifying the presence of A2 and A3 at the scene on that day.

29. Though an argument was put forth by the learned Public Prosecutor that a duty is cast upon A1 to A3 to explain as to what happened to the deceased, it is not the case of the prosecution that the deceased was in the custody of A1 to A3 on that day. The evidence of PWs 5 and 6 only states that they noticed A1 to A3 talking with the deceased at 2.30 or 3 p.m., and there is no evidence as to what happened thereafter. In fact, PW15-the investigating officer, in his evidence, admits that he cannot say what happened after 3 p.m, and also as to how many persons met the deceased and also as to how many places he has gone after seeing PW5. The relevant admission in the evidence of PW15 is as follows:

“I can not say after 3.00 or 3.30 pm how many persons met deceased Srisailam and to how many places he has gone after PW5 saw him.”

30. As the evidence on record does not, anywhere, establish as to what happened after 3 or 3.30 p.m., though all the witnesses claim that by sunset they came to know about the incident, no report was lodged or information was given to the police. On the other hand, PWs 1 and 2, in their evidence, say that they returned to the village at 1 a.m on receiving the information and then lodged a report on the next day morning. Even PW4 does not say as to when he informed the family members of the deceased. If really the entire village was aware of the incident, nothing prevented any of the villagers to inform the police about the

incident. All of them kept quiet till the arrival of PW1. As stated earlier, even in the report, there is no specific reference to the deceased being last seen in the company of A1 to A3 in the village. On the other hand, the report refers to previous disputes between A4 to A6 and a reference about A1 and two others being seen with the deceased. Even if the evidence of PWs 5 and 6 is believed, the prosecution was only able to establish that the deceased was seen talking to A1 to A3.

31. At this stage, it is to be noted that the first person to leave the company of the deceased and the accused was PW14, who, of course, did not support the prosecution case and was declared hostile by the prosecution. The second person who left the company of the deceased and the accused was PW5, who asked the deceased to look after his cattle, as he had got some urgent work. Obviously, there is no evidence as to whether PW6 was there or he left the company of the deceased, though he says that he also came to the village after some time. But the evidence that the deceased was talking to the accused may not by itself constitute an incriminating material connecting the accused with the crime, for the reason that there is no evidence on record to show as to what happened after 3.30 p.m.

32. It is also to be noted that all the witnesses, in one voice, say that by the time they went to the scene of offence, A4 to A6 were present and they were there till the body was lifted for cremation. PW5, in his evidence, admits that on the next day when he went to

the police station, A1 to A3 were in the police station, and the police showed them as accused. PW15-the investigating officer, in his evidence, states and admits that the accused were arrested on 25.07.2007. Further, the evidence of PW1 shows that on the evening of the funeral day, police apprehended A1 to A6. That being the position, the question of PW15 apprehending the accused on 25.07.2007 and effecting recovery of a cell phone and a spade, cannot be accepted. There is absolutely no explanation from the prosecution as to the answers given by PWs 1 to 5 with regard to the presence of the accused in the police station on 16.07.2007. It appears that because of earlier disputes, a report came to be lodged on suspicion, and in pursuance thereof, police have kept all the six accused in illegal custody till their arrest was shown on 25.07.2007. It also appears that the prosecution tried to build up the case, so as to connect the accused with the crime, which they failed to do.

33. Having regard to the facts and circumstances of the case, we feel that the circumstances relied upon by the prosecution, viz., motive, last seen and recovery of knife and mobile phone, are not proved beyond reasonable doubt, and therefore, do not establish a link to connect the accused with the crime.

34. In the result, both the Criminal Appeals are allowed. The conviction and sentence recorded against the appellants/ accused in the judgment dated 31.12.2012, in Sessions Case No.577 of 2008, on the file of the V Additional District and Sessions Judge, (FTC),

Panga Reddy for the offences punishable under Sections 302, read with 34 and 120-B I.P.C. is set aside and they are acquitted for the said offences. Consequently, the appellants/ accused shall be set at liberty forthwith, if not required in any other case.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

14.02.2018
DMG

