

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE Mrs. JUSTICE T.RAJANI

CRIMINAL APPEAL Nos.1332, 1379 of 2011 & 358 of 2012

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

These three appeals are preferred against the judgment in S.C.No.126 of 2007 on the file of the First Additional Sessions Judge, Krishna at Machilipatnam. CrI.A.No.1332 of 2011 is preferred by A1, CrI.A.No.358 of 2012 is preferred by A3 and CrI.A.No.1379 of 2011 is preferred by A4. Originally, A1 to A6 were tried for the following charges:

- (i) Section 120-B (i) IPC against A1, A3 to A5;
- (ii) Section 364 IPC against A1, A3, A4 and A5;
- (iii) Section 396 read with Section 34 IPC against A1 to A6;
- (iv) Section 302 read with Section 34 IPC against A1, A3, A4 to A6;
- (v) Section 201 read with Section 34 IPC against A1 and A4;
- (vi) Section 412 IPC against A1, A3 to A4 to A6;
- (vii) Section 506 Part-II IPC against A5.

2. Vide its judgment dated 18.08.2011, learned Sessions Judge acquitted A5 for the offences punishable under Section 120-B, 364, 396 read with Section 34, 302 read with Section 34, 412 and 506 (ii) IPC, acquitted A6 for the offences under Section 396 read with Section 34, 302 read with Section 34 and 412 IPC, and acquitted A1, A3 and A4 for the offences punishable under Section 120-B and Section 396 read with Section 34 IPC. However, A1, A3 and A4 were convicted for the offences punishable under Sections 364, 302 read with Section 34 and 201 IPC and sentenced to suffer imprisonment for life and to pay fine of Rs.200/- each, in default to suffer S.I. for one year each for the charge under Section 302 read with Section 34 IPC, and also sentenced to undergo Rigorous Imprisonment for a period of seven years and pay a fine of Rs.200/- each, in default to suffer S.I. for one year for the offence punishable under Section 364 IPC and also to suffer SI for two years and to pay a fine of Rs.200/- each in default to suffer SI for six months for the offence punishable under Section 201 IPC.

3. The gravamen of the charge against the accused is that on 09.06.2004, between 11.00 a.m. and 07.30 p.m., at Lakshmanraopuram, all the accused conspired together to abduct and kill one Gangula Balaramudu- the deceased herein for gain. Pursuant thereto, they are said to have killed the deceased on 09.06.2004 at about 08.30 p.m., in the outskirts of Vinnakota Village of Gudlavalleru Mandal, Krishna District.

(i) PW1, is the son of the deceased, while PW2, who is the resident of Javvarupet, Machilipatnam, saw A1 to A4 talking amongst themselves in front of the house of A3 at about 05.00 p.m. It is stated that he knew PW1, the deceased and A1 to A4. PW3 is also the resident of Railpet, Machilipatnam, who was supplying milk to the house of the deceased everyday.

(ii) On 09.06.2004, at about 10.30 a.m., the deceased went to the SBI Main Branch, Machilipatnam to withdraw cash from his account. At about 10.30 or 11.00 a.m., PW4 saw the deceased along with A1 and some other persons in front of the house of A1. Subsequently, at about 11.00 a.m., on 09.06.2004, PW3 saw A3 and A5 talking to each other near a telephone booth situated by the side of Nirmala convent. PW6, who is a tenant in the house of A3, saw the deceased in the house of A3. At about 01.00 p.m., A1 came to the house of A3 along with the deceased who was having a bandage on the head. Accordingly, the deceased was confined in a room till the evening. At about 08.30 p.m., A1 and A3 picked up the deceased from the house of A3 in a car and from there all of them left. On the next day, A5 is said to have washed the blood stains in the room and informed PW6 that the deceased received injuries in an accident. On 09.06.2004, PW2 who does rolled-gold business, saw A1 to A4 talking amongst themselves in front of the house of A3 at about 05.00 p.m. While things stood thus, on the same day, at about 08.30 p.m., PW1 received a phone call on his landline wherein a person by name Ravindra stated that he along with the deceased had gone to

Vijayawada on some work and that they were in Autonagar. Thereafter, he seems to have disclosed that they are going to return on next day. Though the said Ravindra disclosed that he was calling from a public telephone booth, but since PW1 had caller ID phone, out of suspicion, he called back to the same number, who informed him that the deceased was with him and there is nothing to worry. As the deceased did not return home, PW1 went to Autonagar, Vijayawada, but could not trace the deceased. Later, PW1 came to know that the deceased was taken by A1 to his house in a car. On 10.06.2004, at about 05.00 p.m., PW10 who went to plough his land, saw the dead body of an unidentified male person half burnt in the fields of Seelam Ayodhya Ramaiah. Immediately, he informed the same to PW9 the VRO of the village. On receipt of the same, PW9 went to the scene of offence and saw the dead body. Immediately he went to Gudlavalleru Police Station and lodged a report. Ex.P6 is the report given. Basing on the same, a case in Crime No. 34 of 2004 came to be registered under Section 174 Cr.P.C. Ex.P32 is the FIR registered. PW15, who registered the FIR, examined PW9 and recorded his statement. Later, PW15 proceeded to the scene of offence and posted a guard there. On the next day, i.e., on 11.06.2004, at about 08.00 a.m., PW15 conducted scene of offence panchanama in the presence of PW9 and another. Ex.P7 is the observation report. During the said process, he seized MOs.1,2,3 and 5. On the same day, between 09.00 a.m., and 11.00 a.m., PW15 conducted inquest over the body of the

deceased. Ex.P8 is the inquest report. During inquest, PW10 and others were examined. Thereafter, the body was sent for post mortem examination. PW11 the Professor of Forensic Medicines in RMC, Kakinada, conducted autopsy over the body of the deceased. On 11.06.2004, between 03.30 p.m., to 04.35 p.m., PW11 found three ante-mortem injuries and issued Ex.P9 the post mortem certificate. According to the doctor, the cause of death was due to head injury, which is possible with a blunt object like MO9, an iron jack rod. On 11.06.2004, at about 11.00 a.m., PW1 went to Chilakalapudi Police Station and gave a report stating that his father was missing and the same was registered as Crime No.115 of 2004, under 'man missing'. Ex.P37 is the FIR. On 15.06.2004, PW1 came to know about the paper disclosing that an unidentified dead body being found lying in Vinnakota fields of Gudlavalleru Mandal. Immediately, PW1 went to Gudlavalleru police station and identified the half burnt pant piece, shirt piece, the belt and the Anjaneya Swamy pendent, a white beads crystal chain as that of his father. Basing on the said identification, the body was identified as that of the deceased. In view of the report given, the Section of law was altered from Section 174 Cr.P.C. to 302 IPC. Ex.P33 is the altered FIR. Further investigation in this case was taken by PW19. He recorded the statement of PW4 on 16.06.2004. On the next day, he arrested A1, A2 and A5 near Harsha college and seized MOs.10 to 13 from A1. On the same day, PW19 proceeded towards the house of A3 and noticed a car bearing No.AAV 3636 parked in

front of his house and also saw A3, A4 and A6 present. He recovered MOs.4 and 18 from A4 and MO9 from the boot of the said car. Since the identification of the body was doubtful, PW19 took the help of DNA analyst. PW14 the ASI of Finger Prints Expert, Machilipatnam, identified the body as that of the deceased. Ex.P27 is the opinion. PW20, the learned Judicial Magistrate of First Class, Bantumilli, recorded the 164 Cr.P.C. statement of A6 on 28.10.2004 in Crime No. 158 of 2004 of Chilakalapudi Police Station. After collecting all the necessary documents, PW19 – Inspector, Bandar Town Police Station, filed a charge sheet against A1 to A6, which was taken on file as PRC No.25 of 2005, on the file of II Additional Judicial Magistrate of I Class, Machilipatnam.

(iii) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal, the First Additional Sessions Judge, Krishna at Machilipatnam, numbered the case as S.C.No.126 of 2007. On the basis of the material on record, the aforementioned charges came to be framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

(iv) In support of his case, the prosecution examined PWs.1 to 20 and got marked Exs.P1 to P53 and MOs.1 to 23.

(v) 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 their behalf.

(vi) Relying upon the circumstances namely that all the accused were last seen in the company of the deceased and recovery of gold articles belonging to the deceased from A1, A3 and A4, the Tribunal convicted A1, A3 and A4 and sentenced them to suffer imprisonment for life for the offences punishable under Sections 302, 364 and 201 IPC. Challenging the same, the present appeals came to be filed by A1, A3 and A4.

4. Learned counsel for the appellants in the three appeals, mainly submit that there are no eye witnesses to the incident and the circumstances of 'last seen' and recovery of gold articles are not established, beyond reasonable doubt. It is further stated that even if those circumstances are established, still the same may not be sufficient to connect the accused with the crime. It is pleaded that the evidence of PWs. 2, 4, 5 and 6, who were examined to speak about the accused being last seen in the company of the deceased does not conclusively establish that these accused were responsible for the death, more so, when the body was recovered nearly two days after the accused and deceased being last seen together. Insofar as the recovery of gold articles are concerned, learned counsel would contend that gold ornaments which were recovered from A4, though contain the name of the deceased, but there is no proof to show that A4 was in the company of the deceased prior to the incident. It is urged that utmost the offence

that may attract would be under Section 411 IPC, for being in possession of stolen articles.

5. On the other hand, learned additional public prosecutor would contend that circumstances of 'last seen' and recovery of gold articles containing the name of the deceased amply establish that the appellants are responsible for the death of the deceased.

6. Before proceeding further, it is to be noted here that the bag of the deceased was recovered pursuant to the confession made by A5 and it was A5 who is said to have cleaned the premises after the incident, but however, A5 was acquitted. A2 died pending trial.

7. The question that arises for consideration is whether the evidence on record is sufficient to establish the two circumstances, relied upon by the prosecution, namely, 'last seen' and the recovery of gold articles and if so, whether it would be sufficient to connect the accused with the crime?

8. Before dealing with the above, it is to be noted that PW1, who is the son of the deceased, in his evidence, deposed that his father received a sum of Rs.5 lakhs from State Bank of India, towards his retirement benefits. He used to look after the needs of the house, as a manager of the family. According to him, on 09.06.2004, at about 10.30 a.m., his father went to SBI Manager, to withdraw some cash towards house-hold expenses. At that time, the deceased was in white shirt, biscuit colour pant, crystal

chain having Anjaneyaswamy pendant and gold bracelet. His father also took his bag which contains bank pass books, voter identity card and cheque books relating to his account in the bank. Thereafter, his father did not return home. In the evening, at about 08.30 p.m., while PW1 was in the house, he received a phone call to their landline, wherein the caller while disclosing his name as Ravindra, informed him that his father came from Vijayawada on some work and that they are at Autonagar in Vijayawada. Since his landline had a caller ID, out of suspicion, PW1 returned the call to the same number from which he received the call. In the said call, the said Ravindra stated that his (PW1) father is with him along with some cash and asked PW1 not to worry. He further told him that he would send him home on the next day morning and asked him not to give any police report. As his father did not return home, even on the next day, he went to Autonagar, but could not trace his father and so he returned home. On coming to know that his father went to the house of A1, on 11.06.2004, at about 10.30 a.m., PW1 went to Chilakalapudi Police Station. The evidence of PW1 only speaks about his father leaving the house on 09.06.2004 and the call received from one Ravindra. All the efforts made by him to search his father went in vain and hence lodged a report.

9. It is to be noted here that though he claims to have received a call from phone number 9848770488, but no effort was made by police to collect the call details, as to who the owner of that number is. Therefore, the main circumstance which could have

been established, forming a major link, was not investigated into by the police. The evidence of PW1 also discloses that his father withdrew a sum of Rs.22,000/- and went to the house of Savitri. But the said Savitri was not examined. Hence, we feel that the evidence of PW1 may not be of much help to connect the accused with the murder, except to the extent of identifying articles recovered from the accused at a later point of time, which we will discuss later.

10. PW2, who is the resident of Door No.5/241, Javvarupet, Machilipatnam, doing rolled gold business, claims to have acquaintance with PW1 and his father and also A1 to A4 in this case. According to him, on 09.06.2004, while he was going to Chilakalapudi and while passing the house of Chakravarthi, he saw A1 to A4 talking in front of the house of Chakravarthi (A3) at about 05.00 p.m. in the evening. Two days thereafter, he came to know withdrawal of the amount by the deceased and also death of the deceased. He was subjected to lengthy cross-examination. In the cross-examination, PW2 admits about the information given to him by PW1 with regard to his (PW1) father missing since 11.00 a.m., on 11.06.2004 and also enquired as to whether his father came to his house. He claims to have informed PW1 that his father did not visit his house. His evidence does not clearly indicate as to whether he has informed PW1 or the police about seeing A1 and A2 together at 05.00 p.m., on 09.06.2004. Insofar as the statement recorded by the police, PW2 denied informing police with regard to he going to Chilakalapudi to call Nagaraju.

He further admits that he has no acquaintance with A1 to A4 till 09.06.2004. He admits that he has been staying as tenant in the house of the deceased for the last six years prior to the incident.

11. It would be useful to extract relevant portion of cross-examination of PW.2, which is as under:

“On 16.06.2004, at about 06.00 p.m., in the evening, I was examined by the police 2nd time. I did not inform to anybody in my locality about PW1 coming to my house and informing to me about his father. It is true that I did not state before the police with regard to my going to Bhaskarapuram while going to Chilakalapudi to call the said Nagaraju. I am not having any acquaintance with A1 to A4 till 09.06.2004. It is not true to suggest that even though I am having relationship with PW1, I am deposing false only for the purpose of this case stating that I have no relationship with PW1. It is true that I stated before the police that I have been residing in the house of deceased as tenant for the last six years prior to the date of incident”.

12. From the evidence of this witness, another thing which requires to be noted is that he never deposed about seeing A1 to A4 along with the deceased, nor does he deposed about the conversation which was going on between all the four accused. From the admission made, it is clear that PW2, who claims to have seen A1 to A4 on 09.06.2004, has no proper acquaintance with them till 09.06.2004, i.e., the day on which he saw them for the first time. Therefore, there is no scope for him to identify the four accused, as the persons who were present outside the house of A3 on that day. In fact nothing strange happened on that day nor were there any special or peculiar features on the accused,

which made him to remember them and identify at a later point of time.

13. PW3, who is also a resident of Raipet, Machilipatnam, in his evidence deposed that he knew the deceased as he was supplying milk to him. According to him, on 09.06.2004 at about 11.00 a.m., in the morning, after supplying milk, while he was going to a telephone booth situated by the side of Nirmala convent, saw A3 and A5 talking with each other. A5 is the wife of A1. The house of A5 is situated at a distance of 300 yards from the said telephone booth. The house of A3 is situated at a distance of 400 yards away from the telephone booth. He further deposed about the information furnished to him by PW1 on 11.06.2004, with regard to his father not returning home. He was also subjected to lengthy cross examination.

14. Further, PW17, the Inspector of Police, who investigated the case, in his evidence, deposed that PW3 did not state before him that he was supplying milk to the deceased everyday since three years. He did not state that he came to Nirmala convent for the purpose of supplying milk to others. PW3 only stated that he came to convent on that day. Further, PW3 did not state that the house of A1 is at a distance of 300 yards.

15. Therefore, the version of PW3 in the Court that he came to Nirmala convent for supplying milk, which made him to see A3 to A5 together near the house of A3 appears to be doubtful. Even otherwise, PW3 in his evidence speaks about the presence of the

deceased along with A3 and A5 at that time, that by itself may not be of much help to connect the accused with the crime.

16. Further, from the above, it appears that he saw A3 and A5 together talking with each other at telephone booth near Nirmala convent. This was at about 11.00 a.m., on 09.06.2004. His evidence, in our view by itself cannot connect them with the offence of murder, more so, when the trial Court has acquitted A5 and he never saw A3 and A5 along with the deceased.

17. PW4 is a crucial witness in this case. His evidence is to the effect that on 09.06.2004, at about 10.30 or 11.00 a.m., in the morning, while he was proceeding with his work from Ullingpalem to Kampbelpet, saw the deceased along with A1 and some others in front of the house of A1. But he did not account for it and went away to his work. On 11.06.2004, in the afternoon between 02.30p.m., to 03.00 p.m., PW1 met him on the way on the same road and informed him about giving a report to the police about missing of his father since 09.06.2004. Then he claims to have informed PW1 about meeting of the deceased on 09.06.2004 and also seeing A1 and some others in front of the house of A1.

18. In the cross examination, he admits that there are four or five persons along with A1 and deceased and that he does not know the names of others. He further admits that he did not disclose seeing A1 along with deceased and others on 09.06.2004 or 10.06.2004, but informed the same to PW1 on 11.06.2004.

19. PW17, the Investigating Officer, in his evidence deposed that PW4 did not state before him that he came to the house of PW1 at about 02.30 p.m., or 03.00 p.m., on 11.06.2004 and informed him that on 09.06.2004, he saw the deceased along with A1. Further when PW1 informed him on 09.06.2004 itself about the missing of his father, there was no reason for PW4 to keep quiet till 11.06.2004. Nothing prevented him in either informing PW1 or others about seeing the deceased along with A1. His conduct throws some doubt as to whether he really witnessed A1 and the deceased together on 09.06.2004.

20. PW6 in his evidence states that he is a tenant in the house of A3. He further deposed as under:

“On 09.06.2004, at about 01.00 p.m., one of the accused (standing in the Court hall showed by the witness) brought the deceased to the house of A3.”

PW3 in his evidence deposed that he noticed bandage to the head of the deceased. According to him, the deceased was confined in one room of A3. Thereafter, at about 08.30 p.m., A1 and A3 took away the deceased from the house of A3. This witness claims to have identified A1 and A3 as the said persons who took away the deceased in the car. According to him, on the next day morning, the wife of A1, who is A5 came to the house of A3 and cleaned the blood stains. At that time, A5 is said to have informed PW6 that the blood stains were due to injuries received by the deceased in an accident.

21. As per the evidence in chief of PW6, he claims to have seen A1 and A3 bringing the deceased to the house of A3 and thereafter, at about 08.30 p.m., A1 and A3 took the deceased in their car. However, in the cross-examination, he admits that he cannot say the name and particulars of A1 and also does not know where A1 was residing. He further admits that till the time A1 brought the deceased to the house of A3, he never saw A1 prior to that date. He further admits that no test identification parade was conducted to identify A1 and the he saw A1 on that day only and thereafter in this Court, on the date of giving evidence which is six years later. He further admits that he did not state to the police that the name of the deceased is Balaramudu in his 161 Cr.P.C. statement. He categorically admits that he cannot identify the person brought by A1 and A3 with bandages, on that day. He further admits that he has no proof to show that he was a tenant in the house of A3. Though the mother of A3 was present, the prosecution failed to examine her. It would be very much useful to refer to the answers given by PW6, in his cross examination, which is as under:

“I cannot say the name and particulars of A1. I do not know where A1 was residing. I do not know what was the avocation of A1. By the time A1 brought Balaramudu master to the house of A3, I never saw A1 earlier to that date. Police did not conduct any test identification parade to identify A1 by me. I saw A1 on that day and today only. It is not true to suggest that I did not witness A1 on that day and that I am deposing false at the instance of police.

It is true that I did not state to the police the name of Balaramudu Master in my 161 Cr.P.C. statement. I cannot say

who is the said person brought by A1 and A3 with bandage on that day. I do not know the door number of my rented house or the house of A3. I cannot say from which year to which year, I resided as tenant in the house of A3. On that day, the mother of A3 was also present in his house. On that day, I was alone present in my house at that time. At that time my children and my husband went outside. There is no evidence or proof for me to reside in the house of A3 like voter card or ration card. The witness adds that voter identity card or ration card were not written to me in those days.”

In the cross-examination for A5, he deposed as under:

“....It is true that I did not state before the police that A5 washed away the blood stains in the room of the house of A3. It is true that I did not state to police that A5 informed me that the person brought into that room, was received injuries in the accident and she is washing the blood stains fallen in that room. I did not state before the police with regard to the identity features of the person who was brought into that room with bandage. Even though I came to know the murder of the said person, I did not reveal the same either to police or to the neighbours, till I was examined by the police.”

22. From this version of PW6, it is clear that, he never saw A1, and for the first time, he identified him in the Court after six years. He further admits that he is not in a position to say that the person brought by A1 and A3 with the bandage, on the date of incident was the deceased.

23. From the evidence of these witnesses, the prosecution failed to establish that it was the deceased, who was taken in the car by A1 to A3. Therefore, the ‘theory of last seen’, which is now

projected by the prosecution through the evidence of PW6 is not proved beyond reasonable doubt.

24. Even assuming that the evidence of PW4 establish that the deceased was last seen in the company of A1 in the morning of 09.06.2004, but the deceased was found to be missing thereafter, as per the evidence of PW1. Even as per the prosecution, the deceased is said to have gone to the house of PW6 from where A1, A3 took him in their car. But the evidence of PW6, which is pressed into service by prosecution to prove A1 and A3 bringing the deceased to the house of A3 at 01.00 p.m. and taking him out at about 08.30 p.m. is not proved in view of the admission of PW6, referred to above.

25. Having regard to the above, the prosecution failed to establish beyond reasonable doubt, the theory of accused being last seen in the company of the deceased, more particularly the deceased being in the company of A1 and A3.

26. Coming to the other circumstances relied upon by the prosecution, namely, recovery of ornaments MOs.10 to 13 from A1, 8 to 10 from A1 and recovery of MO4 from A4, the prosecution is relying upon the evidence of the investigating officer. The investigating officer, PW17 and PW12, were examined to speak to the recovery and the confession made leading to the said recovery. The evidence of PW1 was also relied upon to prove that these articles belong to the deceased.

27. An attempt came to be made by the counsel for the appellants that no test identification parade was conducted as stipulated under Section 34 of Criminal Rules of Practice and the identification of the articles cannot be accepted.

28. But, in the entire cross examination, the accused nowhere disputed possession of the articles.

29. The evidence of PWs.1 and 17 amply establish that MO4 gold chain which contains the name of the deceased inflicted in it was seized from A4, while MOs.10 and 11 i.e., cash and gold bracelet respectively were seized from A1, MO9 jockey rod was seized from the car dickey pursuant to the confession of A6.

30. The fact that these articles were recovered from them cannot be disputed. Infact, as observed earlier, not much came to be elicited in the cross examination to disprove the recoveries made from the accused. No ornaments lying on the deceased came to be seized from A3, except bracelet, cash and torn shirt from him. Insofar as recovery of cash made from the accused, it cannot be said that the same belongs to the deceased. The said recovery was made nearly eight days after the deceased left the house. Infact, no effort was made to prove that the said cash which was seized from the accused, was the cash which the deceased withdrew from SBI, Machilipatnam branch, so as to prove that the cash which is recovered from the accused was the same which was withdrawn by the deceased from SBI. Therefore, this

recovery of cash in our view may not be an incriminating circumstance to connect the accused with the crime. But, however the recovery of gold ornaments from A1 and A4 coupled with the identification by PW1 and the evidence of PWs.12 and 11 establish that these ornaments belong to the deceased.

31. Thus, we feel that this circumstance of recovery even if believed cannot be made basis to convict the accused with an offence punishable under Sections 302, 364 and 201 IPC, since the prosecution failed to prove the circumstances namely accused being last seen in the company of the deceased, i.e., on 09.06.2004 either at 10.00 p.m., or 08.30 p.m., at the house of A3. Hence we feel that the accused cannot be convicted under Section 411 IPC.

32. In the result, Criminal Appeal No.1332 of 2011 is allowed in part. The conviction and sentence recorded against the appellant/accused No.1, in the judgment dated 18.08.2011, in Sessions Case No.126 of 2007, on the file of the I Additional Sessions Judge, Krishna at Machilipatnam, for the offences punishable under Sections 364, 302 read with Section 34 and 201 IPC are set aside. However, A1 is convicted for the offence punishable under Section 411 IPC and he is sentenced to suffer rigorous imprisonment for a period of three years. The appellant/accused shall be set at liberty forthwith, if not required in any other case, on completion of three years rigorous imprisonment.

33. Criminal Appeal No.1379 of 2011 is allowed in part. The conviction and sentence recorded against the appellant/accused No.4, in the judgment dated 18.08.2011, in Sessions Case No.126 of 2007, on the file of the I Additional Sessions Judge, Krishna at Machilipatnam, for the offences punishable under Sections 364, 302 read with Section 34 and 201 IPC are set aside. However, A4 is convicted for the offence punishable under Section 411 IPC and he is sentenced to suffer rigorous imprisonment for a period of three years. The appellant/accused shall be set at liberty forthwith, if not required in any other case, on completion of three years rigorous imprisonment.

34. Criminal Appeal No.358 of 2012 is allowed. The conviction and sentence recorded against the appellant/accused No.3, in the judgment dated 18.08.2011, in Sessions Case No.126 of 2007, on the file of the I Additional Sessions Judge, Krishna at Machilipatnam, for the offences punishable under Sections 364, 302 read with Section 34 are set aside. Consequently, the appellant/accused No.3 shall be set at liberty forthwith, if not required in any other case.

35. Miscellaneous petitions, pending, if any, shall stand closed.

C.PRAVEEN KUMAR, J

T.RAJANI, J

11.07.2018
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