

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

CRIMINAL APPEAL No.800 of 2013

Between:

Kadamanchi Srinivas

.....Appellant

and

The State of A.P. rep. by its Public Prosecutor

.....Respondent

Date of Judgment pronounced on : 23-11-2018

HON' BLE Dr. JUSTICE B.SIVA SANKARA RAO

AND

HON' BLE SRI JUSTICE M.GANGA RAO

1. Whether Reporters of Local newspapers : Yes/ No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/ No
to Law Reporters/ Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/ No
Of the Judgment ?

* HON' BLE Dr. JUSTICE B.SIVA SANKARA RAO

AND

HON' BLE SRI JUSTICE M.GANGA RAO

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< GIST:

> HEAD NOTE:

! Counsel for the appellant : Sri P. Bhanu Prakash

^ Counsel for the respondent : learned Public Prosecutor

? Cases referred

1. 2016 (1) SCC 550
2. 2011 (6) Scale 511
3. (2007) 2 SCC (Cri) 162
4. 2007 (1) ALT (Crl.) 183 (SC)
5. AIR 1976 SC 483
6. 2018 (2) ALD (Crl.) 505



HON' BLE Dr. JUSTICE B.SIVA SANKARA RAO

AND

HON' BLE SRI JUSTICE M.GANGA RAO

Criminal Appeal No.800 of 2013

JUDGMENT: (per Hon'ble Dr.Justice B.Sri B.Siva Sankara Rao)

The sole accused aggrieved by the conviction judgment of the learned VI Additional District & Sessions Judge, Siddipet of Medak District in SC.No.29 of 2012 (outcome of PRC.No.46 of 2011 and crime No.43 of 2011 registered for the offence punishable under Section 302 IPC) dated 27.08.2013 in finding the accused guilty for the offence under Section 302 IPC on the sole charge to undergo imprisonment for life with fine of Rs.1,000/- with default sentence of three months simple imprisonment, maintained the present appeal.

2. The contentions in the grounds of appeal vis-à-vis the submissions of the learned counsel for the appellant/ accused including from the written arguments submitted are that the conviction judgment of the learned Sessions Judge is contrary to law, weight of evidence and probabilities of the case, the learned Judge went wrong in placing reliance on the so called circumstantial evidence of prosecution witnesses and the trial Judge should have seen that the prosecution miserably failed to bring home the guilt of the accused beyond reasonable doubt and the chain linking the circumstances not proved by the prosecution and should have acquitted rather than conviction on unsound and unsustainable conclusions apart from no basis to convict for the offence under Section 302 IPC solely on the last seen theory of the

case solely rested on circumstantial evidence and auto driver or persons concerned with temple are not examined, PW.1-B.Yellagoud did not mention in Ex.P1 presence of PWs.2 & 3 and they are only the planted witnesses later, to support the false case of prosecution and there is a time gap between the occurrence and last seen from said evidence and PWs.4 & 5 evidence is totally hearsay of what allegedly PW.1 informed them. The so called theory of MO.1-cycle and MO-9 blood stained shirt of accused under cover of Exs.P11 & P12 from accused in the presence of PW.9-MGVN Rao and another by the Inspector after arrest of accused is an introduced story and there is nothing to link the accused to the crime with any complicity and thereby sought to set aside the conviction judgment and acquit the accused by allowing the appeal.

3. The learned Public Prosecutor supported the trial Court's conviction judgment on all material aspects with the contentions of for this Court while sitting in the appeal with reasoned conclusions arrived by the trial Court's in finding the guilt for the offence under Section 302 IPC in sentencing him to undergo life imprisonment with fine no way requires interference in any manner that too when trial Court is fresh in mind of the facts having recorded the evidence and sought for dismissal of the appeal.

4. Heard both sides and perused the entire material on record for re-appreciation with reference to the facts and law from what is heard in detail.

5. The sum and substance of the accusation from the Ex.P1-report covered by Ex.P14-FIR, issued by PW.11, which sets the law in motion from the report of PW.1-complainant and from the investigation by PWs.11 to 13 described in the charge sheet is that the deceased Myakala Kattaiah who is native of Maheshwaram Village, Narasampet Mandal, Warangal District, after his marriage about twenty years back taken divorce from his wife as she was a sterile woman and left the home 10 years ago and staying alone in Dharmashala situated in the Yellamma temple by cleaning the temple premises. On 15.04.2011 when PW.1 went to Yellamma temple and visited Dharmashala and while he was talking with the deceased at about 05.30 PM, the accused came to Dharmashala in a hired auto and by consuming beer got down from the auto with a cane made basket containing household articles and two hens and left off his hens near Dharmashala and while PW.1 and deceased were talking, the accused picked up a quarrel with them about he did not find his hens and shouting that if he could not found his hens he will kill them. Then, the accused and deceased searched for the hens, but they did not find his hens and the same was witnessed by LWs.2 & 3 i.e., PWs.2 & 3 by name Rajamallu and Narsavva and PW.1 returned to his village and informed the incident to LW.4/ PW.4-D.Muthyam. After accused and deceased prepared and taken food, again the accused picked up the quarrel about his lost hens with the deceased and abused the deceased in filthy language and regarding this a hot conversation took place between them, in which the deceased pelted metal stones over

accused and in an angry mood the accused took the pestle there and attacked the deceased with it on his left hand and when the deceased tried to rescue himself, again the accused beat him with stone there on his face and chest, due to which the deceased died on the spot and the blood of the deceased fell over the accused shirt and during the clash with the deceased the accused lost his cell phone and later he went to the bore well near the Yellamma temple and washed his hand and in a fear of the villagers, he fled away from the scene of offence, thus the accused committed an offence punishable under Section 302 IPC. The learned Committal Magistrate taken cognizance from said material for the offence under Section 302 IPC against the accused by allotting PRC.No.46 of 2011 and committed to the Court of Sessions and the learned Principal District and Sessions Judge, Medak, allotted SC.No.29 of 2012 and made over to the learned VI Additional Sessions Judge for disposal according to law.

6. During the course of trial, on behalf of prosecution PWs.1 to 13 were examined and Exs.P1 to P15 and MOs.1 to 9 were marked and among whom PW.1-B.Yellagoud is the complainant, PWs.2 to 5 i.e., Rajamallu, Narsavva, Muthyam and Mallaiah are the circumstantial witnesses, PW.6-Komraiah is brother of the deceased another circumstantial witness, PW.7-Srinivas Goud is the photographer who had taken photos i.e., Exs.P2 to P6 with Ex.P7-CD, PW.8-Narsaiah is the panch witness for the inquest and scene of offence covered by Exs.P8 to P10 and seizure panchanama and MOs.2 to 8 i.e., cell phone, blood stained one granite stone with

six angles, granite stone with four angles, pestle, one pair of black colour cheppals, blood stained orange colour full shirt and blood stained brown colour half shirt, PW.9-MG Venkat Narasimha Rao is the panch witnesses for disclosure statement of accused covered by Ex.P11 and for recovery panchanama covered by Ex.P12 and MOs.1 & 9 i.e., cycle and blood stained orange colour cotton full hand shirt, PW.10-Rahul Kumar is the medical officer who conducted autopsy and Ex.P13 is PME report and Ex.P15-FSL report and PWs.11 to 13 are the investigating officers. After closure of prosecution evidence, when the accused is examined under Section 313 Cr.P.C. examination, he denied truth of the incriminating evidence and reported no defence and after hearing arguments with reference to above material the trial Court convicted and sentenced the accused on the sole charge for the offence under Section 302 IPC held as proved and the same is now under attack referred supra in maintaining the appeal against it in seeking to acquit by setting aside the conviction judgment.

7. Now the points arise for consideration with reference to the material on record are that:

1) Whether the deceased met with homicidal death and if so, whether it is in the hands of the accused and whether same is proved by the prosecution beyond reasonable doubt?

2) Whether the trial Court's conviction judgment is unsustainable and requires interference either to set aside or to modify and if so, to what extent and with what observations?

3) To what result?

8. The evidence of PW.1 among PWs.1 to 6 as one of the crucial witnesses to the prosecution case and in setting the law in motion from his Ex.P1 report registered by PW.11 as Ex.P14-FIR and having also been examined by the police during investigation, is that he is a toddy taper, resident of Gurrallagondhi village, that as usual he went to Yellamma temple on 15.04.2011 at about 05.00 PM and when he was there along the deceased watchmen of the temple by name Gattaiah, the accused came in a hired auto with one cycle, two cocks and one beer bottle having get down sat with them and released the cocks there itself. Within no time the accused started quarrel with PW.1 and the deceased-Gattaiah saying they disappeared the cocks though it is he that left them there at the temple and threatened to kill them for the alleged missing of cocks and as if they are responsible. He deposed further that it was till 06.00 PM he was there at the temple with deceased and accused and PWs.2 & 3 were also present at that time when he left home. He deposed that again on next day morning he came to the scene and found dead body of the temple watchman Gattaiah @Kattaiah with injuries on his face and his face was smashed with granite stone and noticed there 2 blood stained granite stones and one basket and a cell phone underneath the dead body and one cycle and he therefrom informed to the villagers and approached the police where his statement was recorded which is covered by Ex.P1 and he deposed that the accused killed the deceased after he picked up quarrel of deceased was responsible for missing of his cocks, which is the motive behind the cause of the death. In the

cross-examination, he deposed that according to his say Ex.P1 statement prepared by the police and he does not know the father's name of the accused for not having any prior acquaintance with him, however he noticed him on the date of incident supra and subsequent to the lodging of Ex.P1 statement covered by report he did not notice the accused including earlier till that day when he deposed. In the cross-examination, he further stated that the auto in which the accused came to the scene of offence was left after he was alighted. He deposed that he did not mention the presence of PWs.2 & 3 on that evening in his Ex.P1-statement. He deposed that the accused was at the scene of offence till he left the scene of offence to home on that evening at 06.00 PM. He deposed that he did not state before police that accused himself pleaded excuse for his aggressive approach with Kattaiah. What he further deposed that he does not remember whether he stated before the police that the accused questioned about missing of cocks or hens and later Kattaiah and accused also searched for the missing cocks. He went to the police station in giving the statement covered by Ex.P1 and prior to that he did not enquire with the villagers' the further particulars of the accused. He denied the suggestion of deposing falsehood at the instance of police against the accused though accused never visited the temple area and never picked up quarrel with them and not connected with the alleged cause of death of deceased.

9. PW.11 who registered the crime No.43 of 2011 under Section 302 IPC from the statement of PW.1 cause recorded in

issuing Ex.P14 express FIR and also recorded the statement of PW.1 as part of investigation commenced, deposed of his investigation that he also visited the scene of offence which is the premises of Renuka Yellamma Temple called as Dharmashala, which is tin sheeted shed around at the outskirts of Gurralongdhi village and in the presence of PW.8-Narsaiah and LW.9-Parsharamu conducted scene observation and seized MOs.2 to 6 & 8 supra under cover of Ex.P8 scene observation panchanama and prepared Ex.P9-rough sketch and cause photographed through PW.7 dead body with scene of offence covered by Exs.P2 to P7 photos with CD and also examined PWs.2 to 5 supra and also conducted inquest on the body of the deceased in the presence of mediators PW.8 and LW.9 supra covered by Ex.P10 inquest panchanama and shifted the dead body to Government Hospital, Mortuary with request to the medical officer to conduct autopsy on the dead body where examined PW.6 brother of the deceased and handover the CD file to PW.12-Inspector Ravi Kumar. In the cross examination, PW.11 denied the suggestion of he is incompetent to the investigation initially done supra or Ex.P1 contained statement of PW.1 was caused prepared by expert police officials or presence of PWs.2 & 3 not mentioned so also of any quarrel between the accused and deceased. He deposed that PWs.2 & 3 did not state physical features of the assailant. He deposed that in Ex.P14-FIR GD entry reference not mentioned. He denied the suggestion of it is a false case foisted against the accused by preparing the FIR contained statements sitting at police station or he is deposing falsehood.

10. From the above evidence of PWs.1 & 11, particularly from the cross examination confirmation of PW.1 that the accused and deceased were at the scene of offence till 06.00 PM when PW.1 left that place by leaving them and also deposed about PWs.2 & 3 presence. The omission pointed out of did not state in the Ex.P1 about presence of PWs.2 & 3 same was confronted to PW.11 he denied the same of as if omission. A perusal of Ex.P1 clearly speaks mentioned about presence of PWs.2 & 3 who were working at just nearby agricultural field. PWs.2 & 3 evidence in this regard concerned, who are also residents of same village, is that the deceased was watchman of the temple and choultry. PW.2 came to the temple area after attending agricultural work on that evening and by the time PW.1 and another lady (PW.3) there accused quarrelled with deceased for missing of cocks and he convinced him to leave the place and not to quarrel with deceased later he left the scene and on next morning again he visited the temple and found the dead body of deceased-Kattaiah. He deposed that accused was last seen with the deceased the earlier evening and he might have killed the deceased. In the cross examination, PW.2 deposed that he left the scene at about 04.00 PM or so. He deposed that temple is located on road side leading to Srcilla and Siddipet highway and public used to visit the temple throughout the day including coming in vehicles. He deposed that Goundla people used to sell toddy near temple to the highway passers by. He denied the suggestion of he is identifying the accused at the instance of police and accused no way concerned

with the death of the deceased. PW.3 deposed that she noticed on that day of accused came to the temple with cycle, basket with cocks or hens. She went to the area to collect tamarind, where PW.1 and deceased were there when accused picked up quarrel with deceased as responsible for the disappearance of his cocks and thereafter she and PW.1 left the place as sun was setting and on next morning she came to know deceased was killed and went to the scene of offence and noticed the dead body with injuries including blood stained pestle and blood stained granite stone and articles of the accused and she suspected the accused killed the deceased as he quarrelled with the deceased on previous evening. In the cross examination, she deposed that it was at about 06.30 PM she left from the scene. She deposed that daily many devotees visit and there is toddy shop near temple and consumers also visit. She did not state before police noticed the quarrel between PW.1, deceased and accused and went in rescue of deceased and separated from accused. She deposed of not stated before police of accused came to the scene and she can identify and she was not enquired by the police to give the descriptive particulars of the accused and the details of the incident. She denied the suggestion of deposing falsehood at the instance of police though not present at the time the incident taken place.

11. The evidence of PWs.1 to 3 supra is consistent as to accused quarrelled with deceased as responsible for missing of cocks/ hens which he brought having come on hired auto with cycle and the hens in a basket and beer bottle and having left the hens

there who was under intoxication being conscious, raised a quarrel with deceased in particular and also with PW.1 as responsible for missing of the 2 cocks/ hens. That establishes particularly from the evidence of PWs.1 & 3 of accused and deceased were there on the evening even after 6 PM when PW.1 and later PW.3 left that place and the evidence of PWs.1 to 3 also speaks on next morning when they came found the dead body of the deceased. There is last seen theory from the prosecution established of accused and deceased were together when PWs.1 to 3 seen them and about the quarrel between the accused and deceased.

12. The learned counsel for the appellant/ accused referred to the expression of the Apex Court in Nizam Vs. State of Rajasthan¹, which is also case for the offence under Section 302 IPC of rested on circumstantial evidence where observed if the time gap between last seen theory which is one of the very important links in the chain of circumstances that would point towards guilt of the accused with some certainty, is long to the last seen on recovery of dead body, onus shifts on the accused under Section 106 of the Indian Evidence Act to explain how the occurrence taken place, however held on facts from the gap is about 3 days to the last seen to the time of dead body of deceased recovered not prudent to convict the accused only on sole basis. In fact it is categorically observed in Para 14 of the expression in particular of the last seen theory is very important link in the chain of circumstances pointing towards the guilt of the accused with

¹ 2016 (1) SCC 550

some certainty and it holds the Courts to shift the burden of proof on the accused, who has to offer a reasonable explanation as to the cause of death of the deceased and however, it is not a sole link to base the conviction from long time gap from last seen to body recovered, but for to apply said last seen theory with burden on accused the principle supra by taking into consideration of overall facts of the case on hand and keeping in mind the circumstances that precede and follow the point of being so last seen, for the circumstances from which conclusion of guilt to be drawn should be fully proved in completing the chain formation with no gap left in the chain of evidence consistent with the only hypothesis of guilt of accused and inconsistent with innocence of accused. It was held the prosecution is able to prove any motive against accused for the occurrence of cause of death of deceased. It is also one of the circumstances of the chain as a corroborative piece of evidence for scrutiny from the evidence. Here in the case on hand, the last seen was at about 06.00 or 06.30 PM. The PM examination conducted by PW.10 the duty doctor and issued Ex.P13-PM report by mentioning the cause of death is due to haemorrhage and shock and from crush injury of the head and the PM examination was commenced on 16.04.2011 at 02.30 PM onwards and mentions multiple deep lacerated wounds over right side of the face, right lower jaw associated with disfigurement of the face on right side, loss of upper incisors with blood clots in sockets, multiple lacerations of irregular size on the chest wall, massive swelling over to left forearm and right wrist joint and

there are fractures of frontal bones, nose, maxillary bones, lower jaw bone orbits, brain and ménages congested and cerebral vessels congested, mouth broken tooth found disruption of teeth, fracture of left clavicle and fracture of sternum bone and there is some digested food in the stomach and lungs congested right and left and large blood vessels congested and PM examination was concluded by 03.30 PM and the approximate time of death mentioned as 6 to 12 hours prior to the PM examination. In the cross examination he further deposed that the injuries over the skull might be by use of MO.3-blood stained granite stone with six angles where as per Ex.P15 FSL report human blood detected, group could not be stated. In the cross examination he deposed that he examined the dead body and noted injuries which are anti-mortem and recorded the same in Ex.P13-PM report, which is with printed proforma filled and he also expressed the opinion as to cause of death including with reference to the FSL report. He denied the suggestion of he did not conduct PM examination and issued Ex.P13 to support police. Thus the time of death within 12 hours prior to the PM examination commenced at 02.30 PM on 16.04.2011 which probablise the occurrence after midnight of 15.04.2011. The accused in the cross examination of PWs.1 to 3, 10 & 11 supra did not give any worth suggestion as to when he left the company of the deceased on 15.04.2011 after 6 PM if at all, when he was last seen by PWs.1 and 3 in particular though sometime before by PW.2 and it is not even his case that he left the place immediately after that to say he was not responsible for

cause of death but some other. The time gap between the cause of death and last seen from the above is hardly 6 to 12 hours from said evidence including the medical evidence supra and there is motive in addition to the last seen theory proved supra from the evidence of PWs.1 to 3 who categorically deposed of accused quarrelled with deceased with heated exchange also with PW.1 about the alleged missing of cocks though it is he that left the cocks after reached the temple from the basket which he brought along with cycle and beer bottle.

12(a). Coming to the other decision placed reliance on **SK Yusuf Vs. State of West Bengal**², the Apex Court observed of there is no evidence to the extent of deceased and accused were seen together at the place of occurrence in proximity of time besides material contradictions in the prosecution evidence totally rested on circumstantial evidence. Thus the principle laid down with reference to the facts of that expression has no application to the case on hand.

12(b). Coming to the another expression of the Apex Court in **State of Goa Vs. Sanjay Thakran and Others**³, the principle laid down therein is once there is acquittal, double presumption applicable to the innocence of accused and suspicion shall not be a substitute for proof for case rested totally on circumstantial evidence. The links of the chain to be proved and when 2 views possible the view favourable to the accused can be accepted and for the appellate Court merely because another view possible

² 2011 (6) Scale 511

³ (2007) 2 SCC (Cri) 162

cannot interfere with acquittal. It was also observed that last seen theory is an important link of the chain, however on facts held that cannot be a basis from the long gap between the dead body found and the accused last seen in the company of deceased. Same is in fact the proposition referring to it laid down in Nizam supra recently by the Apex Court.

12(c). Coming to the another expression of the Apex Court in Syed Ibrahim Vs. State of Andhra Pradesh⁴, there on facts evidence of PW.1 father of the deceased not supported by any evidence and his evidence is not consistent and riddled with contradictions as to different place of scene of offence held conviction judgment not sustainable. There is also no quarrel on the proposition.

13. Coming to the other evidence, PW.4 deposed that on 15.04.2011 PW.1 informed him at bus stand of one person came with household articles with cocks and quarrelled with PW.1 and deceased of responsible for disappearance of his cocks and on next morning he came to know Kattaiah was killed by somebody and rushed to the spot and found the dead body with injuries and what he stated is he was so informed by the PW.1 regarding the quarrel. PW.5 also deposed only to that extent. There evidence no way improves the prosecution case thereby, but for to a little admissibility under Section 8 of the Evidence Act on the conduct of PW.1 about his information of the occurrence while he is going to report to the police. PW.6 is brother of the deceased deposed

⁴ 2007 (1) ALT (Crl.) 183 (SC)

about wife of deceased deserted him and deceased settled at the Yellamma temple by working as watchman. He came to know of his brother Kattaiah was killed and rushed to the hospital Siddipet and identified the body with injuries. In the cross examination, he deposed that he did not mention the descriptive particulars how he identified dead body of his brother. In fact the dead body is that of the deceased and deceased met with homicidal death not even in dispute by accused, what the evidence of PWs.1 to 3, 10 & 11 referred supra. PW.7-photographer deposed that he photographed the scene of offence and the dead body covered by Exs.P2 to P6 and Ex.P7-CD and denied the suggestion of did not photograph and deposing falsehood. PW.8 is witness to the scene observation and inquest covered by Exs.P8 & 10 deposed that he came to the scene of offence where the dead body in a tin sheeted shed called Dharmashala near at Yellamma temple found and there one cycle-MO.1, cane basket, cellphone-MO.2, blood stained one granite stone with six angles-MO.3, another granite stone with four angles-MO.4, pestle-MO.5, one pair of black colour cheppals-MO.6 found and seized by police who also prepared rough sketch and in the inquest from the injuries on the person found the deceased person by name Kattaiah was killed by unknown offender by smashing his head with granite stone and deposed about police seized blood stained orange colour full shirt and blood stained brown colour half shirt i.e., MOs.7 & 8. He deposed in the cross examination of MOs.1 to 7 found with no slips at the time of his evidence. He deposed that MO.3-six angled granite stone might be with a weight

of 7 kgs so also might be by MO.4-four angled stone. He denied the suggestion of depositing falsehood. There comes to the evidence of PWs.12 & 9, PW.12 the Inspector deposed about he verified the investigation done by PW.11 and found in correct lines and taken up further investigation viz., on 18.04.2011 received information about movements of accused at Ramancha Village rushed with staff and mediators including PW.9 and where accused made a disclosure and showed the cycle used by him and the blood stained shirt of him concealed at his house at Jillella X road, Karimnagar District and brought the same which is MO.9 recovered under cover of said disclosure and recovery of panchanama covered by Exs.P11 & P12. In the cross examination of PW.12, he deposed that he did not examine any witness to show MOs.2 & 6 belongs to accused as witness stated of accused is known to them. He deposed that he did not collect any evidence to establish MO.1 was seized from accused of the cycle brought by accused witnesses by PWs.1 to 3. He denied the suggestion of it is a false implication of the accused and these are planted and panchanamas created. He deposed about case property sent to FSL received opinion. PW.13 is another IO who deposed about continuation of investigation of PW.12 and receiving Ex.P15-FSL report and filed the charge sheet. In the cross examination, he deposed that he did not notice blood stains on MO.2 that was seized by PW.12 at the instance of accused and denied the suggestion of it is a false case foisted. PW.9 who deposed in his chief examination in same line to PW.12 no way requires repetition. In his cross examination deposed of he was

suspended as VRO in ACB trap and he come to Gurrallagondi village to attend police station. He deposed of he is not subordinate to the police officials and did not file a document in writing of permission given by his superiors to act as panch witness supra. The distance between Gurrallagondhi and Ramancha where the accused was found and apprehended is 3 kms and there are hotels, shops and residential houses nearby. He denied the suggestion of no panchanama conducted, accused did not made any disclosure and the seizure of MO.9 shirt at his instance is false and so also of MO.1.

14. PW.9 categorically deposed of MO.9 contained blood stains which is orange colour full hand shirt belongs to the accused which he handed over having concealed at his house as a fact discovered from his disclosure. The FSL report no doubt speaks blood not detected thereon as item No.7, whereas the panchanama speaks the shirt with blood stains. It was seized on 18.04.2011 and the FSL report was on 03.09.2011 which is more than 4 ½ months after said seizure. The said blood stained shirt is seized from the accused at his instance which he concealed at his house is a fact discovered under Section 27 of the Evidence Act only to that extent as per the settled law particularly from the expressions of the Apex Court in Mohmed Inayatullah Vs. The State of Maharashtra⁵ of discovery of relevant fact from information of accused that to be deposed of the information passed on by accused as fact discovered while in police custody to admit for rest

⁵ AIR 1976 SC 483

is inadmissible. Here it is also one of the links coupled with the medical evidence of the facts established categorically including not in dispute of deceased met with homicidal death and so far the complicity of the accused to the crime concerned, the deceased and accused were last seen on 15.04.2011 at about 06/ 06.30 PM when PWs.1 & 3 left so also deposed of seeing them by PW.2 and they all deposed about the accused quarrelled with deceased of responsible for missing of cocks/ hens and threatened to do away unless the cocks were restored to him back and also quarrelled with PW.1 and deceased by suspecting with heated voice and prevented the deceased from clutches of accused and later they left while accused and deceased were there. Once he was last seen in the company of the deceased as one of the important links which he has established how deceased was killed sometime thereafter if at all he got knowledge and if not when he left the company of the deceased if at all thereafter which he did not state anything including by any suggestion though the burden is on him of the exclusive facts within his knowledge to disclose else to draw the inference against him of the deceased met with homicidal death within few hours after accused and deceased last seen and accused did not even report to police and there is no explanation and coupled with it the shirt of the accused with blood stained seized from the evidence of PWs.12 & 9 and on fact discovered and the medical evidence establishes with use of the granite stone-MO.3 the injuries are possible of the deceased met with homicidal death from the attack and all these facts when establishes the

guilt of the accused for the trial Court so to conclude for this Court while sitting in appeal from the said circumstantial evidence of last seen and motive and fact disclosed leading to discovery in corroboration to the last seen in linking the chain there is nothing to interfere with the conviction judgment, but for to say there is no any pre-meditated motive to the accused to kill the deceased other than motive of missing cocks of the accused in suspecting responsible by deceased in saying it is after the heat exchange and when separated by PWs. 1 to 3 and after PWs. 1 to 3 left having last seen accused and deceased together and there is some digested food found in the deceased from the PM examination there is some basis to the prosecution accusation of later accused and deceased cook food and consumed and it is later there was again the attack of deceased in the hands of the accused outcome of heated exchange and it attracts the offence under Section 304 part-I IPC to convert the sentence of life imprisonment for the offence under Section 302 IPC to rigorous imprisonment for 10 years by confirming the fine with default sentence for the offence under Section 304 part-I IPC following the expression in *Gurwinder Singh @Sonu v. State of Punjab and another*⁶.

15. Having regard to the above and in the result, this Criminal Appeal is partly allowed while confirming the fine amount with default sentence modified imprisonment of life to rigorous imprisonment for 10 years for the offence that attracts is Section

⁶ 2018 (2) ALD (Crl.) 505

304 (Part-I) IPC and not Section 302 IPC. The accused is entitled to set off of the period undergone under Section 428 Cr.P.C.

Consequently, miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed.

Dr. B.SIVA SANKARA RAO J,

M.GANGA RAO, J

Date: 23.11.2018

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