

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL Nos.1112 of 2011, 1149 of 2011 and
514 of 2013

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

1) Originally accused Nos.1 to 7 in S.C.No.177 of 2010 on the file of the III Additional Sessions Judge (FTC-II) at Khammam tried on eight charges, which are as under:

S.No.	Charge	Against the accused	Finding of the Sessions Judge
1.	Sec. 380 r/ w 34 IPC	Accused Nos.2 to 4	Found not guilty
2.	Sec. 420 r/ w 34 IPC	Accused Nos.1, 5 and 6	Found not guilty
3.	Sec. 406 IPC	Accused No.1	Found not guilty
4.	Section 406 r/ w 34 IPC	Accused Nos.1 and 5 to 7	Found not guilty
5.	Section 468 IPC	Accused No.1	Found not guilty
6.	Section 302 r/ w 109 IPC	Accused No.1	Found not guilty
7.	Sec. 411 IPC	Accused No.1	Found not guilty
8.	Sec. 302 r/ w 34 IPC	Accused Nos.2 to 4	Found guilty

2) Vide judgment, dated 08.09.2011, the learned Additional Sessions Judge, while acquitting all the accused for the charges under Sections 380, 420, 406 and 468 read with 34 IPC, convicted accused Nos.2 to 4 for the offence punishable under Section 302 read with 34 IPC and sentenced them to suffer "life imprisonment" and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for a period of four months each. Against the said conviction, accused Nos.2 to 4 preferred these appeals. Accused

Nos.3 and 4 preferred CrI.A.No.1149 of 2011 while accused No.2 filed CrI.A.No.1112 of 2011. However, accused No.4 also preferred CrI.A.No.514 of 2013. Pending appeal accused No.4 died.

3) The gravamen of the charge against the accused is that on 12.12.2007 at about 2.45 p.m., at Khadarabasha street, Bhadrachalam, the accused in furtherance of their conspiracy caused the death of the deceased by name Kollu Nageswaramma (hereinafter referred to as "the deceased") by smothering her to death with the help of a pillow.

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

i) PWs.1 and 2 are the son and daughter-in-law of the deceased, while PWs.3 and 4 are the neighbours. Accused No.2 is the wife of accused No.1 while accused Nos.3 and 5 are the sisters of accused No.1. Accused No.4 is the husband of accused No.3. Accused No.7 died pending investigation as such the case against him got abated. Accused No.1 was a tenant in one of the rooms of the house of PW.7. He was running an office in the name and style of "China Mothala Podupu Samstha". Accused No.1 though not an agent of any post office, was doing the business of an agent through his wife-accused No.2, accused Nos.3 and 6, who were given licence to do business by Special Tahsildar, Small Savings, O/o District Collector, Khammam. The deceased who was working as a teacher, retired from service. About two years prior to the date of incident, the husband of the deceased, who was working as

a Works Inspector in R & B Department, died. The money received after the death of the husband of the deceased and also the money earned by the deceased was invested in the post office through accused No.1. It is said that the deceased also took policies from accused No.1 by investing money. It is stated that about 10 accounts were opened by the deceased, for the money invested through accused No.1. About two months prior to the date of incident, the deceased asked accused No.1 about the missing of Rs.5.00 lakhs, which was given to him to be deposited. Thereafter there was an advertisement in TV and newspapers about accused No.1 committing fraud, in respect of deposits made by his customers, by manipulating the numbers and entries in the pass books. On coming to know about the same, the deceased is said to have questioned accused No.1 about the same, which fact was also informed to PW.1. It is said that accused Nos.1 to 3 used to visit the house of the deceased oftenly with regard to collection of deposit amounts. It is also to be noted here that the deceased, who is the mother of PW.1, lives in the upstairs portion of her house, while in one portion of the ground floor, PW.1 lives along with his wife. It is said that on that day PW.1 saw accused Nos.2 to 4 going upstairs ie., towards the house of the deceased. After some time, PW.3 heard some cries from the portion where the deceased lived and the same was informed to PW.4, who inturn informed the same to PW.1. Immediately PW.1 and his wife rushed to that portion of the house where his mother lived and knocked the door as it was bolted from inside. Some time thereafter,

accused No.4 opened the door and ran away from the said place on seeing PWs.1 and 2. PW.1 noticed accused Nos.2 and 3 in the house and the deceased lying on the floor. It was informed to PW.1 that the deceased fell down on the ground due to tension and that they would go and get an auto, to take her to hospital, but they did not turn up again. PW.1 went near his mother, and found her unconscious and also found a pillow and one tin by her side. He noticed blood coming out from the nose of his mother and also swelling of her left cheek. Then he took her outside the house so as to take her to the hospital, but by the time he took her into the varanda, he found that she was no more. Meanwhile, the neighbours gathered there, who informed him that the matter should be reported to the police. He suspects that his mother was killed by accused Nos.2 to 4. Basing on the said apprehension, he lodged a report with PW.23 on 12.12.2007 at 8.30 p.m., which lead to registration of a case in Crime No.280 of 2007. Ex.P68 is the first information report. PW.23 recorded the statement of PW.1 and proceeded to the scene of offence. Thereafter, he posted a guard at the scene of offence. On the next day, he went to the scene of offence, where he examined PWs.2 to 5 and recorded their statements. Thereafter, he conducted a panchanama of the scene in the presence of PW.14. During the said proceedings, he seized M.O.1 (pillow) under Ex.P39. He also got photographed the dead body of the deceased through PW.5 and the same are placed on record as Exs.P14 to P16. Thereafter, he conducted inquest over the dead body of the deceased in the presence of PW.14.

Ex.P40 is the inquest report. He then, sent the body for postmortem examination.

ii) PW.25-the Civil Assistant Surgeon, Government Area Hospital, Bhadrachalam, conducted autopsy over the dead body of the deceased and issued Ex.P72-the postmortem certificate. According to him, the cause of death was “due to asphyxia and smothering”.

iii) Further investigation in this case was taken up by PW.24, who is the Circle Inspector of Police, Bhadrachalam. On receipt of a copy of the first information report, he visited the scene of offence, examined PWs.1 to 5, but did not record their statements as they were already recorded by PW.23. However on 11.01.2008, he examined and recorded the statements of PWs.8, 9, 10 and 19. On 16.01.2008 he examined and recorded the statements of PWs.12 and 13. On 26.01.2008 he recorded the statement of PW.20. On 07.01.2008 he apprehended accused Nos.1 and 4 near Abhaya Anjaneyaswamy park at Bhadrachalam. On interrogation they confessed about the commission of offence in the presence of PW.15. Pursuant to the said confession, accused No.1 lead them to his house situated at Mudiraj Bazar, Bhadrachalam, where he showed 10 pass books pertaining to the post office, which are marked as Exs.P2 to P11. Accused No.1 also showed them the rubber stamp (M.O.2), and one Xerox machine (M.O.3) used in fabricating the documents. Pursuant to the confession made by accused No.4, they proceeded to Sriram Nagar Colony, and at the

instance of accused No.4, seized one TVS scooty bearing No.APP 20 6797 (M.O.4) under Ex.P.71. Thereafter, accused Nos.1 and 4 were brought to the police station, where their arrest was affected. On 10.01.2008, PW.24 arrested accused Nos.2, 3, 5 and 7. On 22.01.2008 he arrested accused No.6. On 26.01.2008, PW.20 came to the police station and handed over a Car bearing No. AP 09 TV 1069 stating that he purchased the said Car from accused No.1, which was seized in the presence of PWs.16 and 17. On 08.01.2008 he forwarded the blood stained pillow to R.F.S.L. The record further discloses that on 16.01.2008 he filed a requisition before the Chief Judicial Magistrate, Khammam, to conduct test identification parade of accused No.4. The documents which were summoned are marked as Exs.P.19 to P36 through PWs.9 and 10. On 24.01.2008, PW.24 filed a requisition before the Tahsildar, National Savings, Office of Collectorate, Khammam, to hand over the documents in original. On 05.03.2008 PW.24 forwarded Exs.P.2 to P11 for F.S.L. Report, the requisition of which is placed on record as Ex.P.67. Further investigation in this case was taken over by PW.27.

iv) The material on record discloses that pursuant to the requisition made by the C.I. of Police, for holding the test identification parade, PW.18-the II Additional Judicial Magistrate of First Class, Khammam, conducted test identification parade of accused No.4 in the jail premises. PWs.1 and 2 were asked to identify accused No.4. Ex.P.55 is the requisition and the test identification proceedings were marked as Ex.P.57, wherein PWs.1

and 2 identified accused No.4 as the person, who was in the house of the deceased when they went there. After receipt of all the documents from the Collectorate, Khammam, District Head Post office and F.S.L. Report, PW.27 filed the charge sheet, which was taken on file as P.R.C.No.82 of 2009 on the file of the Judicial Magistrate of First Class, Bhadrachalam. After complying with the provisions under Section 207 Cr.P.C., the learned Magistrate committed the case to the Sessions Division under Section 209 Cr.P.C. On committal, the same came to be numbered as S.C.No.177 of 2010.

5) On appearance of the accused, charges as referred to above came to be framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

6) In support of its case, the prosecution examined PWs.1 to 28 and got marked Exs.P1 to P78 and MOs.1 to 4.

7) After the closure of prosecution evidence, the accused was 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. Neither oral nor documentary evidence was adduced on behalf of the accused.

8) Out of 27 witnesses examined by the prosecution, PWs.3, 4, 6, 12, 13, 15, 16, 17, 20 and 26 did not support the prosecution case and were treated hostile by the prosecution. Relying upon the evidence of PWs.1 and 2, the learned Additional Sessions Judge

while acquitting accused Nos.1, 5 and 6 of all the charges, convicted accused Nos.2 to 4 for the offence punishable under Section 302 read with 34 IPC and sentenced them to suffer “imprisonment for life”. Challenging the same, the present appeals came to be filed.

9) Heard learned counsel appearing for the appellants in all the appeals and the learned Public Prosecutor.

10) Learned counsel for the appellants mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not connect the accused with the crime. It is their plea that having disbelieved the prosecution case with regard to motive, alteration of entries in the pass books and also the allegation of theft by accused Nos.2 to 4, the trial Court ought to have thrown out the entire prosecution case as false. They further contended that the first information report which is brought into existence at 8.30 p.m., is an outcome of confabulations, since the earlier report given by PW.1 has not seen the light of the day. They submit that there are strong circumstances to indicate that it was PWs.1 and 2 alone who are responsible for the death of the deceased, more so, when PWs.3 and 4, who are the neighbours and who claimed to have informed PWs.1 and 2 about hearing some cries from the flat of the deceased, did not support the prosecution case. In any event he would submit that the question of raising cries by the deceased

would not arise since the death was due to smothering by using the pillow, which prevents the deceased from raising any cries.

11) On the other hand, the learned Public Prosecutor would contend that though the appellants are acquitted under Section 380 read with 34 IPC, but still their presence in the house at the time of the incident cannot be disputed in view of the evidence of PWs.1 and 2, who categorically deposed about seeing accused Nos.2 to 4 going to the upstairs portion, in which the deceased was living. In the absence of any explanation as to how the dead body was present in the house, when their presence in the house stands established through the evidence of PWs.1 and 2, he submits that the findings of the trial Court in convicting the appellants for the offence punishable under Section 302 read with 34 IPC cannot be found fault with.

12) As stated earlier, accused No.4 died pending appeal before this Court, while accused No.7 died pending investigation. Accused Nos.1, 5 and 6 were acquitted of all the charges.

13) The question now is whether accused Nos.2 and 3, who are the wife and sister of accused No.1, are responsible for the murder of the deceased along with accused No.4 (died).

14) The findings of the trial Court, which remained un-challenged by the State are

- i) The version of the prosecution with regard to accused Nos.2 to 4 committing theft of Exs.P2 to

P11 from the house of the deceased. Even as per the prosecution case, the seizure of Exs.P2 to P11 was not affected from accused Nos.2 to 4 or at their instance.

- ii) The prosecution failed to prove that accused No.1 cheated the deceased by altering Exs.P2 to P11 in view of the evidence of PW.21, which goes to show that he could not give any opinion as to the manipulations done in Exs.P2 to P21, since writings of the said period were not sent to him along with the disputed documents.
- iii) The prosecution failed to establish that the deceased entrusted amounts to accused Nos.1, 5 and 6, since the postal authorities, who were examined as PWs.9 to 11, do not anywhere say that accused Nos.1, 5 and 6 brought the amounts of the deceased and deposited in their accounts. Hence, the alleged entrustment of money by the deceased to accused Nos.1, 5 and 6 remained un-proved.
- iv) Similarly, there is no legal evidence on record to show that Exs.P2 to P11 and MOs.2 to 4 were recovered from the possession of accused No.1, since the panch witness (PW.14) did not support the prosecution case.

v) The trial Court also disbelieved the prosecution case with regard to accused Nos.1 to 4 being dropped at Hyderabad after commission of offence since PW.12 resiled from his earlier statement. Similarly issuance of fake pass books by accused No.1 in the name of the deceased was also disbelieved in view of the evidence of PW.13, who did not support the prosecution case in that regard.

vi) The case of prosecution with regard to PW.20 purchasing a car from accused No.1 was also rejected, as PW.20 did not support the prosecution case.

15) But however, the findings of the trial Court are as under:

(1) from the evidence of PWs.9, 10 and 11, the prosecution was able to prove that there were manipulations in the pass books of the deceased namely adding or prefixing alphabets thereby inflating the deposited amounts in the pass book though the said amount was not actually deposited. The said finding gets support from the evidence of handwriting expert. (2) The evidence of PWs.1 and 2, witnessing accused Nos.2 to 3 going to the upstairs portion of the deceased, (3) recovery of blood stained pillow containing human blood, (4) tracing the body of the deceased in the house of the deceased, (5) presence of accused Nos.2 to 4 in the house at that time and they leaving the house informing PWs.1 and 2 that the deceased fell down un-conscious due to tension and

they will get an auto and (6) the evidence of postmortem doctor with regard to cause of death.

16) The question now is whether these circumstances are sufficient to convict the appellants for an offence punishable under Section 302 read with 34 IPC.

17) In order to appreciate the same, it would be useful to refer to the evidence of PWs.1 and 2.

18) Before dealing with the evidence on record, it is to be noted that the main ground urged by the learned counsel for the appellants is that the evidence of Pws.1 and 2 cannot be relied upon since the earlier report given by PW.1 was suppressed. According to the counsel, the version now spoken to by these two witnesses with regard to PWs.3 and 4 informing them about hearing some noise from the house of the deceased, was not referred to in the first information report given by PW.1 at 8.30 p.m. It is also submitted that the evidence of PW.5, who came to the scene of offence by 5.00 p.m., and took the photographs of the dead body, establish that the police had the information furnished by PW.1, which was suppressed, and the delay of five hours in lodging the report came to be utilized after the arrival of the brother of PW.1.

19) Therefore, in order to appreciate the same it would be useful to refer to the evidence of PWs.1, 2, 5, 9 to 11, 21, 23 and 24.

20) Before proceedings further, it is to be noted that the interpolations in Exs.P2 to P11 made by accused No.1 came to be

disbelieved mainly on the ground that the investigating agency failed to send the hand writing of accused No.1, of that relevant period, for comparison with the writings namely the interpolations and over-writings made in Exs.P2 to P11. It would be useful to refer to the relevant portion in the cross-examination of PW.21, which is as under:

“It is true that Exs.P2 to P11 are not synonyms to that of the documents sent to me by the police under Exs.P64 and P65. The witness volunteers that A1 to A30 I have observed only tampering parts and over writings of Exs.P2 to P11. I have observed only the alterations, since the sufficient old writings of the accused were not sent to me for comparison, as such I cannot give opinion and whose hand writings the over writings and additions are made in Exs.P2 to P11 ie., Q.1 to Q.30.”

21) From the above, it is clear that no opinion could be given with regard to the tampering of the documents since writings of the accused of that period were not sent for comparison. But the fact which stands established through the evidence of PW.21 is that there were some over writings and alterations in the savings bank account and other accounts of the deceased maintained at the post office vide Exs.P2 to P11. As the acquittal of the accused under Sections 406 and 468 IPC was on a hyper-technical ground, the same does not efface the motive.

22) Coming to the oral evidence, PW.1 in his evidence deposed that after the death of his father, which was about two years prior to the date of incident, his mother invested money in the post

office through accused No.1 and the deceased also taken policies from accused No.1 in MIS. According to him, his mother invested money through accused No.1 and others by opening 10 accounts. Two months prior to the death of the deceased, the deceased asked accused No.1 about missing of Rs.5.00 lakhs, which she gave to accused No.1, to be deposited in the account. Thereafter a news item appeared disclosing that accused No.1 committed fraud in respect of deposits of his customers by manipulating the numbers in the pass books i.e., altering Rs.4,000/- to Rs.4,00,000/- etc. On coming to know about the same, the deceased is said to have questioned accused No.1 about the same. His evidence also shows that accused Nos.1 to 3 used to visit his house oftenly with regard to collection of amounts from the deceased. He further deposed that on 12.12.2007 at about 2.45 p.m., he noticed accused Nos.2 to 4 going upstairs, to the portion, where his mother lives. After some time, PW.3 heard cries from the portion of the house of deceased which was informed to PW.4, who in turn informed the same to PW.1. Immediately, PWs.1 and 2 went upstairs and knocked the door, which was bolted from inside. After some time the door was opened. He noticed one stranger opening the door and running away from the said place. On entering the house, he found the deceased lying on the floor and accused Nos.2 and 3 inside the house. Accused Nos.2 and 3 informed PW.1 that his mother fell on the ground due to tension and that they will get an auto to take her to hospital, so saying they left the place, but did not return.

23) PW.1 in his cross-examination admits that his father retired as a government employee in R & B Department, while his mother retired as a Government Teacher. His mother was living in the first floor while himself along with his wife, were residing in the down stairs portion of the said house. Another portion in the down stairs was given on rent to a BPL employee. According to him on that day it was a holiday for him, as every Wednesday is a holiday to his office. He admits that during the life time of his parents, they used to cook themselves for few days and PWs.1 and 2 used to send food to them for few days. It was elicited that his mother was hale and healthy and was used to go to temple every day by walk. He further admits that his parents kept the amount in fixed deposits keeping PW.1 and his brother as nominees. The total amount which was deposited in post office, with PW.1 and his brother as nominees was Rs.90,00,000/- . It was further elicited that PW.1 had good relationship with his parents and even his brother had good relationship with his parents. His mother used to give money for his expenses, but he was not able to recollect the exact amount which she used to give him. He further admits that his father kept his mother's name as nominee in savings; that after the death of his father, PW.1 and his brother asked for the share to which his mother replied that everything would come to them after her death as such they kept quiet. He admits that they did not resort to any legal action against the deceased. It was further elicited that PW.1 used to accompany the deceased and that himself and his brother has knowledge about the money dealings of his mother

in the bank and post office. He also admits that he used to go along with his father whenever he goes to bank. After the death of his father, fixed deposits were given to my mother as she was nominee, but the deceased again invested the same in bank and post office, keeping PW.1 and his brother as nominees. To a suggestion that no money was given to PW.1 and his brother in spite of repeated requests on the ground that PW.1 and his brother quarreled with them, was denied by him. To a suggestion that they never used to send food to his parents by preparing the same in their house was denied. To a suggestion that PW.1 intentionally gave the next portion to rent instead of allowing his mother to stay there, though it is very difficult to her to go upstairs was denied by him. However, he admits that the deceased donated Rs.1.00 lakh to Rama Temple through accused No.1. He also admits that entire building stands in the name of the deceased. To a suggestion that anticipating the deceased may donate her entire property to Lord Sri Rama, they have eliminated the deceased, was denied. It was further elicited that the distance between his house and the police station is about ½ km., or less than 1 km. He further admits that on the date of incident police came to his house at about 4.00 or 5.00 p.m. Two police constables came to their house and saw the body of the deceased. He further admits that the police came after he gave a report in the police station. He admits that in the said report he has mentioned that some unknown persons killed the deceased. He further admits that the S.I. of Police came to his house at 7.30 or 8.00 p.m., while his brother came to his house at

about 9.00 p.m., along with his wife. He further admits that after lodging the report, the police examined him at 8.00 or 8.30 p.m. Confronting Ex.P1, the defence counsel asked PW.1 “whether it is the statement recorded by the police”, to which he replied “yes”. But the Public Prosecutor raised an objection stating that the said question has no clarity since without showing 161 Cr.P.C., statement, referring the report to the witness and extracting an answer is contrary to the procedures. At that point of time, another question came to be put by the defence, which is as under:

“Q. In your earlier report at about 5 PM you have mentioned that only some unknown persons killed your mother and subsequently at 9 PM after arrival of your brother you prevailed over the police suspecting that police may involved us in the crime because of strained relations of my mother we gave another report at 9 PM involving A2 to A4, what do you say”

Ans: It is not true to say as above.”

24) It was further suggested that he failed to mention in Ex.P1 that he has noticed Accused No.4 going upstairs of the house, was denied by him. It was elicited that PW.3 heard some cries from the house of the deceased, which was informed to PW.4, who inturn informed the same to him, as such they went upstairs of the house. He admits that he did not mention in Ex.P1 about the fraudulent act of accused No.1 and also about accused Nos.1 to 3 visiting his mother’s house frequently. He also admits that he did not mention in Ex.P1 about Exs.P2 to P11.

25) Insofar as identifying accused No.4 is concerned, he admits that he has not seen him before and that he has seen for the first time while he was running from the house portion of his mother, after opening the door.

26) This evidence of PW.1 is sought to be demolished by the accused on the ground that it was PW.1 along with his wife have caused the death of the deceased, on suspicion that the deceased would donate her entire property to the temple during her life time, because of disputes between PW.1 and the deceased.

27) From the evidence of this witness, it is clear that there were no differences between PW.1 and the deceased or between PW.1, deceased and his father. If really there were some differences as suggested by the accused, definitely the deceased could not have nominated PW.1 and his brother as nominees in the bank and post office accounts. It is not the case of the accused that the deceased was an un-educated lady. The evidence on record further shows that she was a teacher and was visiting the banks and post office on her own at times. If really there was any animosity or disputes, the deceased would have changed the names of nominees. Merely, because a sum of Rs.1.00 lakh was given as donation to Sri Rama temple, it cannot be said that PWs.1 and 2 would have done away the deceased, anticipating donation of the entire amount. Further, there is no evidence on record to show that the deceased made an effort to part with the portion of the property in which PW.1 and his brother were shown as

nominees. Things would have been different had she closed some of the accounts or deposits where PW.1 was shown as nominee and transferred the amount to the temple. Therefore, the reason suggested by the defence trying to fix the culpability on PWs.1 and 2 cannot be accepted.

28) His evidence is also sought to be commented upon with regard to the visit of police at 4.00 or 5.00 p.m., and he admitting lodging of report at 5.00 p.m., and then the police recording his statement at 8.30 p.m. It is to be noted here that after eliciting such answers from PW.1 and if really the defence of the accused was that there was an earlier report which was suppressed and that another report came to be lodged at 8.00 or 8.30 p.m., they should have sought for clarification of the answers elicited earlier, wherein the suggestion to PW.1 as to whether he gave a report earlier to 5.00 p.m., mentioning that some unknown persons killed his mother and after the arrival of his brother at 9.00 p.m., he lodged another report implicating the applicants, was denied. Therefore, we feel that the accused cannot blow hot and cold at PW.1, by giving inconsistent suggestions, and then take advantage of the same.

29) But one fact which remains to be seen is that in the chief evidence itself, PW.1 categorically states that while himself and neighbours were gathered at the flat of the deceased, his neighbours informed him that the matter was reported to the police. Probably that must have made the police to come to the scene of offence basing on the information furnished by the

neighbours, about the death of the deceased or about a dead body lying in the flat of the deceased. This version of PW.1 gets fortified not only from the answers elicited in the cross-examination which we have referred to earlier but also from the evidence of PW.5-the photographer, who categorically states that the police called him to the house of the deceased to take the photographs of the deceased and the scene. Accordingly he went there and took the photographs of the dead body in the evening hours through his digital camera. Therefore, the evidence of PW.5 shows that pursuant to the instructions of the police he came to the scene of offence in the evening, which was clarified in the cross-examination as between 6.00 or 7.00 p.m. Hence, this discrepancy which is sought to be taken advantage of, in our view, do not go to the root of the matter. Admittedly some information was passed on to the police by the neighbours, pursuant to which, the police came at 4.00 or 5.00 p.m., and thereafter PW.5-photographer came there at about 6.00 or 7.00 p.m., and took photographs of the dead body. It would be relevant to extract the relevant portion of the evidence of PW.1, which is as under:

“Then we and the neighbours gathered there neighbours informed me that the matter was reported to the police. I suspected that my mother was killed in the hands of A2, A3 and A4-unknown man Sharath Babu.”

30) A comment is sought to be made that if really the information about the cries being heard from the house of the deceased was furnished to him by PWs.3 and 4, definitely he would have

mentioned the same in the first information report. It is to be noted that the first information report is not an encyclopedia, which should contain all minute details, but basic information that they went to the house of the deceased on the information given by the neighbours, in our view is sufficient to show the source of their information which made them go towards the house of the deceased.

31) As stated earlier, non-mentioning of the names of PWs.3 and 4, who are said to have informed PW.1 about hearing the cries from the house of the deceased, cannot be treated as fatal. On the other hand, the information given in the first information report corroborates his version in the Court, to the extent that when he went upstairs and knocked the door, it was opened after some time by a male person. He noticed accused Nos.2 and 3 and another in the house. All of them left the house stating that they would bring an auto, to shift the deceased to hospital as she fell down due to tension. In the first information report, he categorically states that his mother used to take the help of accused No.1 in depositing amounts in the bank and that she lost one pass book relating to Rs.5.00 lakhs which was informed to him by the deceased. Though accused No.1 was not present along with accused Nos.2 to 4 at that time, but the first information report categorically shows the presence of accused Nos.2 to 4 in the house. If really he wanted to implicate any other person or a known person, he could have mentioned the name of the said person or even the name of accused No.1, for that matter. The

first information report given by PW.1 refers to the names of accused Nos.2 and 3 and one unknown person, who was later identified as accused No.4 in the test identification parade conducted by the Magistrate. Therefore, we feel that Ex.P1 and the evidence of PW.1 cannot be disbelieved merely because of some discrepancy with regard to time in lodging the report. In fact it is very clear from the record that the defence tried to confuse PW.1 by confronting him with Ex.P1 instead of 161 Cr.P.C. statement and when the same was objected too, the defence counsel corrected the same and put another question which clearly establishes that no report was given by PW.1 before 5.00 p.m. Having regard to all the circumstances referred to above, we feel that the evidence of PW.1 can be believed.

32) Coming to the evidence of PW.2. She is none other than the wife of PW.1. Her evidence is to the effect that accused Nos.1 to 3 used to visit the house of her mother-in-law for collecting amounts from the deceased. In her evidence, she states that the building belongs to her mother-in-law which contains three portions. Out of it, two portions are in downstairs and one portion in upstairs. In the down portion PWs.1 and 2 are residing while another portion was let out to a tenant working in BPL as a contractor. She further states that in their building there is one more building by the side of their building, in which PWs.3 and 4 were residing. According to her, on 12.12.2007 while herself and PW.1 were present in the house, PW.4 came and informed to them that PW.3 told her that she heard some noise from the house of the

deceased. On hearing the same, herself and her husband went to the upstairs, they waited 15 minutes in front of the house by knocking the door, but there was no response. After repeated knocking, the door was opened by the accused. When questioned, accused Nos.2 and 3 as to what they were doing inside the house inspite of their knocking the door for about 15 minutes, they told them that the deceased offered tiffins to them and they are eating. Further they told them that the deceased was in tension and they would go and get an auto to take her to hospital. According to her, accused No.1 along with accused Nos.2 to 4 conspired to kill the deceased. The reason for the said Act was that already accused No.1 was responsible for disappearing of the pass book for Rs.5.00 lakhs, which was informed to them by her mother-in-law and that the deceased was repeatedly asking accused No.1 about the same. She further states that whenever her mother-in-law gave Rs.5,000/- accused No.1 used to deposit only Rs.500/- by making interpolations and over writings.

33) PW.2 was also subjected to lengthy cross-examination. In the cross-examination it has been elicited that the reason for their staying outside as tenants to some other building as her mother-in-law let out the house to tenants and that there are no differences between them and the deceased at any time. To a suggestion that after the death of the father-in-law, PW.1 fought with the deceased and forcibly joined in one portion, which is against to the wish of the deceased, was denied by her. All the suggestions given to PW.1 with regard to missing of pass book of Rs.5.00 lakhs,

alterations in bank account pass books, furnishing of an information by PWs.3 and 4 with regard to hearing of cries are all denied by him.

34) From the evidence of this witness, it is also clear that there were no differences between PW.1 and the deceased. Her evidence is very clear to the effect that accused Nos.1 to 3 used to visit the house of the deceased oftenly for collecting deposit amounts. Her evidence further show that on receipt of information from PW.4 they went upstairs and knocked the door for some time and on repeated knocking the accused opened the door. Initially accused No.4 ran away and subsequently accused Nos.2 and 3 left the place saying that the deceased fell down due to tension and that they will go and get an auto. This evidence of PW.2 in our view corroborates the evidence of PW.1 in all respects.

35) PWs.3 and 4, who claims to have informed Pws.1 and 2 about the hearing of cries, did not support the prosecution case and were treated hostile by the prosecution. Merely because PWs.3 and 4 resiled from their earlier version with regard to the information being furnished to PWs.1 and 2, the version of PWs.1 and 2 going to the portion of the deceased and knocking the door on the basis of the information furnished by the neighbours, which is reflected in the first information report, in our view cannot be disbelieved.

36) PWs.8, 9, 10 and 11 are the employees of the post offices at Yellandu and Bhadrachalam. Though all the witnesses say that they know accused Nos.2, 3 and 5, who are their agents, none of

them in their evidence spoke about they coming to the post office to deposit the amount on behalf of the deceased. But however they admit that the deceased is one of the depositors in their post office and she never used to come to the post office to deposit the cash. PW.8 in his evidence states that the deceased used to send money through her agents. PWs.9 and 10 speak about the alterations and over writings in the pass books. Their evidence clearly shows that some alterations were made in the pass books. The alterations are mainly to the effect that more amount than what has been deposited was shown in the pass books. As stated by us earlier that no evidence has been placed on record to show that it was accused No.1, who made the alterations in the pass books. The evidence of these witnesses establish that the deceased was having accounts in the post offices and that she used to send money through her agents.

37) The evidence of PWs.1 and 2 with regard to cause of death of the deceased gets established through the evidence of PW.25-the postmortem doctor. According to PW.25, he found abrasions on left cheek and froth was coming out from the mouth of the deceased. He also noticed 2 cms., nail scratch injury below right eye of the deceased and water discharge from both the nostrils. He also found tip of the tongue of the deceased and also found blood clots on the mouth of the deceased. The death can be caused like M.O.1 pillow by applying force. In the cross-examination he admits that the types of injuries mentioned in post mortem report can be possible in case of struggling with fits and it

depends upon hyper condition of the individual. He cannot say whether usage of pillow, injuries No.2 and 3 can be caused and it depends upon the position of pillow applied by the culprits on the deceased. When the Public Prosecutor sought for clarification about the same, the doctor answered that it depends upon the angle and the angle as suggested above will not result in causing the injury Nos.2 and 3.

38) From the evidence of the doctor, it is clear that the death was due to asphyxia and smothering. He also noticed nail scratch mark below the right eye apart from abrasions on left cheek with injuries on the tongue and blood clots in the mouth. It may be true that injuries of this nature may be caused in case of struggle at the time of fits but it is nobody's case that the deceased suffered with fits on earlier occasion, nor was it suggested to PWs.1 and 2 that the deceased was getting fits now and then. Therefore, merely because such injuries are possible by fits, does not mean that the death was natural or due to fits leading to heart attack.

39) Hence, the evidence of PWs.1 and 2 establish that accused Nos.2 to 4 going towards the house of the deceased and PWs.1 and 2 going upstairs on the information furnished by the neighbours with regard to hearing of some kind of cries from the portion of the deceased. It is also to be noted that after PWs.1 and 2 knocked the door of the flat, the inmates never opened the door for some time. Only after repeated knocking, the door was opened. In the absence of any explanation by accused Nos.2 to 4 as to how the

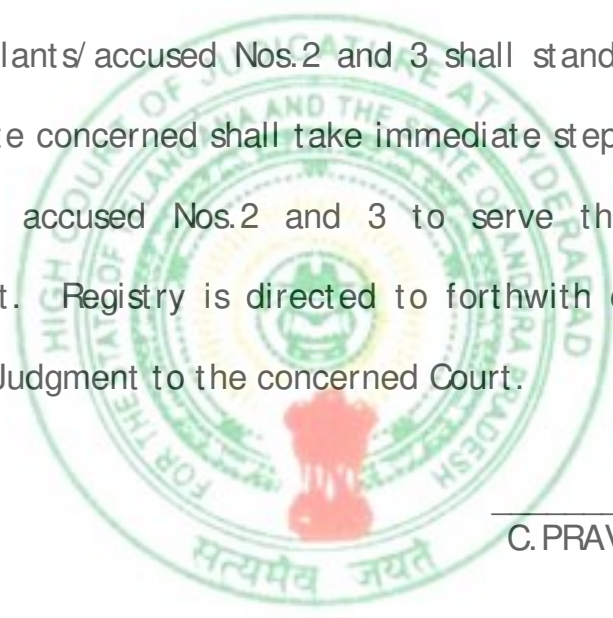
deceased died while they were present in the house, the needle of suspicion points towards them. If really it was a case of natural death as suggested by the appellants, there was no reason for them to run away from the scene. They could have made every effort to take the deceased to the hospital and make themselves available at the house of the deceased. This circumstance of the appellants being last seen in the company of the deceased, non-explanation of accused Nos.2 to 4 as to how the deceased died, injuries on the body of the deceased, coupled with the deceased insisting accused No.1, who is husband of accused No.2 and brother of accused No.3, for the money of Rs.5.00 lakhs, which was not deposited, amply established that there was sufficient motive for these three people to execute the plan. Hence, we feel that the chain of events form a link connecting the accused with the crime.

40) At the fag eng, a faint attempt was sought to be advanced by the learned counsel for the appellants stating that if really accused No.1 wants to attack the deceased and kill the deceased, he himself would come over there and execute the plan. Merely because accused No.1 was not present in the house and merely because he was acquitted, cannot lead to an inference of innocence of accused Nos.2 to 4. Having regard to the above, we feel that the order under challenge warrants no interference, in view of the findings arrived above.

41) Accordingly, Crl.A.Nos.1112 and 1149 of 2011 are dismissed, confirming the conviction and sentence passed in S.C.No.177 of

2010 on the file of the III Additional Sessions Judge (FTC-II) at Khammam against accused Nos.2 and 3. CrI.A.No.514 of 2013 filed by accused No.4 is dismissed as abated. Consequently, miscellaneous petitions, if any, pending shall stand closed.

42) This Court, vide orders dated 11.04.2017 in CrI.A.M.P.No.754 of 2017 and dated 22.03.2017 in CrI.A.M.P.No.613 of 2017, directed release of the appellants/ accused Nos.2 and 3 respectively on bail on the terms and conditions mentioned therein. In view of dismissal of the Criminal Appeal, the bail bonds of the appellants/ accused Nos.2 and 3 shall stand cancelled and the Magistrate concerned shall take immediate steps to secure the presence of accused Nos.2 and 3 to serve the sentence of imprisonment. Registry is directed to forthwith communicate a copy of this Judgment to the concerned Court.



C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

27.07.2018
gkv