

THE HON' BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL APPEAL No.655 of 2013

JUDGMENT: (*Per Hon'ble Sri Justice M. Satyanarayana Murthy*)

The accused in Sessions Case No.567 of 2012 on the file of the Additional Sessions Judge, Hindupur, preferred this criminal appeal under Section 374 (2) of Cr.P.C, challenging the conviction and sentence passed in calendar and judgment dated 31.12.2012.

It is the case of murder on account of disputes allegedly between the accused and the deceased for payment of money and illicit contacts. Accused No.1 is the husband of accused No.2 and they, being vagabonds, are wandering in the border villages of Karnataka and Andhra Pradesh selling hair wigs and colour beads. Ratnamma (deceased No.2) was the resident of Polepalli Village, Ramagiri Mandal of Anantapur District. She is the wife of Poosala Nagaraju @ Pedda Raju, the father of accused No.1, and step mother of accused No.1. Ramesh (deceased No.1) is the cousin of Nagaraju and junior paternal uncle of accused No.1/ appellant No.1 herein. Both the accused developed illicit contact and wandering from place to place. About one and half years prior to the occurrence, the accused and both the deceased met at Kallukota Village and stayed there for some time and, during that period, deceased No.2 – Ratnamma borrowed Rs.2,000/- cash from accused No.1 and evaded to repay the same to accused No.1.

On 12.08.2011, both the accused and the deceased reached Mandalapalli Village and went to S.C Colony during evening hours. Both the accused went to house of one S. Bhagyamma and S. Prameela Bai,

purchased arrack from the said Bhagyamma and that accused No.1 and the deceased consumed arrack. Accused No.1 picked up quarrel and threatened deceased No.2 – Ratnamma to kill her, if she fails to repay the amount, and later, they all returned to Mandalapalli Village and sat on Nagulakatta and quarrelled each other. One E. Ramanjineyulu (PW.3), C. Sreenivasa Prasad (LW.6) and K. Sree Rangappa (LW.7) witnessed the quarrel and intervened and chastised them. Thereupon, accused No.1 warned both the deceased and threatened to kill them on the same day itself, if they fail to pay the amount due i.e., Rs.2,000/- . Due to warning given by LWs.5 to 7, viz., E. Ramanjineyulu, C. Sreenivasa Prasad and K. Sree Rangappa, the accused and the deceased left the village and proceeded towards Dinnehatti Village and reached the Elementary School of Dinnehatti for shelter during that night. Both the accused and the deceased picked up quarrel with each other in inebriated condition. During that night, at about 8.00 p.m., one R. Rangadamappa, Malingappa, Beligerappa and G.Sanna Marappa of Dinnehatti Village, who were sitting on a pial in front of the School, witnessed both the accused and the deceased quarrelling with each other for non-payment of the amount due and left the place.

During night of the same day, at about 9.30 p.m., in furtherance of common intention of both the accused to kill Ramesh and Ratnamma, accused No.1 – Gopi threw a boulder on the head of Ramesh (deceased No.1) and caused severe head injury. When deceased No.2 – Ratnamma intervened, accused No.2 – Sasi strangulated her throat with a saree tightly, due to which Ratnamma died. While deceased No.1 was struggling with head injury, accused No.1 pressed his throat and caused his death. Both the accused dragged the body of Ratnamma into

bathroom of the School, created a scene by hanging her with a saree and, later, both the accused left the Village.

On the early hours of 13.08.2011, the village servants of Mandalapalli Village, viz., T.Sreeramappa and Vetti Kariyappa, informed the V.R.O – T. Nagaraju about finding of un-identified male and female dead bodies in the premises of Elementary School of Dinnehatti Village. Immediately, V.R.O reached the said school and, on finding the dead bodies, reported the same to the Sub-Inspector of Police, Gudibanda Police Station, in writing. The same was registered as a case in Crime No.30 of 2011 for the offence punishable under Section 302 IPC and the First Information Report was issued.

I. Ramakrishna, in-charge Inspector of Police, Madakasira, took up investigation, visited the scene of offence, observed the scene of offence, seized incriminating articles under the cover of scene observation mahazar in the presence of one D. Maddanakuntappa and G. Mareka and held inquest over the dead bodies separately in the presence of the said witnesses. Later, the dead bodies were sent to the Government Hospital, Madakasira, where Dr. K.R. Satish, Civil Assistant Surgeon, conducted autopsy on the two dead bodies, issued P.M. Certificates opining that the cause of death of male Ramesh was due to head injury and asphyxia due to strangulation, and also opined that the cause of death of female Ratnamma appears to be asphyxia due to strangulation. The Inspector of Police examined the witnesses and recorded their statements under Section 161(3) of Cr.P.C during investigation. Based on the report of the Finger Print Bureau, Bangalore, the male deceased was identified and also LW.14 – Gangamma, L.W.15 – Eeramma, L.W.16 – Lokeshappa, L.W.17 – Nagaraju and L.W.18 –

Devemma, the relatives of both the deceased persons, also identified the photos of the dead bodies of both the male and female persons.

During investigation, on 21.05.2012, both the accused approached K. Surya Prakash, the V.R.O, and made extra-judicial confession informing that they have committed murder of both Ramesh and Ratnamma and requested him to save them from police harassment. The V.R.O – Surya Prakash recorded the confessional statement of both the accused and produced them before V. Harinath, the Inspector of Police, Madakasira, who interrogated both the accused in the presence of mediators V. Narasimhappa and K. Narasimhamurthy. During interrogation, the accused disclosed their identity and assured that they will show the scene of offence and, in pursuance of the confession made by both the accused, they lead the Inspector and mediators to Elementary School premises of Dinnehatti Village and, on their explanation, scene of offence was re-constructed. Later, both the accused were remanded to judicial custody on their production before the Judicial Magistrate of First Class, Madakasira on 16.06.2012.

On requisition, Smt. G. Geetha, Judicial Magistrate of First Class, Hindupur, conducted test identification parade of both the accused. C.Sreenivasa Prasad, K. Sree Rangappa, S. Bhagyamma, S. Prameela Bai, R.Rangadamappa, Malingappa, Beligerappa and G. Sanna Marappa identified both the accused persons. During their interrogation, on the basis of their confessional statement leading to discovery, the blood stained material seized at the place of offence were sent to Forensic Science Laboratory, Hyderabad, for analysis and report. On receipt of F.S.L report and after completion of investigation, charge sheet was

filed before the Judicial Magistrate of First Class, Madakasira, for the offence punishable under Section 302 read with 34 of IPC.

The Judicial Magistrate of First Class, Madakasira, having concluded that the case is exclusively triable by the Court of Sessions, supplied copies of documents and material papers in compliance of Section 207 of Cr.P.C and committed the case to the Sessions Division at Anantapur, under Section 209 of Cr.P.C. In turn, the Principal District and Sessions Judge, Anantapur, registered the case as Sessions Case and made over the same to the Additional District Judge at Hindupur, for trial in accordance with law.

On securing the appearance of both the accused and upon hearing both the Public Prosecutor for the State and the defence counsel, the Sessions Court framed charge against both the accused for the offence punishable under Section 302 read with 34 IPC, read over and explained to them in Telugu, they pleaded not guilty and claimed to be tried.

During trial, the prosecution has examined P.Ws.1 to 15 and got marked Exs.P.1 to P17 and M.Os.1 to 49. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C, explained the incriminating material that appeared against them in the evidence of prosecution witnesses. They denied the same and reported no evidence on their behalf.

Upon hearing the arguments of both the learned Additional Public Prosecutor and defence counsel appearing for the accused, the trial Court found both the accused guilty for the offence punishable under Section 302 read with 34 IPC, convicted and sentenced them to undergo imprisonment for life and to pay fine of Rs.1,000/- each with default

sentence of Simple Imprisonment for six months. Aggrieved by the conviction and sentence imposed upon the appellants/ accused Nos.1 and 2, they both preferred the present appeal under Section 374 (2) of Cr.P.C through legal-aid-counsel provided by High Court Legal Services Authority on various grounds.

The main ground urged before the Court is that there is no reliable evidence on record, but the Court, based on the alleged extra-judicial confession and recovery evidence, found the accused guilty and recorded conviction and sentenced them to undergo life imprisonment and to pay fine of Rs.1,000/- with default sentence. The evidence of PWs.3 to 5, 6 and 8 is improbable to the natural circumstances and recording conviction on the basis of their unreliable testimony and sentencing to undergo imprisonment for life and to pay fine of Rs.1,000/- each with default sentence is illegal and unsustainable. The Investigating Officer failed to seize the boulder used in causing head injury on the head of Pamesh (deceased No.1) and it was not marked before the Court. In the absence of any evidence that the death was due to head injury allegedly caused by throwing a boulder, conviction of the accused for the offence under Section 302 read with 34 IPC is illegal. Apart from that, the evidence of identifying witnesses in the Test Identification Parade is one of the circumstances to complete the links in the chain of circumstances, but it is not a substantive piece. Similarly, the confession leading to discovery and motive are all not substantive piece of evidence. However, both, the motive and recovery evidence, are unbelievable, but the Court below, without appreciating the evidence in proper perspective, committed error in finding the accused guilty and convicting them, imposing sentence of life imprisonment and fine of Rs.1,000/- by each, with default sentence, and requested to set

aside the conviction and sentence finding them not guilty for the offence punishable under Section 302 read with Section 34 IPC.

During hearing, Smt. Padmalatha Yadav, the legal-aid-counsel, highlighted the illegalities in the judgment and calender, more particularly the extra-judicial confession allegedly made after 9 months before the V.R.O – K. Surya Prakash (PW.8), and the extra-judicial confession alone cannot form the basis for recording conviction of the accused for the grave offence punishable under Section 302 IPC. When such extra-judicial confession was allegedly made before PW.8, who had no acquaintance with the accused – appellants, the same cannot be believed as wholly truthful extra-judicial confession and, on the basis of such extra-judicial confession, conviction cannot be recorded, but the Court below, on the basis of extra-judicial confession, recorded conviction of the accused and it is a serious illegality. Yet, another ground urged before this Court is that the evidence of T. Nagaraju, N. Subbarayasetti, Ediga Ramanjaneyulu, M.N. Sreenivasa Prasad, S. Bhagyamma and Beligerappa, who are examined as PWs.1 to 6 respectively, is highly improbable to the natural circumstances. If really the witnesses, viz., T. Nagaraju and Subbarayasetti and Ediga Ramanjaneyulu, who are examined as PWs.1 to 3, found the accused and the deceased quarrelling in the compound of Elementary School at Dinnehatti Village and chastised them, they ought not to have left the place maintaining silence without informing the same to any of the persons till they were examined under Section 161 (3) Cr.P.C is highly improbable to the natural circumstances, as they are four in number who allegedly witnessed the incident of causing head injury on the head of Ramesh (deceased No.1) with a big boulder thrown by accused No.1. Therefore, conviction is not based on any material and the findings

recorded by the trial Court is without any reliable evidence, requested to set aside the conviction and sentence passed by the trial Court finding the appellants/accused not guilty for the offence punishable under Section 302 read with 34 IPC and acquit them.

On the other hand, the Public Prosecutor supported the conviction and sentence recorded by the trial Court.

Considering the rival contentions and perusing the material available on record, the point that arise for consideration is

“Whether accused Nos.1 and 2, the appellants herein, caused death of Ramesh (deceased No.1) and Ratnamma (deceased No.2) with an intention to kill them and with a knowledge that the injuries caused on their body are sufficient to cause death in the ordinary course of events, if not whether the conviction and sentence imposed against the appellants/accused by the Additional District Judge, Hindupur, be set aside?”

POINT: The present appeal is filed under Section 374 (2) of Cr.P.C challenging the conviction and sentence passed by the trial Court in the impugned calendar and judgment in S.C.No.567 of 2012, whereby both the accused/ appellant were found guilty for the offence punishable under Section 302 read with Section 34 of IPC and sentenced them to undergo imprisonment for life and to pay fine of Rs.1,000/- with default sentence.

Section 374 Cr.P.C conferred a substantive right of appeal on the accused who is convicted by the Trial Court and this Court while exercising power under Section 374(2) Cr.P.C is bound to re-appraise entire evidence to come to an independent conclusion, uninfluenced by

the findings recorded by the Court below and decide the legality of conviction and sentence passed by the Sessions Court. Therefore, it is the duty of this Court to re-appraise entire evidence recorded by the Court below after affording an opportunity to both the parties i.e., accused and the respondent, unless the Court finds manifest perversity in the calendar and judgment or such findings were recorded without evidence, normally, this Court cannot interfere with such fact findings in appeal, while exercising jurisdiction under Section 374(2) Cr.P.C. It is the sacrosanct duty of the appellate Court, while sitting in appeal against the judgment of the trial Judge, to be satisfied that the guilty of the accused has been established beyond all reasonable doubt after proper re-assessment, re-appreciation and re-scrutiny of the material on record. Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal. That is the quality of exercise which is expected of the appellate court to be undertaken and when that is not done, the cause of justice is not sub-served, for neither an innocent person should be sent to prison without his fault nor a guilty person should be let off despite evidence on record to assure his guilt (vide Kamlesh Prabhudas Tanna & Anr v. State of Gujarat¹). Keeping the scope of Section 374(2) Cr.P.C, we would like to re-appreciate entire evidence on record to come to an independent conclusion, uninfluenced by the findings recorded by the Court below.

When the case of prosecution is based on both direct and circumstantial evidence, this Court, being the appellate Court, is under obligation to re-appraise the evidence and record a finding whether the witnesses are only reliable or unreliable, if this Court arrives at such conclusion that they are neither reliable nor unreliable, unless, their

¹ (2013) 15 SCC 263

testimony is supported by any independent corroboration, which is a rule of prudence, the Court cannot uphold the conviction and sentence imposed against the appellants/ accused Nos.1 and 2 for this grave offence punishable under Section 302 read with Section 34 of IPC.

When the case is based on circumstantial evidence, burden of proof is always on the prosecution to prove all the circumstances from which conclusion of guilt is to be drawn must be fully established and the facts so established must be consistent with hypothesis of guilt of accused and any circumstance consistent with innocence of accused, he is entitled to benefit of doubt. (vide *Kishore Chand v. State of Himachal Pradesh*²).

The Apex Court while discussing the scope of Section 3 of the Evidence Act, more particularly, circumstantial evidence held that, in a case of murder when the prosecution relying on circumstantial evidence, it is for the prosecution to prove all the incriminating facts and circumstances and the circumstances which are incompatible with innocence of the accused to draw inference of guilt and such evidence should be tested by touchstone of law relating to circumstantial evidence laid down by Supreme Court (vide *Syed Hakkim & another v. State*³).

Similarly, in *G. Parshwanath v. State of Karnataka*⁴, the Supreme Court is of the view, when the case of the prosecution is based on proof of circumstantial evidence on the basis of which conclusion of guilt is drawn must be fully established, individual chain of circumstances must be complete pointing out the guilt of accused, all proved facts must lead

² AIR 1990 SC page 2140

³ 2009 CrI.L.J. page 1891

⁴ AIR 2010 S.C. page 2914

to inference of guilt of the accused alone and court has to draw distinction between primary and basic facts while appreciating the circumstances and regard must be had to common course of natural events and human conduct and finally the facts established should be consistent only with hypothesis of guilt of accused and it does not mean that each and every hypothesis suggested by the accused must be excluded by proved facts. In *Rukia Begum Vs. State of Karnataka* with *Issaq Sait and another v. State of Karnataka* with *Nasreen v. State of Karnataka*⁵; *Jagroop Singh Vs. State of Punjab*, *Inspector of Police, Tamil Nadu Vs. Balaprasanna*⁶; *Shaik Khadar Basha v. State of Andhra Pradesh*⁷, the same principle referred supra was reiterated.

The Supreme Court, in *Trimukh Maloti Kikran v. State of Maharashtra*⁸, held that in case there is no eye-witness to the occurrence and the case of the prosecution rests on circumstantial evidence, the normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

⁵ AIR 2011 SC page 1585

⁶ 2009(1) ALD (CrI.) page 113

⁷ 2009(1) ALD (CrI.) page 859 (AP)

⁸ (2006) 10 SCC 681

Thus, from the law declared by the Apex Court in Trimukh Maloti Kikran⁸, the prosecution must make sincere attempts to prove each and every circumstance pointing out the guilt of the accused for the offence punishable under Section 302 IPC by drawing inference from the proved facts and circumstances which are consistent only with hypothesis of guilt of accused before the Trial Court and inconsistent with innocence.

In the present case, as stated supra, the prosecution relied on both the direct and circumstantial evidence to prove the guilt of the accused for the offence punishable under Section 302 of IPC. The direct eye-witnesses are R. Rangadamappa, Malingappa, Beligerappa and Golla Sanna Marappa. Though they were cited as LWs.10 to 13 in the memo of evidence, the prosecution examined only LW.12 as PW.6 to prove that he witnessed the commission of murder of both Pamesh and Ratnamma. According to the testimony of PW.6, about one year prior to his examination, at about 8.00 or 8.30 p.m., while he along with Rangadamappa (LW.10), Malingappa (LW.11) and Sanna Marappa (LW.13) were sitting in the verandah of the Elementary School of the Village Dinnehatti, they noticed a quarrel among four persons in the compound of the said school and that these two accused were among the four persons. He further stated that the quarrel was due to non-payment of money borrowed and illicit relationship between the deceased Pamesh and Ratnamma and that he and others chastised both the accused and the other two persons, but they did not heed their advice as they were in inebriated condition. He also spoke that during the said quarrel, accused No.1 –appellant No.1 picked up a stone and beat on the head of Pamesh (deceased No.1) with the stone and caused an injury, thereafter, both the accused dragged the female deceased Ratnamma towards bathroom side holding her saree, but due to fear, all the four

persons including PW.6 left the premises. He also spoke about the identification of the accused at Hindupur. In the cross-examination by defence, PW.6 admitted that there are buses and autos from Gudibanda to Dinnehatti during day time and Maddanakuntappa is a politician in his village. He also spoke that though he tried to separate both the accused and the deceased, they did not hear their words, except that, nothing has been elicited. When suggested that no incident took place and that PW.6 is deposing false, the suggestion was denied. However, the consistent evidence of PW.6 is that he along with other three persons referred supra witnessed the incident of quarrel among the four persons, amongst whom the accused were two, for non-payment of amount due to the accused. But, the evidence of PW.6, at best, discloses that accused No.1 allegedly caused injury on the head of Ramesh with a boulder and the other female deceased Ratnamma was dragged towards toilet in the school. But, witnessing incident by PW.6 and three others referred above is improbable due to their subsequent conduct. When PW.6 along with three others were sitting in the verandah of the school and they directly witnessed the alleged quarrel among the four persons and accused No.1 beating with a stone on the head of Ramesh (deceased No.1), what would be the natural conduct of such witness is to be considered to accept the truth or otherwise in the testimony of PW.6. The normal conduct of any person when he witnessed such incident, more particularly when PW.6 is accompanied by the other three male persons, must be to separate the persons quarrelling by interfering with the quarrel, more particularly when the persons quarrelling were in inebriated condition, unarmed with any weapons. When the persons quarrelling are unarmed with any weapons and are in inebriated condition, the question of causing any injury on the body in the event of

intervention can be ruled out. Therefore, maintaining silence after witnessing the incident is improbable to the natural conduct of a human being, more particularly when PW.6 was accompanied by three other male members. After their witnessing, that incident was also not informed to any one either during night or on the next day, till they were examined by the police. Therefore, the conduct of PW.6 is highly improbable to the natural conduct of a human being, therefore, he is neither wholly reliable nor unreliable witness and the Court cannot place much reliance on the testimony of such witness based on his conduct at the time of alleged occurrence and subsequent to the occurrence of such incident, which is improbable and inconsistent to the natural conduct of a human being. Therefore, based on the testimony of PW.6, recording conviction for such grave offence is unsustainable. The testimony of PW.6 is not corroborated by any independent witness.

The other evidence relied on by the prosecution is circumstantial evidence. The following are the circumstances relied on by the prosecution to establish the guilt of the accused for the offence punishable under Section 302 of IPC: (i) The deceased Ramesh and Ratnamma were last seen alive in the company of the accused, (ii) extra-judicial confession made by both the accused jointly before the V.R.O - K. Surya Prakash (PW.8), (iii) identification of the accused in the Test Identification Parade held by PW.11 – Smt. G. Geetha, the Judicial Magistrate of First Class, Hindupur, and (iv) the confession made in the presence of police leading to discovery and (v) motive.

(i) Last Seen Together:

According to the prosecution, the two deceased persons Ramesh and Ratnamma along with the accused allegedly reached Mandalapalli

Village on 12.08.2011, went to S.C Colony during evening hours. Then, they all went to S. Bhagyamma (PW.5) and Sugali Prameela Bai (LW.9) and purchased arrack from PW.5 – Bhagyamma. Later, accused No.1 and both the deceased consumed arrack and started quarrelling and, in that quarrel, accused No.1 threatened Ratnamma to kill her if she fails to repay the amount. Subsequently, they returned to Mandalapalli Village and sat on Nagulakatta and picked up quarrel among themselves. The said quarrel was witnessed by E. Ramanjineyulu (PW.3), C. Sreenivasa Prasad and Kapu Sree Rangappa. E. Ramanjineyulu alone was examined to prove the quarrel while sitting on Nagulakatta, their intervention and chastising both the accused and the deceased and that accused No.1 warned both the deceased to kill them on the same day, if they fail to pay the debt of Rs.2,000/-, but, due to warning of E. Ramanjineyulu and other persons C. Sreenivasa Prasad and Kapu Sree Rangappa, both the accused and the deceased left the Village and proceeded towards Dinnehatti Village. To prove the last seen together alive in the company of the accused, the prosecution examined PW.5 – S. Bhagyamma, who sold arrack to both the accused and the deceased, and to prove the quarrel on Nagulakatta at Mandalapalli, E. Ramanjineyulu alone was examined. PW.5, who allegedly sold arrack to the accused and the deceased, categorically stated that she is living by doing coolie work and also by selling arrack, when there was no coolie work. According to her testimony, about one year ago, when she was selling arrack, at about 4.00 p.m. near her village, both the accused along with one male person and female person came to her, purchased arrack on payment of Rs.20/- and, out of four, three persons consumed arrack and filled carriage with arrack, went towards Mandalapalli. In the cross-examination by the defence counsel, nothing was elicited to disprove her sale of arrack to

the accused and the deceased, except suggesting and getting denial. Even assuming for a moment that her evidence is true, she found the accused in the company of the deceased Ramesh and Ratnamma about 4.00 p.m on 12.08.2011 i.e., about one year ago before her examination. Similarly, the evidence of PW.3 – E. Ramanjineyulu, who was examined to prove the last seen theory, is consistent that when Ramanjineyulu himself (PW.3) along with C. Sreenivasa Prasad were sitting on Nagalakatta (verandah), at about 6.00 p.m., both the accused and the deceased persons came there from C.C.Giri village and sat on Nagulakatta and the deceased and accused No.1 were found in drunken state, but accused No.2 – Sasi had gone towards bus stand and then both the deceased persons and accused No.1 picked up a quarrel among themselves for non-payment of money and later the deceased Ramesh and Ratnamma proceeded towards Dinnehatti Village and accused No.1 also followed them. Therefore, the evidence of PW.3, at best, established that the deceased persons were found alive in the company of accused Nos.1 and 2 at 6.00 p.m on 12.08.2011. But, according to the medical evidence on record i.e., P.M. certificates marked as Exs.P6 and P7, and PW.9-K.R.Sateesh, who held autopsy over the dead body of male Ramesh on 14.08.2011 from 10.00 a.m. to 11.00 a.m, expressed his opinion that the time of death was 24 to 36 hours prior to P.M. examination and issued Ex.P6 – P.M. certificate of the male Ramesh. Similarly, he held autopsy over the dead body of Ratnamma, aged about 42 to 45 years, and opined that the time of death was 24 to 36 hours prior to P.M examination and issued Ex.P7 – P.M certificate of the female Ratnamma. The time of death is supported by P.M certificates marked as Exs.P6 and P7. If the opinion of the doctor (PW.9) is accepted as to the time of death, the death might have taken place

during early hours of 13-08-2011, whereas, according to the evidence of PWs.3 and 5, the deceased persons were found alive in the company of the accused about 4.00 and 6.00 p.m on 12.08.2011 and the gap between their finding the deceased alive and the approximate time of death is about 10 to 12 hours. The last seen alive in the company of the accused is only a circumstantial evidence and, on the basis of such theory, the accused cannot be found guilty. The last seen theory if accepted, it must be soon before their death.

When the case of the prosecution is depending upon circumstantial evidence, the last seen together deposed by natural witness about 'last seen' only after 5 years in Court and made improvements makes his evidence unreliable without corroboration. Fact that one of accused did not like his sister's affair with deceased and, therefore, had motive, creates suspicion but cannot be substitute of proof. Thereby, the accused is entitled to be given benefit of doubt (vide Sampath Kumar v. Inspector of Police, Krishnagiri⁹).

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something mere establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability

⁹ AIR 2012 SC pg 1249

for the homicide (In Mohibur Rahman and Another v. State of Assam¹⁰).

Thus, in view of the law declared, last seen together is only a corroborative piece of evidence and not a substantive piece of evidence. Based on such theory of last seen, in the absence of proximity of time between the incident and the last seen alive together, the Court cannot record conviction on the basis of such a last seen theory.

In the present facts of the case, there is alleged approximate gap of 10 to 12 hours between the time of death and the last seen together by PWs.5 and 3. Therefore, there is a gap of more than 10 hours between the approximate time of death and last seen by PW.3 and 12 hours by PW.5 Bhagyamma. That too, they did not disclose anything about the incident to the police immediately, though they came to know about the incident, but disclosed about the incident only when they were examined by the police under Section 161 (3) Cr.P.C. Hence, in view of the long gap of 10 to 12 hours between the approximate time of death and last seen together in the company of the accused, the theory of the deceased last seen alive in the company of the accused cannot be accepted.

The second circumstance relied on by the prosecution is extra-judicial confession allegedly made by the accused/ appellants to PW.8 – V.R.O. The incident allegedly took place on 12.08.2011 and the alleged extra-judicial confession made by the accused before PW.8 – K. Surya Prakash was on 21.05.2012. Thus, there is a gap of approximately 9 months between the extra-judicial confession allegedly made before PW.8 by the accused and the date of incident. Even according to the

¹⁰ AIR 2002 SC page 3064

case of prosecution, the accused have no fixed place of residence and they wander in the surrounding border villages of Karnataka and Andhra Pradesh selling hair wigs and colour beads, whereas Ratnamma (deceased No.2) is a permanent resident of Polepalli Village, Ramigiri Mandal, Anantapur District, and Ramesh (deceased No.1) is the cousin of Ratnamma's husband Pasula Nagaraju. Therefore, both the deceased are the residents of Polepalli Village, Ramigiri Mandal, Anantapur District, whereas the appellants/accused have no permanent abode and they wander in the border villages of Karnataka and Andhra Pradesh selling hair wigs, colour beads etc. Thus, the accused are nomads without any permanent abode, whereas the scene of offence is the Elementary School premises of Dinnehatti Village. PW.8, the V.R.O of Kodipalli Village, Agali Mandal, previously worked as V.R.O of Madhudi Village. According to his testimony, on 21.05.2012 at about 8.00 a.m, while he was in his office, both the accused came to him and, on his enquiry, they disclosed their identity as Gopi and Sashi and when he asked about the purpose of their approaching him, they confessed that about 10 months ago, they murdered one Ramesh and Ratnamma in the Elementary School premises of Dinnehatti Village and police were searching for them and they requested him to save them from the clutches of the police harassment and they also disclosed about the cause of committing murder. In the cross-examination, PW.8 admitted that he had not seen both the accused prior to 21.05.2012 and he had no prior acquaintance and both the accused were not aware that he would help them in the case. However, the consistent evidence of PW.8 is that he had not seen both the accused prior to the alleged confession made before him on 21.05.2012. This admission is suffice to conclude that PW.8 had no acquaintance with the accused at any time prior to the

alleged confession made before him and that they are also unaware about PW.8 extending any help to them prior to their approaching him while he was in office. This admission is suffice to disbelieve the alleged extra-judicial confession marked as Ex.P5 for the simple reason that the normal conduct of a human being is that he/she will not approach any unknown person to seek help of protecting him/her from police harassment etc. in the normal course. In view of the admission made by PW.8, undoubtedly, he had no acquaintance with the accused prior to the alleged date of confession. In such case, the alleged extra-judicial confession is improbable to the natural conduct of a human being. Thereby, the Court cannot accept such extra-judicial confession as it is not a substantive piece of evidence, but it is one of the circumstances to complete the links in the chain of circumstances.

In *Balwinder Singh v. State of Punjab*¹¹, the Apex Court stated the principle that an extra-judicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

In *Pakkirisamy v. State of T.N*¹², the Apex Court held that it is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.

Similarly, in *Kavita v. State of T.N*¹³, the Apex Court held that the conviction can be based on extra-judicial confession, but it is well

¹¹ 1995 Supp. (4) SCC 259

¹² (1997) 8 SCC 158

¹³ (1998) 6 SCC 108

settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon veracity of the witnesses to whom it is made.

While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, the Apex Court in the case of *State of Rajasthan v. Raja Ram*¹⁴ laid down a principle that an extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The Court, further expressed the view that such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement of the accused.

Similarly, in *Aloke Nath Dutta v. State of W.B*¹⁵, the Court held that placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material, as unjustified, observed in paragraphs 87 ad 89 as follows:

“Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy

¹⁴ (2003) 8 SCC 180

¹⁵ (2007) 12 SCC 230

itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

...

A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof."

Accepting the admissibility of the extra-judicial confession, the Apex Court in the case of *Sansar Chand v. State of Rajasthan*¹⁶, expressed its view that there is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material (vide *Thimma and Thimma Raju v. State of Mysore*, *Mulk Raj v. State of U.P.*, *Sivakumar v. State* (SCC paras 40 and 41 : AIR paras 41 & 42), *Shiva Karam Payaswami Tewari v. State of Maharashtra* and *Mohd. Azad v. State of W.B.*)

In view of the principles laid down in the above judgments, unless the Court satisfies that the person to whom the confession is given is wholly truthful witness and that the confession is voluntary, the Court cannot record conviction on the basis of extra-judicial confession.

Turning to the facts of the present case, PW.8 had no prior acquaintance with the accused, but they suddenly approached him and gave extra-judicial confession admitting commission of murder of Pamesh and Patnamma. Such confession made to an unknown person cannot be relied upon by the Court to record conviction of the accused for a grave offence. The Apex Court, in *Deepak Chandrakant Patil v.*

¹⁶ (2010) 10 SCC 604

State of Maharashtra¹⁷, held that it was wholly unlikely that the accused would make extra judicial confession to a person whom they never knew.

Similarly, in *Jaswant Gir v. State of Punjab*¹⁸, the Apex Court held that the witness to whom confession said to have been made, not taken the accused to the police station immediately and no reason for the accused to confess to the witness with whom he had no intimate relation. The Court cannot rely on such extra judicial confession to record conviction of the accused in view of doubtful testimony. If these principles are applied to the present case, the very making of extra-judicial confession marked as Ex.P5 before PW.8, that too after a gap of 9 months from the alleged murder of Ramesh and Ratnamma, is unbelievable for the simple reason that they had no acquaintance prior to the alleged confession marked as Ex.P5. Hence, the extra-judicial confession cannot be relied upon to prove the guilt of the accused/ appellants for the offence punishable under Section 302 read with Section 34 IPC.

The trial Court referred a judgment of this Court in *Yadagiri Santhosh v. State of Andhra Pradesh*¹⁹, wherein the Court held that when extra-judicial confession is made at a belated stage, more particularly when the accused are not facing any grave situation, the Court cannot accept such extra-judicial confession to record conviction.

In the present case, the gap between the extra-judicial confession allegedly made before PW.8 by the accused and the date of incident is

¹⁷ (2006) 10 SC 151

¹⁸ 2005 (12) SCC 438

¹⁹ 2012 (1) ALD (CrI.) 855 (AP)

about 9 months and the accused are not facing any grave circumstances which compelled them to give any confession seeking help of PW.8 to protect them from the police harassment. Even by applying the principles laid down in the above judgment, the extra-judicial confession cannot be accepted.

The 3rd circumstance relied by the prosecution to prove the guilt of the accused is identification of accused in the Test Identification Parade held by PW.11 – Judicial Magistrate of First Class, Hindupur, in the sub jail premises of Penukonda. Ex.P10 is the Test Identification proceedings. PW.11, in her evidence, testified as to how she conducted Test Identification Parade on 16.06.2012 i.e., approximately after 9 months from the date of incident, on their arrest based on extra-judicial confession made before PW.8 and on their production by the police. According to her testimony, on the date of Test Identification Parade, except E. Ramanjineyulu, all the other witnesses were present and they identified both the accused. Identification of the accused in the Test Identification Parade though relevant under Section 9 of the Evidence Act (for short, 'the Act'), that by itself is not a substantive piece of evidence to record conviction of the accused, but it is only one of the circumstances to establish guilt of the accused for grave offence.

Section 9 of the Act deals with relevancy of facts necessary to explain or introduce relevant facts. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or

which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

From a bare reading of Section 9 of the Act, to prove the identity of a person or thing, the facts to explain or introduce a fact in issue or relevant fact are also relevant. Therefore, the purpose of Test Identification is to corroborate the evidence of eye-witnesses in the form of earlier identification and that the substantive evidence of witnesses is the evidence in the Court. Rule 34 of Criminal Rules of Practice and Circular Orders, 1990, laid down the procedure to be followed by a Magistrate in conducting Test Identification Parades. Test Identification Parades do not constitute substantive evidence, but they can be used only for corroboration of statements made in the Court.

In Mulla & another v. State of U.P.²⁰, it is held that the failure to hold the Test Identification Parade does not make the identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction. It can only be used as a corroborative piece of evidence.

From a reading of the catena of judgments, it is explicit that the purpose or whole idea of a Test Identification Parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon

²⁰ AIR 2010 SC 942

first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. It is equally correct that the Code of Criminal Procedure does not obligate the investigating agency to necessarily hold the Test Identification Parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the Court for the first time. One of the views taken is that identification in Court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the Test Identification Parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is, however subjected to exceptions (Ravi Kapur v. State of Rajasthan²¹).

In the present case, test identification parade was held by PW.11 and all the witnesses identified the accused in the test identification parade, but mere identification of the accused in test identification parade itself will not form the basis for recording conviction, since it is a corroborative piece of evidence to the other circumstances relied by the prosecution. Therefore, on the basis of identification of the accused in the test identification parade held by PW.11, the Court cannot record conviction of the accused for the grave offence.

²¹ AIR 2013(1) ALD (Cri.) page 303 (SC)

The other circumstance relied on by the prosecution is the confession made by the accused while in police custody on 21.05.2012 when they were produced before the Inspector of Police by PW.8 along with Ex.P5 extra-judicial confession. On the basis of confession made by the accused leading to discovery, both the accused led the Inspector of Police and panchayatdars to the scene of offence and, on the basis of confession, the scene of offence was re-constructed in the presence of panchayatdar - Narasimhappa (PW.10). Ex.P8 is the confession made by the accused leading to discovery and re-construction of scene of offence and Ex.P9 is the re-construction of scene of offence mahazar. But, based on this piece of evidence, it is difficult to sustain the conviction.

Under Section 27 of the Act, a confession leading to discovery alone is relevant and admissible in evidence. Section 27 of the Act is an exception to Sections 25 and 26. The conditions necessary for invoking the aid of the Section are as follows:

- “a) there must be a discovery of a fact albeit relevant fact in pursuance of an information received from a person in police custody;
- b) the discovery of such fact must be deposed to ;
- c) at the time of giving information the accused must be in police custody;

Then the effect is that so much of the information as relates distinctly to the fact thereby discovered is admissible. What is allowed to be proved is the information or such part thereof as related distinctly to the fact thereby discovered.”

Discovery evidence is not substantive evidence (vide *Dinakar v. State*²²).

²² AIR 1970 Bombay page 438

Similarly, in Inspector of Police (6 supra), the Apex Court held as follows:

“Law is well settled that the prosecution while relying upon the confessional statement leading to discovery of articles under Section 27 of the Evidence Act, has to prove through cogent evidence that the statement has been made voluntarily and leads to discovery of the relevant facts. The scope and ambit of Section 27 of the Evidence Act had been stated and restated in several decisions of the Supreme Court. However, in almost all such decisions reference is made to the observations of the Privy Council in *Pulukuri Kotayya vs. Emperor*, AIR 1947 PC 67. At one time it was held that the expression ‘fact discovered’ in the second is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact, now it is fairly settled that the expression ‘fact discovered’ includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in *Pulukuri Kotayya’s* case. The various requirements of the section can be summed up as follows:

- 1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.
- 2) The fact must have been discovered.
- 3) The discovery must have been in consequence of some information received from the accused and not by the accused’s own act.
- 4) The person giving the information must be accused of any offence.
- 5) He must be in the custody of a police officer.
- 6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- 7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.”

In view of the principle laid down in the above decision, when a fact is discovered in pursuance of confession leading to discovery is only relevant piece of evidence, but it is not a substantive piece of evidence.

Even otherwise, in *Brijesh Mavi v. State of NCT of Delhi*²³, the Apex Court, held that recovery evidence, when not sufficient to prove culpability of accused and no direct evidence connecting accused to murder. Recovery of weapon of offence at the instance of accused two years after incident is not believable. Mere recovery of weapon, therefore, not sufficient to convict the accused for the offence of murder under Section 302 of I.P.C.

In view of the law declared by the Apex Court in the judgments *supra*, a confession leading to discovery is alone admissible.

Here, in this case, on the basis of extra-judicial confession allegedly made by the accused before PW.8 and on their production before the Inspector of Police, they made a confession and led the Inspector of Police and other mediators to the scene of offence and re-constructed the scene of offence. Exs.P8 and P9 are the confessional statement leading to discovery and re-construction of scene of offence mahazar respectively. This recovery evidence is only an additional link in the chain of circumstances to complete the links in the chain of circumstances, but not a substantive piece of evidence. In this case, nothing has been recovered on the basis of alleged confession made by the accused/ appellants. Therefore, more or less, the evidence with regard to re-construction of scene of offence is irrelevant and it cannot be a basis for recording conviction and that too, scene of offence was observed by Investigating Officer in the presence of mediators, held inquest at the scene of offence and the scene of offence is accessible to every one and not within exclusive knowledge of the accused.

²³ 2012 (2) ALD (Cri.) page 865 (SC)

The other circumstance is motive. As per the material on record, Ramesh (deceased No.1) borrowed Rs.2,000/- from accused No.1, but he did not repay the same, despite demands. Due to non-payment of amount borrowed, there was a quarrel after consuming arrack at the house of PW.5 – Bhagyamma and accused No.1 allegedly threatened to kill Ramesh. In spite of quarrel, they all proceeded towards Mandalapalli Village and reached Nagulakatta and there they sat and again picked up quarrel. But, as per the evidence of PW.3, accused No.2 proceeded towards bus stand, whereas accused No.1 picked up quarrel with the deceased persons and threatened to kill them on the same day. Thus, at the time of quarrel between the deceased and accused No.1, accused No.2 was absent and the prosecution failed to explain as to when accused No.2 joined with accused No.1 and all proceeded to the Elementary School at Dinnehatti Village. In the absence of any explanation as to when accused No.2 joined with the deceased, the presence of accused No.2 at the time of scene of offence is highly doubtful. Moreover, the motive attributed to accused No.1 to kill both Ramesh and Ratnamma is non-payment of Rs.2,000/- borrowed from him. Though motive is relevant under Section 8 of the Act, it is not a substantive piece of evidence and it is only a corroborative piece of evidence to complete the links in the chain of circumstances. Here, in fact, no motive was attributed to the accused to kill the deceased persons, except quarrel for non-payment of the amount borrowed, and to prove the motive part, PWs.3 and 5 were examined. They spoke about the quarrel between accused No.1 and the deceased for non-payment of amount borrowed. Thus, on account of non-payment of the amount borrowed, they developed enmity and it may be one of the circumstances, but that by itself is not a substantive proof.

In *Anil Rai v. State of Bihar*²⁴, the Apex Court held that the admitted position of law is that enmity is a double edged weapon which can be a motive for the crime as also the ground for false implication of the accused persons. In case of inimical witnesses, the Courts are required to scrutinize their testimony with anxious care to find out whether their testimony inspires confidence to be acceptable notwithstanding the existence of enmity. Where enmity is proved to be the motive for the commission of the crime, the accused cannot urge that despite proof of the motive of the crime, the witnesses proved to be inimical should not be relied upon. Bitter animosity held to be a double edged weapon may be instrumental for false involvement or for the witnesses inferring and strongly believing that the crime must have been committed by the accused. Such possibility has to be kept in mind while evaluating the prosecution witnesses regarding the involvement of the accused in the commission of the crime.

From the principle laid down by the Hon'ble Apex Court, enmity by itself is not a ground to conclude that the accused is the person who perpetrated the murder. After developing enmity, the accused must develop motive to commit murder. However, proof of motive by itself is not a ground to convict the accused and proof of motive is not the substitute for proof.

Therefore, proof of motive by itself is not sufficient to rope the accused with the crime. Moreover, in the present case, though the deceased is allegedly due an amount of Rs.2,000/- to accused No.1 and they quarreled with each other for non-payment of the amount, they jointly consumed arrack, the accused did not leave the deceased and

²⁴ 2001 (2) ALD (Cri) page 446

allegedly followed the deceased to the School at Dinnehatti Village. If really there was enmity among the accused and the deceased for non-payment of amount borrowed, the question of the accused following the deceased, despite quarrel at two places, is highly improbable to the natural circumstances. Therefore, based on motive, the Court cannot record conviction of the accused.

The unnatural death of Ramesh and Patnamma is not in dispute. The medical evidence of Dr. K. R. Sateesh – PW.9 coupled with P.M. certificates is sufficient to establish that death of Ramesh and Patnamma is unnatural and it is a homicidal death. Apart from that, the inquest report marked as Exs.P2 and P3 coupled with the evidence of mediators establish that the probable cause of death of Ramesh and Patnamma was asphyxia due to strangulation and head injury on the head of Ramesh. But the inquest report can be used for limited purpose and the object of inquest is only to ascertain whether a person had died under suspicious circumstances or unnatural death and, if so, what is the apparent cause of death.

Details of the attack of the deceased are not necessary to be mentioned (vide State of U.P v. Abdul²⁵).

In Radha Mohan Singh v. State of U.P²⁶, the Apex Court analysed the scope and object of the inquest report elaborately; it is limited in scope and is confined to ascertainment of apparent cause of death; it is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted; details of overt acts need not be recorded

²⁵ AIR 1997 sc 2512

²⁶ (2006) 2 SCC 450

in inquest report; the question regarding details as to how the deceased was assaulted etc., need not be mentioned and they fall within the ambit of scope of Section 174 Cr.P.C.

The purpose and object of inquest report under Section 172 of Cr.P.C has been stated that inquest report is prepared by the Investigating Officer to find out *prima facie* the nature of injuries and the possible weapons used in causing those injuries as also the possible cause of death (vide *Suresh Rai v. State of Bihar*²⁷). Therefore, the inquest report can be used for limited purpose to find out probable cause of death of the deceased and not for any other purpose.

The trial Court, based on the evidence of eye-witnesses and the circumstances proved by the prosecution, recorded conviction of both the accused for grave offence punishable under Section 302 read with Section 34 IPC. But the extra-judicial confession made before PW.8 – Surya Prakash, the V.R.O., is totally unbelievable for the reasons mentioned in the earlier paras.

Similarly, though confession leading to discovery is relevant under Section 27 of the Act, re-construction of scene of offence does not amount to discovery within the ambit of Section 27 of the Act. Therefore, on the basis of discovery, the Court cannot record conviction of the accused. Similarly, the motive and identification are only corroborative piece of evidence and not substantive evidence to record conviction of the accused. Making extra-judicial confession after 9 months to a person who had no acquaintance with the accused is a strong reason to disbelieve the testimony of PW.8. The trial Court did

²⁷ AIR 2000 SC 2207

not appreciate the evidence with reference to the probative value of the testimony of witnesses, but based on improbable conduct of the witnesses and the accused, recorded conviction of the accused.

When the story of eye-witnesses is disbelieved on account of improbability, who is described as neither wholly reliable nor unreliable witness as discussed in the earlier paras, and when the prosecution failed to establish the links in the chain of circumstances without giving scope to any hypothesis unequivocally pointing the guilt, the Court cannot record conviction, unless there is independent corroboration to the testimony of eye-witnesses. But, on erroneous appreciation of facts and evidence, the trial Court recorded such findings ignoring the improbabilities in the case and committed an error in finding the accused guilty for the offence punishable under Section 302 read with Section 34 IPC. Therefore, the findings recorded by the trial Court finding the accused guilty for the offence punishable under Section 302 read with Section 34 IPC are liable to be set aside, finding both the accused/ appellants not guilty for the offence charged and they are acquitted for the same.

In the result, the appeal is allowed, setting aside the conviction and sentence imposed against the accused in Sessions Case No.567 of 2012 passed by the Additional Sessions Judge, Hindupur, finding them not guilty for the offence punishable under Section 302 read with 34 IPC and they are acquitted for the said offence. Both the accused/ appellants be set at liberty forthwith, if they are not required in any other case. The fine amount paid by them, if any, shall be returned to them.

Consequently, miscellaneous applications pending, if any, shall stand closed.

RAMESH RANJANATHAN,J

M.SATYANARAYANA MURTHY,J

20.09.2018

v v

