

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

And

HONOURABLE SRI JUSTICE M.GANGA RAO

Criminal Appeal No.766 of 2013

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

The appellant, A.1 out of two accused in S.C.No.308 of 2011 aggrieved by the conviction judgment of the learned I Addl.Sessions Judge, Chittoor, dt.11.06.2013 finding him guilty for the offences punishable under Sections 302 and 201 IPC in sentencing him to undergo life imprisonment with a fine of Rs.5,000/- with default sentence of Simple Imprisonment for six months, maintained the present appeal, with contentions in the grounds of appeal and oral submissions of the learned counsel for the appellant vis-à-vis written arguments of the learned counsel for the appellant are that the trial Court's conviction judgment is contrary to law, weight of evidence, preponderance of probabilities. The trial Court failed to observe that both the deceased and the A.1 temporarily staying in Sri Rama Delux Lodge (for short, 'the Lodge') room of PW3-G.V.Krishnamurthy on rent, where the P.W.2-A.R.Ramireddy was working as Room Boy and there is no day-to-day entry register mentioning their stay in the lodge. The trial Court erred in observing that the appellant took the deceased to V.Kota, in fact it is the deceased himself. Further the prosecution failed to explain when the deceased was taken to the lodge by the accused and for what purpose, which is not corroborating with the evidence of PW1-the brother of the deceased who deposed that the deceased went to Mulbaghal on his tailoring works. The trial Court failed to see that the Ex.P.1-complaint reveals that PW 1-the defacto-complainant Manjunatha suspected one Anwar Basha, Nyaz, Saleem and Krishna Murthy, but the

prosecution failed explain the reason for deletion of their names from the case. The trial Court ought to have discarded the version of prosecution of the murder was caused with pre-plan and also committed disappearance of the evidence because the M.O.1 billhook was recovered from the scene of offence subsequent to the commission of offence but shown was recovered from the scene of offence. The trial Court failed to observe that the P.W.1 suspected the PW3 and Anwar Basha, Nyaz, Saleem as committed the crime but the prosecution on the influence of PW3, falsely implicated the appellant/ A.1, so as to escape the PW3 from the case. There is no motive and intention to kill the deceased, moreover, as per the prosecution evidence, the motive behind the killing, is illicit contacts by the deceased with the wife of A.2, but the complaint lodged by the brother of the deceased i.e. PW1 is with no mention about the illicit intimacy between the wife of A2 and the deceased. It is the first time spoken by the PW4-wife of the deceased at the time of her examination, which is an after thought, so as to implicate the appellant in the case. The trial Court failed to notice that admittedly, P.W.1, PW4-wife of the deceased and PW5 being the residents of same village definitely known about alleged illegal intimacy which is the cause for the murder and the same should be mentioned in the FIR. The trial Court ought not have believed the evidence of PWs.2 and 3 as the accused was shown to them, much before the Test Identification Parade (for short, 'the TIP'), in the presence of the learned Magistrate. Thus the trial Court's conviction judgment is thereby unsustainable and liable to be set aside and the appeal is to be allowed by acquitting the appellant/ accused.

2. Whereas, the learned Public Prosecutor representing respondent/ State in opposing the same supported the trial Court's judgment in finding the petitioner guilty for both the offences and also the sentence of imprisonment with fine and further submitted that for this Court while sitting in appeal against the trial Court's said conviction judgment or on the quantum of sentence, there is nothing to interfere and the trial Court judgment is well considered and supported by reasons having fresh in mind of the facts, merely because of some other view is possible, the Court cannot easily interfere with the appeal as held in Abdul Razaq Vs. Nanhey and others¹ and sought for dismissal of the appeal.

3. Heard both sides at length and perused the entire material on record.

4. The sum and substance of the accusation against the accused by the prosecution from the police final report taken cognizance as PRC for the offences punishable under Sections 302 and 201 IPC by the learned committal Magistrate, Palamaner in allotting PRC No.30 of 2010 which is outcome of Cr.No.47 of 2010 of V.Kota Police Station registered on the report-Ex.P1, dt.20.04.2010 of brother of the deceased-P.W.1-Manjunatha in registration of Ex.P.7 First Information Report by P.W.10-P.V.Sva Prasad, Sub Inspector of Police, is that the petitioner-A.1 at the instigation and connivance with A.2, alleged to have been brutally murdered the deceased Viswanath and disappeared the evidence by set ablaze. The brief facts are that the A.1-Yellappa is the resident of Pichiguntapalli, and A.2 Venkataramanappa is the resident of Manchiganipalli respectively of Mulbhagal Taluq, Kolar District,

¹ AIR 1984 SC 452

Karnataka state. The A.1 and A.2 are co-brothers for wife of A.1 and wife of A.2 are own sisters. The deceased Viswanath is also a resident of Manchiganihali village, Kasaba Hobli, Mulbagal Taluk, Kolar District, and he developed illicit intimacy with the wife of A.2 and despite advice of the elders, the deceased did not discontinue his illicit relationship with her and the same was informed by A.2 to A.1. On one occasion both the A.1 and A.2 witnessed the deceased was taking the wife of A.2. Unable to bear the same they have decided to do away with the deceased and as part of the plan, A.1 developed friendship with the deceased. While so on 17.04.2010, the A.1 took the deceased to V.Kota where the deceased took Room No.101 in Sri Rama Deluxe Lodge near RTC bus stand and both occupied the room and stayed there upto 18/ 19.04.2010 by spending time in consuming alcohol. A.1 brought one billhook there from the bazaar and secretly kept it under the bed. On 20.04.2010 at about 5.00A.M., while the deceased was in deep sleep, after taking drink and meals, A.1 hacked on the neck of deceased with the billhook and killed him and poured some petrol and set fire over the body in order to screen the evidence and closed the door and went away. On seeing the flames in the room, the room service boy P.W.2-A.R.Rami Reddy opened the door and reported the matter to his owner. PW3-GV Krishnamurthy and they found the deadbody inside. Subsequently, PW1-the brother of deceased presented a report to the police.

5. During trial before the learned Sessions Judge, the prosecution examined P.Ws.1 to 11 viz; P.W.1- Manjunatha-the defacto-complainant and brother of the deceased, PW2-A.R.Rami Reddy-witness to the deceased being in flames and identified both the accused in sub-jail, Palamaner during Test Identification Parade, PW3-G.V.Krishnamurthy

who identified the accused during Test Identification Parade, PW4-K.Eswaramma, PW5-G.Anandam, PW6-V.Venkataramana-inquestdar, PW7-K.B.Ravi-witness to the mahazar proceedings of arrest of the accused and his disclosure about the complicity to the crime, PW8-Dr.T.Leela-the doctor who conducted autopsy over the deadbody of the deceased, PW9-Swarna Ravi Kumar, JMFC who conducted the TIP of the suspect by mixed with non-suspects, PW10-P.V.Saiprasad Sub Inspector of Police, the investigating officer and PW11-D.Amarnath Fedricks, DSP completed the investigation and filed chargesheet and got marked Exs.P1 to P11 viz; Ex.P.1-complaint given by PW1, Ex.P2-Inquest report, Ex.P3-Postmortem report, Ex.P4-proceedings of the CJM for TIP, Ex.P5-requisition given to PW9, Ex.P6-TIP proceedings of JMFC, Ex.P7-First Information Report, Ex.P8-arrest-cum-disclosure Mahazar, dated 05.06.2010, Ex.P.9-letter of Advice, Ex.P10-RFSL report, and Ex.P11-rough sketch of scene of offence and got marked MO-1-billhook and MO2-Drawer.

6. From the above material, now the points for consideration in deciding the appeal are:-

- i) Whether the deceased met with homicidal death, if so, in the hands of the accused, or otherwise?
 - ii) Whether the prosecution proved guilt of the accused for the two charges levelled under Sections 302 and 201 IPC and if not the conviction judgment against the petitioner-A.1, while acquitting the A.2 by the trial Court is unsustainable and requires interference by this Court while sitting in appeal and if so with what observations and to what extent?
- and
- iii) To what result?

7. As the points for consideration can be taken up together to avoid repetition of facts since inter-connected in deciding the appeal by sitting against the correctness of the trial Court's conviction judgment supra, those are taken up together.

8. Needless to repeat the substance of the accusation of the prosecution against the accused persons since referred supra,

9. Coming to the evidence placed on record, the Ex.P.1 report of P.W.1-Manjunatha-brother of the deceased, dt.20.04.2010 registered as Ex.P.7 First Information Report in Cr.No.47 of 2010 registered by P.W.10 for the offences punishable under Sections 302 and 201 read with 34 IPC reads that the deceased Viswanath, elder brother of the defacto-complainant was making his livelihood by running tailor shop before Jayalakshmi theatre in Mulbagal town and often used to come to V.Kota for tailoring material. While so from 17.04.2010, the deceased-Viswanath did not come to home and they kept on searching for him and on 20.04.2010(the date of report) at about 9.30 A.M., they received information of he was killed and the deadbody was lying in Room No.101 of Lodge, V.Kota and he along with some villagers rushed to the Lodge and found deadbody with cut injury on the throat and also injuries all over body and that was burnt and on enquiry with the Manager of the Lodge-P.W.3-Krishnamurthy, they came to know that the persons Shaik Anwar Basha, Saleem Basha and Mohd.Nayaz belongs to the Mulbagal town were stayed in Room No.103 on that day and therefrom they have suspicion on the said three persons including the P.W.3-Krishnamurthy as responsible for the murder, hence to take action.

10. The sum and substance indicates that the deceased met with homicidal death and there was suspicion against the Manager-P.W.3-

krishna Murthy. After registration of the crime, the investigation was conducted and final report filed showing it is the accused person that killed the deceased with pre-meditation for the deceased was having extra marital relationship with the wife of his co-brother-A.2. P.W.1 deposed the above facts including his presenting Ex.P.1 report by suspecting P.W.3-Krishnamurthy and Anwar Basha, Mohd.Nayaz and Saleem. He also deposed about the inquest over the deadbody of the deceased conducted in his presence and the billhook of M.O.1 seized from the Room No.101 of the Lodge where the inquest over the deadbody was conducted. In the cross-examination, he deposed that by the time he reached the Lodge on receiving information on 20.04.2010, some persons gathered in the Lodge there but police did not come. The distance between manchiganihalli and Pichiguntlahalli is 4 kms. and he was examined by police besides L.Ws.6 to 11. He denied the suggestion of M.O.1-billhook, the so called weapon of offence not seized from the alleged scene of offence by police much less in his presence or police came to the Lodge and after seeing the scene of offence, they obtained complaint from him. He also deposed that the distance between Mulbagal and V.Kota is 3½ kms, and he does not know who was the person telephoned to him on 20.04.2010 and he does not remember whether he stated to the police about the phone call to him. What is elicited in the cross-examination cannot be considered as omission, in fact. He deposed that he reached V.Kota by 12.30 noon and after seeing the deadbody, he presented report Ex.P.1 by mentioning his suspicion. P.W.4-Eshwaramma W/o the deceased Vishwanath deposed that she knows accused 1 and 2 and her husband was having illicit intimacy with wife of A.2 and A.2 told A.1 to take away her deceased husband

Viswanath to V.Kota and kill and A.1 did it and on knowing the death of her husband, she went to the Lodge, and saw the deadbody with injuries on his neck showing he was killed by hacking with billhook. She identified M.O.2 as underwear belongs to her deceased husband. In the cross-examination by accused, she deposed that the distance between Pichiguntlapalli and Manchiganihalli is about 60kms and the distance between Mulbagal and V.Kota is about 60 kms. and she denied the suggestion of deceased was not having illicit intimacy with the wife of A.2 or A.2 did not ask A.1 to take away her husband to V.Kota to kill or she is giving false evidence or there are no talking terms between A.1 and A.2 due to landed disputes. She further deposed of she did not inform the village elders about illicit intimacy of deceased with wife of A.2. She deposed that on the day when they went to V.Kota to see the deadbody of her husband, police examined her and she stated before police of her husband was a good man with no illegal intimacy with anybody. She denied the suggestion of wife of A.2 was not having any illicit intimacy with anyone or A.2 did not tell anything to A.1 about the deceased Viswanath. From the evidence of P.W.2 also, it establishes the deadbody with injuries found in the Lodge where he was examined by police and wife of A.2 and the deceased were having extra marital relationship. The P.W.5 Anandam of Manchiganihalli, neighbour to the deceased and P.W.4, deposed that the deceased was doing tailoring in Magbagal and was having illicit relationship with the wife of A.2 and he advised the deceased Viswanath not to move with said Manjula-wife of A.2 as A.2 was unhappy and informed the same to his brother-A.2. He deposed that three years back the deceased-viswanath and A.1 went to Lodge at V.Kota where Viswanath died. On knowing the same, he went

to Lodge and saw the deadbody of Viswanath and came to know that Viswanath was killed by A.1. He deposed that he stated before the police of deceased Viswanath and A.1 together went to V.Kota and he did not say to anybody of said fact and again says did not state to police of he saw deceased and A.1 were together going to V.Kota. He deposed that he does not know whether A.1 and A.2 are not on talking terms due to adoption of A.1's son by his father-in-law. He further deposed he has not heard directly from A.2 about the alleged intimacy between the deceased and wife of A.2 or about A.2 told to A.1 and also does not know of A.2 was having 5 acres land at Manchiganihalli village. He deposed that he does not know whether A.2 is residing in Mulbagal and having a Mechanic shed however A.2 is motor cycle mechanic. He denied the suggestion of A.2 acquiring lands and stopped doing any work. He denied the suggestion of Yadava caste people had a Panchayat in the village against Scheduled Caste people about their attitude for not coming to coolie work and since then there is a rivalry in between their community and Scheduled Casts of their village. He also denied the suggestion of A.2 has no concern with this case and at the instance of their caste people, he is deposing false against A.2. He also denied that said Manjula-wife of A.2 is not having any illicit intimacy with any one much less deceased Viswanath and she is the dutiful wife in Mulbagal and also denied that he is deposing falsehood.

11. This witness evidence is only to the limited extent of he went and saw the deadbody at the Lodge where the deceased found lying killed and nothing beyond. P.W.6 Venkataramana deposed of he received phone call from P.W.4 on 20.04.2010 stating that her husband was killed in the Lodge and then himself and his villagers went there and saw the

deadbody of Viswanath with injuries and deadbody was also burnt and later police came and he was one of the witnesses to Ex.P.2 inquest panchanama where also opined the deceased was killed and later deadbody was burnt. In the cross-examination he deposed that the distance between his village and V.Kota is 26kms, and the distance between V.Kota and Palamaner is 42kms, and denied the suggestion of no inquest was conducted in his presence. He deposed that he does not remember whether in the inquest it is opined that three Muslim persons from Mulbagal and Manager of Lodge, were the suspects for the murder of deceased.

12. The evidence of this witness is only to the extent of his being a witness to the inquest.

13. P.W.7 K.B.Ravi deposed that on 05.06.2010 at about 11.00a.m., when he went to V.Kota for some personal work, he and L.W.14 were present in the police station, and on their request to act as mediators to apprehend the offenders of crime supra they accompanied the police Inspector to Eguva check post, opposite to State Bank of India branch, V.Kota. On seeing them, the A.1 and A.2 tried to flee away and the police apprehended them and when interrogated, they stated of their relation as co-brothers and deceased was having illegal intimacy with wife of A.2 and other facts and they were arrested under cover of panchanama. In the cross-examination, this witness denied the suggestion of he is a police stock witness and the police not arrested the accused and interrogated in his presence on any disclosure by the accused. He deposed that he does not know who drafted the panchanama. He denied the suggestion of A.2 was arrested 3 days prior to 05.06.2010 at Mulbagal and brought to V.Kota Police Station and he

saw the A.2 in the police station and no arrest took in his presence much less any confession and he is deposing falsehood.

14. There remains on the facts and circumstances as to how the deceased met with homicidal death while in the Lodge, the evidence of P.Ws.2 and 3.

15. P.W.2 Rami Reddy-Room Service Boy of Lodge, and P.W.3 is the Manager of the Lodge. P.W.2-Room Service Boy deposed that on 17.04.2010 at about 5.00 P.M. deceased Viswanath and another person came to the Lodge and they introduced themselves as JCB operator and required a room and paid Rs.100 advance and taken Room No.101. On 18.04.2010 morning, deceased and another person went out and returned in the evening. Again on 19.04.2010, both the deceased and another person went out and returned in the night by 10.30p.m. On 20.04.2010 in the early morning he noticed smoke was coming out from said room and immediately informed to the P.W.3-Manager-Krishnamurthy, and both came and opened the door with the assistance of others and put off the flames in the room as well as over the body of the deceased-Viswanath and they found cut injury on the neck of the deceased and the billhook M.O.1 found in the bath room. He also deposed that he was examined by police at the time of inquest when present. He also deposed that he identified the person who was seen with the deceased-Viswanath in the Lodge stated supra as A.1 in the TIP conducted in Sub Jail by the Magistrate and also identified in the open Court. In the Cross-examination he deposed that on noticing smoke from the Room No.101 he informed the same to P.W.3 Krishnamurthy Manager and they did not inform the police immediately. The Lodge is situated on the North of RTC Bus stand, V.Kota about 40 ft. away and the police

station is one furlong away to the bus stand. He did not give any report to police. He denied the suggestion of he did not state police about the description particulars of the person accompanied Viswanath-deceased and he can identify him if shown. He deposed as to no specific reason for him to remember the identity of the person who accompanied the deceased-Viswanath and in identifying him before the Magistrate. He denied the suggestion of A.1 was detained in Kuppam police station for two days and was shown to him so as to identify in the TIP by the learned Magistrate later. He also denied the suggestion of when A.1 was produced before the Palamaner Court while in judicial custody, he was shown in the Court premises also by police. He also denied the suggestion of even on the date of TIP, the police shown him A.1. He deposed that he has no idea how many persons are there in the Lodge on the night of 19.04.2010 and cannot identify them and he does not know whether family members of Viswanath-deceased given any report to police by suspecting Krishnamurthy-P.W.3 and 3 Muslim persons of Karnataka State. He denied the suggestion of he, to save Krishnamurthy-P.W.3 from this case, giving false evidence. He denied the suggestion of A.1 is not the person who accompanied the deceased-Viswanath to the Lodge room on 17.04.2010 and A.1 was not there later even on 18/ 19.04.2018. He deposed that the persons of suspects and non-suspects of the TIP were wearing different dresses and different in colour complexions and sizes. In fact, even first time identification before the Court no way fatal if there is memory goes for the person and so far as the P.W.2 concerned is not disputed of working as Room Service Boy for all the rooms in the Lodge. What is suggested is he cannot memorize all the persons stayed on 19.04.2010 in the Lodge rooms. In

fact what he deposed categorically is it is A.1 who came along with the deceased Viswanath and taken Room No.101 on 17.04.2010 evening and was moving with the deceased since then including going out and coming back on 18 and 19.04.2010 and last seen both coming back to the room on 19.04.2010.

16. Once such is the case, there is no difficulty to remember and identify, leave apart even in the TIP he unerringly identified the said person who was moving with the deceased as A.1. There is nothing to doubt credibility of the witnesses concerned but for if at all given any little credence of what is suggested of to save P.W.3 Krishnamurthy-Manager of the Lodge of any of his complicity to the crime at his instance or of police, he is deposing falsehood against A.1. In this regard how far such a suggestion can be given even by preponderance of probabilities of the defence version concerned, now coming to the evidence of P.W.3-Krishna Murthy, Manager of the Lodge, deposed that on 17.04.2010 evening deceased and another person came to their lodge and took room No.101 on rent by payment of Rs.100/- advance and they continued even on 18.04.2010 by payment of room rent of Rs.100/-. He also deposed about the P.W.1 came to him on 20.04.2010 morning at 6.00 A.M. and informed of smoke emanating from Room No.101 and immediately both along with staff went to the room poured water and subsided the flames including on the deadbody of Viswanath in the room. He deposed of family members of the deceased came to the Lodge and after seeing the deadbody they presented the report and police examined him. He also deposed about he identified the person along with the deceased Viswanath as A.1 in the TIP proceedings conducted by the JFCM, Palamaner, and also identified A.1 in the Court

as the person stayed in the Lodge with the deceased-Viswanath. In the cross-examination, he deposed that he did not state before the police of the deceased came along with another person and paid Rs.100/- towards room rent for the Room No.101 on 17.04.2010 and 18.04.2010. He deposed that he telephoned to police on 7.00 A.M. on 20.04.2010 informing about deadbody of Viswanath lying with injuries and partly burnt in Room No.101 and police came only at 2.00p.m. and examined him. He deposed that the distance to the police station from the Lodge is about furlong. He also deposed of police detained him for one week and thereafter he came out saying his mother is not well. He deposed that Inspector of Police shown A.1 and A.2 him and asked whether the A.1 is the person who accompanied the deceased-Viswanath. He denied the suggestion of his identifying the A.1 at the instance of police. He denied the suggestion of police shown the A.1 to him in Palamaner Court when he was produced for extension of remand and asked him to identify and therefrom only he identified A.1 in TIP proceedings. He also denied the suggestion of to save him from this case, police falsely implicated the A.1 in this case. He deposed of he identified the A.1 among other persons who were made to stand in TIP conducted by Magistrate wearing dresses of different colours with different personalities and colour complexions.

17. In fact, even from said cross-examination so far as the P.W.3 Krishna Murthy, Manager of the Lodge and any responsibility of him for the death of deceased concerned, there is no any suggestion much less with regard to any motive to him to kill the deceased Viswanath a stranger to him by then by coming and taking room at the lodge along with A.1 on 17.04.2010 in the evening. Merely because he is the lodge

Manager and merely because the defacto-complainant, the brother of the deceased suspected of him as responsible for death that is not be all once the investigation discloses otherwise that too when the evidence of P.W.2 categorically shows with all certainty of the deceased and accused were last seen together including on the night of 19.04.2010 at about 10.30P.M. when they returned back to the Lodge room having both came to the Lodge and obtained the Room No.101 on 17.04.2010 evening and stayed including on 18.04.2010 and 19.04.2010 evening and on 19.04.2010 night came back to the lodge and stayed there. It is the deceased when met with homicidal death with injuries and body partly burnt lying in the room and A.1 was not there in the room though both together returned back to the room seen by P.W.2 on the previous night on 19.04.2010 at about 10.30p.m., to say the deceased and the A.1 were last seen together, within 7 hours before the deceased met with homicidal death in the room, while both were returned to the room few hours before and stayed in the room.

18.The Apex Court in *Nizam Vs. State of Rajasthan*², which is also case for the offence under Section 302 IPC of rested on circumstantial evidence where observed if the time gap between last seen theory which is one of the very important links in the chain of circumstances that would point towards guilt of the accused with some certainty, not long to the last seen on recovery of dead body, onus shifts on the accused under Section 106 of the Indian Evidence Act to explain how the occurrence taken place, however held on facts from the gap is about 3 days to the last seen to the time of dead body of deceased recovered not prudent to convict the accused only on sole basis. In fact it is

² 2016 (1) SCC 550

categorically observed in Para 14 of the expression in particular of the last seen theory is very important link in the chain of circumstances pointing towards the guilt of the accused with some certainty and it holds the Courts to shift the burden of proof on the accused, who has to offer a reasonable explanation as to the cause of death of the deceased and however, it is not a sole link to base the conviction from long time gap from last seen to body recovered, but for to apply said last seen theory with burden on accused the principle supra by taking into consideration of overall facts of the case on hand and keeping in mind the circumstances that precede and follow the point of being so last seen, for the circumstances from which conclusion of guilt to be drawn should be fully proved in completing the chain formation with no gap left in the chain of evidence consistent with the only hypothesis of guilt of accused and inconsistent with innocence of accused. It was held the prosecution is able to prove any motive against accused for the occurrence of cause of death of deceased. It is also one of the circumstances of the chain as a corroborative piece of evidence for scrutiny from the evidence.

19. In the case on hand, the evidence of P.Ws. 1 to 5 shows about motive of the A.1 as he is co-brother of A.2 with whose wife the deceased was having illicit relationship and even warned unheeded by the deceased and the A.1 and A.2 even saw when the deceased was taking away wife of A.2 sometime before the occurrence. Leave about no evidence from which acquitted by the trial Court on conspiracy or abatement of A.2 for A.1 to kill the deceased proved with consistency in finding A.2 guilty along with A.1 to the complicity of crime, there is motive as referred supra. Coming to the First Information Report, leave

about what is discussed of no basis to suspect for what is mentioned therein of P.W.3-Krishna Murthy Lodge Manager, thereby the trial Court not given credence to the stray defence contention in this regard. It is also in relation to the three Muslim persons from what P.W.3-Krishna Murthy stated to P.W.1 when came to know of the death and inspected the Lodge when enquired of three Muslim persons also stated of Karnataka with names on 19.04.2010 night in the side by room 103 of the Lodge if at all to suspect. Once the material from evidence of prosecution side establishes the last seen theory beyond reasonable doubt from the evidence of the P.W.2 that also corroborated by the evidence of P.W.3; though the P.W.3's evidence at one point speaks in the cross-examination of the Inspector of Police shown A.1 and asked him as to who was the person came along with the deceased to the Lodge for his identifying as that person who is the A.1. Even taken the same, once he categorically deposed that because he was shown he identified is not correct. The evidence of P.W.3, as rightly concluded by the trial Court lends corroboration to the evidence of P.W.2 of A.1 and the deceased stayed in the room 101 of the Lodge having occupied since evening of 17.04.2010 including having come back to the Lodge and stayed on the night of 19.04.2010 having found by P.W.2 at 10.30P.M. when they returned back to the Lodge room and it is A.1 that has to explain how if not in his hands the deceased met with the homicidal death supra from the main link consistently pointing out of the complicity of the A.1 to the crime with only hypothesis of the deceased died in the hands of A.1 and but for that A.1 should have been given explanation as to when he if at all left the Lodge after 10.30 P.M., on 19.04.2010 from the company of the deceased and why he fled away

from the Lodge after the occurrence in the early hours on 20.04.2010. The flames comes out how but for to screen the evidence in burning the deadbody by pouring some inflammable in setting ablaze after attack and caused injustice and as to how the billhook-the cutting instrument came to the Lodge room, that too when the medical evidence shows the possibility of causing the injury with it, that too when it is lying in the bathroom with no bloodstains having been cleaned. For that coming to the medical evidence of P.W.8 doctor Leela-the medical officer who conducted autopsy and issued Ex.P.3 post mortem report, that she conducted autopsy on the body of the deceased Viswanath on 20.04.2010 from 4.10p.m, onwards pursuant to the police requisition and found 60% to 70% burns present and incised injuries viz; an incised wound below the lower lip extending from mid line to left side of the chin, size 9cm x 1cm bone deep, mandibles bone fractured, cheek muscles cut, loss of lower molars, premolars and incised teeth on left side; an incised injury extends from right side of neck to left side of neck and back of the left side of neck, size 12cm x 3 cm, muscle deep, thyroid cartilage, trachea, oesophagus and larynx are cut, hyoid bone intact; an incised wound extends from right side of neck to midline, 14cm x 4 cm, x muscle deep, blood vessels and neck muscles are cut; a punctured wound 1 cm x 1 cm x muscle deep on right shoulder, two fractured wounds 2 cm x 1 cm on left side of the chest, and also found internal injuries of stomach contained semi digested food about 150 grams present. Kidneys E/ a Pale. Cut section pale. Spleen-E/ A pale, Cut section pale. Urinal bladder contains 30 ml., of urine. External genetaria-no injury, Skull bone-no fractured. Meninges intact, Cerebrum, medulla Milongata-pale, Fracture of Mandibular bone

present. Spinal cord no injury. The Doctor opined that the deceased would appear to have died of shock and hemorrhage due to burning and injuries to great vessels of neck. The time of death within 18 to 24 hours prior to his post mortem examination and issued post mortem certificate which shows 18 hours prior to the 4 P.M. of 20.04.2010 traced back to midnight or just before midnight of 19.04.2010 to say within one or two hours before death of deceased who was killed.

20. Thus from the evidence on record discussed supra, the deceased and the accused were last seen together by P.W.2 at 10.30p.m, while they were returning to Room No.101 which is right conclusion arrived in fact with reference to the evidence on record by the trial Court from the last seen theory in non-discharging even from preponderance of probability, the burden on accused shifted including the facts within exclusive knowledge u/ sec.106 of the Indian Evidence Act from the chain of circumstances linked and from the evidence particularly of P.W.2 besides what the P.W.3 saying A.1 was in the company of the deceased right from 17.04.2010 till the deceased breathed last as discussed supra. There is nothing even from the evidence of P.W.9, the learned Magistrate who conducted TIP as to any irregularity in the procedure or the improbability to the Ex.P.6 TIP that also lends corroboration from what is discussed supra and the evidence of P.W.11, the then Inspector who conducted the investigation from the Ex.P.7 FIR issued by the P.W.10, speaks of his visiting the scene of offence and finding the deadbody, taking photographs and preparing rough sketch, Scene observation panchanama and inquest panchanama and shifted the deadbody for autopsy and subsequently during investigation apprehension of the accused in the presence of P.W.7 and

L.W.14 under cover of Ex.P.8 arrest panchanama. No doubt there is nothing to show any disclosure leading to the facts discovered within the meaning of Section 27 of the Indian Evidence Act, to admit the same. Coming to the medical evidence as discussed supra, there is nothing in the cross-examination of the accused of the Doctor on the Ex.P.3 post mortem report to improbabilise the medical evidence for they did not cross-examine anything including nothing in the cross-examination of P.W.11 on the manner of investigation much less to say any false implication much less to say how the P.W.3 if at all liable even by any probability to infer complicity to the crime of with what motive was there for the other three persons for the scene of staying in Room No.103 in the absence of any probability with what P.W.3 deposed from the investigation.

21. Having regard to the above once that was the conclusion rightly arrived by scanning the evidence by the trial Court, for this court while sitting in appeal, there is nothing to interfere much less to set aside the conviction judgment of the trial Court.

22. Accordingly and in the result, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, pending if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

M.GANGA RAO, J

Date:23.11.2018
b/ o.vvr