

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.259 OF 2012

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

Assailing the judgment in Sessions Case No.194 of 2011 on the file of the Court of III Additional District and Sessions Judge, Kurnool at Nandyal (for short, trial Court), the appellants P.Ws.1 and 2 have filed the present appeal against acquittal of accused Nos.1 to 3.

2. The case of the prosecution, as culled out from the evidence, is as under:-

P.W.1 is the father of the deceased Narsimhulu while P.W.2 is the wife of P.W.1. In their evidence, both of them stated that on the date of incident i.e., 06.09.2010, P.Ws.2 and 6 went to agricultural work and the deceased went to Nandyal to attend his college. On the same day at about 5.30 PM., while P.Ws.1, 2 and 6 were present in the agricultural fields, one Bala Subbi (not examined as witness) and one Sreenivasulu came to him and informed that their son Narasimhulu was killed by A.1 to A.3. Immediately, they rushed to the house and found the deceased lying on the cot. P.Ws.3 to 5 stated that they untied the body, brought the same and laid it on the cot. P.W.1 is stated to have noticed an injury on the left side of the head of the deceased. Immediately, P.W.1 lodged a report – Ex.P.15, with a Constable of Allagadda Rural Police Station, basing on which, a case in Crime No.113/2010 under Sections 302 and 201 IPC was registered. P.W.17 in his evidence

deposed that on 06.09.2010 at about 10.00 PM., he received a phone message from P.W.15 about registering of the case and as such immediately, proceeded to Allagadda Rural Police Station, received Ex.P14 FIR and posted a guard at the scene of offence. He further deposed that on 7.9.2010 at about 6.00 A.M., he visited the scene of offence and held inquest over the dead body of the deceased Narasimhulu in the presence of P.Ws.10 to 12, Ex.P.8 is the inquest report. During the course of inquest, he examined P.Ws.1 to 5, recorded their statements under Section 161 Cr.P.C and seized green colour banian and brown colour lungi, which are marked as M.Os.1 and 2. He also drafted Ex.P.17 a rough sketch of the scene and sent the dead body for postmortem examination. P.W.16 – the Medical Officer in Primary Health Center, Ahobilam conducted postmortem examination and issued Ex.P.15 – postmortem examination report, wherein he opined that the cause of death of the deceased was due to cerebral anoxia and asphyxia due to pressure over the neck due to hanging. P.W.17 further deposed that on 18-9-2010 at about 9.00 A.M., P.W.13 came to his office along with A.1 to A.3 and presented Ex.P.9 a letter, pursuant to which he recorded the confessional statements of A.1 to A.3 under Exs.P.10 to P.12 in the presence of P.Ws.13 and 14 and later remanded A.1 to A.3 for judicial custody. After completion of the investigation, he filed the charge sheet.

3. On appearance of the accused, the Judicial Magistrate of First Class, Allagadda furnished copies of the documents to the accused, as required under Section 207 Cr.P.C. As the case is

triable by a Court of Sessions, the same was committed to the Court of Sessions, wherein it came to be numbered as S.C.No.194 of 2011. Basing on the material available, charges under Sections 302 and 201 IPC came to be framed, read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

4. In support of its case, the prosecution examined P.Ws.1 to 19 and got marked Exs.P.1 to P.15 and M.Os.1 to 4. Out of 19 witnesses examined by the prosecution, P.Ws.3, 4, 7, 8, 9, 11, 12, 13 and 14 did not support the case of the prosecution and were declared hostile by the prosecution. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses, to which they denied. In the absence of any evidence connecting the accused with the commission of the offence, the trial Court found the accused not guilty for the offences punishable under Sections 302 and 201 IPC., and acquitted them under Section 235(1) Cr.P.C. Challenging the same, the present appeal came to be filed under Section 372 Cr.P.C.

5. The learned counsel for the appellants would contend that though P.Ws.18 and 19 were not shown as witnesses, to the list of witnesses appended to the charge sheet, they were examined to speak about the participation of the accused in the commission of offence, which can be made the basis to convict the accused.

6. On the other hand, the learned counsel for the respondents/accused would submit that the evidence of P.Ws.18 and 19 cannot be taken into consideration since they have not been shown as witnesses in the charge sheet and their statements under Section 161 Cr.P.C., were not furnished to the accused. In the absence of the same, he pleads that there is no basis to convict the accused.

7. The point for consideration is whether A.1 to A.3 are responsible for the incident?

8. It is brought to the notice of this Court that A1 and A3 died, which fact is not disputed by other side. Hence, this appeal is dismissed as abated against A1 and A3. Therefore, the question is whether there is any material to convict A2 for the offence punishable under Section 302 IPC.

9. As seen from the record, P.Ws.1 and 2 are the parents of the deceased. Admittedly, they are not the eyewitnesses to the incident. Even according to their version, while they were present at their fields, received information about the murder of the deceased by the accused, through one Bala Subbi and Sreenivasulu, but strangely, said Bala Subbi was not examined by the prosecution. If the evidence of P.Ws.1 and 2 is excluded from consideration, as they are not eye witnesses to the incident, the only other evidence, which is left on record is that of P.Ws.18 and 19. As seen from the evidence on record, P.Ws.18 and 19 were not shown as witnesses to the list of witnesses appended to the charge

sheet. The learned counsel for the accused would contend that Pws.18 and 19 were examined by the prosecution during the course of investigation, but strangely, their statements were not supplied to the accused. For the first time, in the Court, these two witnesses were made to speak about the incident. In his evidence, P.W.18 deposed that on the date of incident at about 4.30 PM., while he was present at his house, he heard some noise from the eastern side of his house and after hearing the sounds, he came out of his house and raised alarm as “YEVARU VANDLU” (who is there). He is said to have noticed A.1 to A.3 coming out from the cattle shed of P.W.1. He also noticed A.1 to A.3 going in a hurried manner. He also noticed the deceased Narasimhlu hanging with a rope in the cattle shed. In the meanwhile, P.W.19 came there and noticed the body.

10. Though the prosecution has not shown P.Ws.18 and 19 as witnesses in the charge sheet, it claims to have recorded their statements under Section 161 Cr.P.C. But their statements were not furnished to the accused along with the charge sheet or during the course of trial. Even otherwise, if really the version of P.W.1 that P.Ws.18 and 19 came to the fields and informed about the incident is correct, then the same should have been reflected in Ex.P1. Strangely, the same does not find place in the FIR. This throws any amount of doubt in the version of P.Ws.1 and 2 about the manner in which they received information about the death of the deceased. Apart from that, in the cross examination of P.W.18, it was elicited that P.W.18 was an accused in S.C.No.394 of 2006

on the file of the Court of Assistant Sessions Judge, Allagadda, which ended in an acquittal pursuant to a compromise. According to him, A.S.I., Babu Rao put up the above case against him. Similarly, P.W.19 stated in his evidence as under:-

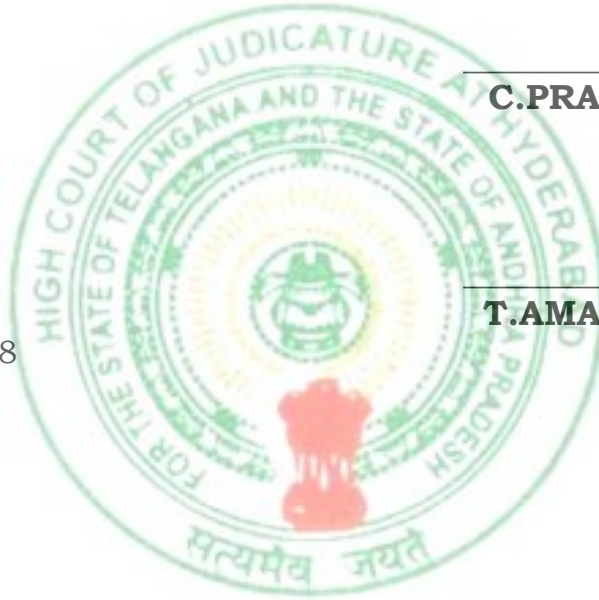
“I went to the house of Narasimhulu at about 5.30 PM., Meanwhile, A1 to A3 in a hurried manner came out from the cattle shed of deceased. Later they went away. When I reached the cattle shed, Pw.18 also present at that time. We together went to the cattle shed and found the deceased Narasimhulu was hanged. We observed the deceased Narasimhulu and after 5 minutes we went to the fields to inform the same to the parents of deceased Narasimhulu. Later Pws.1, 2 and 6 and ourselves together came back to the house of deceased Narasimhulu.”

11. Further, from the evidence of these two witnesses, it is clear that they saw A.1 to A.3 leaving cattle shed of P.W.1 in hurried manner. When they proceeded to the said place, they noticed the deceased hanging in the cattle shed. If the evidence of these two witnesses is tested with the postmortem examination report, it would show that the death was due to hanging. Therefore, a doubt arises whether the death was homicidal or suicidal, since P.Ws.18 and 19 have not seen the accused hanging the deceased to the ceiling after pulling him. Apart from that the evidence of P.Ws.18 and 19, who are not the eye witnesses, cannot be made a basis to convict the accused for more than one reason. Firstly, if really the version of P.W.1 is true namely that he was informed about the incident by P.Ws.18 and 19, the same would have found place in the FIR. Secondly, though P.Ws.18 and 19 in their evidence explain about the incident during the course of investigation, their 161 Cr.P.C., statements were not furnished and they were not

shown as witnesses in the charge sheet. Therefore, their version with regard to seeing the incident cannot be relied upon, more so as the accused would be prejudiced due to non-furnishing of their 161 Cr.P.C., statements. Hence, we see no grounds to interfere with the judgment of the trial Court.

12. For the aforesaid reasons, the Criminal Appeal is dismissed confirming the judgment dated 13.12.2011 in Sessions Case No.194 of 2011 on the file of the Court of II Additional District and Sessions Judge, Kurnool.

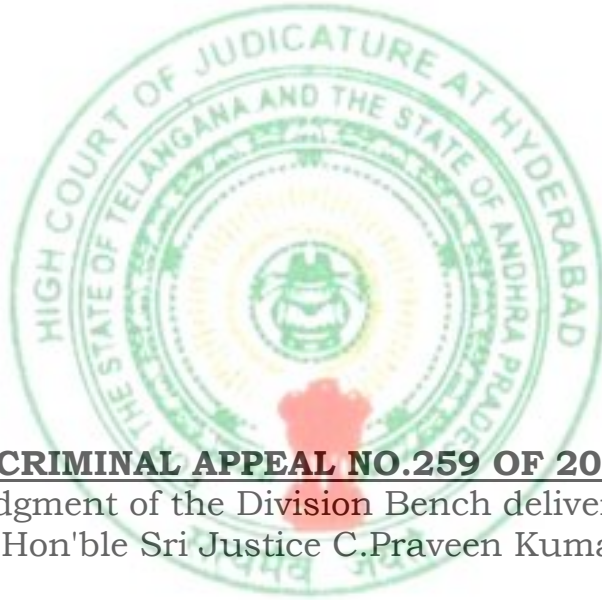
Date: 17.04.2018
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C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

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