



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE M.GANGA RAO
THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO
CRIMINAL APPEAL NO: 625 OF 2015

Between:

1. MR. KANUMA GANGADHAR, MADANAPALLE TOWN S/o.K. Kadirappa
R/o. D.No. 3-189-p-21-6-1
Vijayanagar Colony
Gollapalle
Madanapalle Town

...PETITIONER(S)

AND:

1. SHO, II TOWN P.S., MADANAPALLE Rep. by its Public Prosecutor
through SHO, II Town P.S.,
Madanapalle
High Court at Hyderabad

...RESPONDENTS

Counsel for the Petitioner(s): S DILIP JAYA RAM

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER



HON'BLE SHRI JUSTICE M.GANGA RAO
&
HON'BLE SHRI JUSTICE T.MALLIKARJUNA RAO

CRIMINAL APPEAL No.625 of 2015

JUDGMENT: *(Per Hon'ble Shri Justice T.Mallikarjuna Rao)*

- 1.** This Criminal appeal filed by the Appellant herein under Section 374(2) of the Code of Criminal Procedure challenging the order of conviction and sentence dated 11.12.2014 passed by learned II Additional District & Sessions Judge, Madanapalle in Sessions Case No.306 of 2013, whereby he was convicted for the offence under Section 302 of Indian Penal Code and sentenced to life imprisonment with fine of Rs.3,000/- and in default of payment of fine to undergo simple imprisonment for three months.
- 2.** The substance of the charges against the accused is that on 20.02.2013 at 10.00 p.m. at Srinivasa lodge, Madanapalle town murdered Kasireddy Jagadeesh @ Chinna (hereinafter will be referred to as 'deceased') by hacking with a cock-fight knife on his throat and committed the murder.
- 3.** In brief, the Prosecution's case is that:

The accused and the deceased were childhood friends. In 2009, the deceased asked the accused for a loan. The accused lent Rs.6,50,000/- in three installments to the deceased. The deceased used to visit the house of the accused frequently. On 13.02.2013, when the accused came to his house, he found his wife with the deceased; he



warned and sent the deceased away. Subsequently, also the deceased caught hold of the accused's wife, and she told the same to the accused. On being warned by the accused, she left his house to live with her parents. After that, the accused hated the deceased and wanted to kill him. The accused then bought two cockfighting knives from his distant relative, Sankara. On 20.02.2013 at 4.30 p.m., the accused went to the deceased's house and asked him to come with him to P.W.1-Suresh's house, where they talked and had coffee. At 5:30 p.m., the deceased and the accused went to J.C.N. Bar in Madanapalle and had one-quarter of the alcohol. The accused also invited the deceased to stay at Srinivasa Lodge.

The deceased then paid Rs.500/- to the Srinivasa Lodge Manager for Room No.110, on being directed by him P.W.5-P.Venu brought liquor bottles and biryani packets. Later the accused requested P.W.5 to get a water bottle. The accused kicked the deceased in the chest after P.W.5 left for a water bottle. The deceased fell on the cot. The accused, holding a knife, cut the deceased's throat, left the scene dropping one of the knives there. P.W.5 arrived and witnessed it. Upon P.W.1's complaint, Madanapalle II town P.S. registered Crime No.39 of 2013 under Section 302 of I.P.C.

On credible information, on 23.03.2013 at 04.00 p.m., PW.10, along with his staff and mediators, proceeded to Municipal Arch, Bangalore road, Madanapalle town and found the accused; on interrogation in the presence of mediators, the accused confessed to the offence, and



as per the confession of accused, PW.10 and his team along with mediators proceeded to Thattivaripalli tank at 05.30 p.m., the accused went to big boulders brought blood stained clothes and cock fight knife; PW.10 seized the same under cover of mahazarnama; on 23.02.2013 the accused was forwarded to the II Additional Judicial Magistrate of First Class, Madanapalle for judicial remand. After completion of the investigation, PW.10 laid the charge sheet.

4. The II Additional Judicial First Class Magistrate, Madanapalle, has taken on file as P.R.C. No.26 of 2013. On appearance, furnished the copies of the documents to the accused under Section 207 Cr.P.C., and committed the case to the Sessions Court. Based on the material available on record, as referred to earlier, the charge came to be framed, read over and explained to the accused. He pleaded not guilty and claimed for trial.
5. To prove the case, the Prosecution examined P.Ws.1 to 10 and got marked Exs.P.1 to P.13, besides marking M.Os.1 to 12. After completing the prosecution evidence, learned Sessions Judge examined the accused under Section 313 Cr.P.C., concerning the incriminating circumstances appearing against him in the evidence of prosecution witnesses, which he denied. The defence was of total denial and false implication by the deceased's family members. No oral or documentary evidence was adduced on behalf of the defence.
6. After considering the material available on record, the learned Sessions Judge found the guilt of the accused/Appellant and convicted and sen-



tenced as stated hereinbefore. Aggrieved by which the present appeal has preferred.

- 7.** M/s.A.P.Reddy, learned counsel for the Appellant, would contend that the Prosecution's case is not supported by the witnesses who said to have witnessed the offence; the chain of evidence and circumstances are not complete to conclusively establish that the accused person is the perpetrator of a crime of murder of the deceased; the Prosecution has failed to show that in all human probability, the act must have been done by the Appellant. The Appellant has been falsely roped in the present case. The trial court's conclusion is based on assumptions and conjectures and not on reliable evidence. The Prosecution failed to establish any motive for the alleged crime. There are several discrepancies in the prosecution case, which makes the alleged seizure doubtful. In this regard, he has referred to the testimonies of the prosecution witnesses; the evidence against the Appellant is shaky and insufficient. Despite the Prosecution's failure to discharge its burden to prove the case against the Appellant beyond a reasonable doubt, the trial court convicted the accused; the benefit of the doubt must go to him. The conviction and sentence awarded to the Appellant under section 302 of I.P.C. are unsustainable and liable to be set aside; the Appellant deserves to be acquitted.
- 8.** Per contra, the learned public prosecutor would contend that there is no embellishment in the prosecution version; there is no material contradiction in the statement of prosecution witnesses; the medical evidence also supports the ocular evidence. He further contends that the



impugned Judgment of the trial Court is well-reasoned as it is based on cogent evidence pointing to the guilt of the accused. He has referred to the oral testimonies of the prosecution witnesses and the documentary and material evidence placed on record at the trial; the evidence adduced by the Prosecution has established the guilt of the accused beyond a reasonable doubt; the present appeal is liable to be dismissed.

9. We have heard the learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
10. Now, the point that arises for determination is whether the Prosecution proved the guilt of the accused beyond all reasonable doubt?

POINT:

11. The first question would be whether the death of the deceased is homicidal. The prosecution case is based on direct evidence as well as circumstantial evidence to establish the charge.
12. PW.1 S.Suresh is the husband of PW.2 – S. Aruna, PW.2 and the deceased K. Jagadeesh are children of PW.3 – K. Lakshmi and LW.3 – K. Venkata Ramana.
13. PWs.1 to 3 testified that on 20.02.2013 at about 05.00 p.m., the deceased and the accused came to their house and had tea; both left their home by informing them they had some work. On the same day, LW.3 – K.Venkata Ramana received a phone call at about 10.00 p.m. informing death of his son in Srinivasa Lodge, Madanapalle. PWs.1 to 3 deposed that they, along with LW.3, went to room No.110 of the



Srinivasa Lodge, Madanapalli and found the deceased's death with bleeding injuries.

- 14.** It is suggested to PW.1 in the cross-examination that his brother-in-law (deceased) had several criminal cases against him; the police filed a case against the deceased, attributing that he, along with two other persons, raped one Uma Devi, who is the wife of Prasad; the deceased also used to attend a case pending in S.C.s & S.T.s Court at Chittoor; the deceased loved a girl by name Manjula, and he eloped with her and settled at Vijayanagaram Colony for some time; there were disputes in connection with an elopement. Subsequently, the deceased got compromised the case with the family of Manjula; the deceased had contact with one Muslim woman in the same locality, and the woman left her husband because of her illegal connection. However, he denied the said suggestions. It is suggested to PWs.2 and 3 in the cross-examination that the deceased had bad vices and disputes with others.
- 15.** PW.4 – K.Sudhakar, Manager of Srinivasa Lodge, also stated in his evidence that on 20.02.2013 at about 06.45 p.m., the deceased came to their lodge and took a room bearing No.110 in the lodge by paying Rs.500/- as an advance. At about 10.00 p.m., the deceased was murdered in the said room, and he came to know about the murder of the deceased at approximately 10.30 p.m. He went to room No.110 on hearing the shouts of the Room Boy along with others and observed the deceased Jagadeesh lying with a cutthroat injury and blood on the ground. The learned defence counsel did not choose to cross-examine PW.4 except by eliciting that they do not permit the consumption of



liquor in their lodge. The unchallenged evidence of PW.4 shows that on 20.02.2013 at about 06.45 p.m., the deceased took a room bearing No.110 in the lodge by paying Rs.500/- and at approximately 10.30 p.m., the murder of the deceased was noticed by PW.4.

16. The unchallenged evidence of PW.5 – P.Venu, a Room Boy of Srinivasa Lodge, shows that on the day of the incident, the deceased had taken a room bearing No.110 in the Srinivasa Lodge, Madanapalle. At about 10.00 p.m., he found the dead body of the deceased in the said room.

17. From what is discussed *supra*, it is the compatible version of PWs.1 to 3 that on the receipt of a phone call at 10.00 p.m. by the LW.3, they rushed to the Srinivasa Lodge, Madanapalle and found the dead body of the deceased with bleeding injuries in the room No.110 of the Srinivasa lodge. It is the evidence of PWs.1 to 3 that on making enquires with the Manager and Boy of the lodge, they learned that the accused and deceased had taken a room bearing No.110 in the lodge by paying an advance of Rs.500/- and consumed alcohol and had eaten Biryani. After that, they sent a room boy to bring water. After some time, the room boy came to the room and found that the accused was cutting the throat of the deceased with a knife, which was used for cock fight. Then PW.1 lodged Ex.P1-report to the police. A reading of the evidence of PW.1 shows that he did not furnish the names of the manager and room boy of the lodge, who have given the particulars of the incident that happened in the lodge. PW.1 also stated in his cross-examination that he did not enquire who made a phone call to his



father-in-law (LW.3) at about 10.00 p.m. and informed the deceased's death in the lodge.

- 18.** PW.1 stated in the cross-examination that about ten persons gathered at the lodge, i.e., at the scene of the offence, including the police. Twenty minutes later, he complained to the police and handed over the complaint to the S.I. of the police.
- 19.** PW.1's evidence further shows that after receipt of the complaint, the S.I. of Police came to the scene of the offence after 20 minutes. At about 07.00 a.m., the dead body was taken to the Government hospital. The police were also present when the dead body was shifted to the Government hospital. The postmortem examination was conducted between 07.00 a.m. to 10.00 a.m., and the deceased's funeral was completed in the evening.
- 20.** PW.10-C.M.Gangaiah, Inspector of Police, stated that on 21.02.2013 at 12.30 a.m., PW.1 came to the police station and presented a complaint; he registered the complaint as a case in Cr. No.39 of 2012 under section 302 of I.P.C. of Madanapalle II Town P.S. and transmitted Ex.P.9-F.I.R to the learned II Additional Judicial Magistrate of First Class, Madanapalle, and he secured the presence of S.I. and his staff. At about 02.00 a.m., he reached the scene of the offence, where he found the dead body of the deceased K. Jagadeesh lying in a pool of blood in Room No.110 of Srinivasa lodge. At this juncture, it is pertinent to note that Ex.P9-F.I.R shows that the offence occurred on 20th February 2013, and the information was received at the police station on 21st February 2013 at 00.30 hours. The distance between the



place of occurrence and the police station is 100 meters. The Prosecution has not explained why there was a delay of three hours in reporting the incident to the police, though the scene of the offence is at such a small distance from the police station. The evidence of PWs.4 and 5 shows that they were aware of the murder of the deceased in room No.110 of the lodge at 10.30 p.m. No explanation is forthcoming for the non-reporting of the incident to the police by the lodge's management immediately after the occurrence. As already referred, the evidence of PW.1 shows the presence of police at the scene of the offence when he first reached the lodge. Thus, it shows that the police people might have received the information about the offence even before the coming of PWs.1 to 3 to the scene of the offence. But, the investigation does not reveal the same. In contrast, the evidence of PW.10-Investigating Officer shows that he visited the scene of the offence at 02.00 a.m.

- 21.** It goes with saying the inconsistency about the timings as referred to above, it transpires from the evidence of PW.10 that he found the dead body of the deceased K. Jagadeesh lying in a pool of blood in room No.110 of Srinivasa lodge. The defence does not dispute the said Prosecution's case. PW.10's evidence shows that he returned to the scene of the offence on the next day at 06.45 a.m., secured the presence of the deceased's blood relatives, witnesses and panchayatdars, and commenced an inquest over the dead body of the deceased. During the inquest, he examined the dead body of the deceased and found a stab injury over the neck under the right ear; the throat was cut with a knife



about 4 inches in depth; there, he examined the scene; prepared Ex.P10-rough sketch of the scene of offence; he also seized the M.O.4-green/white colour and white stripes full shirt stains in the blood, M.O.5 navy blue colour jeans pant, M.O.6 mill made white colour banyan stained with blood, M.O.7-control tile, M.O.8-blood stained control tie, M.O.9-one pair of chappal, M.O.10-cock fight knife, M.O.11-Mcdowell's No.1 celebrations Luxury XXX rum full bottles and M.O.12-two disposal plastic glasses. He examined the inquest panchayatdars, who unanimously opined that the accused Gangadhar cut the throat of the deceased Jagadeesh by holding his head to cause murder. The inquest was conducted at 10.00 a.m.

- 22.** At this stage, it would be apposite to refer to the evidence of PW.6-A.Guru Murthy, Retired Village Revenue Officer, PW.7-K.Sreenivasulu. PW.6 deposed that he, along with panch witnesses, affixed their signatures on the Ex.P5-inquest report after reading the contents. They learned that in the lodge, the deceased himself cut his throat. He also admitted that in the inquest, it was noted that the accused cut the throat of the deceased in connection with financial disputes. PW.6 evidence shows that he has not fully supported the prosecution case.
- 23.** In the cross-examination, PW.6 stated that they went to the lodge where the inquest was conducted at the place of the dead body in their presence, but their signatures were obtained at the M.R.O. office.
- 24.** Coming to the evidence of PW.7, he stated that about his presence at the inquest over the dead body of the deceased K. Jagadeesh at the scene of offence and his attestation in the inquest report as inquest



panchayatdars. He does not know the reasons for the murder of the deceased. PWs.6 and 7 did not support the Prosecution's case regarding the reasons for the murder of the deceased; the learned Additional Public Prosecutor cross-examined PW.7, but nothing was elicited in support of the Prosecution's case.

25. PW.10-Investigating Officer stated that he handed over the dead body to PC-3933 B.E.Nataraj along with postmortem requisition and sent the dead body to Deputy Medical Officer, Government Area Hospital, Madanapalle, for conducting Autopsy over the dead body of the deceased.

26. The evidence of PW.9-Dr.M.Hemanth Kumar Ayyappa shows that on 21.02.2013 at about 01.00 p.m., he received a requisition from the S.H.O, Madanapalle II Town P.S., to conduct a postmortem examination over the dead body of the deceased K.Jagadeesh. The evidence of PW.9 and Ex.P8 postmortem examination certificate show that he found the following injuries in his postmortem examination:

An abrasion is present over the left arm,
Neck: Depth deep laceration of size, length -23 cms, depth-7cms present,
Extending from the mastoid process to another mastoid process.
Tracheal rings disrupted.

27. According to the evidence of PW.9, the injury found on the neck of the deceased is possibly caused by any sharp-edged weapon like a knife shown to him.

28. According to his version in the cross-examination, he found a cut injury deep over the neck above the cricoid's cartilage. He admitted that there



is a difference between the neck and throat, and he mentioned the injuries on the neck in the postmortem certificate.

- 29.** The evidence of PW.10-Investigating Officer shows that the seized items 1 to 9 were sent to R.F.S.L., Tirupathi, through the Court for examination and report. The Assistant Director of R.F.S.L. sent the Ex.P13-R.F.S.L report dated 26.04.2013. He opined that blood detected on items No.1 to 3, 5 to 9 is of human and blood group on items No.1, 2, 3, 7 and 8 is of the 'A' group and blood group is not determined on the items No.6 and 9 and blood is not detected on item No.4, which is control for item No.5. The nature of injuries suffered by the deceased as referred to by the witnesses and the doctor-PW9 evidence indicates that the death of the deceased was not natural. In the opinion of the Doctor who conducted the postmortem examination, the deceased appeared to have died of hypovolemic shock due to excessive bleeding from the neck due to a deep laceration.
- 30.** As seen from the material on record, the mediators prepared an inquest report of the deceased. However, they have not supported the case of the Prosecution regarding the cause of the deceased's death. The evidence of PWs.6 and 7 establishes their presence at the time of the inquest and subscribing their signatures on the Ex.P5. The inquest report also clearly shows the injuries sustained by the deceased. The fact remains that the accused has not suggested to any witnesses that the incident has not occurred in the lodge; it can be seen that the investigating Officer has prepared a rough sketch of the scene of offence and placed it before the Court and duly proved. From the above-said



factual evidence on record, it emerges that the defence has not at all disputed the death of the deceased as a homicidal one. The suggestions put to PWs.1 to 3 in the cross-examination also show the murder of the deceased in the lodge. By placing various suggestions to PWs.1 to 3 in the cross-examination, the defence intended to establish that the deceased was having vices and disputes with several persons and filing several criminal cases against him, and somebody might have killed the deceased in the lodge.

- 31.** Considering the nature of injuries on the vital organs of the deceased body and the Doctor's opinion in the context of the evidence led by the Prosecution, there was nothing to disbelieve the homicidal death. What is most significant to be noted is that even in the cross-examination of material witnesses, the defence did not dispute the homicidal death of the deceased. Thus, we are of the view that there is no serious challenge to the homicidal death of the deceased.
- 32.** At the outset, we are of the view that the Prosecution is able to establish that the deceased, on 20.02.2013 at about 06.45 p.m., went to the lodge and took a room bearing No.110 in the lodge by paying Rs.500/- as an advance. At about 10.30 p.m., the deceased was murdered in the said room. To establish the presence of the accused in the lodge, the Prosecution relied on the evidence of PWs.4 and 5.
- 33.** It is Prosecution's case that the accused and deceased went to J.C.N. Bar, Madanapalle and consumed alcohol in the bar, and after that, the accused asked the deceased to come with him to Srinivasa lodge to spend time with him on that night. Then the deceased took the room



No.110 in the Srinivasa lodge by paying cash of Rs.500/- and at about 06.45 p.m., they gave the amount to PW.5, who is a room boy, to bring liquor, and after some time, PW.5 got the Rum bottle and biryani packets and kept the same in the room. Then the accused asked PW.5 to bring a water bottle; when PW.5 left the room to bring a water bottle, then the accused kicked the deceased on his chest, as a result of which, the deceased fell on the cot then, the accused took a knife and caught hold of the deceased and cut his throat to murder him. One knife fell into the room; by then, PW.5 came to the room and witnessed the same. The said Prosecution's case is not supported by the evidence of PWs.4 and 5. PWs.4 and 5 were shown to be witnesses to establish that the accused and deceased came to their lodge and took a room at about 06.45 p.m., and they stayed there in the lodge till 10.00 p.m. It is not the evidence of PW.4 that the accused and the deceased came together to the lodge. Though PWs.4 and 5 have supported the case of Prosecution to the extent that the deceased went to the lodge on that day at about 06.45 p.m., and they noticed the dead body of the deceased in the room No.110 at approximately 10.30 p.m., they did not speak about the presence of the accused in the lodge at the relevant time of the offence. Thus the prosecution case is not supported by PWs.4 and 5 regarding the presence of the accused along with the deceased as contended.



34. Now, we consider the circumstantial evidence relied on by the Prosecution. In a decision reported in **Bijender Alias Mandar Vs. State of Haryana**¹, the Hon'ble Apex Court held that

"it may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. Circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery".

35. The learned public prosecutor relied on a decision in **Geejaganda Somaiah Vs. State of Karnataka**², wherein the Hon'ble Apex Court held that

"there is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952".

36. In **Sharad Birdhichand Sarda v. State of Maharashtra**³ so far as the circumstantial evidence is concerned, the Supreme Court has laid down the five golden principles to be followed while deciding a case based on circumstantial evidence, which is as under:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

¹ (2022) 1 Supreme Court Cases 92

² (2007) 9 Supreme Court Cases 315

³ 1984 4 SCC 116



....the circumstances concerned 'must or should and not 'may be established,

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to prove, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused."

- 37.** The Prosecution's case is that, as per the confession of the accused, he murdered the deceased by cutting his throat with a knife as the deceased did not repay the debt amount to him, and he has also had illegal intimacy with his wife. In this regard, the Investigating officer-PW.10 testified that on 23.02.2013, while he was present at the police station, he received credible information about the accused. Immediately, he secured the presence of PW.8-Nadiganti Bala Subramanyam, Village Revenue Officer, LW.14-Mondem Narasimhulu, Gollapalle, along with mediators, S.I. of Police-Gangadhar and his staff proceeded in a police jeep and visited the Municipal Arch Bangalore Road, Madanapalle town, where he found a person standing near the Arch and on seeing the police, he tried to run away from the spot. Immediately, he stopped his jeep near him and caught hold of him with the assistance of his staff at a distance of 100 feet towards the Southern side of the Arch and brought him to the Arch and questioned him in the presence of mediators. On that, he voluntarily confessed and admitted to the murder of the deceased Jagadeesh by cutting his throat



with a cock-fight knife and also stabbed below the ear and caused his instantaneous death due to a grudge over the deceased, who is his close friend who failed to return hand loan amount and suspected to have illegal intimacy with the wife of the accused.

- 38.** From the reading of the version above, it is a confessional statement said to be made to the police in the presence of mediators. Section 25 of the Evidence Act mandates that no confession made to a police officer shall be proved against a person accused of an offence. Similarly, Section 26 of the Evidence Act provides that confession by the accused person while in the custody of police cannot be proved against him. Section 25 of the Evidence Act deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any investigation had begun. The expression "accused of any offence" in Section 25 would cover the case of an accused who has since been put on trial, whether or not, at the time when he made the confessional statement, he was under arrest or in custody as an accused in that case or not inadmissibility of a confessional statement made to a police officer under Section 25 of the Evidence Act is based on the ground of public policy. Section 25 of the Evidence Act not only bars proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also the admission contained in the confessional statement of all incriminating facts relating to the commission of an offence. Thus, they were incriminating statements made to a police officer and were hit by Sections 25 and 26 of the Indian Evidence Act.



- 39.** It is equally well settled that in a case based on circumstantial evidence, the motive for committing the crime on the part of the accused assumes importance. The only question that arises now for our consideration is whether the circumstances and the chain of events conclusively establish the involvement of the accused in committing the crime of murder of the deceased.
- 40.** The evidence of PW.10-Investigating Officer shows that on the confession statement said to be made by the accused in the presence of police, the motive is attributed to the accused for committing the offence. There is no dispute that the Prosecution has not adduced the evidence to show that the deceased had taken a hand loan from the accused and also to establish the alleged illicit relationship with the wife of the accused. PW.1 to PW.3 have not stated the alleged disputes between the deceased and the accused. They were unaware of the alleged disputes between the deceased and the accused. The evidence of PWs.1 to 3 shows that the deceased, and the accused, came to their house and had tea at their house, and both left their home by informing them that they had some work. It goes without saying that the accused also maintained a cordial relationship with the deceased. Otherwise, the accused would not have proceeded to the house of PWs.1 to 3. We are conscious that the deceased had also not suspected anything against the accused; otherwise, he could not have proceeded with the accused. No evidence is placed before the Court to show any previous disputes between the accused and the deceased. PW.2 testified that the accused had taken money from the deceased. But it is



the Prosecution's case that the deceased had taken a hand loan from the accused but failed to pay the same. PWs.1 to 3 have not given particulars of the financial transactions. What emerges from the above discussion and analysis of *supra*, the Prosecution has failed to establish any financial transactions between the accused and the deceased and also about the misbehaviour of the deceased towards the wife of the accused.

- 41.** It may be relevant to mention that there is a plethora of cases wherein the Hon'ble Apex Court has observed that motive is a relevant factor in all criminal cases, whether based on the testimony of eyewitnesses or circumstantial evidence. In **Shreekantiah Vs. State of Bombay**⁴, the Hon'ble Apex Court observed-

"It has to be kept in mind that a person does not commit a grave illegal act which might expose him to prosecution and possible disgrace unless he is prompted by some strong motive." Whether a criminal act may be presumed without motive? Generally, no criminal act is presumed unless the motive is proven. But there may be cases when, even if the motive is not proved, the commission of a criminal act may be presumed. It is not mandatory that motive must exist to prove a criminal act, nor is it mandatory that motive must be proved before a criminal act is presumed.

- 42.** In **Anwar Ali and Anr. v. State of Himachal Pradesh**⁵, the Hon'ble Apex Court has referred to and relied upon the principles enunciated in previous decisions and has laid down as under: -

"24. Now so far as the submission on behalf of the accused that in the present case, the Prosecution has failed to establish and prove the motive and, therefore, the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case".

⁴ 1955 SCJ 233

⁵ 2020 10 SCC 166



43. The Hon'ble Apex Court held in **Suresh Chandra Bahri v. State of Bihar**⁶ that:

if the motive is proved, that will supply a link in the chain of circumstantial evidence, but the absence thereof cannot be a ground to reject the prosecution case.

44. After careful analysis of the evidence on record, we are of the view that the Prosecution failed to establish the motive aspect for the commission of the offence by the accused.

45. In light of the above legal position, we are constrained to hold that simply because the Prosecution failed to establish the motive on the part of the accused, it cannot be a sole ground to reject the prosecution case, and if the motive is proved, that will supply another link in the chain of circumstantial evidence.

46. The evidence of PWs.1 to 3 shows that the deceased and accused came to their house on 20.02.2013 between 5.00 p.m. to 5.30 p.m., and the deceased and accused left their home by informing them that they had work. It is submitted on behalf of the Prosecution that the Prosecution is able to establish that the accused and the deceased were last seen together by the PWs.1 to 3, and the theory of last seen is ground to establish the guilt of the accused.

47. In **State of Karnataka v. M.V. Mahesh**⁷ the Hon'ble Apex Court held that:

"3. ... Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that [the deceased] had been done to death, of which the respondent is or must be aware as also proximate to the time of being last seen together.

⁶ 1995 Supp1 SCC 80(: 1995 SCC (Cri) 60.)

⁷ [(2003) 3 SCC 353 : 2003 S.C.C. (Cri) 795



48. In **State of U.P. v. Satish**⁸, the Hon'ble Apex Court had stated that the principle of last seen comes into play

“where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.”

49. In **Nizam v. State of Rajasthan**⁹, the Hon'ble supreme Court held that:

Undoubtedly, the “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well settled by this Court that it is not prudent to base the conviction solely on “last seen theory”. “Last seen theory” should be applied, taking into consideration the case of the Prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

50. The Hon'ble Apex Court has elaborated the principle of “last seen alive” in **State of Rajasthan v. Kashi Ram**¹⁰, wherein it held that:

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so, he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in the discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which

⁸ (2005) 3 SCC 114; 2005 S.C.C. (Cri) 642

⁹ (2016) 1 SCC 550 : (2016) 1 S.C.C. (Cri) 386; 2015 S.C.C. OnLine SC 782

¹⁰ (2006) 12 SCC 254 : (2007) 1 S.C.C. (Cri) 688



is always upon the Prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation as an additional link which completes the chain.

51. The evidence on record shows that the accused and the deceased left the house of PWs.1 to 3 at about 05.30 p.m. Though it is the Prosecution's case that they went to J.C.N. bar, Madanapalle, at approximately 05.30 p.m., no evidence is adduced to show the said visit to the bar. It is also the Prosecution's case that both the deceased and the accused together went to Srinivasa lodge at about 06.40 p.m. It is pertinent to note that though the lodge manager and room boy were examined to establish the stay of the deceased and the accused in the room No.110 of Srinivasa lodge, as already noted, PW.4 lodge manager and PW.5 room boy have not supported the Prosecution's case. Thus, it can be held that the Prosecution failed to establish that they were last seen together either in the bar or in the lodge after leaving from the house of PWs.1 to 3. Simply because the Prosecution is able to establish the deceased and the accused left the house of P.W.s. 1 to 3 at 05.30 p.m., it cannot be held that the burden is on the accused to establish that he was not with the deceased in the lodge as PW.4 and PW.5 have not stated about the presence of accused with the deceased.

52. In view of the time gap between two incidents, i.e., leaving the deceased and the accused from the house of PWs.1 to 3 and noticing the deceased's dead body in the lodge, the possibility of others intervening cannot be ruled out. There is the absence of definite evidence that the



Appellant and the deceased were last seen together in the lodge. The evidence of PW.4 and PW.5 shows that the deceased alone visited the lodge at about 06.30 p.m. As such, it would be dangerous to come to the conclusion that the Appellant also visited the lodge along with the deceased, and he caused the murder of the deceased.

53. As per the Prosecution's case, MO.3-four inches knife with blood stains and MO.10-cock fight, which were said to be used by the accused in the commission of the offence, According to the evidence of PW.10, he seized the M.O.9-one pair of chappals of the deceased and M.O.10-cock-fight knife at the scene of the offence. It is the evidence of PW.8 that the accused produced the M.O.1-shirt, M.O.2-cotton jeans pants and M.O.3-four inches knife with blood stains and the same were seized under Ex.P7-mahazarnama in pursuance of the confession made by the accused. According to the evidence of PW.8, in furtherance of the confession of the accused, they were led by the accused to a water tank of Thattivaripalle, where the clothes of the accused and the knife used for the murdering of the deceased are concealed. The accused himself produced the M.O.1-shirt, M.O.2-cotton jeans pants and M.O.3-four inches knife with blood stains. It is the evidence of PW.8 in the cross-examination that he has no idea about the exact distance between the place of apprehension of the accused and the place of seizure of the material objects. He also stated that to reach the place of seizure, the police vehicle has to pass through the traffic in the colony, and about 30 to 40 minutes might have taken to pass through the traffic. His evidence shows that he was suspended because he gave false evidence in



another case. According to the evidence of PW.8, the place where the accused was arrested is a busy road, and it is a residential locality. About 30 people were available around that place. After taking the accused into custody, the confession was recorded, and the confession was drafted by the police persons. It is elicited in the cross-examination of the PW.10-investigation officer that the witnesses whom he examined stated before him that the deceased and accused had taken coffee but not tea. PW.10 also stated that he did not collect the fingerprints of the liquor bottles and the glasses which were seized by him from the scene of the offence. It is suggested to PW.10 in the cross-examination that the accused was not apprehended at the place he stated, but he was arrested at his house on the date of the incident itself.

- 54.** To the aforesaid rule of Sections 25 and 26 of the Evidence Act, there is an exception carved out by Section 27. Section 27 is a proviso to Sections 25 and 26 of the Evidence Act. Such statements are generally termed disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 of the Evidence Act provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of the information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. It cannot be disputed that by giving such information, the accused furnishes evidence and therefore is a "witness" during the investigation.



55. In **State of Rajasthan v. Bhup Singh**¹¹ the Hon'ble Apex Court observed the following:

The conditions prescribed in Section 27 of the Evidence Act, 1872 for unwrapping the cover of the ban against the admissibility of the statement of the accused to the police (1) a fact should have been discovered in consequence of the information received from the accused; (2) he should have been accused of an offence; (3) he should have been in the custody of a police officer when he supplied the information; (4) the fact so discovered should have been deposed to by the witness. The Court observed that if these conditions are satisfied, that part of the information given by the accused, which led to such recovery, gets denuded of the wrapper of prohibition, and it becomes admissible in evidence.

56. In **Bodhraj v. State of J&K**¹² the Hon'ble Apex Court held that:

"The words 'so much of such information' as relates distinctly to the fact thereby discovered are very important, and the whole force of the section concentrates on them. Clearly, the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

57. A mere glance at the above precedents clearly indicates that for a confession to be admissible under Section 27, the information supplied should lead to the discovery of a fact, leading to the production or recovery of a tangible object, not in the knowledge of the police and only so much of the information that distinctly relates to the fact discovered is admissible and shall be proved. When in consequence of information furnished by the accused, a fact is discovered, then the discovery of that fact supplies a guarantee of the truth of the information, which may amount to a confession. The confession, in so far as it is confirmed by the discovery, should be deemed to be true. And the Prosecution is

¹¹ (1997) 10 SCC 675: 1997 S.C.C. (Cri) 1032

¹² (2002) 8 S.C.C. 45



required to bring in evidence aliunde, connecting the fact discovered with the offence.

58. PW.10 denied the defence suggestion that the accused was in the custody of the police till he was produced before the Magistrate Court. In this regard, PW.1 stated in his cross-examination that the police did not accord permission for them to see the accused during the first three days in the police station. The said evidence of PW.1 in the cross-examination probabilities that the accused was kept in the police station for three days, which gives strength to put suggestions to PW.1 in the cross-examination that the accused was brought to the police station immediately after the incident. If the said evidence of PW.1 is taken into consideration, it is somewhat difficult to believe the Prosecution version that on credible information on 23.02.2013, PW.10 secured the presence of mediators and visited the Municipal Arch, Bangalore road, Madanapalle town and found the presence of the accused, and the accused made confession statement.

59. The sheet anchor of the Prosecution's case is that the accused produced a receipt for Rs.500/-, which was given by the Srinivasa Lodge Manager at the time of booking the room. Close scrutiny of the evidence of PW.10-Investigating Officer shows that he did not identify the said receipt alleged to be seized from the accused in the presence of mediators on 23.02.2013 at 05.30 p.m. According to the Prosecution's case, PW.8 was also said to be present at the time of the alleged seizure of receipt. What needs to be emphasized is that PW.8 has not deposed anything about the seizure of the lodge receipt. He deposed only about



the seizure of the clothes of the accused and M.O.3-knife. It is noteworthy at this juncture that PW.8 and PW.10 have not identified the alleged lodge receipt said to be seized from the possession of the accused under Ex.P7-seizure mahazarnama. On the other hand, the evidence of PW.4 shows that he identified the Ex.P2-lodge receipt. It is not the case of the Prosecution that PW.4 was present at the time of the seizure of Ex.P2-receipt. It would be clear from the foregoing discussion no evidence is placed before the Court to show that Ex.P2-receipt was seized from the possession of the accused as alleged. If really the Ex.P2-receipt was seized as contended by the Prosecution, PWs.8 and 10 would not have hesitated to identify Ex.P2-receipt before the Court. When such evidence is lacking, be that as it may, it is difficult to believe the Prosecution's case that Ex.P2-receipt was said to be seized from the possession of the accused as contended by the Prosecution.

60. In **Sangili @ Sanganathan Vs. State of Tamil Nadu**¹³, the Hon'ble Supreme Court referred to a decision reported in **Mani Vs. State of Tamil Nadu**¹⁴, and made the following observation:

"the discovery is a weak kind of evidence and cannot be wholly relied upon, and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case".

61. The Hon'ble Supreme Court referred to a decision reported in **Mustkean @ Sirajuddin Vs. State of Rajasthan**¹⁵, it is observed that:

"With regard to section 27 of the Act, what is important is the discovery of material object at the disclosure of the accused but such disclosure alone would not automatically lead to the

¹³ 2014 A.I.A.R. (Crl.) 874

¹⁴ (2009) 17 SCC 273

¹⁵ (2011) 11 SCC 724



conclusion that the offence was also committed by the accused. In fact, therefore burden lies on the Prosecution to establish a close link between the discovery of the material object and its use in the commission of offence.”

62. In **Wakkar and another Vs. State of U.P.**¹⁶, wherein the Hon’ble Apex Court observed that :

It is true that recovery of certain articles at the instance of the accused u/s.27 of the Evidence Act, by itself, cannot form the basis of conviction. The recovery of incriminating articles and their evidentiary value has to be considered in the light of other circumstances as well as the chain of events suggesting the involvement of the accused.

63. In **Munavath Redia Vs. The state of A.P.**¹⁷, this Court held that:

Even if the testimony of the Investigation Officer is believed with regard to recovery of weapon of offence in pursuance of the disclosure statement made by the Appellant and the reason being the recovery of evidence is only subsidiary evidence, and a conviction cannot be rested solely on such evidence in the absence of any other incriminating evidence indicating the involvement of the accused in the commission of the offence.

64. The learned defence counsel to buttress his argument, relied on a decision in **Prabhoo Vs. State of Uttar Pradesh**¹⁸, the Hon’ble Apex Court observed that

“it is well settled that circumstantial evidence must be such as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused person and not with his innocence. The motive alleged in this case would operate not only on the Appellant but on his father as well. From the mere production of the blood stained articles by the Appellant one cannot come to the conclusion that the Appellant committed the murder”.

65. The learned defence counsel contends that in Ex.P6-confession and arrest mahazarnama, it is worth noting that the accused said to have confessed that bleeding injuries were caused to his right little finger and

¹⁶ 2011 Law Suit (SC) 136

¹⁷ 2009(2) ALT(Crl.) 64 (A.P.)

¹⁸ 1962 Law Suit (SC) 179



ring finger with the hen knife at the time of the commission of the offence. It seems that the said confessional statement was made in the presence of police and mediators. It is not admissible in evidence. There is nothing to show that the investigating Officer has taken steps to establish that the accused sustained injuries in the incident in question, as referred to in Ex.P6. It is needless to point out that based on the blood stains being found on the wearing apparels of the deceased, the prosecution intends to connect the accused with the offence. The Investigation authorities have not sent the sample blood of accused for blood test nor any DNA test was conducted to prove that the blood found on the clothes of the accused was that of accused.

- 66.** The evidence adduced regarding the recovery of MOs.1 to 3 is not very satisfactory, and the trial court went wrong in admitting statements alleged to have been made by the Appellant in connection with the recovery. The evidence of PW.8 shows that even he has no idea about the exact distance between the place of apprehension of the accused and the place of seizure of the material objects and he was suspended once as he gave false evidence in another case. The evidence of PW.8 shows that the place where the accused was arrested is a busy road and it is a residential locality, and about 30 people were available around the place. The Trial Court failed to take into consideration that the Investigating Officer exhibited no substantial effort to secure the presence of local witnesses. On the other hand, the evidence of PW.1 creates doubt about the alleged arrest and seizure of the case property



as he stated that police did not accord permission to them to see the accused during the first three days in the police station. The chain of circumstantial evidence is not complete, and the Prosecution has left missing links. The Prosecution failed to inspire confidence in the manner and/or the contents of recovery with regard to its nexus to the alleged offence. Ex.P2 - Lodge Receipt is not identified by the Investigating Officer/PW.10 or the mediator/PW.8 in whose presence it is said to be seized under cover of Ex.P7 Seizure Mahazarnama. Thus a vital piece of evidence is missing. There is no other evidence on record that even remotely points towards the iniquity of the Appellant. As noticed above, in the light of the settled legal position, the recovery is a weak piece of evidence and cannot be wholly relied upon in the absence of other corroborative evidence; as such, the evidence of recovery of M.Os.1 to 3 and Ex.P2 under cover of Ex.P7-seizure mahazarnama stands rejected. As observed above, the prosecution failed to establish and prove the motive and no evidence to show that the appellant and deceased being seen together in the lodge prior to the death of the deceased. There are no incriminating circumstances available on record to convict the Appellant for the offence in question.

67. Having regard to the aforesaid discussion, we feel that the circumstances relied upon by the Prosecution are not legally proven and sufficient to connect the accused with the crime. The evidence adduced by the Prosecution does not give rise to any inference that it was the accused person who, in all human probability, committed the



crime against the deceased. The facts, which form the basis of the legal inference, must be proved beyond reasonable doubt by the Prosecution. But the Prosecution failed to discharge the said burden. In light of the aforesaid discussion, we are of the considered opinion that evidence on record does not establish the guilt of the accused beyond a reasonable doubt. The Trial Court has arrived at recording the guilt of the Appellant in the absence of any cogent, rational material justifying his conviction for the offence punishable under section 302 of I.P.C. As such, the conviction and sentence rendered by the trial Court against the Appellant are considered as not based on proper factual aspects and sound principles of law and hence, liable to be set aside.

- 68.** As a result, Criminal appeal is allowed. The conviction and sentence imposed against the appellant for the offence Under Section 302 of I.P.C. in Sessions Case No.306 of 2013 on the file of learned II Additional District & Sessions Judge, Madanapalle, by Judgment dated 11.12.2014 are hereby set aside and is acquitted, and he shall be set at liberty *forthwith* if not required in any other case.
- 69.** Consequently, miscellaneous applications, if any, shall also stand closed.

M.GANGA R.A.O., J

T.MALLIKARJUNA RAO, J



HON'BLE SHRI JUSTICE M.GANGA RAO
&
HON'BLE SHRI JUSTICE T.MALLIKARJUNA RAO

CRIMINAL APPEAL No.625 of 2015

Dated .2023