

**HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

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**CRIMINAL APPEAL NO.277 OF 2017**

Between:

Sayaboina Venkatanarayana, Guntur Dst. &  
another

... Appellant(s)

*Versus*

The State of AP Rep. by PP

...Respondent

\* \* \* \* \*

DATE OF JUDGMENT PRONOUNCED : 14.10.2024

**SUBMITTED FOR APPROVAL:**

**HONOURABLE SRI JUSTICE K. SURESH REDDY**

**HONOURABLE SRI JUSTICE K. SREENIVASA REDDY**

1. Whether Reporters of Local Newspapers  
may be allowed to see the Order? Yes/No
2. Whether the copy of Order may be  
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the  
fair copy of the Order? Yes/No

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JUSTICE K.SURESH REDDY**

**\_\_\_\_\_  
JUSTICE K.SREENIVASA REDDY**

**\* HONOURABLE SRI JUSTICE K.SURESH REDDY**

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**! Counsel for the Appellant(s) : Sri Raja Reddy Koneti**

**^ Counsel for the Respondent/  
State : Public Prosecutor**

**< Gist:**

**> Head Note:**

**? Cases referred:**

1. **(2023) 10 SCR 1033.**
2. **(2016) 4 SCC 96 : (2016) 3 SCC (Cri) 211.**

This Court made the following:

APHC010185982017



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI  
(Special Original Jurisdiction)**

**[3486]**

MONDAY, THE FOURTEENTH DAY OF OCTOBER  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE SRI JUSTICE K SURESH REDDY**

**THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY**

**CRIMINAL APPEAL NO: 277/2017**

**Between:**

Sayaboina Venkatanaryana, Guntur Dst. & Anr., ...**APPELLANT(S)**

**AND**

The State of AP Rep PP

...**RESPONDENT**

**Counsel for the Appellant(S):**

1. RAJA REDDY KONETI

**Counsel for the Respondent:**

1. PUBLIC PROSECUTOR (AP)

**The Court made the following:**

**J U D G M E N T:** *(Per Hon'ble Sri Justice K.Sreenivasa Reddy)*

Accused Nos.1 and 2 in Sessions Case No.24 of 2016 on the file of the XIII Additional District and Sessions Judge, Guntur at Narasaraopet, (hereinafter referred to, as 'the learned Additional Sessions Judge') are the appellants in the present Criminal Appeal. Accused Nos.1 and 2 were tried by the learned Additional Sessions Judge for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code, 1860 (for brevity 'IPC').

2. *Vide* Judgment, dated 19.12.2016, the learned Additional Sessions Judge convicted the accused Nos.1 and 2 and sentenced to undergo imprisonment for life each and to pay a fine of Rs.500/- (Rupees five hundred only) each, in default of payment of fine, to undergo simple imprisonment for a period of one (01) month each for the offence punishable under Section 302 read with 34 IPC. Further, accused Nos.1 and 2 were sentenced to undergo rigorous imprisonment for a period of two (02) years each and to pay a fine of Rs.100/- (Rupees one hundred only) each, in default of payment of fine, to undergo simple imprisonment for a period of fifteen (15) days each for the offence punishable under Section 201 read with

34 IPC. Both the substantial sentences were directed to run concurrently.

3. The substance of the charges as against the accused Nos.1 and 2 is that on 31.08.2014 at about 8.00 p.m., in the fields of Yarla Seethamma of Sangineedupalem village, while accused No.2 caught hold the legs of one Gorre Ramanjaneyulu (hereinafter referred to, as 'the deceased'), accused No.1 caused the death of the deceased by squeezing the neck of the deceased. In the course of the same transaction, the accused threw the dead body of the deceased into NSP Canal to screen the evidence.

4. Case of the prosecution, briefly, is as follows:

(i) The accused and the deceased are residents of Sangineedupalem village of Bollapalli Mandal. P.W.1 is the father, and P.W.2 is the brother, of the deceased. The deceased discontinued his studies after X class and used to attend agricultural works; the deceased used to drink alcohol.

(ii) On 31.08.2014 at about 6.00 p.m., the deceased informed P.W.1 that one Amarason Balu called him on phone and suggested to raise chilly seed links (మిఠప నారు); thereafter, he went

into the washroom to take bath; even, while the deceased was taking bath, his mobile rang and the deceased attended the same and said 'వస్తున్నా అన్న' ('coming brother'); the deceased was wearing black pant, red colour banian; he did not come back for the dinner; P.W.1 waited for the arrival of the deceased till 11.00 p.m., thereafter, they slept in their house; on the next day morning, P.W.1 went to the fields, as usual, to attend the works; they were there in the fields till 12.00 noon; around 12.00 noon, P.W.1 returned home for lunch and after having lunch at home, P.W.1 took food for others, who were working in the field; in the field, P.W.1 told the workers that the deceased did not come back; thereafter, P.W.1 returned home and enquired his relatives over phone with regard to whereabouts of the deceased but, no one gave information about the deceased.

(iii) About 7.00 or 8.00 p.m., P.W.1 proceeded to the house of accused No.1 to know the whereabouts of the deceased; by the time P.W.1 reached the house of accused No.1, the family members of accused No.1 were taking him to the hospital, as he consumed pesticide; P.W.1 returned home; on the next day morning, he proceeded to the Vellaturu Hospital, where accused

No.1 was taking treatment; P.W.1 enquired accused No.1 about the deceased, for which, accused No.1 and his father uttered as “మీ వాడికి మేము ఏమైనా కావలి ఉన్నామా?” (‘Are we security guards to your son?’).

(iv) On his way back to home, P.W.1 searched for the deceased in two wells, on suspicion, but, in vain. Then, P.Ws.1 and 2 proceeded to the NSP canal, on bike, in search of the deceased; at Siddinapalem, they found an old man washing clothes in the canal; on enquiry, he informed P.Ws.1 and 2 that a dead body was flowing in the canal; then, P.Ws.1 and 2 proceeded further on the right canal bund up to Chandavaram, where they found the dead body on the left side of the canal; then, they proceeded further, crossed the bridge and entered into left side canal bund and travelled back up to the dead body; P.Ws.1 and 2 got down into the water and found the dead body is that of the deceased, consequently, they brought the dead body of the deceased to the extreme edge to prevent further flow; thereafter, they called the relatives over phone and informed about the death of the deceased; with the help of other relatives, L.W.3/Gorre China Anjaneyulu and

L.W.4/Gorre Peda Guravaiah, the dead body was brought to the bund.

(v) On 03.09.2014 around 11.00 p.m., P.W.9, Assistant Sub-Inspector of Police, Donakonda Police Station, received report from P.W.1, basing on which, P.W.9 registered a case in Crime No.92 of 2014 under Section 174 of the Code of Criminal Procedure, 1973 (for brevity 'CrPC') and issued Ex.P10-FIR to all the concerned.

(vi) On 04.09.2014, P.W.9 held inquest over the dead body of the deceased and in the presence of inquestdars *vide* Ex.P2. During the course of investigation, P.W.9 examined P.Ws.1, 2 and others and recorded their statements.

(vii) On 04.09.2014, P.W.6, Medical Officer, Community Health Centre, Darsi, on requisition, conducted autopsy over the dead body of the deceased and issued Ex.P3-Post-Mortem Certificate. According to the Doctor, the cause of death is due to shock and haemorrhage on account of multiple injuries to head and thorax caused by blunt object under Ex.P6.

(viii) On 05.09.2014, P.W.11, Sub-Inspector of Police, Donakonda Police Station took up investigation and visited the scene of offence situated on the bund of the NSP canal in between Padamata Lakshmipuram and Chandavaram villages. P.W.11 examined P.Ws.1, 2 and others, but no statements were recorded by him. On 06.09.2014, on receipt of preliminary Post-Mortem certificate, P.W.11 sent a questionnaire to P.W.6 to know whether the injuries noted by him in Ex.P3 were of ante-mortem or post-mortem in nature and whether those injuries are sufficient to cause death. Basing on the reply given by the Doctor, P.W.11 altered the section of law from Section 174 CrPC to Section 302 IPC and issued altered memo under Ex.P11. P.W.11 addressed a letter to the Tahsildar, Donakonda to transfer Ex.P10-FIR in Crime No.92 of 2014 and Ex.P2-Inquest Report to the Judicial Magistrate of First Class, Darsi.

(ix) P.W.13, Inspector of Police, Darsi, Prakasam District took up investigation on 10.09.2014 from P.W.11, verified the investigation made by P.Ws.9 and 11 in the aforesaid crime and found it on correct lines. P.W.9 prepared Ex.P13-rough sketch of scene of offence, Ex.P14-positive photographs of the deceased. Thereafter, P.W.13 visited the scene of offence along with P.W.11.

On 11.09.2014, P.W.13 visited Sangineedupalem village of Bollapalli Mandal and examined P.Ws.1 to 3 and others and recorded their statements. On the next day, P.W.13 put up a note to the Superintendent of Police, Prakasam to transfer the case file *i.e.* Crime No.92 of 2014 to Bollapalli Police Station, Guntur District.

(x) On 11.10.2014, P.W.14, Inspector of Police, Vinukonda Rural Circle, on receipt of case diary file in Crime No.92 of 2014, in turn, sent the said record to the Station House Officer, Bandlamotu Police Station, reregistered the same as a case in Crime No.79 of 2014 for the offence punishable under Section 302 read with 34 IPC against the accused and issued Ex.P10-FIR to all the concerned. Thereafter, P.W.14 took up investigation, proceeded to the NSP Canal, secured the presence of P.Ws.4 and 10 and recorded their statements. On 24.10.2014, P.W.14 forwarded the material objects to the Regional Forensic Science Laboratory, Guntur through SDPO, Narasaraopet, for analysis.

(xi) On 11.11.2014 around 9.00 a.m., P.W.8 produced both the accused before P.W.14 along with Report *vide* Ex.P9. Thereafter, P.W.14 interrogated and recorded the confessional statements of the accused *vide* Ex.P7. Thereafter, the accused led

P.W.14 and others to the NSP canal right side bund situated on northern side to Sanginetipalem village and showed the place where they killed the deceased and threw into the canal. Thereafter, both the accused were remanded to judicial custody. The successor of P.W.14 filed the charge sheet.

5. In support of its case, prosecution examined P.Ws.1 to 15 and got marked Exs.P1 to P16 on behalf of the prosecution. On behalf of the defence, Exs.D1 to D5 were marked.

6. The plea of accused Nos.1 and 2 is one of denial.

7. Sri Raja Reddy Koneti, learned counsel appearing on behalf of the appellants/accused Nos.1 and 2 submitted that the entire case rests on the circumstantial evidence and there are no eyewitnesses to the occurrence. According to him, P.Ws.3, 4 and 10 are the witnesses, who are alleged to have seen the deceased in the company of the accused and they were examined at a belated stage *i.e.* eleven (11) days after the incident. Learned counsel further submitted that much credence cannot be given to the evidence of those witnesses, for the reason that, on coming to know about the aforesaid incident, they did not come out with the said version, immediately. Learned counsel further submitted that

the learned Additional Sessions Judge relied upon the extra-judicial confession made by the accused Nos.1 and 2 to P.W.8, Village Revenue Officer of Vellaturu village. According to him, the Village Revenue Officer is completely a stranger to the accused Nos.1 and 2, therefore, question of accused Nos.1 and 2 going to other village and making an extra-judicial confession before the Village Revenue Officer of Vellaturu village, cannot be accepted, that too, after lapse of two and half (2½) months.

8. On the other hand, Sri Kochiri Anand Kumar, learned Assistant Public Prosecutor for State, contended that the version spoken by P.Ws.3 and 4 is consistent with regard to the fact that the deceased was last seen in the company of the accused. Apart from it, P.W.10 saw the accused on the date of the incident at about 10.00 p.m., at the scene of offence. Their evidence is in corroboration with the extra-judicial confession made by the accused Nos.1 and 2 to P.W.8, Village Revenue Officer. On a close scrutiny of the aforesaid evidence goes to show that it is the accused and accused alone that had caused the death of the deceased, for the reason that, the deceased was moving closely with the wife and sister-in-law of accused No.1. According to him,

learned Additional Sessions Judge has passed a reasoned Judgment and it calls for no interference of this Court.

9. Now the point for determination:

Whether the prosecution is able to bring home the guilt of the appellants/accused Nos.1 and 2 for the offences punishable under Sections 302 and 201 read with 34 IPC, beyond all reasonable doubt and whether the conviction and sentence recorded by the learned Additional Sessions Judge are liable to be set aside or modified?

10. The entire case rests on circumstantial evidence. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence.

11. In a decision reported in **Pritinder Singh @ Lovely v. The State of Punjab**<sup>1</sup>, the Hon'ble Supreme Court held thus.

“Undisputedly, the present case is a case which rests on circumstantial evidence. The law with regard to

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<sup>1</sup> (2023) 10 SCR 1033

conviction in the case of circumstantial evidence is very well crystallised in the case of **Sharad Birdhichand Sarda v. State of Maharashtra**, ((1984) 4 SCC 116).

We may gainfully refer to the following observations of this Court in the case of Sharad Birdhichand Sarda (supra):

“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.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrI LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(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 be proved, 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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

12. In the light of these guiding principles, the present appeal has to be considered.

13. This Court perused the record.

14. In order to connect the links to form a chain, it has to be examined whether the accused have motive to cause the death of the deceased?

**MOTIVE:**

15. P.W.1, who is the father of the deceased, deposed that the deceased had studied X class and was attending to agricultural works; the deceased was habituated to drinking alcohol; on the date

of the incident *i.e.* on 31.08.2014 around 6.00 p.m., when the deceased was taking bath, his mobile rang and the deceased attended the same and said 'వస్తున్నా అన్న' ('coming brother'); after taking bath, the deceased wore the same dress, black pant, red colour banian and left the house; the deceased did not turn back for the dinner; P.Ws.1 and 2 waited for his arrival till 11.00 p.m; thereafter, they slept in their house; on the next day morning, as usual, P.W.1 went to the fields and attended to his works; around 12.00 noon, P.W.1 returned home for lunch and after having lunch, P.W.1 took lunch for others, who are working in the field; in the field, he told the workers that the deceased did not come back; thereafter, P.W.1 returned home and enquired with the relatives over phone with regard to whereabouts of the deceased; no one gave information about the deceased; at about 7.00 or 8.00 p.m., P.W.1 proceeded to the house of accused No.1 and enquired the whereabouts of the deceased; accused No.1 was admitted into the hospital on the ground that he consumed pesticide; on enquiry with accused No.1 in the hospital, accused No.1 and his father uttered as 'మీ వాడికి మేము ఏమైనా కావలి ఉన్నామా?' ('Are we security guards to your son?'); on his way to home, P.W.1 searched for the deceased

in two wells, on suspicion, but, in vain; then, P.Ws.1 and 2 proceeded to the NSP Canal, in search of the deceased; at Siddinapalem, they found an old man washing clothes in the canal; on enquiry, he stated that one dead body was flowing in the canal; then, P.Ws.1 and 2 proceeded further on the right canal bund up to Chandavaram and found a dead body on the left side of the canal bund and travelled back up to the dead body; thereafter, P.Ws.1 and 2 went down into the water and found the dead body is that of the deceased; later, they called their relatives over phone and informed about the death of the deceased. Thereafter, P.W.1 lodged a report to the police.

16. P.W.2 is the brother of the deceased. He reiterated the version of P.W.1. His evidence is a parrot like version given by P.W.1. There is absolutely no change in his evidence from that of P.W.1, which is of no relevance to the case of prosecution.

17. A perusal of Ex.P10-FIR, registered, basing on Ex.P1-report given by P.W.1, at the earliest point of time *i.e.* on 03.09.2014 at 11.00 p.m., goes to show that on the date of the incident when the deceased was taking bath, he received a phone call. Thereafter, he left the house. There is no mention with regard to the fact that the

deceased uttering a word like 'వస్తున్నా అన్న' ('coming brother').

Except stating that the deceased left the house on receiving phone call at about 8.00 p.m., there is nothing further mentioned in Ex.P10-FIR and there is nothing in the evidence of P.W.1, as soon as the mobile of the deceased rang, he attended the same and said 'వస్తున్నా అన్న' ('coming brother'). The said fact is that of an improvement from that of Ex.P1.

18. The motive that is attributed as against the accused Nos.1 and 2 to cause the death of the deceased is that, the deceased was alleged to have moving closely with women folk in the village. It is further alleged that the deceased was visiting the house of accused No.1 in his absence and he was moving very closely with the wife and sister-in-law of accused No.1. In connection with that, P.W.1 chastised the deceased.

19. A perusal of Ex.P10-FIR goes to show that none of the said facts has been mentioned at the earliest point of time. Subsequently, during the course of evidence, the said aspect of moving closely with women folk was brought into existence at a belated stage. Except the version given by P.Ws.1 and 2, there is

no corroborative evidence to show that the accused Nos.1 and 2 had grudge over the deceased in connection with the fact that the deceased was moving very closely with the women folk. The said aspect of motive appears to be quite artificial and the same was brought into existence by the prosecution after due deliberations and confabulations. A perusal of entire material on record, we are of the opinion that even the motive is not conclusive as per the prosecution case.

**LAST SEEN THEORY:**

20. In order to prove 'last seen theory', the prosecution examined P.Ws.3, 4 and 10. P.W.3 is the resident of Sangineedupalem village. According to him, the deceased used to move closely with women folk of their village. According to him, on 31.08.2014 at about 8.00 and 8.15 p.m., he found the deceased in the company of accused Nos.1 and 2 in NSP Canal bund near their field. At that time, P.W.3 was checking the water motor for watering the chilly seed links; on seeing the deceased, accused Nos.1 and 2, P.W.3 asked as to where they were going, for which, accused No.1 replied that they were going to celebrate party; accused No.1 further asked him whether P.W.3 was interested to join them in the party, for

which, he refused. P.W.3 further deposed that on the next day morning, he went to Porumetla village to his in-laws house, where, he remained for nine days. After P.W.3 returned to the village, he came to know that the deceased died. P.W.3 informed P.W.1 that he found the deceased in the company of the accused on the night of 31.08.2014 at NSP canal bund. Thereafter, the Inspector of Police, Bollapalli examined P.W.3 on 11.09.2014.

21. A perusal of the evidence of P.W.3 goes to show that the said witness was examined by police after a lapse of eleven (11) days from the date of the incident, which itself shows the said witness is not trustworthy. Another aspect that has to be seen is that the presence of the witness during the relevant point of time appears to be improbable, for the reason that, in the night of 31.08.2014, P.W.3 is alleged to have present in his fields, watering the chilly seed links (మిరప నారు) at about 8.00 and 8.15 p.m.

22. Case of the prosecution is that accused Nos.1 and 2 intended to eliminate the deceased as he was moving closely with the women folk. In such an event, the accused asking P.W.3 whether he was interested to join them in the party and to which, he refused, appears to be most unnatural. Even if, P.W.3 went to Porumetla

village to his in-laws house, death of the deceased would have been known to him after his return, but he did not come forward to state that the deceased was last seen in the company of the accused, at the earliest point of time. In the opinion of this Court, the evidence of P.W.3 appears to be unnatural and much credence cannot be given to such evidence. Apart from the same, there are number of improvements in his evidence than that of his statement made before police.

23. P.W.4 too examined as a witness, who last seen the deceased in the company of the accused. Even according to him, on 31.08.2014 he saw the deceased in the company of the accused at around 7.30 p.m. and on the next day morning he left for Guntur. Thereafter, he returned to the village from Guntur on the night of 09.09.2014. According to him, on return to the village, he came to know that the deceased died. Thereafter, even the said witness was examined by the police on 11.09.2014.

24. In the cross-examination, P.W.4 has categorically stated that though he returned to his village on 03.09.2014, he does not know about the death of the deceased till 11.09.2014. P.W.4 appears to be a planted witness, for the reason that, he was examined at a

belated stage, and hence, much credence cannot be given to the evidence of the said witness.

25. The other circumstantial witness, on whose evidence the learned Additional Sessions Judge relied upon, is that of P.W.10. According to P.W.10, about 1½ year back, around 10.00 p.m., on his way to Nayudupalem from Bollapalli, he found both the accused near a bridge constructed on NSP Canal. He questioned the accused as to why they were there and they told that they were returning after the party. Four days thereafter, P.W.10 came to know that the deceased was killed and the dead body was thrown into NSP Canal. One week thereafter, P.W.10 visited Sangineedupalem village and informed, about his finding the accused near NSP Canal bridge, to the village elders. Thereafter, police examined him in the police station.

26. A perusal of the evidence of P.W.10, even the said witness appears to be a planted witness, for the reason that, the said witness was examined by police, eleven (11) days after the incident. There are number of improvements in the evidence of P.W.10 with that of his statement made to the police. Basing on the

same, the theory put forth by the prosecution that both the accused and the deceased were last seen going together is unbelievable.

27. In ordinary course of nature, the Investigating Officer is expected to kick start his investigation immediately after registration of a cognizance offence. An inordinate and unexplained delay of examining the witnesses may be fatal to the prosecution's case but only to be considered by the Court, on the facts of each case. It is essential that when the incident is being witnessed by the person, has to be examined as early as possible. There may be adequate circumstances for not examining a witness at an appropriate time. However, non-examination of the said witness at an early stage casts any amount of doubt in the mind of the Court, which has to be cleared.

28. In **Shahid Khan v. State of Rajasthan**<sup>2</sup> the Hon'ble Apex Court at paragraph No.20, held as under:

*"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt*

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<sup>2</sup> (2016) 4 SCC 96 : (2016) 3 SCC (Cri) 211.

*about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappreciate the evidence thereby resulting to miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt.”*

29. In the present case on hand, the alleged witnesses were said to have seen the deceased in the company of the accused, had not come forward with the said version. The evidence of P.Ws.3, 4 and 10 are extremely doubtful on their evidence rendered by them. These witnesses have given their statements under Section 161 CrPC only after lapse of eleven (11) days stating that they are away from the place. Surprisingly, how the three (03) witnesses are alleged to have gone out of the place and returned only after nine (09) days of the incident and thereafter, delay of two (02) days they are alleged to have examined by the investigating agency.

Therefore, we are of the firm opinion that the statements provided by these witnesses rise suspicion and likely to mislead or, at any rate, not firm enough to support a seriously contested conclusion.

30. Learned Additional Sessions Judge relied upon the evidence of P.Ws.3, 4 and 10, as they are the witnesses, who have last seen the deceased in the company of the accused. The learned Additional Sessions Judge has also relied upon yet other circumstance, where the accused Nos.1 and 2 are alleged to have made extra-judicial confession before P.W.8, Village Revenue Officer. Except the said circumstances, there is no other material to connect the accused Nos.1 and 2 to the crime.

**EXTRA-JUDICIAL CONFESSION:**

31. The other circumstantial evidence relied upon by the learned Additional Sessions Judge is with regard to the extra-judicial confession that has been made by the accused to P.W.8.

32. P.W.8 is the Village Revenue Officer of Vellaturu village of Bollapalli Mandal. According to him, on 11.11.2014 in between 8.00 and 9.00 a.m., while he was at his office, both the accused came there and informed that Bandlamottu Police were searching for

them in connection with the murder of the deceased and that, they further informed that they killed the deceased and threw his dead body into NSP Canal and requested him to take them to the police station and surrender them. P.W.8 recorded the confessional statement of both the accused. Thereafter, P.W.8 took both the accused to Bandlamottu police station and surrendered them to the police along with report under Ex.P9.

33. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.

34. In the present case on hand, the witness is Village Revenue Officer belonging to Vellaturu village; whereas, the accused Nos.1 and 2 are ordinarily residents of Sangineedupalem village. The question of accused making of extra-judicial confession to P.W.8, who is the Village Revenue Officer of a different village, after a lapse of 2½ months, appears to be highly improbable.

35. In the cross-examination of P.W.8, he categorically states that he has no prior acquaintance with the accused. Apart from the same, he further deposed that he did not obtain any identity proofs from the accused before taking them to the police station. The accused, who are strangers to P.W.8, who is Village Revenue Officer of Vellaturu village, would not have gone to him and made a confession after a lapse of 2½ months. In the absence of any other evidence to point the finger to the accused, the said extra-judicial confession cannot be acted upon.

36. Apart from the same, the said extra-judicial confession by itself is not trustworthy, as time and again this Court and the Hon'ble Apex Court has reiterated that the extra-judicial confession made by the accused is a weak piece of evidence. Therefore, the extra-judicial confession that is made by accused Nos.1 and 2 to P.W.8, Village Revenue Officer, of a different village, appears to be improbable.

37. On a conspectus of entire evidence on record goes to show that in a case of circumstantial evidence of this nature, the evidence of P.Ws.3 and 4, who have last seen the deceased in the company of the accused, cannot be believed. The said witnesses appear to

be planted in order to suit the case of the prosecution. Apart from it, the evidence of P.W.10, who deposed that he has seen the accused at NSP Canal bridge at about 10.00 p.m. on the date of the incident, would, by itself, cannot point the finger at the accused.

38. It is pertinent to mention here that P.W.10 did not witness the deceased in the company of the accused. He only deposed that the accused were seen at the NSP canal and on enquiry, the accused were alleged to have stated that they had a party. Except the same, there is no other evidence to connect the accused Nos.1 and 2 to the aforesaid crime. Since the evidence of P.Ws.3, 4 and 10 cannot be believed and at the same time, this Court does not give much weight to the extra-judicial confession made by the accused Nos.1 and 2 to P.W.8, who is Village Revenue Officer of a different village, nothing remains on record to prove the guilt of the accused Nos.1 and 2.

39. Furthermore, as per the charges framed as against the accused Nos.1 and 2 goes to show that accused No.2 is alleged to have caught hold of the legs of the deceased and the accused No.1 is said to have squeezed the neck of the deceased. On the contrary, a perusal of the evidence of P.W.6, Medical Officer, goes

to show that the deceased is said to have died due to multiple injuries sustained by him, which, in ordinary course, would have been beaten with a blunt object. It is quite surprising as to how the prosecution framed the charge quite contrary to the medical evidence and such ground also goes against the case of prosecution.

40. In view of the aforesaid facts and circumstances of the case, we come to a conclusion that there is no trustworthy and reliable evidence on record to prove the charges, for the offences punishable under Sections 302 and 201 read with 34 IPC against the appellants herein/accused Nos.1 and 2. Accordingly, the point is answered.

41. In the result, the Criminal Appeal No.277 of 2017 is allowed. The conviction and sentence recorded by the learned XIII Additional Sessions Judge, Guntur at Narasaraopet *vide* Judgment dated 19.12.2016 in Sessions Case No.24 of 2016 against the appellants herein/accused Nos.1 and 2 for the offences punishable under Sections 302 and 201 read with 34 IPC are set-aside. The appellants herein/accused Nos.1 and 2 are found not guilty of the charges levelled against them and are acquitted of the said

charges. The fine amount, if any, paid by the appellants herein/accused Nos.1 and 2, shall be refunded.

42. The appellants herein/accused Nos.1 and 2 were enlarged on bail as per the Order of this Court dated 14.10.2022 *vide* I.A.No.1 of 2022, in view of the Judgment of the combined High Court in **Batchu Ranga Rao Vs. State of Andhra Pradesh**<sup>3</sup>. Hence, the appellants herein/accused Nos.1 and 2 are directed to appear before the Superintendent, Central Prison, Rajahmundry, East Godavari District, for completing necessary legal formalities.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

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**JUSTICE K. SURESH REDDY**

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**JUSTICE K. SREENIVASA REDDY**

14<sup>th</sup> October, 2024.

DNB

Note:

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<sup>3</sup> Crl.A.M.P.No.1687 of 2016 in Crl.A.No.607 of 2011, dated 02.11.2016.