

(2016) 06 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1225 of 2010.

**Duddebanda Hemanth Kumar @ Hemanth, S/o Upendra Rao, 25 years,
D.No. 5/7, Ram Mandir Street, Penukonda, Anantapur District -
Appellant @HASH The State of Andhra Pradesh, Rep. by its Public
Prosecutor, High Court of A.P., Hyderabad, through Inspector of Po**

Date of Decision : 01-06-2016

Acts Referred:

Citation : (2016) 2 AndhLDCriminal 728

Hon'ble Judges : Sri C.V. Nagarjuna Reddy and G. Shyam Prasad, JJ.

Bench : Division Bench

Advocate : Sri I. Venkata Prasad, Advocate, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

G. Shyam Prasad, J - This criminal appeal arises out of the impugned judgment dated 23-07-2010 on the file of the Court of Additional Sessions Judge, Hindupur, whereby the appellant has been convicted for the offences under Sections 302 and 201 of the Indian Penal Code (for short, "I.P.C.") and, has been sentenced to suffer imprisonment for life, for the offence under Section 302 I.P.C. and to suffer rigorous imprisonment for two years, for the offence under Section 201 I.P.C.

2. The investigation was conducted by Police, Penukonda of Anantapur District. On completion of investigation, the Inspector of Police, Penukonda Circle, Anantapur District, filed charge sheet against A1 to A6 in Crime No. 108 of 2008 for the offences punishable under Sections 302, 201, 120 (B) and 201 r/w 34 I.P.C. The allegations are that A1 to A6 are close associates, and they are residents of Duddebanda Village of Penukonda Town. A1, A2 and A6 are inter-related. P.W.1, the defacto complainant, is the mother of the deceased G. Madhusudhan Reddy.

3. It is stated that the deceased used to tease P.W.12-Boya Roopa by asking her to satisfy his lust. She is the concubine of A5. Due to that, ill-feelings have cropped up between A5 and the deceased and the accused bore grudge against

the deceased. A1 and A3 to A5 have chastised the deceased for his misbehaviour with P.W.12 and there was a verbal altercation in that regard between the accused and the deceased. Therefore, the elders of the locality intervened and subsided the matter but the deceased did not care the advice of the accused and he had continued to tease P.W.12.

4. While the things were being so, A1 to A5 gathered at Ayyappa Swamy Temple, Penukonda, one week prior to the incident, and hatched a plan to do away with the life of the deceased, as he was misbehaving with P.W.12. On 21-08-2008 at 10 p.m., as per their plan, A1 and A3 to A5 while proceeding towards Ramamandiram Street, Penukonda, A1 informed A2 to A5 to wait at Old S.B.I. building, he alone went to the deceased, and asked him to come to the function of his relatives where liquor would be offered. On that, the deceased went along with A1 to Swagat Hotel, Penukonda, where all the accused consumed liquor, and picked up quarrel with the deceased about teasing of P.W.12. Then, A1 caught hold of the shirt of the deceased, and beat him with a beer bottle. Meanwhile, P.W.19 intervened, separated them, and sent them away from the hotel. Then, the accused went to Srikrishnadevaraya Circle at about 10.15 p.m. where A3 purchased two nips of liquor, with intention to offer the same to the deceased, and handed over the liquor bottles to A1 in the presence of P.W.19. Then, P.W.19 chastised them and asked them to go to their houses.

5. Thereafter, A1 and the deceased proceeded towards southern side, and A3 to A5 proceeded towards northern side. A1 took the deceased to his dilapidated house situated in Ramamandiram Street, Penukonda, and on that night, A1 forced the deceased to consume liquor, and when the deceased became fully intoxicated, A1 picked up a sharp edged crowbar type rod and stabbed him on his throat and strangled him with a plastic wire, and killed on the instigation of A3 to A5. Later, A1 had concealed dead body of the deceased in a ditch, which was dug in the house for treasure trove, thereafter closed the pit with soil and concealed the crime weapon at the backside of his house, under the bush of jasmine flower plant, and they all have left from that place.

6. On the next day morning i.e. on 22-08-2008 at about 9.30 p.m., A1 met A3 to A5 and informed about the killing of the deceased. The other accused have informed A1 to leave Penukonda to take shelter somewhere as police may trace him. On the evening of 22-08-2008, A1 again came to the place of offence, and cleaned the bloodstained marks with phenol to avoid smell of the dead body of the deceased. Later, A1 met his brother A2 and informed him about murder of the deceased, and concealment of the dead body of the deceased, in the dilapidated house situated in Ramamandiram Street, and asked his help to shift the dead body.

7. On 23-08-2008 at about 8.30 p.m., A1 and A2 removed the dead body from the dilapidated house, situated in Ramamandiram Street, shifted the same in an auto of P.W.9 to Duddebanda Village where they took the help of A6 and threw the dead body of the deceased in the toilet pit of the house of Satyanarayana

and closed the said pit with a stone with an intention to screen the offence. They concealed his jerkin and shirt in an unused room of the old house and left that place.

8. As the deceased could not be traced for three days, P.W.1 lodged a report to P.W.20 for disappearance of her son, and she had suspected the hand of A1 in the commission of offence. P.W.20, having received the complaint from P.W.1, registered Crime No. 108 of 2008 as man missing case, showing A1 as the suspect and took up investigation. P.W.20 examined P.Ws.1 and 2 and L.W.3 and recorded their statements under Section 161 of the Code of Criminal Procedure (for short, "Cr.P.C.").

9. On the morning of 25-08-2008, P.W.1 and other villagers found the dead body of the deceased with severe injuries concealed in the toilet pit of the house of Satyanarayana, rushed to Police Station and gave a report to P.W.20 suspecting the commission of offence by A1, A2 and others. On that, P.W.20 registered a case by altering the Section of law from man missing to Sections 302 and 201 r/w 34 I.P.C. and sent express F.I.R. copies to all the concerned officers. P.W.22 took up investigation on 25-08-2008 and conducted inquest over the dead body of the deceased in the presence of inquest pancha witnesses.

10. The investigation discloses that A1 to A6 had killed the deceased, and concealed his dead body in a latrine pit. The investigation officer searched for A1 to A6, and found them absconding from the town. On 03-09- 2008 in the morning hours, A1 approached P.W.24, and confessed the commission of offences and requested to produce him before the police. P.W.24 recorded extra-judicial confession of A1, and produced him before P.W.23.

11. P.W.23 interrogated A1 in the presence of P.Ws.18 and 24, and A1 had confessed the commission of offence, and a mahazar was prepared. The accused were arrested at the instance of A-1 and in pursuance of the confessional statements, about the commission of offence, and causing disappearance of the evidence, A1 to A6 led P.W.23 to the dilapidated house. At the instance of A1, the crime weapon was seized by the investigating officer in the presence of the panchas P.Ws.18 and 24, under a cover of panchanama. P.W.24 examined the first scene of offence situated in the dilapidated house in Ramamandiram Street where A1 committed murder of the deceased and prepared rough sketch of the scene offence. In pursuance of the confession of A1, the investigating team proceeded to the house of Satyanarayana where A1 concealed his clothes and they were seized at his instance in the presence of P.Ws.18 and 24 under a cover of panchanama.

12. The auto bearing No. AP 12 T 3772 hired by the accused for shifting the dead body was seized by police under a cover of panchanama in the presence of the panch witnesses P.Ws.18 and 24. It is stated that all the material objects have been properly sealed and labeled, and forwarded to Regional Forensic Science Laboratory for examination and report.

13. P.W.21, Dr. Tyagaraj, conducted post mortem examination over the dead body of the deceased and issued post mortem report opining that the deceased had died of "asphyxia due to injuries sustained by him due to strangulation".

14. The version of the investigating agency is that A3 to A5 abetted A1 for commission of murder of the deceased, and, as such, they are liable for punishment under Sections 302, 109 and 120 (B) r/w 34 I.P.C. and that A1 with the help of A2 and A6 shifted the dead body of the deceased to screen the offence of murder and, hence, they are liable for punishment under Sections 201 and 109 r/w 34 I.P.C.

15. On receipt of charge sheet filed by the Inspector of Police, Penukonda Circle, and on receipt of material, the learned Additional Sessions Judge, Hindupur, framed charges against the accused and read over and explained to them and they have denied the charges and preferred to be tried.

16. The evidence of the witnesses and description of the exhibits are as follows:

The prosecution has examined P.W.1 G. Akkamma, P.W.2 E. Sreenivasulu, P.W.3 E. Praveen Kumar @ Praveen, P.W.4 S.R.P.B. Nataraj, P.W.5 D.Akar, P.W.6 Panchangam Siva Prasad, P.W.7 Kotla Pothireddy, P.W.8 Devangam Kotha Siva, P.W.9 S. Shaikshavali, P.W.10 Chilamathur Sridheer @ Goodu, P.W.11 Golla Aswarthamma, P.W.12 Boya Roopa, P.W.13 K. Tabrez, P.W.14 S. Shaik Jabiulla, P.W.15 M. Ramachandran, P.W.16 R. Laxminarayana Reddy, P.W.17 Balija Dathathreya, P.W.18 V. Nanjappa, P.W.19 Nagaloori Varikoti Jaya Prakash, P.W.20 S. Murali Krishna, P.W.21 Dr. Tyagaraju, P.W.22 G. Ramakrishnaiah, P.W.23 Kolar Krishna and P.W.24 Madanapalle Nazeer Ahmed.

The documents got marked are Ex.P1 First complaint given by P.W.1, Ex.P2 Second complaint given by P.W.1, Ex.P3 162 Cr.P.C. statement of P.W.2, Ex.P4 162 Cr.P.C. statement of P.W.5, Ex.P5 162 Cr.P.C. statement of P.W.6, Ex.P6 162 Cr.P.C. statement of P.W.7, Ex.P7 162 Cr.P.C. statement of P.W.8, Ex.P8 162 Cr.P.C. statement of P.W.10, Ex.P9 162 Cr.P.C. statement of P.W.11, Ex.P10 162 Cr.P.C. statement of P.W.12, Ex.P11 162 Cr.P.C. statement of P.W.13, Ex.P12 Certificate issued by P.W.15, Ex.P13 Certificate issued by V.R.O., Duddebanda, Ex.P14 Inquest report of the deceased, Ex.P15 Signature of P.W.18 on arrest mahazar, Ex.P16 F.I.R. for man missing, Ex.P17 Scene of offence observation mahazar, Ex.P18 Rough sketch of scene of offence, Ex.P19 Express F.I.R. under Sections 302 and 201 r/w 34 I.P.C., Ex.P20 Post mortem report, Ex.P21 Rough sketch of the first scene of offence, Ex.P22 Rough sketch of the second scene of offence, Ex.P23 Confessional statement of A1 including arrest, Ex.P24 Seizure mahazar for seizure of M.O.5 iron rod, Ex.P25 Seizure mahazar for seizure of clothes of A1, Ex.P26 Letter of advice, Ex.P27 R.F.S.L. report, Ex.P28 Extra-judicial confessional statement of A1 made before police and Ex.P29 Seizure mahazar for seizure of auto and also got marked M.Os.1 to 5.

17. On appreciation of oral and documentary evidence, the trial Court convicted and sentenced the appellant as noted hereinbefore.

18. We have heard Mr. Mynam Bhaskar appearing for Mr. I. Venkata Prasad, learned Counsel for the appellant and the learned Public Prosecutor for the State of Andhra Pradesh.

19. The learned counsel for the appellant submitted that (1) There is no evidence to prove the charges against A1 under Sections 302 and 201 I.P.C., (2) The conviction recorded by the trial Court is based on extrajudicial confession which is not proved beyond reasonable doubt and that the extrajudicial confession being a weak piece of evidence, the prosecution failed to prove the same. (3) The trial Court placed reliance on the "last seen together theory" though there is no sufficient material to prove that it is A-1 who had committed the offence by killing the deceased. (4) The entire case of the prosecution is based on circumstantial evidence and the prosecution has failed to prove that the house, from where material objects have been seized, belongs to A-1. (5) The motive for commission of the offence by A-1 has not been established by prosecution as there is no evidence against him in this regard, and (6) The trial Court has acquitted A2 to A6 giving benefit of doubt to them, and that the same benefit of doubt ought to have been extended to A1 also, as the version of the prosecution is that A-1 has committed the offence along with A2 to A6 and acquitted the appellant.

20. The Learned Public Prosecutor contended that the judgment of the trial Court does not suffer from any infirmity. That The prosecution has proved the guilt of A-1 beyond reasonable doubt, by establishing all the circumstances in the case. The last seen together theory, the motive for commission of offence, the extrajudicial confession, and the recovery of material objects belonging to the deceased and A-1 have been proved beyond reasonable doubt, and that the trial Court had considered all the circumstances and found A1 guilty.

21. We have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

Oral evidence:

22. P.W.1 is the mother of the deceased. She stated that on 19-08-2008 at about 10 p.m., A1 came to her house and took her son along with him but her son did not return thereafter. In spite of her search, she could not find her son and lodged complaint on 24-08-2008. She further stated that three days after her son left the house, his dead body was found at Duddebanda Village. She suspected that the accused was responsible for the death of her son. She further stated that there was no reason or cause for the accused to kill her son. On information from the villagers about the foul smell coming from the latrine, the dead body of her son was traced and she lodged Ex.P2, second complaint after noticing the dead body of her son. At the time of inquest, she identified the apparel of her deceased son. M.O.1 is the bloodstained mill made baniyan, M.O.2 is bloodstained polyester pant, M.O.3 is white polyester full shirt with coffee colour design on the neck of the shirt and M.O.4 is bloodstained mill made colour

drawer. In her cross-examination, nothing was elicited to discredit her evidence as she denied the suggestions made to her that due to enmity, she foisted false case against the accused and that A1 is not in any way connected with the commission of offence.

23. P.W.2 did not support the version of prosecution and denied his statement recorded under Section 161 Cr.P.C., Ex.P3, that he knows the deceased and accused very well and about their consuming alcohol and that he saw A-1 and the deceased going together leaving the latter's house. He denied the version of the prosecution that he saw A-1 and the deceased together on 21-08-2008.

24. P.W.3 is the brother of the accused, an employee of Infosys at Bangalore. He spoke about holding of inquest over the dead body of the deceased.

25. P.W.4 is the brother-in-law of P.W.3, a Software Engineer at Bangalore. He deposed that the accused killed the deceased over a dispute pertaining to an illegal affair with a woman.

26. P.Ws.5 to 8 and PWs.10 to 13 did not support the version of prosecution.

27. The testimony of P.W.9 clearly reveals that A1 took his auto on hire about 1? years ago for transporting household articles. Police informed him that one dead body was transported in his auto and that it was thrown in the village of Duddebanda.

28. P.W.14 stated that A1 and A2 engaged his auto for shifting household articles and when he asked about his auto, they told him that his auto was stopped due to mechanical defect at Duddebanda and asked them to go and get his auto. He further stated that the police informed him that one male dead body was taken in his auto from Duddebanda. He denied the suggestion that the accused never engaged his auto.

29. P.Ws.15 and 16 are S.R.O. and V.R.O. of Duddebanda respectively. They issued Exs.P12 and P13.

30. P.W.17 is panch witness who was present at the time of conducting inquest panchanama over the dead body of the deceased. He opined that the dead body was in a highly decomposed condition and that the injuries could not be identified because of decomposition. Ex.P14 is inquest panchanama prepared in the presence of P.W.17 and L.Ws.25 and 26. Nothing material, worthwhile a mention, was elicited in the cross-examination of this witness.

31. P.W.18 was declared as hostile as he did not support the version of arrest of the accused and about the extra-judicial confession made by A1 before P.W.24. In the light of the evidence of P.W.24, the evidence of this hostile witness loses its significance.

32. P.W.19 is the important star witness of the prosecution. His evidence reveals that on 21-08-2008 at 11 p.m., he saw A1, A3 and all other accused quarrelling with the deceased in Swagat Hotel. He further deposed that he intervened,

separated the deceased and the accused and chastised them. He found one liquor bottle in the hands of A1 at that time. On the same day at about 11.30 p.m., he noticed the accused and the deceased going towards Sri krishnadevaraya Circle, Penukonda, and chastised the deceased and the accused at that time also. This piece of evidence would clinchingly prove the fact that the accused and the deceased were last seen together at 11 p.m. and at 11.30 p.m. by this witness on 21-08-2008. It is also obvious from his testimony that the accused quarrelled with the deceased at that time. The testimony of this witness proves the important circumstance of "last seen together" prior to the commission of offence. Nothing was elicited in the cross-examination of this witness to discredit his testimony. It is obvious that this witness had denied the suggestions made to him in his cross-examination, in respect of the incriminating circumstances in this case.

33. P.W.20 was the Sub Inspector of Police, Penukonda Police Station. On 24-08-2008 at 3 p.m., he received Ex.P1 complaint from P.W.1, mother of the deceased, wherein she stated that her son Madhusudhan Reddy was missing. Basing on that, he registered a case in Crime No. 108 of 2008 of Penukonda Police Station for man missing and issued Ex.P16 F.I.R. He examined P.W.1 on that day, recorded her statement, left the Police Station, reached the house of P.W.1, secured the presence of P.W.2 and L.W.3, examined them and recorded their statements. On the same day at 5 p.m., P.W.1 received a phone call, whereby she was informed that her son Madhusudhan Reddy was killed by some unknown persons and buried in a dilapidated house at Penukonda. He secured the presence of mediators, reached the scene of offence at Ramamandiram Street and found one spade on the bank of the pit. On suspicion, he got dug the pit and found the apparels of the deceased which are marked as M.Os.1 to 4 and the same were identified by P.W.1 as the clothes of her son. He also found bloodstained marks on the walls of the house bearing No. 4-72 and those bloodstained walls appeared to have been recently washed. He seized the apparels of the deceased, slippers, two empty liquor bottles and two use and throw plastic glasses under Ex.P17 Mahazar. He got photographed the scene of offence and prepared Ex.P18 rough sketch of the scene of offence on the same day i.e. on 24-08-2008. On 25-08-2008, P.W.1 came to Police Station and presented Ex.P2 written report. Basing on it, he altered the Section of law from man missing to Section 302 and 201 r/w 34 I.P.C. and issued Ex.P19 Express F.I.R. to all the concerned officials. It was revealed in his cross-examination that he did not enquire the Gramapanchayat Authorities of Penukonda about ownership of the house bearing No. 4-72. Except this, nothing was elicited in the cross-examination of this witness worthwhile to mention. However, during investigation, a certificate was obtained from the concerned revenue officials with regard to the ownership of the house.

Motive:

34. This case is based on circumstantial evidence. The first circumstance is the

motive for commission of offence. The motive for commission of the offence is sexual jealousy between A5 and the deceased. The deceased was said to have asked the concubine of A5 to satisfy his desire. On that, when there was an altercation between them, the deceased was chastised twice and at last the accused developed motive for commission of the offence. A1 is alleged to have committed this offence with the help of A2 to A6. However, A2 to A6 were acquitted by the trial Court which is not challenged by the prosecution. Now, the case is only against A1. The motive part was spoken to by PW-3, the brother of the deceased, that there was quarrel between A-1 and the deceased earlier. PW-4, the brother-in-law of the deceased, also deposed that there was a dispute in connection with illegal affair with a lady and that therefore the accused killed the deceased. Therefore, the motive for the commission of offence is established by the prosecution though P.W.1 stated that she does not know the cause or reason for commission of offence by the accused as she might not have had knowledge about the illicit intimacy between the deceased and the said Roopa. We however could find no reason to disbelieve the evidence of PW- 3 and PW-4, regarding motive.

Last seen theory:

35. The other circumstance is last seen together theory. In cases where the accused was last seen with the deceased victim just before the incident, it becomes the duty of the accused to explain the circumstances under which the death of the victim occurred. The doctrine of last seen together theory shifts the burden of proof on the accused requiring him to explain how the incident occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him. It is a settled legal proposition that in a case, based on circumstantial evidence, where no eyewitnesses' account is available, the principle is that "when an incriminating circumstance is put to the accused and the accused either offers no explanation or offers an explanation which is found to be untrue, the same becomes an additional link in the chain of circumstances to make it complete.

36. In *Neel Kumar v. State of Haryana*, 2012 (2) ALD (CrL.) 646 (SC) : (2012) 5 SCC 766 it was held in para 13 as under:

"It is the duty of the accused to explain the incriminating circumstance prove against him while making a statement under Section 313 Cr.P.C. Keeping silent and not furnishing any explanation for such circumstance is an additional link in the chain of circumstances to sustain the charges against him. Recovery of incriminating material, at his disclosure statement, duly proved is a very positive circumstance against him."

37. In this context, it is appropriate to refer to the provisions under Section 313 Cr.P.C.:

Power to examine the accused.-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under subsection (1)

(3) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he had committed.

38. It is also appropriate to refer to Section 106 of the Indian Evidence Act, 1872, at this juncture, which reads:

"Burden of proving fact especially within knowledge: - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

39. Non-examination by the accused to explain the incriminating circumstances against him would itself be an additional link in the chain of circumstances to sustain the charge against him. The proximity of time is another important circumstance to be proved by the prosecution when an offence is proved in the light of the last seen theory against the accused and by other evidence.

40. In *Billal Hussain and another v. State of Assam*, 2008 CrL LJ 1422, it was held that:

"The last seen theory further more comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together. It would be hazardous to come to a conclusion of guilt in those cases."

41. In this case, the deceased was last seen with A-1 by P.W.1 on 21-08-2008.

P.W.1 stated in her evidence that on 19-08-2008, A-1 came to her house and took the deceased but her Ex.P1 complaint clearly reveals that A-1 came to her house and took her son on 21-08-2008. In Ex.P2 also, P.W.1 stated that the accused came to her house on 21-08-2008 and took her son away. The discrepancy in the date stated by P.W.1 in her testimony as a witness in the Court and in her Section 161 Cr.P.C. statement is not a serious discrepancy in view of the fact that she lodged a complaint and the date is clearly mentioned in the complaint as 21-08-2008. The Police, Penukonda, registered a case in Crime No. 108 of 2008. The second complaint was lodged on 25-08-2008 showing the date of the accused taking away her deceased son as 21-08-2008. The last seen theory would clearly prove the fact that the accused had taken away the deceased from the house of P.W.1; thereafter, they searched for the deceased but could not trace him for three days; then they lodged Ex.P1 complaint; on the very next day, the dead body of the deceased was traced; and, on that, they lodged another complaint Ex.P2.

Seizure of dead body, clothes etc., from A-1's house:

42. The dead body of the deceased, clothes of the deceased and that of A-1 and the weapon used for commission of offence were seized from the house of A1. However, the learned counsel for the appellant contended that the place of seizure of the property by the investigating agency is not clearly established. He mainly contended that the dead body, clothes and the weapon, alleged to have been used, were seized from the house of some other person other than the grandfather of A1. In fact, the evidence of witnesses in this case i.e. Mandal Revenue Officer, Sub-Registrar and Panchayat Officer and the documents referred supra clearly proved the fact that the dead body of the deceased, his clothes and that of A-1 were seized from the house of the latter's grandfather. This is an important circumstance to prove the guilt of A1 beyond reasonable doubt in the light of the other circumstances.

Extra judicial confession:

43. The trial Court totally believed the extra-judicial confession made by A-1 to a third party who happened to be a retired Sub Inspector of Police and an independent person and there is no need for him to implicate the accused in this case falsely. This extra-judicial confession is an important circumstance which completes the link in the chain of circumstances of the case and proves the guilt of A-1 beyond reasonable doubt that he alone had committed the offence and none others, as the proximity of time of commission of offence and he having been last seen together with the deceased was very close.

Non-explanation of incriminating circumstances by A-1:

44. A-1 has not explained either during his Section 313 Cr.P.C. examination or in any other form explaining the circumstances i.e. what had happened after he took the deceased along with him from the house of P.W.1 on that particular day. This is another circumstance appearing against A-1 which was not explained by

him by proving what has happened subsequent to his taking the deceased along with him. The silence of A-1 during his examination under Section 313 Cr.P.C. and the absence of suggestions put to the prosecution witnesses in this regard during entire trial would clearly go against A-1 that he was only responsible for causing the death of the deceased. The post mortem report, inquest and scene of offence panchanama would clearly indicate that this is a case of homicide and the other circumstances would prove that A1 is only responsible for the death of the deceased in this case.

45. On consideration of the material on record, the trial Court acquitted A2 to A6 for the offences punishable under Sections 302 r/w 109 I.P.C. and 201 I.P.C. Learned counsel for the appellant contended that according to the version of the prosecution, A-2 to A-6 abetted A-1 to commit the offence of murder of the deceased, in pursuance of which A-1 murdered the deceased and that the former helped the latter in screening the evidence in the case. Therefore, contends the counsel, acquittal of A2 to A6 would give a benefit to A1 also for the offences alleged against him under Sections 302 and 201 I.P.C.

46. Learned Public Prosecutor submitted that the trial Court convicted A1 and acquitted A2 to A6 as there is no material found against them and that the acquittal of A2 to A6 no way affects the conviction of A1 and, therefore, on that basis, A1 cannot seek for acquittal.

47. The circumstantial evidence available on record clearly reveals that A1 committed murder of the deceased, buried the dead body in a ditch in his house and closed it and also concealed the crime weapon M.O.1, used in the commission of offence, in the backyard of his house. Later, he took out the dead body and brought in the auto of P.W.9 to the house of his grandfather situated at Duddebanda and threw the dead body in a toilet pit and closed the pit with a stone in order to screen the offence. No doubt A1 also confessed before P.W.24 that he murdered the deceased with the help of A2 to A6. Basing on the confessional statement of A1, A2 to A6 were arrested in this case.

48. The testimony of P.W.19 reveals that on 21-08-2008 at about 11 p.m., he noticed the accused quarrelling with the deceased in Swagat Hotel, Penukonda. He then intervened and separated the deceased and the accused and chastised them; that on the same day at about 11.30 p.m., he noticed the accused and the deceased going towards Srikrishnadevaraya Circle, Penukonda, and at that time also, he chastised the deceased and the accused and that later he came to know that the deceased was killed by the accused. The testimony of this witness clearly reveals that the deceased and the accused were last seen together quarrelling with each other. The testimony of other witnesses reveals that A1 alone committed murder of the deceased and screened the dead body. There is no material on record to show that A2 to A6 assisted A1 in screening the offence. The trial Court rightly acquitted A2 to A6 as there was no incriminating evidence against them for the offences punishable under Sections 302 r/w 109 I.P.C. and 201 I.P.C. The present appeal is preferred by A1 and it is also obvious that no

appeal is preferred by the prosecution challenging the acquittal of A2 to A6.

49. The trial Court, having considered the evidence on record, has reached the conclusion that A1 alone was responsible for the death of the deceased, and recorded conviction against him for the offences under Sections 302 and 201 I.P.C. When the prosecution was able to place on record clear evidence to prove the involvement of A-1 in the commission of the murder of the deceased, but however could not prove its theory of abetment by A-2 to A-6 and their involvement in the commission of the offence, the same would not entitle A-1 for acquittal. As such, the judgment of the trial Court does not require any interference.

50. In view of our foregoing reasons, we see no reason to allow the appeal and, as such, the same is liable to be dismissed.

51. Accordingly, the criminal appeal is dismissed, confirming the judgment dated 23-07-2010 passed in S.C.No. 434 of 2009 on the file of the Court of Additional Sessions Judge, HIndupur. Pending miscellaneous petitions, if any, in this appeal shall stand dismissed in consequence.