

THE HON'BLE SRI JUSTICE G.CHANDRAIAH AND THE HON'BLE SRI JUSTICE M.S.K.JAISWAL CRL.A.NO.362 OF 2012 JUDGMENT (Per the Hon'ble Sri Justice G.Chandraiah) The accused were five in number. A-1 was charged for the offence punishable under Sections 302 r/w 109, 201 r/w 109, 120-B IPC and A-2 to A-5 were charged for the offence punishable under Sections 302 r/w 34 IPC and 120-B IPC. The gravamen of the charge was that the accused and the deceased were political rivals belonging to two different parties and have ill-feelings and that A-1 had strong motive to eliminate the deceased for his political existence and the deceased was also facing charge for attempt on the life of A-4. In that process, A-2 to A-5, on the date of incident on 10.4.2007, under the conspiracy of A-1, by secretly observing the movements of the deceased, waylaid and caused the death of the deceased and burnt the body with petrol and buried in a pit and thereby sought to screen the evidence. The trial court i.e., the court of VIII Additional District and Sessions Judge (FTC), Chittoor, by judgment dated 20.4.2012 found A-1 guilty of the charges under Sections, 120-B, 302 r/w 109, 201 r/w 109 IPC and A-2 to A-5 were found guilty of the charge under Sections 120-B, 302 r/w 34, 201 r/w 34 IPC. A-1 was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months for the charge under Section 120-B IPC. A-1 was further sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three months for the charge under Section 302 r/w 109 IPC. A-1 was further sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month, for the charge under Section 201 r/w 109 IPC. A-2 to A-5 were sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months each for the charge under Section 120-B IPC. They were further sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for a period of three months each for the charge under Section 302 r/w 34 IPC. They were also further sentenced to suffer rigorous imprisonment for a period of five years each and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for one month each for the charge under Section 201 r/w 34 IPC. All the sentences were made to run concurrently. Aggrieved by the conviction and sentence, the accused filed the present appeal. 2. The case of the prosecution was that A-1 is the resident of C.K.Palle village of Gudipala mandal and A-2 to A-5 were inter-related and close associates of A-1. The deceased was a resident of Kattakondapalle village and he was also involving in the village politics in highhanded manner, which made all the accused to make the deceased target. A-1 was secretary of National Congress party of Chittoor and his younger brother by name Jayachandra Naidu was single window president and he was Sarpanch of that village. They were strong followers of congress party. During Sarpach elections held in the year 2001, the mother of the deceased and A-1's wife had contested. The mother of the deceased had won the elections. During the M.P.T.C. and Z.P.T.C. elections in the year 2006, there was a clash between all the accused and the deceased and similarly during the same year in Sarpanch elections, there were clashes between the deceased and the followers of A-1. There were ill-feelings between A-1 and the deceased to the highest extent. A-1 had a strong motive to eliminate the deceased for his existence in his political life. It is further alleged in the charge sheet that about eight months prior to the incident, all the accused have conspired to eliminate the deceased. A-1 had handed over a cell phone to A-4 (J.Chinnaraj) and gave Rs.10,000/- to purchase cell phones to other accused with that amount. A-4 gave Rs.3,000/- to A-3 (Murugan) and other accused to purchase cell phone. A-3 (Murugan) purchased second hand cell phone on 29.1.2007 from Lakshmi Watch and Mobile shop, Church street, Chittoor and he purchased a Hutch sim card No.99854 43101. All the accused were in touch with one another in order to get rid of the deceased. The charge sheet further shows since the date of offence in Crime No.75/2006 under Section 307 IPC of Gudipala P.S., which occurred on 1.10.2006, the deceased who was accused in that case, absconded from the village for about four or five months and he came to the village only after obtaining anticipatory bail from the High Court and it was informed to A-4 (J.Chinnaraj), who was working as driver in A.P.S.R.T.C. Markapur. About two days prior to the incident i.e., on 8.4.2007, A-4 contacted other accused over his cell phone and alerted the other accused i.e., on 10.4.2007 at about 7-00 p.m., A-4 contacted A-3 (Murugan) over his cell phone and asked him to go to Annaiahkonda and to secure three stout sticks, that A-4 had informed that A-2 David would inform them by cell phone about the movements of the deceased from Naraharipeta, that accordingly A-3 (Murugan) collected two advise sticks and one cart peg from the outskirts of the village and went to Annaiahkonda, that by that time A-4 (J.Chinnaraj) and A-5 (Chittibabu), were already present there, that A-4 (J.Chinnaraj) was contacting A-1 and A-2 about the movements of the deceased, that at about 21.41.55 hours, A-2 David had informed A-4 stating that the deceased left Naraharipeta on his motorcycle, that immediately A-2 to A-5 concealed themselves near the bushes, that when the deceased reached Annaiahkonda on his motorcycle from Naraharipeta, A-3 to A-5 pounced upon him, bet him with sticks, that when the deceased fell down, A-4 (J.Chinnaraj) carried the deceased on his shoulder and went towards check-dam and A-5 took the motorcycle of the deceased and concealed it in the bushes, that A-3 Murugan had thrown the sticks used by them in the bushes near check-dam, that A-4 (J.Chinnaraj) having found the deceased alive, threw a stone on his head and killed him and immediately A-4 had informed A-1 about the murder and A-1 had suggested them to cause disappearance of the dead body, by carrying it to Ootagunta tank near Ramapuram and to burn it. Then A-4 (J.Chinnaraj) had contacted A-2 (David) on his cell phone and asked him to bring gunny bag and plastic sheet to Annaiahkonda check-dam, that within half an hour, A-2 (David) brought gunny bag and a plastic sheet on his motorcycle bearing No. TAJ 4856 to Annaiahkonda check-dam, that A-2 to A-4 covered the dead body of the deceased in a plastic sheet and kept it in the gunny bag, that A-4 had tied the gunny bag with his kerchief, that A-4 asked A-2 and A-3 to get a plastic can and to get petrol in it and to bring a crowbar to Ootagunta, that A-5 (T.Chittibabu) brought the motorcycle of the deceased, that A-5 sat on it by placing the gunny bag in their middle which was containing the dead body, that A-2 and A-3 went to the house of A-2, took a 10 litres plastic can and a crowbar, purchased petrol worth Rs.500/- from Reliance Petrol Bunk at Gangasagaram and reached Ootagunta, that by that time A-4 and A-5 reached that place, A-4 asked A-2 and A-3 to dig a pit, that when A-2 and A-3 were digging the pit, A-4 and A-5 removed the dead body from the gunny bag, poured half of the petrol and burnt the dead body, that again the dead body was kept in the gunny bag and it was dropped in the pit and they had burnt the dead body in the pit with the remaining petrol, closed the pit, that A-2 had thrown away the crowbar in the water of Ootagunta tank, that A-2 and A-3 left the place on the motorcycle of A-2, that A-2 dropped A-3 at Kothapalle Mitta and went to Chittoor, that as per the instructions of A-5, A-3 went to Bangalore after reaching Chittoor, that A-4 and A-5 went on the motorcycle of the deceased, that A-4 dropped A-5 on Chittoor main road and he went to Gopalapuram through Thalambedu, that A-1 had instructed A-4 over cell phone to abandon the motorcycle of the deceased and accordingly A-4 had left the motorcycle near Perumallakandriga cross and went to Markapur. The further case of the prosecution is that the deceased had informed his wife (P.W.1) at about 9-30 p.m. on 10.4.2007 stating that he had left Naraharipeta for his house, that since the deceased did not reach the house till the morning on 11.4.2007, P.W.1 suspected something had happened to the deceased and informed the said fact to her relatives and friends over telephone, that they searched for the deceased, that in the meanwhile the gold dollar of the minor chain of the deceased was found at Annaiahkonda check-dam, that blood stains were also found here and there, that there was a blood stained black stone at that place and on information, P.W.1 went to that place and suspected that her husband might have been murdered and hence she lodged report at 10-00 p.m., in Gudipala Police Station against A-1 to A-4 and one Jayachandra Naidu stating that they might have been murdered her husband due to political rivalry, as the were making threatening calls to her husband. P.W.25, the then Sub Inspector of Gudipala Police Station registered FIR, that on the next day, P.W.26, the then Circle Inspector B.Narasappa took up the investigation, examined the scene of offence, seized blood stained earth, control earth, blood stained stone, gold dollar, two stout sticks, that out of them, one stick was found with hair, two teeth, that he had seized all these articles at 6-30 a.m., under a cover of mahazamama by preparing rough sketch of the scene of offence and on the same day at 9-30 a.m., he had seized the motorcycle of the deceased near Perumallakandriga cross on Chittoor - Naraharipeta road under a cover of mahazamama. Further, P.W.11 Sri Kondaiah, the then Sub-Inspector of Police, Kallur Police Station brought A-4 from Markapur and produced him before P.W.26. On interrogation, A-4 had confessed the offence committed by him along with other accused and their conspiracy to kill the deceased, that in pursuance of the confession made by A-4, P.W.26 got the dead body exhumed by P.W.19, the then Mandal Executive Magistrate, Gudipala, that on 19.4.2007 also when A-4 was taken into police custody and interrogated, he confessed their conspiracy with A-1 and A-1's monitoring the execution of offence. The charge sheet further shows that at the request of P.W.26, P.W.19 held inquest over the dead body at Ootagunta tank after it was exhumed, that P.W.19 examined the witnesses and recorded their statements. The charge sheet further

shows that clues team had collected the blood stains and other material and they were seized by P.W.26 under a cover of mahazarnama at 12.15 p.m. that P.W.20 and Dr.S.Natarajan had conducted post mortem examination over the dead body at Ootagunta tank. The charge sheet further shows the examination of witnesses by P.W.26 on different dates. P.W.26 sent viscera preserved by the Medical Officer to R.F.S.L. Tirupati on 18.4.2007 and on the same day he also sent skull, blood, right femur, left femur, two teeth and two colour photographs of the deceased along with other material objects to APFSL, Hyderabad for super imposition and DNA finger print test. On 19.4.2007, P.W.26 had arrested A-2 and A-5 near Iruvaram Bridge on Chittoor – Palamaner road in the presence of mediators, that in pursuance of their confession, the Investigating Officer seized Nokia cell phone (Model 2600) and cash of Rs.80/- from the possession of A-5, the Investigating Officer also seized one cell phone of Sagem and one C.D. and a Hero Honda motorcycle bearing No.TSJ-4856 from the possession of A-2 under a cover of mahazarnama at 2.40 p.m. and in pursuance of their confession, he had seized a crowbar from Ootagunta tank water at 5-30 p.m., under a cover of mahazarnama, that on the same day at 7-00 p.m., the investigating officer had arrested A-1 (Sudhakar Naidu) near Ambedkar Bhavan at Mesanical Ground, Chittoor, that in pursuance of his confession, the Investigating Officer had seized one Nokia cell phone of 3310 model under a cover of mahazar. On 1.5.2007 P.W.26 had sent the mother of the deceased namely Smt. Neelamma to A.P.F.S.L., Hyderabad where her blood samples were collected for conducting DNA and Finger Printing Test, that on 10.5.2007 P.W.26 visited Markapur and obtained copy of attendance sheet relating to A-4 from the Depot Manager, A.P.S.R.T.C., Markapur. On 18.5.2007, the call details of sim card No. 99856 20018 of Chittibabu, 99854 43101 of A-3 Murgan from Hustchson Essar Ltd., Tirupati were received in the form of C.D. and hard copy, that on 2.6.2007 the call details of 94418 04075 of A-4, 94406 77255 of A-2, 94402 16878 of A-1 Sudhakar Naidu and 94413 31775 of the suspected Jayachandra Naidu from B.S.N.L. Tirupati were received. The Investigating Officer had deleted the name of said Jayachandra Naidu as per the direction of the Superintendent of Police, Chittoor. The charge sheet further shows on 12.6.2007 P.W.27 namely Sri Rajagopal Reddy, the then Inspector of Police, Chittoor Rural West Circle took up further investigation and he had arrested A-3 (Murugan) near Ramapuram Railway Station in the presence of mediators and in pursuance of his confession, the Investigating Officer had seized one Nokia cell phone with sim card bearing No. 99854 43101 and cash of Rs.20/- under a cover of mahazar at 4-00 p.m., that further in pursuance of the confession made by A-3, the Investigating Officer had seized one Avise Katte from Annaiahkonda at 6-15 p.m., under a cover of mahazar which was used by the accused for committing the offence. The investigating further revealed that the customer copy applications of the sim card Nos.94418 04075 used by A-4 relates to A-1, 94406 77255 used by A-2 belongs to P.W.10, the sim card bearing No.94413 31775 used by the suspected accused Jayachandra Naidu belongs to the wife of A-1 by name Suneela, that the sim card No.99854 43101 belongs to A-3, the sim card bearing No.94402 16878 used by A-1 was issued in the name of the wife of A-1 Suneela. The charge sheet further shows that the call details of A-1, A-2, A-4 and A-5 were obtained and after analyzing the same, the Investigating Officer found that abnormal calls were made among them repeatedly during the relevant period at relevant times which proves the conspiracy among them through cell phone conversations. The prosecution further contents that the FSL report received on 19.7.2007 reveals that there was no poisonous substance or ethyl alcohol found in the viscera and as per the report received from the APFSL, Hyderabad, dated 21.2.2007, the Autosomal STR analysis conclusively proves that the source of long bone belonging to the deceased is biologically related to DNA profile of Smt. V.Nellamma, who is the mother of the deceased. The charge sheet further reveals that one K.Narasimhulu Naidu (P.W.6) had stated about the ill feelings between the deceased and the accused and that he had seen A-2 (David) on 10.4.2007 between 9-00 p.m. to 9-30 p.m. while he was standing opposite to the office of the deceased at Naraharipeta and talking on his cell phone, that P.W.7 had seen A-4 and A-5 on 10.4.2007 in the midnight when they were going on a motorcycle at Cheelapalle cross road, Chittoor when A-4 was driving the motorcycle and A-5 was sitting as pillion rider with a loaded gunny bag, that P.W.8 stated before the Investigating officer that on 10.4.2007 when he was on duty in the Reliance Petrol bunk in the midnight, two persons came to their petrol bunk on their motorcycle and purchased petrol for Rs.500/-, that P.W.9 had seen A-2 on 10.4.2007 between 10-30 p.m. and 11-00 p.m., going on a motorcycle to his house and returning within 10 minutes with an empty gunny bag and later on, after sometime A-2 and A-3 again went to the house of A-2 on A-2's motorcycle and after sometime they returned with a plastic can and a small crowbar, that P.W.10 had purchased sim card bearing No. 94406 77255 for A-2 (David) by giving his photos and identity card. The charge sheet further shows that the post-mortem certificate show that the death of the deceased might be due to injury to vital organ like brain and due to fracture of frontal bone and skull and other bones in the head and the burns are post mortem in nature. Thus, the prosecution contends that the substantial evidence and the circumstantial evidence as discussed about would clearly go to show that all the accused had entered into criminal conspiracy for eliminating the deceased and accordingly they had executed their plan, hence the Investigating Officer had filed charge sheet against A-1 to A-5 by deleting the name of Jayachandra Naidu and by adding the name of Chittibabu as A-5 under Sections 302, 201 r/w 34 and Section 120-B IPC. 3. The cognizance of the offence was taken by the learned IV Additional JFCM Chittoor against A-1 to A-5 under Sections 302, 201 and 120-B of IPC. After securing the presence of the accused, copies of the documents were furnished to them, as required under Section 207 Cr.P.C. and following the procedure laid down under Section 209 Cr.P.C., the case was committed to the Court of Sessions where, it is numbered as S.C.No.240/2009 and was made over to the I Additional Sessions Judge, Chittoor and later on transferred to the present trial court for disposal in accordance with law. The specific charges framed under Sections 302 r/w 109, 201 r/w 109, 120-B IPC against A-1, under Section 302 r/w 34 IPC, 201 r/w 34 IPC and 120-B IPC against A-2 to A-5 were framed as per Section 228(1)(b) and the charges so framed were read over and explained to them in Telugu as required under Section 228(2) Cr.P.C. and the accused pleaded not guilty and claimed to be tried. 4. To prove the case of the prosecution, P.Ws.1 to 27 were examined, Exs.P-1 to P-55 and M.Os.1 to 32 were marked and Exs.D-1 to D-5 were marked. After closure of prosecution evidence, A-1 to A-5 were examined under Section 313 Cr.P.C. to answer the incriminating material found in the evidence of the prosecution witnesses and they denied the same and did not choose to adduce any evidence on their behalf. 5. On appreciating the entire evidence on record, the trial court convicted the accused and aggrieved by the same, the present appeal has been filed by the accused. 6. The learned counsel appearing for the accused/appellants A-1 to A-5 contended that the trial court totally erred in convicting the accused based on inconsistent evidence of prosecution witnesses. The learned counsel has taken this court through the entire evidence and pointed out the circumstances to show that the prosecution failed to prove its case. The contentions and circumstances pointed out by the learned counsel, will be considered and discussed in the light of the evidence on record, during the course of judgment. The learned counsel eventually submitted that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and hence, they are entitled for acquittal. 7. On the other hand, the learned Public Prosecutor supporting the impugned judgment of the trial court, sought to dismiss the appeal. 8. In view of the above rival contentions, the issues that arises for our consideration are (1) Whether the prosecution could prove the guilty of the accused beyond reasonable doubt ? and (2) Whether the conviction and sentence imposed by the trial court is sustainable? 9. In order to consider the above issues it is necessary to note the relevant evidence available on record. 10. P.W.1 is the wife of the deceased and P.W.2 is the younger brother of deceased. She deposed that on 10.4.2007 at about 9-30 p.m., when she was present in their house, her husband had telephoned to their land line and stated that he had started from Naraharipeta to their village. But he did not turn up in that night. On the next day i.e., on 11.4.2007 she had informed to the friends and relatives of her husband that her husband did not turn up to their village since 10.4.2007. They had searched for him in the neighbouring places, but the deceased was not found. On 11.4.2007 in the evening their relatives had taken her to Annayyakonda Check-dam and there, they found a gold dollar of Sri Venkateswara Swamy and a black boulder with blood stains and blood stains on the earth. She could identify the gold dollar M.O.1 with blood stains. M.O.2 is the blood stained black boulder. Immediately, she had telephoned to V.K.Prabhu Kumar (P.W.2). Then she along with her relatives went to Naraharipeta Police Station and lodged report in the police station, which is Ex.P-1. During the life time of her husband, he used to receive threatening calls to their landline phone stating that he would be killed. She also received such threatening calls stating that her husband would be killed. Out of suspicion, she lodged report against A-1 to A-5. She Lodged Ex.P-1 at 10-00 p.m. on 11.4.2007 in Naraharipeta Police Station. By the time, she returned to her house after lodging report in Naraharipet Police station, V.K.Prabhu Kumar (P.W.2) had come to their village from Bangalore. On 12.4.2007 also they searched for her husband, but they did not find him anywhere. On 13.4.2007 Naraharipeta police took her, P.W.2 and their relatives to Ootagunta Cheruvu at 01.15 p.m.. They found dead body of her husband in Ootaguntacheruvu. A-4 was present there at that time. Thahsildar, V.R.O., doctors and all villagers were present there at that time. A-4 had shown the dead body of her husband stating that he was killed and burnt there. In the presence of Thahasildar, the dead body was exhumed. They found a belt buckle fallen from the dead body when it was removed. That buckle belongs to her husband and M.O.3 is

burnt belt pieces with metallic buckle. They found a big boulder with burnt signs on it. They found silver thayt, M.O.4 is Thalishmen (Thayat), which was burnt, belonging to her husband. In the presence of Tahasildar, inquest was conducted. At that time, along with her, V.K.Prabhu Kumar (P.W.2), Promod Kumar (P.W.5) Balaji Naidu (L.W.15), Kamalesh Babu (P.W.11), other police people and S.I., were present. Then Tahasildar (P.W.19) and C.I. had examined her and recorded her statement. Ex.P-2 is the exhumation proceedings. Ex.P-3 is the inquest proceedings. Ex.P-4 is her statement recorded by Tahasildar, Gudipala, which bears her signature. During the year 2006, Z.P.T.C. elections and M.P.T.C. elections were held. On the date of counting all the accused had quarrelled with her husband. Thereafter, Sarpanch elections were held. On that day also, all the accused and Jayachandra Naidu, s/o Kuppaiah Naidu had quarrelled with her husband. All the accused were threatening her husband to his mobile phone and to their landline phone stating that her husband would be killed. She also used to receive such calls stating that her husband would be killed. Then she asked her husband to lodge report in the police station with regard to threatening calls, but he used to ask me to keep silent. Hence, all the accused had killed her husband and burnt him. P.W.1 was cross-examined and no inconsistencies with her chief could be elicited by the defence. 11. P.W.2 is the brother of the deceased, who on information from P.W.1, came to the village from Bangalore and he deposed in line with P.W.1 and hence his evidence is not being extracted. 12. P.W.3 is the person who is alleged to have noticed deceased going alone on his Suzuki motor cycle through his village on 10.4.2007 around 9-30 pm. He is also present during inquest. In his evidence before the court he deposed that he is the resident of Basavapalle and living by cooli work. He knew P.Ws.1 and 2 and they are residents of Kattakindapalle. On 10.4.2007 at about 9-45 p.m., he was present near a shop in their village Basavapalle. At that time, the deceased was seen by him going on his motor cycle. The deceased had wished him and he also wished him. He went away on his motor cycle by wished him. On the next day, the villagers were searching for the deceased Vijaya Kumar. On the next day evening at about 5-00 p.m., they found a gold dollar, a small boulder and blood stains near Annayyakonda Checkdam. P.W.1 also was present there and as she was weeping, they took her to her house. On 13.4.2007 at about 1-00 p.m. or 2-00 p.m., they came to know about the presence of dead body in Ootagunta cheruvu. They went there and could not find the dead body. Then police brought A-4 to that place. Then A-4 had shown the place where the dead body was buried. Then the dead body was exhumed in the presence of M.R.O. Police, Doctors and villagers. They found burnt belt with buckle and a Thayat. The Tahasildar had examined him and recorded his statement and that he was present when Tahasildar held inquest over the dead body. 13. P.Ws.4 and 5 were examined to depose about the existence of strained feelings between the accused and the deceased and P.W.5 was further examined to depose about hearing of threatening calls being received by the deceased from A-1. 14. P.W.6 is the person who is alleged to have seen A-2 on the night of the fatal date near a wine shop opposite to the room of the deceased at Narahariept. Before the court he deposed about the disputes between the accused and the deceased in relating to local body elections. He deposed that on 10.4.2007 at about 9-00 p.m., he saw the deceased was present at his office and when he was talking with the deceased in his office, he found A-2 talking in his mobile phone at the wine shop situated in front of the office of the deceased situated on the other side of the road. Ten minutes thereafter, the deceased left his office to go to his village by his two wheeler i.e., Suzuki samurai motor cycle. A-2 also left the place after some time. Then he also went to his house. On 11.4.2007, when he came to hotel in Naraharipeta at about 3-00 p.m., he heard the villagers discussing that the deceased had not reached his house since last night and his relatives are searching for him. In his further deposition, he deposed about the searching of the body and its exhumation at the instance of A-4 and conducting inquest and other facts. 15. P.W.7 is the resident of Kothapalle and he knew the accused and the deceased. He was examined by the prosecution to speak to the facts of existence of ill-feelings between the accused and the deceased and also to speak about noting A-4 and A-5 on the night of 10.4.2007 going on a motor cycle carrying a gunny bag with some load. Before the court he only deposed about the existence of ill-feelings between the accused and the deceased and to the remaining story of the prosecution, he turned hostile and though he was cross-examined, no useful information in favour of the prosecution could be elicited. 16. P.W.8 was working at petrol bunk, from whom, the accused were alleged to have purchased petrol. In his evidence before the court, he deposed that he is the resident of Samireddipalle of Yadamari mandal and was working as handymen in Reliance Petrol Bunk near Gangasagaram since past three years. On 10.4.2007 when he was on duty in the petrol bunk at about 10.4.2007 in between 11-00 p.m. and 12-00 mid night A-2 came to their petrol bunk along with A-4 and asked him to give petrol from the bunk as their car was stopped on the way. A-2 took petrol from the bunk worth Rs.500/- and that ten days thereafter, police examined him. In the cross-examination he deposed that he knew very well that A-2 is the ration dealer at Kattakindapalle and he had seen A-4 previously, but he was not aware of his name. He stated that he did not state before the police that he was told by A-2 that their car was stopped on the way. He admitted that they would note the number of the car while selling the petrol when the car comes or when somebody purchases petrol meant for the car. He knew A-2 with name since one year prior to the date of incident. He did not reveal the names of A-2 or A-4 before the police when he was examined. He admitted that the nearby villagers purchase petrol in bottles, cans etc., and that since many customers come like that, it is difficult to remember all the persons. In his further cross-examination, he denied the suggestion that he is deposing falsehood. 17. The prosecution sought to examine P.W.9 to depose about witnessing A-2 and A-3 going on a motor cycle when he was lying on his cot. This witness turned hostile and in the cross-examination by the learned Public Prosecutor, nothing useful to the case of the prosecution could be elicited. 18. P.W.10 is the person who is alleged to have secured sim card for A-2 on his request by giving his identity particulars. This witness also turned hostile and in the cross-examination by the learned Public Prosecutor, nothing useful to the case of the prosecution could be elicited. 19. P.W.11 is the Inspector of Police, who apprehended A-4. He deposed that on the instructions from Additional S.P. Tirupathi and S.D.P.O., Chittoor he along with P.C.No.3208 of Kallur Police Station went to Markapuram and secured Chinnaraj (A-4) at Markapuram Bus Stand at 5-30 p.m., who was on duty on Yerragundlapalem – Polakala service route. After informing the Depot Manager, A.P.S.R.T.C. Markapuram, he took A-4 and came to Gudipala Police Station on 13.4.2007 at 10-00 a.m. and produced him before the Inspector of Police (P.W.26) Sri B.Narasappa for further investigation. On 30.4.2007, Sri B.Narasappa, Inspector of Police examined him and recorded his statement. 20. P.W.12 is the punch witness for the preparation of Mahaz report under Ex.P-11 for seizure of M.Os.5, 1, 6 and 7 and for seizure of motor cycle under M.O.8 and Ex.P-12 is the mahazarnama for seizure of motor cycle. 21. P.W.13 is the punch witness for the confession of A-4 and to exhumation proceedings under Ex.P-2. In his chief examination, about the deposition of P.W.13, the trial court noted that “ A-4 had shown the place stating that the dead body was burnt and buried there, the dead body was shown, we found burnt cloth pieces, belt buckle, after repeatedly asked by the P.P. on 4th time, the witness deposes that the dead body was exhumed and the Tahasildar prepared mahazar.” 22. P.W.14 is the panch witness along with P.W.13 for the alleged confession of A-4. P.W.15 is the panch witness for inquest conducted by Tahsildar, P.W.19. 23. P.W.16 is the panch witness for the alleged confession of A-4 and he further deposed that A-4 had further stated that A-1 had given him Rs.10,000/- to purchase a mobile phone. 24. P.W.17 is the punch witness for arrest of A-3, his alleged confession and for preparation of mahazarnama and recovery of nokia cell phone from A-3, Ex.P-19 mahazarnama for recovery of Avisakatte under M.O.10 from A-3. 25. P.W.18 is the Sub Divisional Engineer and he deposed about the furnishing of call data of the accused. 26. P.W.19 is the Tahasildar, who conducted inquest. He deposed that on 13.4.2007 at about 5-30 a.m., the S.I. of police of Gudipala and the Inspector of Police (P.W.26) by name Narasappa came to him and informed that the dead body of Madras Babu was traced out and accused were in their custody. At about 7-45 a.m. or 8-00 am., he was taken by the police to some Gutta and there is a small pond with water. He did not find anything there. Then the C.I. and S.I. had shown him that place stating that the dead body is buried there. I sent requisition to doctors for conducting post-mortem examination on the spot. Again at 1-30 p.m. on the same day, the S.I. of Police, Gudipala had taken me to that gutta, there was a team of doctors already present there by that time. The dead body was exhumed and it was totally burnt and it was removed and kept on a mat. The wife and brother of the deceased also were sent for. When they came, they were asked to identify the dead body. After observing for 15 minutes, they had identified the dead body as that of Madras Babu @ Vijaya Kumar. Later on, he ordered for post mortem examination. After conducting post mortem examination, the statement of P.Ws.1, 2, M.Thyagarajau, 3, 5 were written by some policemen to his dictation. Ex.P-2 is the exhumation proceedings written to his dictation. Ex.P-26 is the statement of M.Thyagarajau. Thereafter, the dead body was handed over to the blood relatives of the deceased. 27. P.W.20 is the doctor who conducted post-mortem examination of the deceased. He deposed that on 13.4.2007 at 2-30 p.m., he received a requisition from P.W.19 (Tahasildar) and that himself and Dr.S.Natarajan conducted post-mortem examination over the dead body of V.K.Vijaya Kumar @ Madras Babu at 4-15 p.m. on 13-4-2007 at Gudipala Chervu. He found the following on examination: Internal Examination: Oesophagus, Pharnx, Larunx, neck muscle pale and shrunken cut section pale, suto is not present. Hyoid bone – fracture present. Thoracic cage shrunken, ribs right, left charred, loosened. Lunga right, left shrunken black in colour cut

section suoto is not present. Suto means it is like black particles. If the dead body is burnt after death of a person, there will be no suto. Heart – Shrunken cut section pale. Stomach – Shrunken cut section pale. Intestines – Shrunken cut section pale. Pancreas, liver spleen, both kidneys – shrunken cut section pale. Urinary bladder shrunnekh cut section empty. Skull Reddish erythema present on the frontal and parietal bones fracture of frontal bone present, fracture of mandibular right and left present with nasal bones and maxillary bones, teeth loosend, 4 empty sockets are present over right upper jaw, 2 empty sockets are present over left lower jaw, liquification of brain, all long bones normal. Vertebra normal, spinal column liquefied. The following viscera preserved for chemical analysis. Bottle No.1 Stomach and its contents., Bottle No.2 Intestines and its contents. Bottle No.3 A piece of liver. Bottle No.4 Right kidney. Bottle No.5 Sampling. Skull and right and left femur preserved for Analysis. In continuation of the post-mortem examination, already given report of RFSL, Tirupati dated 19.7.2007, file No.TPT/TOX/413/07. Items are analysed but no poisonous substance is found in them. Ethyl alcohol is also not found in them. Report from the Joint Director, APFSL, Red hills, Hyderabad, File No.DNA/69/2007 & DNA issues – 30/2007 dated 21.2.2008 on 16.6.2008 revealed: First report: No poisonous substance is found. Second report: Proved the same person bones of the deceased femur bone.” They opined that the deceased might have died due to injury to vital organ like brain and due to fracture of frontal bone of skull, fracture of mandibular bone, fracture of right and left nasal bones and that the injuries are Ante-mortem in nature and the burns are post mortem in nature. Ex.P-28 is the post-mortem certificate consisting of three sheets with his final opinion, which is signed by him and Dr.Natarajan. In the cross-examination he admitted that at the time of conducting post-mortem examination, the doctor has to observe the smell emanating from the dead body and that he did not observe any petrol smell from the dead body, nor did he smell it. 28. P.W.21 is the Scientific Officer, at Regional Forensic Science Laboratory, Tirupati and he conducted chemical analysis test on the viscera of the deceased and filed report under Ex.P-29. 29. P.W.23 is the Crime Scene Technician of clues team, Chittoor and he deposed about the visiting the scene, collection and preservation the material objects from various scenes connected to this case and handing them to P.W.26 along with the covering letter. 30. P.W.24 is the Depot Manager of Markapuram. He deposed that as per their records, one J.Chinnaraj (A-4) was working as contract Driver in their depot since 12.9.2006. As per muster rolls i.e., attendance register said J.Chinnaraj was on leaving without pay from 9.4.2007 to 11.4.2007. He brought the original attendance register, Ex.P-30 to the court. He stated that as per their records, said J.Chinnaraj (A-4) was arrested by the S.I. of Police, Kallur on 12.4.2007, while he was on duty at Markapur. He brought the original register again, he stated that as per records, said J.Chinnaraj was arrested by the police on 13.4.2007 at 7.30 p.m. at Gudipala police station and he identified A-4 in the court. 31. P.W.25 is the Sub Inspector of Police at the relevant time. He deposed that on 11.4.2007 at 4-00 p.m., while he was present in the Police Station, he received a telephone call from one Balaji Z.P.T.C. (L.W.15) of Gudipala stating that the deceased Vijaya Kumar @ Madras Babu is found missing since 10.4.2007 at 9-30 p.m. and that he informed him that he (Balaji) found a Venkateswara Swamy gold dollar, blood stained stone near Annaiah Konda Check dam. Immediately, he made a G.D. entry at 4-15 p.m. Immediately, he left police station along with the available staff. After reaching Annaiah Konda check-dam, he noticed one Venkateswara Swamy dollar, blood stains, blood stained stone. There, he posted two police constables to guard the scene of offence. Immediately, he sent word for dogs squad, F.P. Inspector and clues team. He had informed to his superior officer about the incident. With the assistance of his staff, he caused search of the scene of offence for some more material objects and for the dead body of the deceased. At about 6-00 p.m., the dogs squad reached the scene of offence at Annaiah Konda check-dam. The dog was shown smell of Venkateswara Swamy dollar, blood stains and the blood stained stone found near Annaiah Konda Check-dam. The sniffer dog and its team lead them to a distance of one kilo meter on south-west corner and it stopped near agricultural well of Gunabhushanam Naidu. From there, the sniffer dog did not proceed further. From there, he came back to Annaiah Konda Checkdam. He searched for the dead body of the deceased in surrounding areas, but he did not find it. Then he requested the public present there to give a report. They had informed him that the wife of the deceased had already gone to Gudipala Police Station. Hence, he returned to Gudipala police station and reached there at about 10-00 p.m. He found P.W.1 present in the police station at that time and she gave a written report to him, which is Ex.P-1. Based upon it, he registered F.I.R. in Crime No.28/2007 under Section 302, 201 read with 34 I.P.C. and submitted express FIR to all the concerned officers. Ex.P-31 is the original F.I.R. submitted to IV A.J.F.C.M. Court, Chittoor. In the cross-examination, he deposed that P.W.1 is the resident of Kattakondapalle. When he visited Annaiahkonda check-dam after receipt of telephone message from Balaji, Z.P.T.C., he was present there in the mob. There were around two hundred people at that time. By 4.30 p.m., he was present at Annaiahkonda check dam. He asked Balaji Naidu, Z.P.T.C. to lodge report, but he has not given any report. In Ex.P-1 report, P.W.1 mentioned that she suspects A-1 to A-5 might have murdered her husband and nothing more. He further admitted that except G.D., he do not have any record to show that he visited Annaiah Konda check-dam and found Venkateswaraswamy dollar etc. 32. P.W.26 is the investigating officer, and he deposed about the investigation, collection of evidence and arrest of A-1, A-2, A-4 and A-5. P.W.27 is the subsequent investigating officer, who has taken the further investigation from P.W.26 and he deposed about the arresting of A-3 and finalizing investigation and filing of charge sheet. The relevant evidence of these witnesses, would be considered while appreciating the evidence of other prosecution witnesses and the circumstances on record. 33. Now we shall analyse the case of the prosecution in the light of the above evidence to answer the issues framed above. Discussion 34. V.K.Vijaykumar @ Madras Babu (deceased) was dabbling in politics in the District of Chittoor. He held certain posts in MPTC, ZPTC and Mandal President and was owing his allegiance to Telugu Desam Party. He was a resident of Kattakindapalli village, H/o.Gudipala Mandal. On 10-04-2007, at about 09.30 p.m., he disappeared and his mortal remains were found on 13-04-2007. In between the deceased and accused, who were also active in politics and were the supporters of the Congress party, there were certain disputes, which have come to the fore during the local body elections in 2001 and 2006. It is also on record that by the time of his death, the deceased Madras Babu was facing trial in a case wherein it was alleged that he has attempted to kill A.4 herein. A.2 to A.5 are said to be the followers of A.1. 35. In view of the hostilities between the two groups, it is alleged that A.1, with the assistance of A.2 to A.5, has conspired to kill the deceased and accordingly the said plan was executed on the intervening night of 10/11-04-2007. In brief, it is the case of the prosecution that on 10-04-2007 at about 09.30 p.m., the deceased, who was having his office at Naraharipet, telephoned to his wife-PW.1 stating that he is coming home. The deceased did not reach his house through out the night. Next day morning, PW.1 and her people started searching for the deceased. In the evening hours, they have noticed one Lord Venkateshwara Dollar and certain blood stains at Annaiah Konda Check Dam and since the said gold dollar belong to the deceased, the ZPTC member Mr.Balaji has immediately informed the S.I. of Police-PW.25 over telephone and the S.I. of Police reached the scene, searched for other objects and also searched for the deceased Vijaykumar. The S.I. of Police-PW.25 has also requisitioned the services of dog-squad and the dog-squad has led the police up to a well of Gunabhushanam Naidu and thereafter could not proceed further. The S.I. of Police – PW.25 wanted Balaji to give a complaint but he refused to do so. Before proceeding to the scene of offence, the S.I. of Police – PW.25 however made an entry in his General Diary. The S.I. of Police advised the people who gathered there who were numbering about 200, to lodge a complaint and he was informed that the wife of the deceased PW.1 has already went to Gudipala P.S. to lodge the complaint. The S.I. of Police returned to Gudipala P.S., and after obtaining the complaint – Ex.P.1, registered a case in Cr.No.28 of 2007 under Sections 302 and 201 read with 34, 120 (B) of I.P.C., and issued the F.I.R. 36. Since the case involved the disappearance and suspected murder of a political leader, the Superintendent of Police of Chittoor District also gave necessary instructions and deputed senior Police Officers to assist the investigation. PW.26 is the Inspector of Police, who by memo of the Superintendent of Police(Ex.P.32) was directed to take up the investigation and accordingly in the early hours of 12-04-2007 PW.26 took up the investigation. Efforts were being made to trace Vijaykumar @ Madras Babu or his body. 37. The needle of suspicion pointed out towards the involvement of A.4 who was by then working as Contract Driver in Madakashira RTC Depot. On 13-04-2007, A.4 was produced by the S.I. of Police before the Inspector of Police who interrogated him and it is said that he confessed having killed the deceased along with the other accused under the conspiracy of A.1. A.4 is also said to have led the police and panchas to the place where the body was buried. The dead body was exhumed and further investigation proceeded. 38. So far as the involvement of the accused is concerned, the case of the prosecution is that when the deceased was in his office at 09.30 p.m., on 10-04-2007, A.2 was seen in front of the office. At about 06.00 or 07.00 p.m., on 10-04-2007, A.3 and A.4 were seen sitting near Annaiah Konda Check Dam. The accused were said to be monitoring the movements of the deceased. The deceased left the office on his two wheeler and has crossed Basavapalli, which is a village in between Naraharipet and Kattakindapalli. There he was seen by PW.3. The other evidence that is placed on record is that P.W. 7 had seen A.4 and A.5 carrying a gunny bag on their motor cycle at about 10.30 p.m. Subsequently, it is in the evidence of P.W.8 that A.2 and A.4 came to his petrol pump and purchased petrol worth Rs.500/-. Thereafter, there is no

evidence, whatsoever, as to what happened and only the dollar belonging to the deceased, his motor cycle were found and subsequently, the dead body of the deceased was exhumed. The Investigating Officer after apprehending the accused have recovered the cell-phones from them and obtained the data from the concerned service providers and it has come out that in the intervening night of 10/11-04-2007 there were several calls made in between the accused. 39. From the above brief narration of facts, what is evident is that the case is based on purely circumstantial evidence. When a case squarely rests on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. Establishment of motive is an essential ingredient to be established by the prosecution in a case based on circumstantial evidence. It is obligatory on the part of the prosecution to establish all the links in the chain and the circumstances so established should lead to irresistible conclusion that it is the accused who have perpetrated the crime. 40. In the instant case, insofar as the motive is concerned, the prosecution could place on record that both the deceased and the accused belong to different political parties and were contesting in the elections against one another. It is also not denied that the deceased was charge-sheeted and the case is pending trial wherein it was alleged that he attempted to kill A.4 herein. In the MPTC and ZPTC elections held in the years 2001 and 2006, there were certain disputes between the two groups. 41. The main link in the chain of circumstances in the instant case is (1) the accused were seen loitering around Naraharipet and Annaiah Konda Check Dam; (2) there were unusually large number of telephone calls in between the accused in the intervening night of 10/11-04-2007; and (3) the crucial link is said to be the confession made by A.4 which led to the discovery of corpus delicti. 42. Learned Counsel appearing for the appellants submitted that there are several circumstances and contradictions which clearly show that the prosecution has not placed on record the true genesis of the incident. The conduct of the wife – PW.1 in the night of 10/11-04-2007 is not the natural conduct of a wife. Having received the information at about 09.30 p.m., that her husband is starting from his Office at Naraharipet and is coming to house and even though the husband did not turn up throughout the night, she did not react in any unusual manner. Admittedly, the distance between the Office of the deceased and her house can conveniently be covered within 15 to 20 minutes. The normal conduct would have been that since the husband has specifically stated her that he is on his way to home, but he did not turn up for considerable length of time, she should have made some efforts to locate her husband. Admittedly, she did not even try to contact her husband on the cell-phone which was being carried by the deceased. Learned Counsel submits that if really the deceased informed PW.1 that he is coming home and will be reaching within 15 minutes to half-an-hour and when the deceased husband did not reach home, she should have immediately tried to ascertain the whereabouts of her deceased husband. This is more particularly in view of the fact that admittedly there were disputes between the two political groups in the village and the accused are alleged to have been threatening the deceased to eliminate him and this was very much within the knowledge of the wife PW.1. When the conduct of PW.1 is juxtaposed with the surrounding circumstances, we are of the opinion that PW.1 has not conducted herself in the manner in which she was expected or that she is not coming out with the true version about there being any conversation in between her and her husband at 09.30 p.m., on 10-04-2007. 43. It is the further submission of the learned Counsel appearing for the appellants that the complaint Ex.P.1 lodged by the wife PW.1 at 10.00 p.m., on 11-04-2007, cannot be treated as a First Information Report for the reason that even before the complaint was lodged, the investigation was taken up by the Investigating Officer. Therefore, the same is hit by the provisions of the Code of Criminal Procedure. At best, the complaint Ex.P.1 can be treated as a statement of the witness under Section 161 Cr.P.C. The admitted facts are that the deceased disappeared at about 10.00 p.m., on 10-04-2007. There was no movement whatsoever during the night. Next morning, the wife PW.1 claims to have started searching for the deceased and informing her relations. In the afternoon, the ZPTC Member by name Balaji has noticed the Venkateshwara Swamy dollar and certain blood stains at Annaiah Konda Check Dam and all the villagers were alerted. PW.1 also went there and identified the dollar as belonging to the deceased. Immediately, the said Balaji, who has been listed as witness No.15 in the charge-sheet, has informed the Investigating Officer over telephone. Specific information about disappearance of the deceased and finding of the golden dollar belonging to the deceased and blood stains were informed to the Police Officer. Rightly the Police Officer has made an entry in the General Diary about the information received over telephone and proceeded to the spot. At the spot at about 04.00 p.m., on 11-04-2007, the Police Officer found as many as 200 villagers. Investigation was immediately taken up and search was made for the deceased. Even the services of dog squad was requisitioned and at about 06.00 p.m., the squad came and the dog has led the Investigating Officers to a distance of about 1 K.M. Thereafter, the dog did not proceed further. The Investigating Officer claims to have called upon the said Balaji, who was very much present at the scene, to give a written report, but he is said to have refused. On the other hand, the Police Officer was informed that the wife of the deceased PW.1 has already gone to the Police Station for lodging the complaint. Thereafter, the Police Officer returned to the Police Station and then a complaint written by somebody else but signed by PW.1 was presented. In the said complaint, it was mentioned that the deceased has not returned home as informed and his whereabouts are not known. Suspicion was raised against six persons including A.1 to A.5 herein and one Jayachandra Naidu. By the time the complaint was lodged, nobody knew that the deceased has been killed or that there is any evidence pointing towards the murder, nor was there any evidence to show that there was any attempt to screen the offence. A plain reading of the complaint Ex.P.1, even if it is taken as statement, clearly show that at that point of time the ingredients of Sections 302 and 201 of IPC. were not established. Still an experienced Police Officer has registered the crime, as if it was certain that the person whose whereabouts are not known, was murdered. It is on record that for nearly two days after the crime was registered, nobody knew that the untraced person has been killed and that the body of the deceased has been secreted or that the evidence was destroyed. In view of this, the learned Counsel submits that entire facts are not truly placed by the prosecution before the Court. Significantly, the first informant namely Balaji (LW.15), who is a responsible elected representative, though listed as witness, has not been examined by the prosecution. For the reasons best known, his evidence has been withheld by the prosecution. 44. One of the circumstances sought to be established by the prosecution is based on the theory of last seen together. None of the prosecution witnesses that were examined have seen the deceased in the company of the accused. The only evidence that is placed on record is that at about 09.30 p.m., when the deceased was in his office at Naraharipet, A.2 was standing in front of his Office speaking over telephone to somebody. The other evidence is that A.3 and A.4 were seen at about 06.00 or 07.00 p.m., on 10-04-2007 at Annaiah Konda Check Dam. The other evidence is that A.4 and A.5 were carrying something in a gunny bag on their motorcycle. Another circumstance is that A.2 and A.3 have purchased petrol from PW.8 in the mid-night in a plastic can. These circumstances even if taken as established, do not in any way show that the deceased was seen alive in the company of the accused at any time prior to his disappearance. 45. In this regard, the prosecution mainly rely on the evidence of PWs.3 and 6 to contend that their evidence proves that the accused were seen at or near the scene of offence prior to the deceased disappearing, which was before 09.30 p.m. on 10-4-2007. PW.3 claims to be a follower of the deceased. He is resident of Basavapalli, which is in between Naraharipet and Kattakindapalle. He deposed that at about 09.45 p.m., when he was near a shop in the village, he has seen the deceased going on his motorcycle. Not only that he also claims that the deceased has wished him and he reciprocated. Thereafter, next day morning he claims to have come to know about the disappearance of the deceased. He further claims that next day i.e., on 11-04-2007 at about 05.30 p.m., they found a gold dollar near Annayyakonda Checkdam. He also claims to be present when the dead body was discovered. However, these material facts of PW.3 having seen the deceased at about 09.45 p.m., on 10-04-2007, have not been spoken to by him in his previous statement before the police and the Executive Magistrate. 46. PW.6, who is also a follower of the deceased, speaks about the disputes between the accused and the deceased and also claims knowledge about the threats being held out by the accused to the deceased. It is in his evidence that at about 09.00 p.m. on 10-04-2007 himself and the deceased were together in the office of the deceased at Naraharipet. At that time, PW.6 claims to have seen A.2 standing in front of the office of the deceased and talking over telephone. The deceased and PW.6 dispersed from Naraharipet and A.2 followed the deceased. From his evidence what could be gathered is that he was aware about the threats to the life of the deceased at the hands of the accused. He claims to be a friend and a follower of the deceased. As a matter of fact, he is the person who was in the company of the deceased when he was alive. If really he had seen A.2 standing in front of the office of the deceased and thereafter following him behind, this would have alerted PW.6 to alert the deceased about A.2 watching the movements of the deceased and following him behind. In the cross-examination PW.6 admits that the deceased could have reached his house within 10 or 15 minutes after having left the office at Naraharipet. Even till the evening of 11-04-2007, even though the deceased was being searched through out the day, this witness has not informed the family

members of the deceased of his having been in the company of the deceased till 09.00 p.m. on 10-04-2007 and that A.2 being seen in front of the office of the deceased at that time. 47. The Investigating Officers have drawn as many as '3' sketches. They are marked as Exs.P.33, P.35 and P.38. What is noticed from the plans is that there is a National Highway connecting Chittoor and Vellore/Chennai. Naraharipet and Gudipala X-roads are on the Highway. The village Basavapalle is interior by about 1.2 KMs., from the Highway and Kattakindapalle Harijanwada is further 1 KM inside and beyond Basavapalle. Adjacent thereto is the village of Kattakindapalle. There is a straight road from Naraharipet to Kattakindapalle via Basavapalle. In between Basavapalle and Kattakindapalle, there is a way to field towards south. A checkdam is on the said way to fields. The deceased was proceeding from Basavapalle to Kattakindapalle. At Basavapalle, PW.3 has wished him which is responded by the deceased. From Basavapalle to go to the house of the deceased, there is no need for taking a diversion towards southern side on the way which leads to the fields and the checkdam. According to the prosecution, the attack took place on the road leading from Basavapalle to Kattakindapalle. The attack was made with sticks and stones. Significantly, no blood stains were found on the road leading from Basavapalle to Kattakindapalle. However, on the way leading to fields, which was towards the south of the road connecting Basavapalle and Kattakindapalle, after crossing the check-dam blood stains were found. If the sketch Ex.P.33 is to be believed, the attack on the deceased did not take place on the road leading from Basavapalle to Kattakindapalle but it was on the way to fields, which was altogether in a different direction. Further blood stains were also found further interior on the way to fields as evident from the sketch Ex.P.33. As per Ex.P.33, as already noticed, the attack on the deceased did not take place on the road leading from Basavapalle to Kattakindapalle, on which he was proceeding on his motorcycle. It is not placed on record as to where exactly the incident took place since Ex.P.33 rules out the possibility of the attack having taken place on the road on which the deceased was proceeding. 48. Ex.P.38 is another sketch which shows the place where the dead body is alleged to have been burnt and subsequently shifted to a distance of about 50 feet and buried in a pit which was dug by the accused. It is the case of the prosecution that at a place shown has big stone in Ex.P.38, the accused have set fire to the dead body of the deceased. When the body was still burning, the accused are said to have shifted the dead body to a distance of about 50 feet and dumped it in the pit dug by them. How could the accused shift a burning dead body and carry to a distance of 50 feet is not explained. If really, the accused have shifted the dead body when it was burning to a distance of about 50 feet, they are bound to have sustained burn injuries at least on their hands. A.4 was apprehended within less than 48 hours of the incident and he was found driving the bus at the relevant time he being on duty. Absolutely, no signs of A.4 having any kind of burn injuries on his hand or even the other accused to show that they could have shifted the half burnt dead body from a big stone to a pit which was separated by 50 feet as is evident from the sketch Ex.P.38. Human body as is well known will take substantial time to burn or even to cool off a half burnt body. 49. The decisive link that is sought to be established by the prosecution is the confession alleged to have been made by A.4 leading to the discovery of the dead body of the deceased. According to the prosecution, after having killed the deceased by beating with sticks and stones, the accused have carried the dead body in a gunny bag on motorcycle to Ootagunta cheruvu and by pouring petrol, the body was burnt. Even before the body was completely burnt, the dead body was shifted to a distance of 50 feet where a deep pit was dug by the accused with the help of a crowbar and the accused have dumped the half burnt dead body into the pit and again poured petrol and burnt it. Subsequently, the pit was filled with mud. Therefore, where the dead body is shifted at a place where it will not be known to any person other than the person who has committed the crime. If the prosecution could establish that the dead body was found hidden deep under a pit and it was discovered at the instance of the accused, then the irresistible conclusion that has to be drawn is that the person leading to the discovery of the corpus delicti is the author of the crime. 50. The material witnesses to speak on this aspect are PWs.13, 14, 16 and the Investigating Officer – PW.26. Insofar as the evidence with regard to exhuming dead body of the deceased from a fully covered pit allegedly at the instance of A.4, the relevant evidence is that of PW.15 and PW.19 – the Executive Magistrate. 51. It may be recalled that the entire mystery surrounding the disappearance of the deceased was unearthed with the arrest of A.4. Till that time, nobody exactly knew as to what happened to the deceased. A.4 is said to be working as a driver on contract basis in APS RTC in Markapuram Depot. His arrest led to unfolding of the events both prior to and subsequent to the death of the deceased. PW.11 is the Inspector of Police, who has been deputed by the superior Officers specifically to investigate the present crime. Actually he was the S.I. of Police at Kallur P.S., but he claims that on 11-04-2007 at 08.00 p.m., he received instructions from the SDPO, Chittoor, to attend to the bandobasth duty at Gudipala P.S. It is further in his evidence that on 12-04-2007 at 05.00 a.m., in the early morning he received instructions from the Additional S.P., Tirupati and the SDPO, Chittoor, to go to Markapuram and to secure one Chinnaraj (A.4) who was working as a driver in the said Depot. He deposed that accordingly he went along with the constable to the Bus Depot and secured the presence of A.4 at about 05.30 p.m., who was actually on duty at that time. The Police Officer informed the Depot Manager-PW.24 and brought A.4 to Gudipala P.S. and on the next day morning at 10.00 a.m., i.e., on 13-04-2007 the Police Officer-PW.11 produced A.4 before the Investigating Officer – PW.26 for further investigation. This is the evidence at the threshold about the apprehension of A.4. There are material discrepancies on this aspect. As noticed above, as per the Police Officer – PW.11, the driver – A.4 was apprehended at 05.30 p.m., on 12-04-2007 and produced before the Inspector of Police – PW.26 at 10.00 a.m., on 13-04-2007. The Depot Manager – P.W.24 spoke with reference to the record since he joined the said Depot subsequently. It is in his evidence that A.4 was on leave on loss of pay on 9th, 10th and 11th April, 2007. He produced Ex.P.30 which is the original muster roll. The Depot Manager with reference to the record says that the driver – A.4 was arrested by the police on 13-04-2007 at 07.30 p.m., at Gudipala P.S. When the Police Officer would have it that A.4 was arrested in the evening of 12-04-2007, according to the Depot Manager – PW.24, A.4 was arrested at 07.30 p.m., on 13-04-2007. Yet another discrepancy is noticed from the evidence of the Executive Magistrate – PW.19. As per the Police Officer – PW.11, the presence of A.4 was secured at 05.30 p.m., on 12-04-2007 and he was produced before the Inspector of Police – PW.27 at 10.00 a.m., on 13-04-2007. The Executive Magistrate – PW.19 deposed that on 13-04-2007 at about 05.30 a.m., in the morning, the S.I. of Police – PW.25 and C.I. of Police – PW.26 came to him and informed that the dead body of Madras Babu was traced and that the accused are in their custody. This is completely at variance with the case of the prosecution and the other evidence on record. If what the Executive Magistrate – PW.19 deposed is to be believed, it is apparent that even by 05.30 a.m., on 13-04-2007, the Police Officers knew as to where the dead body was buried and that was even prior to A.4 being produced before PW.26 by PW.11 at 10.00 a.m., on 13-04-2007. When none of the accused are arrested by then, how can the Investigating Officers know that the dead body is buried in a pit fully covered at a place which was not known to anybody. 52. Be that as it may, even the crucial evidence with regard to the confession alleged to have been made by A.4 while in police custody leading to discovery of fact is suspicious. As is well known, the evidence on this aspect should be cogent, consistent and shall inspire the confidence of the Court so as to accept the self-inculpatory confession said to have been made by A.4 while in police custody. PWs.13 and 14 are said to be the independent panch witnesses in whose presence A.4 made the confession in the presence of the Inspector of Police – PW.26. These two witnesses are crucial for the prosecution and both of them are working as Village Revenue Officers of Nagamangalam Group and Bommasamudram Group. 53. PW.13 deposed that on 13-04-2007 at about 09.30 a.m., when he was present at Nangamanagalam, the Police Constable came to him and asked him to come over to Naraharipet P.S. Accordingly, he went to Naraharipet P.S., and reached there at about 10.00 a.m., and found PW.11 and A.4 in the Police Station. He claims that PW.14 was also present by then. The relevant part of the statement of PW.13 to put it in his own words is that "PW.11 (Inspector of Police) had informed us that A.4 is involved in the murder case of Madras Babu and they want to record his statement in our presence". It is further in his evidence that subsequently A.4 stated that he would show a place at Ootagunta where the dead body was buried. PW.13 further deposed that when they were in the Police Station, the C.I. of Police addressed a letter to Tahasildar – PW.19 for exhumation of the body. Thereafter they went to the Office of Tahasildar and Tahasildar followed them in a vehicle to Ootagunta along with police. PW.13 further deposed that A.4 and another VRO (PW.14) and all of them reached Ootagunta cheruvu at about 01.45 p.m. A.4 had shown the place stating that the dead body was burnt there and the dead body was shown and they found certain burnt cloth pieces, belt buckle etc. After having deposed so, it is recorded in his deposition that the Public Prosecutor was conducting the case had to ask PW.13 four times and only then the witness deposed that the dead body was exhumed and Tahasildar – PW.19 prepared the mahazar, which is Ex.P.2. This observation of demeanour of the witness goes to show that the dead body was already on the surface but not hidden and discovered at the instance of A.4. This part of the testimony of PW.13 gets corroborated from the evidence of Tahasildar-PW.19 since as already noticed the Tahasildar deposed that at 05.30 a.m. itself on 13-04-2007 the Police Officers came to his house and informed that the dead body of Madras Babu has been found and that the accused are in their custody. There is significant admission from the mouth of PW.13 in the cross-examination. He deposed that Ex.P.2 – Exhumation proceedings do not contain the

recitals about the presence of A.4 or A.4 informing the Tahasildar about the murder of the deceased, burning the dead body and burying it at Ootagunta. 54. The other evidence is that of the other VRO – PW.14. It is in his evidence that in his presence A.4 confessed that he along with another murdered the deceased on 10-04-2007 at about 09.00 or 09.30 p.m., and that he would show the place where the dead body was buried. According to the prosecution, the confession of A.4 was on all the aspects preceding and subsequent to the murder of the deceased. Significantly PW.14 do not say any such thing and the evidence of PW.14 is very cryptic. According to him, A.4 confessed that he along with another, who has not been named by A.4, have caused the death of the deceased and buried the dead body. 55. On this material aspect, the evidence of the Executive Magistrate/Tahasildar-PW.19 is material. If the evidence of the Executive Magistrate is carefully analysed, we feel that the evidence of the Officer instead of supporting the case of the prosecution falsifies the events sought to be proved by the prosecution. Before proceeding to read the evidence of PW.19, it may be recalled that according to the Police Officers, A.4 was arrested on 13-04-2007 and he confessed having committed the crime along with the other accused and led the police and panchas to the place where the dead body was hidden. At his instance, the dead body was exhumed in the presence of Tahasildar and was identified by the relations of the deceased as that of Madras Babu. The evidence of PW.19 is not on those lines. On the other hand, PW.19 deposed as under: "On 13-4-2007 at about 5.30 a.m., the S.I. of Police of Gudipala and the Inspector of Police, by name Narasappa came to me and informed that the dead body of Madras Babu was traced out and accused are in their custody. At about 7.45 a.m., or 08.00 a.m., I was taken by the police to some Gutta and there is a small pond with water. I did not find anything there. Then the C.I. and S.I. had shown me that place stating that the dead body is buried there. I sent requisition to doctors for conducting p.m. examination on the spot. Again at 1.30 p.m., on the same day, the S.I. of Police, Gudipala had taken me to that gunta, there was a team of doctors already present there by that time. The dead body was exhumed, it was totally burnt, it was removed and kept on a mat. The wife and brother of the deceased also were sent for. When they came, they were asked to identify the dead body. After observing for 15 minutes they had identified the dead body as that of Madras Babu @ Vijaya Kumar. Later on I have ordered for P.M. examination. After conducting P.M. Examination, the statements of PW.1, PW.2, M.Thyagaraju, PW.3, PW.5 were written by some policemen to my dictation. Ex.P.2 is the exhumation proceedings written to my dictation. Ex.P.26 is the statement of M.Thyagaraju. There after the dead body was handed over to the blood relatives of the deceased. (The witness is not able to read letters and he had simply identified his signature in all the documents with the help of Additional Public Prosecutor, he states that he is unable to read letters because of eye problem)." From the above statement of PW.19, what is established is that the dead body was discovered not at the instance of any of the accused but at the instance of the Police Officers. The Executive Magistrate – PW.19 do not even speak about the presence of A.4 or any of the accused at the time when the dead body was traced. The evidence of the Executive Magistrate - PW.19 completely belies the case of the prosecution that it is the confession of A.4 which led to the discovery of corpus delicti from the place it was hidden underneath the ground and it was within the exclusive knowledge of A.4. 56. PW.15 is a panch witness to the exhumation proceedings – Ex.P.2 conducted by the Tahasildar – PW.19. His evidence is to the effect that the Tahasildar summoned him to his Office and from there, himself, one Balaji and Tahasildar went to Ootagunta cheruvu and at Ootagunta cheruvu the dead body of Madras Babu was exhumed in their presence and that it is they who identified the dead body and inquest panchanama was conducted. Even PW.15 do not speak about the presence of A.4 at the relevant time when the incriminating fact was discovered. As against the evidence of PW.15, the panch witness and the Tahasildar – PW.19, the Investigating Officer – PW.26 claims that on 13-04-2007, A.4 was arrested and he confessed having committed the crime and thereafter he led the panchas, police and the Tahasildar to Ootagunta cheruvu and shown the place where the dead body was buried. According to the Investigating Officer, the Tahasildar got the dead body exhumed after the place was pointed out by A.4. 57. Upon carefully perusing the above evidence, we have no hesitation in holding that the prosecution has miserably failed to prove the material aspect of the confession leading to the discovery of fact said to have been made by A.4 while in police custody so as to accept the same as establishing the involvement of A.4 in the crime. 58. According to the case of the prosecution, after having killed the deceased, the accused purchased petrol worth Rs.500/- from the Petrol Pump of PW.8 and with the help of that petrol, they set fire the dead body. The petrol pump of PW.8 is situated 12 KMs., away from the village where the incident took place. It is in the evidence of PW.12 – the VRO that at a distance to 4 KMs., from the village, there was a petrol pump. If that be the case, at the dead end of the night, the accused would not have travelled to a distance of 12 KMs., to purchase the petrol when there was petrol pump just 4 KMs., away from the place where the incident took place. It is not the case of the prosecution that attempt was made by the accused to purchase the petrol from the petrol pump which was just 4 KMs., from the village and they having failed, have to proceed to a petrol pump which was 12 KMs., away from the village. This circumstance only goes to show that PW.8 who claims to have sold the petrol to the accused in the mid-night has been planted to suit the case of the prosecution. 59. The main stay of the case of the prosecution is that the crime was committed in pursuance to the conspiracy the kingpin of which was A.1. The motive being the one-upmanship in the political fiefdom. A.4 was also nurturing grievance against the deceased for the reason that he made an attempt on his life and by the date of incident, the deceased was facing trial for that crime. In view the above, all the accused have hatched the plan to eliminate the deceased and accordingly they were constantly in touch with one another both before and subsequent to the execution of the plan. It may be recalled that according to the confession of the accused, A.2 was made to keep a watch on the movement of the deceased and inform A.3 and A.4 who were in the wait for the prey to come. Accordingly, A.2 informed the other accused immediately after the deceased left his office at Naraharipet and the other accused have killed the deceased by beating him with sticks and stones, carried the dead body in a gunny bag to far off place, burnt it partly, dug a pit nearby, buried the same and covered the dead body with mud, which was not visible to anybody. After being apprehended, the cell-phones were recovered from the accused and the requisite data was obtained from the Service Providers, which revealed that there were unusually frequent calls in between the accused throughout the night of 10/11-04-2007. This according to the prosecution establishes the complicity of the accused. 60. Learned Counsel appearing for the accused, on the other hand, submits that admittedly all the accused were inter-related. The prosecution did not establish the ownership of the cell-phones. The voice of A.1 was not tested. Except for the fact that there was certain incoming and outgoing calls in between the accused in the night, it cannot be said to establish the guilt of the accused. What transpired in between the accused is not known. Merely because there were certain calls in between the accused at and around the time when the incident took place cannot be said to be conclusively establishing the guilt of the accused. Learned counsel further submits that at best the evidence that is produced would raise suspicion against the accused but as is well-known suspicion howsoever strong cannot take the place of proof. Learned Counsel submits that, admittedly, the cell-phones that were recovered are all not belonging to the accused. For instance, the cell-phone bearing No.9440216878, which was used by A.1, stands in the name of his wife Suneela. It is also in the evidence that the cell-phone bearing No.9441804075 though belonging to A.4 was being used by A.1. According to the prosecution, A.2 requested PW.10 – Sampath Kumar about six months prior to the incident to purchase sim card in the name of PW.10 and give it to A.2 since he was not having the requisite documents for obtaining the sim card. PW.10, however, denied the said version of the prosecution. Apparently, the cell-phone bearing No.9440677255 which was used by A.2 stands in the name of PW.10 but not the accused. By examining PW.18 – the Assistant General Manager, BSNL, Tirupati, and PW.22 – the Nodal Officer, Vodafone for A.P., and by producing Exs.P.20, 21, 22, 23 and 24, the prosecution has, no doubt, proved that in the intervening night of 10/11-04-2007 there was unusually more number of telephone calls in between some of the accused. Except for proving the aspect of there being frequent calls that by itself do not establish beyond reasonable doubt that it is the accused who have conspired to kill the deceased and have executed the plan in pursuance to the conspiracy. When all the accused persons are inter-related and they belong to the same village, merely because they spoke amongst them more often than in the past, it may not be safe to base on that particular testimony for holding that it is the accused who have conspired to kill the deceased and executed the same. This circumstance can no doubt be taken as proving the guilt of the accused provided the other crucial links in the chain of circumstances are established by the prosecution. We find substance in the submission of the learned Counsel for the accused that solely on the basis of there being frequent telephone calls in between the accused in the intervening night of 10/11-04-2007, it cannot be said that the case of the prosecution is proved and this circumstance, no doubt, raises a doubt about the involvement of the accused but the said suspicion cannot be taken as proof beyond reasonable doubt. 61. It may be noted that the case of the prosecution is that the deceased when he was starting to his home from the office, gave a ring to his wife PW.1 and informed that the deceased will be reaching home which would not have taken more than 15 to 30 minutes as admitted by the witnesses. It is also in the evidence that the deceased was carrying a cell-phone and when the body was discovered, partly burnt cell-phone was also recovered. When the deceased did not turn up, as promised, PW.1 would have certainly tried to contact

