

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

REFERRED TRIAL NO.2 OF 2014

The VI Additional District and Sessions Judge,
Godavarikhani, Karimnagar District .. Referring Officer

(For confirmation of Death Sentence awarded on 09.10.2014 to the
accused 1 & 2 in Sessions Case No.499 of 2011 on the file of VI
Additional District and Sessions Judge at Godavarikhani,
Karimnagar District (Letter Dis.No.2256 of 2014, dated
24.11.2014)

Between:

The State through SHO, PS Godavarikhani,
II Town (Cr.No.35 of 2010) rep. by the
Public Prosecutor for the State of Telangana,
High Court at Hyderabad. .. Complainant

And

1. Junugari Devender
2. Junugari Naresh .. Accused 1 & 2

CRIMINAL APPEAL NO.1413 OF 2014

Between:

Junugari Decvender and another .. Appellants/accused 1 & 2

And

The State of Telangana rep. by its
Public Prosecutor, High Court at
Hyderabad through State House
Officer, Godavarikhani, II-Town
Police Station .. Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED: 30.09.2016

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

% DATED 30th SEPTEMBER, 2016

+ REFERRED TRIAL NO.2 OF 2014

The VI Additional District and Sessions Judge,
Godavarikhani, Karimnagar Distric .. Referring Officer

(For confirmation of Death Sentence awarded on 09.10.2014 to the accused 1 & 2 in Sessions Case No.499 of 2011 on the file of VI Additional District and Sessions Judge at Godavarikhani, Karimnagar District (Letter Dis.No.2256 of 2014, dated 24.11.2014)

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Junugari Decvender and another .. Appellants/accused 1 & 2

Vs

\$ The State of Telangana rep. by its
Public Prosecutor, High Court at
Hyderabad through State House
Officer, Godavarikhani, II-Town
Police Station .. Respondent/Complainant

<Gist:

>Head Note:

! Counsel for the Appellants : Sri M.Chalapati Rao

^Counsel for the respondent : Public Prosecutor

? CASES REFERRED:

1. (2014) 10 SCC 473
2. (2016) 1 SCC 550
3. (2012) 6 SCC 403
4. (2012) 2 SCC 399
5. (2011) 11 SCC 666
6. (2014) 14 SCC 431
7. (2010) 2 SCC 583

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**REFERRED TRIAL NO.2 OF 2014
AND
CRIMINAL APPEAL NO.1413 OF 2014**

C O M M O N J U D G M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)

On the intervening night of 27/28.03.2010, Bogiri Banaiah (D1), his wife, Banamma (D2), their daughter, Aruna (D3) and their granddaughter, Deepthi (D4), daughter of their son, Ravi (P.W.1), died in their home at Pothana Colony, Godavarikhani. Their deaths were undoubtedly homicidal, having been caused by asphyxia due to strangulation. Junugari Devender (A1), son-in-law of D1 and D2 and the husband of D3, and his relation and friend, Junugari Naresh (A2), were tried for the murders and other offences in Sessions Case No.499 of 2011 on the file of the learned VI Additional District and Sessions Judge, Godavarikhani. By judgment dated 09.10.2014, they were convicted of all charges and sentenced to death by hanging. They were also visited with sentences for the lesser charges held proved against them. Aggrieved thereby, they filed Criminal Appeal No.1413 of 2014 under Section 374(2) CrPC. Referred Trial No.2 of 2014 was taken on record under Section 366 CrPC for confirmation of the death sentence by this Court.

The charges framed against A1 and A2 by the Sessions Court, verbatim read as under:

FIRSTLY:

A1 of you married **D3 Junuguri Aruna**, led happy marry life for six months only, thereafter you started harassing physically and mentally her for additional dowry and committed thereby an offence punishable U/s. 498-A IPC.

SECONDLY:

You A-1 approached A-2 and LW-13 Junugari Thirupathi sought for their cooperation to kill D-1 Bogiri Banaiah, D-2: Bogiri Banamma and D-3: Junugari Aruna by inducing them to share the booty to be stolen from their house; A-2 of you agreed; you both purchased two iron rods from the shop of LW-14 Chippa Ramakrishna, secured two knives from LW-15 Solanki Veeraman, purchased two pairs of gloves from shop of LW-16 Mirza Shamsheer Baig, a quarter bottle of whisky from the shop of LW-17 Thalla Madhu to offer it to D-1, went to his house at 11 Pm on 27.03.2010 woke him up, offered wine to D-1 and killed D-1 to D-3 one after another; you both stolen away gold ornaments from the dead bodies of D2 & D3 and from almirah also and later shared the booty and committed thereby an offence punishable U/s.380 IPC.

THIRDLY:

A-1 of you in order to murder D-1 Bogiri Banaiah secured A-2 to help you, went into his house on the same day, obtained chunni and killed D-1: Bogiri Banaiah by strangulation with chunni pressing his throat with foot and committed thereby an offence punishable U/s.302 IPC

FOURTHLY:

A-1 of you in furtherance of the same object on the same day woke up D-2 Bogiri Banamma secured her, pounced upon her and strangled her with chunni and towel and murdered her and committed thereby an offence punishable U/s.302 IPC

FIFTHLY

A-1 of you in furtherance of the same object on the same day woke up D-3 also strangled her also with chunni and towel throttling her with hands with pillow and committed thereby an offence punishable U/s.302 IPC

SIXTHLY

A-1 of you in furtherance of the same object on the same day noticed Bodiri Deepthi (D-4) woke up while you were strangulating other deceased and strangled her also with hands, chunni and pillow and murdered her and committed thereby an offence punishable U/s.302 IPC

SEVENTHLY:-

A-2 of you joined A-1 and strangled D-1 Bogiri Banaiah on the same day and committed thereby an offence punishable U/s.302 IPC

EIGHTHLY

A-2 of you in furtherance of the same common object on the same day at the same place pounced upon **D-2 Bogiri Banamma** also and strangled her and committed thereby an offence punishable U/s.302 IPC.

NINTHLY

A-2 of you in furtherance same common object on the same day woke up **D-3 Junugari Aruna** and strangled her similarly with Chunny and towel and pillow and committed thereby offence punishable U/s.302 IPC.

TENTHLY

A-2 of you in furtherance same common object on the same day got **D-4 Bogiri Deepthi** woke up saw her crying and strangled her with chunny and pillow and committed thereby offence punishable U/s.302 IPC.

LASTLY

You A-1 since 3 months after your marriage with the deceased Junugari Aruna demanded to bring additional dowry from her parents, and thereby committed an offence punishable U/s. 4 of Dowry Prohibition Act.'

A1 and A2 pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 24 witnesses and marked 53 exhibits. Case properties were marked as M.Os.1 to 36. No oral evidence was let in by the defence but Ex.D1, a portion of the statement of P.W.3 recorded under Section 161 CrPC, was marked.

The prosecution's case before the Sessions Court:

The Circle Inspector of Police, Godavarikhani II Town Police Station (P.W.23), received Ex.P1 report from Bogiri Ravi (P.W.1), the son of D1 and D2, brother of D3 and father of D4, on

29.03.2010 at 00.30 hours. Therein, P.W.1 stated that he was informed over phone at about 4.00 PM. by Sathish (P.W.3) that when there was no response at the house of his parents when a Bharath Gas Company delivery boy knocked on the door at about 3.30 PM., Sathish and some others went into the house through the back door which was open and found his parents (D1 and D2), sister (D3) and daughter (D4) dead. P.W.1 stated that he, along with his cousin, Bhaskar (L.W.11), went to the house at Pothana Colony and found the bodies of D1 to D4. P.W.1 further stated that he had a strong suspicion that his brother-in-law, Junugari Devender (A1), along with others had killed them and had taken away their gold ornaments. He requested the police authorities to enquire and take necessary action.

Thereupon, P.W.23 registered a case in Crime No.35 of 2010 under Section 302 IPC r/w Section 34 IPC and Section 380 IPC. Ex.P39 is the FIR. He then handed over the same to the Sub-Divisional Police Officer, Godavarikhani (P.W.24), who took up investigation. P.W.24 visited the scene of the offence during the early hours of 29.03.2010. He posted a police picket at the scene as it was past midnight. On daybreak, he secured the presence of panchas, Vadlakonda Praveen (P.W.17) and G.Rajaiah (L.W.22), and conducted an inquest over the dead body of D1. He thereafter conducted inquest proceedings over the dead body of D.4 in the presence of Maturi Bhagyalaxmi (P.W.16) and A.Ramulu (L.W.28). A video (Ex.P24 CD) and photographs (Exs.P4 to P23) were taken with the help of Ch.Madhu (P.W.15), a professional photographer. On the instructions of P.W.24, P.W.23 conducted an inquest over the dead body of D.2. Ex.P2 is the inquest panchanama. The Circle Inspector of Police, Kamanpur (P.W.22), conducted inquest proceedings over the dead body of D.3 on the instructions of

P.W.24. During the inquest proceedings, P.W.24 collected hair from the fists of D2 and D3 and the same was preserved in separate polythene covers in the presence of panchas. He also collected one blood-stained chunny and clothes belonging to D2 and D3 in the presence of panchas. During the course of the scene of the offence panchanama under the Crime Detail Form (Ex.P28), P.W.24 collected two gold pusthelu, six gold gundlu and two other gold pusthelu from near the fish aquarium in the hall. He then filed a requisition with the Superintendent of Police, Karimnagar, to send a clues team. Thereupon, S.Satyanarayana (P.W.21), a Finger Print Expert in the District Police Office, Karimnagar, and his team visited the scene of the offence and collected chance prints appearing on an empty quarter whisky bottle and a glass found near the sofa set at the scene of the offence. The quarter whisky bottle and the glass were also seized under the Crime Detail Form (Ex.P28) in the presence of panchas. P.W.24 then drew a rough sketch of the scene of the offence in the presence of panchas. He examined and recorded the statements of Bogiri Ravi (P.W.1), Jangili Sathish (P.W.3), K.Ramulu (L.W.4), B.Laxmi (L.W.7), J.Bheemakka (L.W.8), K.Rajeshwari (L.W.9), B.Sujatha (P.W.6), R.Santhosh (P.W.7) and Ch.Madhu (P.W.15). After completion of the inquest proceedings, the four dead bodies were sent to the Government Area Hospital, Godavarikhani, for post-mortem examination. Dr. V.Prabhakar Rao (P.W.20), the Civil Assistant Surgeon, Government Hospital, Godavarikhani, conducted the post-mortem examination and furnished his reports (Exs.P31 to P34) stating that the death of all the deceased was caused by asphyxia due to strangulation. During the course of further investigation, P.W.24 also examined and recorded the statements of Kanuganti Shankar (P.W.5), Bogiri Srinivas (P.W.4)

and Bogiri Bhaskar (L.W.11). On 17.04.2010, P.W.24, along with his team, apprehended A1 and A2 at the house of A1 and having secured the presence of P.Ravi (P.W.19) and Abhay Kumar (L.W.30), he interrogated them in their presence. P.W.24 thereupon conducted confession panchanamas of A.1 and A.2 individually. At the instance of A1, one gold necklace, one gold pusthelu tadu, one mobile phone G5 model and sim (9666782370), and a knife were seized under cover of a recovery panchanama (Ex.P29). P.W.24 got weighed the gold ornaments with K.Krisnamachary (P.W.18), a gold smith. At the instance of A.2, P.W.24 recovered one gold pusthelu tadu, a pair of gold ear tops, a pair of gold maties, a pair of gold small tops, a knife, a pair of hand gloves and a mobile phone of Nokia model with sim No.9912915441, under recovery panchanama (Ex.P30). He also got these gold ornaments weighed with K.Krisnamachary (P.W.18). Thereafter, based upon the confessions, P.W.24 visited the shops from where A1 and A2 had secured iron rods, hand gloves, liquor and also the blacksmith who made the knives. P.W.24 visited the tea stall where the accused consumed tea after committing the offence. He obtained finger prints of the accused and they were produced before the Medical Officer for collecting samples of their hair. They were then remanded to judicial custody. The hair collected from the fists of D2 and D3 and the sample hair collected from the accused were sent to the Forensic Science Laboratory, Hyderabad, along with the clothes of the deceased for examination and report. The collected finger prints of the accused were sent to the finger print expert for comparison with the prints secured from the whisky bottle and the glass. P.W.24 then examined and recorded the statement of Konda Shankar (L.W.19). During the course of further investigation, he filed a requisition with the Sub-

Divisional Police Officer, Karimnagar, requesting him to obtain call details of the various sim cards used by A1 and A2, apart from those used by D3 and Junugari Thirupathi (P.W.8). He then received the call details in relation to these sim cards (Ex.P41). The Sub-Divisional Police Officer, Karimnagar, also sent details of the owners of sim card Nos.9666782370 and 9912915441. As per this information, the sim card bearing No.9666782370 belonged to A1 and the sim card bearing No.9912915441 stood in the name of A.2's father. Exs.P42 and P43 are the details of these sim cards. The details of the calls showed that A1 called D3 on her cell phone on 27.03.2010 at 09.44 PM. Ex.P44 is the admissible portion of A1's confession, while Ex.P45 is the admissible portion of A2's confession. After completion of the investigation, P.W.24 laid a charge sheet against both the accused for offences under Section 498A, Section 302 IPC r/w Section 34 IPC, Section 380 IPC and Section 4 of the Dowry Prohibition Act, 1961, against A1 and Section 302 IPC r/w Section 34 IPC and Section 380 IPC, against A2. M.Os.1 to 15 are the clothes of D1 to D4, while M.Os.16 to 24 are the seized gold items. M.O.25 is a pair of gloves. M.Os.26 to 30 are the towel, pillow covers, whisky bottle and glass. M.O.31 is a set of four black beads. M.O.32 is a set of two red beads. M.O.33 is the knife allegedly used by A1. M.O.34 is the cell phone of A1 and M.O.35 is the knife allegedly used by A2. M.O.36 is the cell phone of A2.

Now, the oral evidence:

Bogiri Ravi (P.W.1), the son of D1 and D2, brother of D3 and father of D4, stated that his father (D1) worked in Singareni Collieries and stayed in Quarter No.25-339 in Pothana Colony, Godavarikhani. He confirmed that his father stayed there along with his mother, sister, Aruna, and his daughter, Deepthi. He

confirmed that Srinivas (P.W.4) is his younger brother; Laxmi (P.W.14) is his paternal grandmother; Bheemakka (L.W.8) is his maternal grandmother and Sujatha (P.W.6) is his wife. He stated that Gangulu (P.W.2) is the elder brother of his wife, Sujatha (P.W.6) and that he was earlier married to his sister, Aruna (D3). The marriage of D3 with P.W.2 was dissolved by way of a divorce. Thereafter, D3 was given in marriage to A1. P.W.1 stated that for about one year, D3 and A1 lived happily and thereafter, A1 began harassing D3 for additional dowry. According to P.W.1, at the time of marriage of D3 with A1, D1 had gifted 2 acres of land to her and had also promised to execute a registered gift deed in relation thereto after children were born to her. P.W.1 stated that A1 was insisting upon the registration being completed and quarreled with D1 in this regard. Though the matter was settled by elders and A1 agreed to live with D3, he started beating her though she was pregnant. As a result, D3 suffered an abortion and was treated in Rahul Hospital, Godavarikhani. This, according to P.W.1, happened about six months prior to her death and D3 began residing with their parents after the abortion.

As to the events on the fateful day, P.W.1 said that he received a phone call from Sathish (P.W.3) on 28.03.2010 at about 4.00 PM. P.W.3 told him that a Bharath Gas supplier went to the house of his father and knocked on the door so as to deliver gas but there was no reply and the supplier, in turn, informed P.W.3. P.W.3 and others then went to the house, knocked on the front door but found that there was no response. They then went to the back of the house and found the door open. They entered into the house and found the dead bodies. On receiving this news, P.W.1 said that he rushed to his father's house on his motor cycle along with his cousin, Bhaskar (L.W.11). His wife and other family

members came in an auto. P.W.1 said that he entered into the house through the back door and found the dead bodies. He said that he found injuries on the neck of each of the bodies and he also found injuries on the back of the head of his daughter (D4). He further stated that he found all the articles in the house thrown pell-mell and stated that all the gold ornaments on the person of his mother and sister (D2 and D3) were missing. He said that the gold in the iron almirah was also missing and said that he gave a report to the II Town Police, Godavarikhani. He confirmed that Ex.P1 was the report given by him to the police. P.W.1 said that he suspected A1 because he had previously threatened his parents and his sister. He further said that his mother (D2) told him that a few days prior to the incident, A1 threatened to kill her for not executing a registered gift deed for the land. P.W.1 further said that D2 told him that A1 had come on 2 or 3 occasions and threatened them. He identified the clothes which were worn by the deceased and also the waist thread of his father (D1). P.W.1 thereafter produced the gold ornaments taken by him from the police for interim custody and they were marked as M.Os.16 to 24.

During his cross-examination, P.W.1 stated that he had studied up to 10th class and was an agriculturist. He further stated that the marriage between D3 and Gangulu (P.W.2) was dissolved by way of a notarized affidavit and this document was given to A1 at the time of his engagement with D3. He also confirmed that D3 had no issues with Gangulu (P.W.2) and that she married A1 about three years after dissolution of the first marriage. According to him, D3 was in the 3rd or 4th month of pregnancy at the time of the abortion and his mother, D2, took her to Rahul Hospital. Three days after her admission in the hospital, A1 came to see her. P.W.1 stated that he gave a report to the

police on 28.03.2010 at about 11.30 PM. and that Ex.P1 was scribed to his dictation by a friend. He further confirmed that Bhaskar (L.W.11) was present with him at that time. According to him, on the second day of giving the report, P.W.1 saw the accused in custody in the police station. He denied the suggestion that A1 never harassed D3 for dowry and never beat her or caused her abortion. He confirmed that the police visited the scene of the offence as soon as he gave the report.

Girugula Gangulu (P.W.2), the first husband of D3 and brother-in-law of P.W.1, stated that his marriage with D3 was dissolved after 4 or 5 years. He stated that his relationship with the family continued even after the divorce because his sister, Sujatha (P.W.6), was the wife of P.W.1. P.W.2 said that he used to visit the house of his former in-laws along with his wife and his former wife's relations used to visit him. According to him, on 27.03.2010, he came to Godavarikhani from Mancherial on some personal work and went to the house of the parents of P.W.1 to see his niece, Deepthi (D4). D3 was stated to have told him that A1 was harassing her and threatening to kill her. P.W.2 said that she told him that A1 beat her and she had suffered an abortion. P.W.2 further stated that he had his meals in the house of P.W.1's parents and came out after 10.00 PM. He then observed A1 and A2 going into the house of P.W.1's parents. He said that A1 looked at him angrily while going inside the house and that he left for Mancherial on his motor cycle. He further said that on 28.03.2010 at about 6.00 PM., his sister, Sujatha (P.W.6), telephoned and informed him that P.W.1's parents-D1 and D2, D3 and D4 were found dead in the house. He stated that he then went to Godavarikhani and found marks of throttling on the dead bodies. He further stated that about 1 or 2 months prior to the incident,

he had seen D3 in Rahul Hospital and that she had told him that A1 beat her and caused her abortion. He further stated that D3 told him that A1 had harassed her for registration of the land promised as dowry.

In his cross-examination, P.W.2 stated that he married D3 on 28.03.2003. He said that 6 or 7 years previously, his marriage with D3 was dissolved and a document was executed regarding the divorce in the presence of elders. He also confirmed that after his divorce with D3, he got married again and begot a son and a daughter through his second wife. He stated that on 27.03.2010, he did not collect payments from his debtors in relation to his finance business and so was the case with the next day. He denied the suggestion that he wanted to renew his relationship with D3 after she was admitted in Rahul Hospital. He said that he came to Godavarikhani at about 5.00 or 6.00 PM. on 27.03.2010, met his in-laws at New Poratpally at NTPC, Godavarikhani, and was in the house of D3's parents from 8.00 PM. to 11.00 PM. During that time, he said that D3 expressed that she was unable to bear the harassment of A1 and that she could live with him. He stated that he was not an alcoholic, but D3's father used to take alcohol. He further stated that D1 did not take alcohol on the night of 27.03.2010. He said that he left the house of D3's parents at about 11.00 PM. and went to Mancherial, where he received news of the death of D3 and the others. He said that he thereupon reached Godavarikhani at about 7.00 PM. and saw P.W.1, P.W.6 and others at the scene of the offence. He stated that he stayed at Godavarikhani till the cremation was over but did not accompany P.W.1 to the police station. He said that police examined him and recorded his statement on 30.03.2010 at the police station. He confirmed that he did not go to the police station after the arrest of

A1 and denied the suggestion that he did not see A1 and A2 entering the house of D3's parents on the night of 27.03.2010.

Jangili Sathish (P.W.3) stated that he was a resident of Quarter No.370 at Pothana Colony. He confirmed that he knew P.W.1 and the four deceased. He further confirmed that on 28.03.2010, Kanuganti Shankar (P.W.5), Bharat Gas Supplier, approached him saying that he had gone to Quarter No.339 to deliver a gas cylinder but did not get any response when he knocked on the door. P.W.3 said that he, Kandula Ramulu (L.W.4), Chandraiah and others went to Quarter No.339, but when they verified the front door, it was bolted from inside. He said that they then went to the back side of the quarter and found the door open and went inside. He further stated that he found three dead bodies in the bedroom and that he could identify them as he knew the residents of Quarter No.339. He said that he found the bodies of D1, D2 and D3 in the bedroom and the body of D4 in the bathroom. He further stated that he found ligature marks on the neck of each of the deceased. He said that as he knew P.W.1, he informed him over the cell phone about the bodies. According to him, P.W.1 and his relative came there at about 4.30 or 5.00 PM.

During his cross-examination, P.W.3 admitted that P.W.1 was his classmate and that the distance between his house and the house of D1 was 50 yards. He further confirmed that there were 14 quarters in Block No.25 and that Block No.28 was situated abutting the road of Block No.25. He denied the suggestion that there was no access to the house of Banaiah from the back door. He confirmed that the police examined him at the police station on 29.03.2010. He denied the suggestion that he did not know about the disputes between A1 and D3 and confirmed that he had admitted to this knowledge before the police. The

contradiction in his statement recorded under Section 161 CrPC is marked as Ex.D.1, wherein he stated that he came to know about the disputes between A1 and D3 from her relations.

Bogiri Srinivas (P.W.4) is the second son of D1 and D2. He confirmed that the marriage between A1 and D3 took place about three years prior to her death. He also confirmed that on one occasion, A1 beat D3 when she was pregnant demanding additional dowry and as a result of the assault, D3 suffered an abortion. According to him, his sister began living in the house of his parents since then. He stated that he received information about their death at about 7.00 PM. on 28.03.2010 at Hyderabad and reached Godavarikhani by midnight.

In his cross-examination, P.W.4 said that P.W.2 visited the house of his father to see D4, the daughter of P.W.1. He denied the suggestion that P.W.2 used to come to see D3. He also denied the suggestion that there were no disputes between A1 and D3.

Kanuganti Shankar (P.W.5), the delivery boy of Bharat Gas Company, stated that he took gas cylinders in an auto and delivered them to consumers. He stated that D1 lived in Pothana Colony and that on 28.03.2010, he had gone to the house of D1 to deliver a gas cylinder. He stated that he knocked on the door as the door was bolted from inside but nobody responded. He stated that he informed the same to P.W.3 and others and left the place. He came to know about the death of the deceased on the next day morning. In his cross-examination, P.W.5 stated that generally, Sunday was a holiday, but sometimes he would work on Sundays also when there was a demand for cylinders.

Bogiri Sujatha (P.W.6) is the wife of P.W.1 and sister of P.W.2. She stated that her daughter, D4, was kept in the house of her in-laws at Pothana Colony for the purpose of her studies as

P.W.6 and her husband (P.W.1) lived in a village. She confirmed that D3 was initially married to P.W.2, but the marriage was dissolved, whereupon D3 was given in marriage to A1. She said that on 28.03.2010, she came to know about the death of the deceased and went to the house at Pothana Colony. She said that she found the dead body of her daughter lying in the bathroom with an injury on the neck. She confirmed that the dead bodies of her father-in-law and mother-in-law were lying in the bedroom and that gold ornaments along with Rs.1,00,000/- cash were missing.

In her cross-examination, P.W.6 stated that her brother, P.W.2, did not come to visit her and her husband because of ill-health but used to contact them over phone. She stated that P.W.2 had come to their house at Potharam at the time of a function and that was the only occasion after their marriage that he did so. She stated that she did not attend the second marriage of P.W.2. She stated that she came to know about the harassment of D3 by A1 through her in-laws and denied the suggestion that A1 never harassed D3 and that she was deposing falsely.

R.Santhosh (P.W.7), a neighbour, stated that he was a resident of Quarter No.374 in Block No.27, Pothana Colony. He admitted that he knew the deceased and P.W.1. He said that the quarter of D1 was beside his house. He stated that on the intervening night of 27/28.03.2010, he woke up at about 3.00 A.M. to answer a call of nature. He said that he slept outside the house and observed a fair complexioned person and a short person coming out of the backside of the house of D1. He said that one person was carrying a bag. On the next day evening, he said that he came to know that four persons had died in the house of D1. He said that he was examined on 30.03.2010 by the police and that he had stated what he had seen. On 17.04.2010, he was

called to Godavarikhani II Town Police Station and he identified the accused as the persons who came out of the quarter of D1 on the night of 27/28.03.2010. He identified the accused in the Court as the persons who came out of the house of D1 on that night.

During his cross-examination, P.W.7 stated that the distance between his quarter and the quarter of D1 would be about 30 feet. He further stated that passengers who board Bhagyanagar Express would start between 3.00 and 4.00 A.M. from the colony as there was a bus at 4.00 A.M. to reach Peddapalli Railway Station. He admitted that the compound wall surrounding every quarter in their area was of 6 feet height. He further admitted that they do not go to open place for urination but denied the suggestion that persons coming out of the quarters in that area would not be visible from his quarter. He also denied the suggestion that the main gate of Block No.25 was not visible from his house. He denied the suggestion that persons coming out of the back door of the quarter of D1 would not be visible from his house.

J.Thirupathi (P.W.8), a resident of Viloachavaram, is a relation of the accused. According to him, three years previously, A2 came and asked him to meet A1 at the Government school in their village and when they met, A1 stated that his wife, D3, was having illegal intimacy with others and that he wanted to kill her and her parents. P.W.8 said that A1 asked him to help him in the crime but he turned him down. He stated that A1 requested him not to reveal this to anybody and promised to give him some gold after killing his wife and her parents. In his cross-examination, P.W.8 stated that he could not give the exact date on which A2 asked him to meet A1 at the school. He denied the suggestion that he had disputes with A1. He also denied the suggestion that he had gone to the house of A1 when D3 was living with him and he

got involved in the disputes between A1 and D3, for which A1 took objection. He also denied the suggestion that A1 beat him on that day and necked him out of the house. He admitted that he had not given any report to the police about A1 threatening him not to reveal his plan. He said that he did not inform anybody about the request of A1 to take part in the crime.

Ch.Ramakrishna (P.W.9) stated that he ran a welding shop in Kalyan Nagar, Godavarikhani, and that he knew the accused. He stated that about 3½ years prior to his examination, the accused came to his shop around lunch time and wanted to purchase two iron rods. He said that he sold two iron rods to them for Rs.30/-. He stated that about 20 or 25 days thereafter, the police brought the accused to his shop and he identified the accused as the persons who had purchased the iron rods from him. During his cross-examination, he denied the suggestion that he never sold the iron rods to the accused and that he was deposing falsely at the instance of the police.

Mirza Shamsher Baig (P.W.10) stated that he sold readymade clothes and that about 3½ years prior to his examination, the accused had come to his shop at about 5.30 PM. to purchase gloves (M.O.25).

T.Madhu (P.W.11) stated that he runs a kirana shop in Pothana Colony. He said that he sold liquor also. About 3½ years prior to his examination, he said that the accused came to his shop at about 10.00 PM. when he was just about to close and purchased one quarter bottle of Officers Choice Whisky. 20 or 25 days later, the police were stated to have brought the accused to his shop and he identified them as the persons who purchased the whisky bottle. He identified the empty whisky bottle (M.O.1) as the

type of whisky bottle sold by him to the accused. In his cross-examination, P.W.1 admitted that he had no licence to sell liquor.

N.Mallamma (P.W.12) stated that she ran a small hotel in her house situated on the road leading towards Pothana Colony. She said that every day, she started her business at about 4.00 A.M. She further said that about 3½ years prior to her examination, the accused came to her shop at about 4.00 A.M. and consumed tea. According to her, the accused enquired with her about the bus to Peddapalli which is a link bus to board Bhagyanagar express. She said that she told the accused that the particular bus had already left and the accused thereupon walked away from her hotel. About 20 days later, she said that the police brought the accused in a Tata Sumo vehicle and asked whether she could identify them and she thereupon identified them. She said that the accused were brought to her because of the confession about coming to her shop. She further said that 2 or 3 days after the accused had come to her shop, she came to know that four persons had died in Pothana Colony on the date when the accused had come to her shop.

G.Swarupa (P.W.13), V.Kanakalaxmi (P.W.14) and Maturi Bhagyalaxmi (P.W.16) were witnesses to the inquest proceedings. Ch.Madhu (P.W.15) was the photographer who took pictures of the dead bodies and also videographed the scene. He confirmed that Exs.P4 to P23 were the photos and Ex.P24 CD was the video. Ex.P25 was the set of negatives of the photographs.

V.Praveen Kumar (P.W.17) was a witness to the inquest proceedings in relation to D1 and was a signatory to Ex.P27. He said that in his presence, the police seized some gold ornaments from the dead bodies, two pillow covers, a white towel, an empty whisky quarter bottle and a glass tumbler. He identified the seized

towel, pillow covers, empty bottle and tumbler (M.Os.26 to 30). He further stated that four black beads and two red beads were also seized (M.Os.31 and 32). He identified M.Os.16 to 18 gold ornaments and confirmed that Ex.P28 was the Crime Detail Form which contained his signature.

K.Krishnamachary (P.W.18), a gold smith, confirmed that he was called by the Inspector of Police, II Town Police Station, Godavarikhani, to Vilochavaram village, where the police recovered some gold ornaments from the accused and at their request, he weighed them. He confirmed that he weighed one necklace, two numbers of pusthelu tadu, one set of matilu, a pair of ear studs and a pair of ear hangings. He identified the gold ornaments marked as case properties as what he had weighed.

P.Ravi (P.W.19) was a witness to the recovery panchanamas, Exs.P29 and P30. He confirmed that on 17.04.2010 at about 1.00 PM., the police called him to the house of A1 where both A1 and A2 were present. He stated that one Abhay Kumar (L.W.30) was also present along with them and at the request of the police, he and L.W.30 acted as panchas for the confession made by A1. He said that police recovered one pusthelu tadu, one necklace, one knife and one cell phone. He said that A1 showed the police the place within his house where the articles were buried in the ground. He said that he proceeded to the house of A2 along with the police and A2 produced a gold pusthelu tadu, a pair of maties, a pair of gold ear studs, a knife, two gloves and a cell phone. Ex.P29 is the recovery panchanama of A1, while Ex.P30 is the recovery panchanama of A2. He identified the case properties so recovered.

Dr. V.Prabhakar Rao (P.W.20), the Civil Assistant Surgeon, Government Hospital, Godavarikhani, confirmed that he had conducted the post-mortem examination of the four dead bodies.

He said that he received a requisition at 11.30 A.M. on 29.03.2010 and started the post-mortem over the dead body of D1 at 12.15 PM. He confirmed that the cause of death was asphyxia due to strangulation and that time of death was 1 to 2 days prior to the examination. He further confirmed that the same result was noted in relation to other dead bodies also.

S.Satyanarayana (P.W.21) was the finger print expert from the Finger Print Unit in District Police Office, Karimnagar. He said that he received a telephonic message from Godavarikhani II Town Police Station to examine the scene of the offence in Crime No.35 of 2010 on the file of Godavarikhani II Town Police Station. He said that he along with his staff reached Godavarikhani II Town Police Station around 11.30 PM. on 28.03.2010. He said that he examined the entrance and exit of Quarter No.339 at Pothana Colony and also a quarter bottle of Officers Choice Whisky and a glass tumbler, apart from a steel almirah. He said that he found and developed one chance print on the bottle and another chance print on the glass tumbler. He however found that the chance print on the glass tumbler was unfit for comparison but the print on the bottle was fit for comparison. He said that on 19.05.2010, he received a letter from the Sub-Divisional Police Officer, Godavarikhani, along with finger prints of A1 and A2 for comparison with the chance prints taken by him on the intervening night of 28/29.03.2010. On such examination, he found that the chance print on the whisky bottle tallied with the right thumb impression of A1. He confirmed that Ex.P36 was his opinion and Ex.P37 was his report.

The following salient points may be noted:

Ex.P2, the inquest report relating to D2, indicates that she was last seen alive on 27.03.2010 at about 6.30 PM. in front of the

quarter feeding her granddaughter, D4. Ex.P3, the inquest report relating to D3, records that she was last seen alive on 27.03.2010 at about 6.30 PM. by one Kandula Ramulu (L.W.4) while sitting in the hall of her house and watching TV. Ex.P26, the inquest report of D4, records that she was last seen alive on 27.03.2010 at about 6.30 PM. while having her meal with D2. This was also witnessed by Kandula Ramulu (L.W.4). Ex.P27, the inquest report relating to D1, records that he was last seen alive at about 6.30 PM. while sitting in the hall of his house and watching TV. Kandula Ramulu (L.W.4), who lives in the officers' quarters, last saw him.

None of the deceased were seen alive by the neighbours after 6.30 PM. on 27.03.2010 and their bodies were found sometime on 28.03.2010. The case of the prosecution therefore rests purely on circumstantial evidence. There were no eyewitnesses to the actual commission of the crime.

P.W.2 is however the most crucial witness for the prosecution. He was the first husband of D3. According to him, despite his divorce with D3, his relationship with the family continued as his sister, P.W.6, was married to D3's brother, P.W.1. He claimed that he used to visit the house of his former in-laws along with his wife and they used to visit him. This is however somewhat contrary to what P.W.6 stated. She said that P.W.2 did not visit her or her husband because of his ill-health. She further said that P.W.2 came to their house at Potharam only once at the time of a function and that was the only occasion he visited them after their marriage. She further stated that she did not attend the second marriage of P.W.2. Notably, P.W.6 did not state that her brother, P.W.2, was in the habit of visiting his niece, Deepthi (D3), at the house of the deceased. On the other hand, her evidence suggests that relations between the brother (P.W.2) and the sister

(P.W.6) were not very close and they were not in the habit of visiting each other. So much so that P.W.6 did not even attend his second marriage. When P.W.2 did not visit his own sister (P.W.6), it is doubtful as to whether he would have taken the trouble to regularly visit his four year old niece (D4) and his former in-laws.

P.W.2's evidence is also rife with discrepancies and self-contradictions. On one hand, he said that when he went to the house of the deceased on 27.03.2010 to see his niece (D4), D3 told him that A1 had beaten her and she suffered an abortion. But, he stated later in his chief examination that about one or two months prior to the incident, he had seen D3 in Rahul Hospital and she told him that A1 had beaten her and caused her abortion. There is no reason why D3 would have again mentioned this fact on 27.03.2010 to P.W.2 if she had already told him so in the hospital itself. As to the reason why he came to Godavarikhani on 27.03.2010 from Mancheri, P.W.2 said that he came on personal work. In his cross-examination, he admitted that on the said day he did not collect any payments from his debtors and so too, the next day. In the course of his cross-examination, he denied the suggestion that he wanted to renew his relationship with D3 after she was admitted in Rahul Hospital but on the other hand, he said that D3 expressed to him that she was unable to bear A1's harassment and that she could live with him and he agreed.

Further, according to P.W.2, he was at the house of the deceased on 27.03.2010 from 8.00 PM. to 11.00 PM. This admission was made by him in the course of his cross-examination. However, in his chief examination, P.W.2 stated that after he had his meals in the house of P.W.1's parents, he came out after 10.00 PM. and observed A1 and A2 going into the house

of P.W.1's parents. It is not clear as to whether he stayed at the house along with A1 and A2 till 11.00 PM.

P.W.2 further stated in his chief examination that on 28.03.2010 at about 6.00 PM., his sister (P.W.6) telephoned him and informed him of the bodies having been found in the house. He claimed that he came to Godavarikhani and saw the bodies. He stated that the police examined him and recorded his statement on 30.03.2010. P.W.2 stated that he arrived at Godavarikhani on 28.03.2010 in the evening itself and saw the dead bodies. If so, it is difficult to believe that he would not have disclosed to the police authorities then and there that he had seen A1 and A2 at the house of the deceased on 27.03.2010 after 10.00 PM.

P.W.1 stated that he could not say the exact time at which P.W.2 came to the scene of the offence. It is however clear that he arrived at the scene on 28.03.2010 in the evening hours itself as he claimed that he saw the dead bodies with marks of throttling. Despite the same, none of the inquest proceedings show his participation. There is also no mention therein about P.W.2 having conveyed the information that he had seen A1 and A2 on 27.03.2010 at the house of the deceased after 10.00 PM. When he came to the scene of the offence on 28.03.2010 during the evening hours and saw the dead bodies, it is highly improbable that he would not have at least told P.W.1 or P.W.6 that he had seen A1 and A2 at the house of the deceased the previous night. The presence of P.W.2 at the house of the deceased on 27.03.2010 between 8.00 and 11.00 PM. is therefore rendered doubtful.

The oral evidence of the relatives of the deceased was to the effect that A1 had disputes with his wife, D3, only in relation to his demand for registration of the land gift deed. Significantly, P.W.1, P.W.4 and P.W.6 said nothing about A1 doubting the fidelity of D3,

despite the fact that P.W.1 submitted Ex.P1 report stating to that effect, leading to this allegation being echoed in the Charge Sheet. Had he said so in Ex.P1 report of his own volition and knowledge, P.W.1 would not have failed to mention it in his deposition before the Sessions Court. The contents of Ex.P1 report therefore assume a suspicious character.

Apart from the above aspects, the prosecution's case is that the police received information only during the night of 28.03.2010. Ex.P39 FIR indicates that information was received at the police station on 29.03.2010 at 12.30 A.M. P.W.1 stated in his cross-examination that he gave Ex.P1 report to the police on 28.03.2010 at about 11.30 PM. Ex.P1 report however contains the endorsement made by the Circle Inspector, Godavarikhani II Town Police Station, that it was received on 29.03.2010 at 00.30 hours. According to P.W.3, who contacted P.W.1 on 28.03.2010 and informed him about the bodies lying in the house, P.W.1 reached the spot at about 4.30 or 5.00 PM. Significantly, P.W.5, the Bharat Gas Company delivery boy, did not state in his evidence as to the exact time at which he knocked on the door of the house of the deceased. There is no explanation forthcoming for the delay in the registration of the FIR. Going by P.W.3's evidence, P.W.1 reached there at around 4.30 or 5.00 PM. There is at least a delay of five to six hours in the registration of the FIR. This delay in the registration of the FIR therefore leads to doubt.

As regards the corroboration of the prosecution's case in the form of the finger print secured from the whisky bottle which was found to have matched the right thumb finger print of A1, P.W.21, the Finger Print Expert, stated that he received a telephonic message from Godavarikhani II Town Police Station to take finger prints from the scene of the offence on the intervening night of

28/29.03.2010. He further stated that he, along with his staff, reached Godavarikhani II Town Police Station around 11.30 PM. on 28.03.2010. Be it noted that P.W.21's evidence completely discredits the prosecution's case that the FIR was registered only at 12.30 A.M. on 29.03.2010. Had that been so, P.W.21 could not have reached Godavarikhani II Police Station from Karimnagar by 11.30 PM. itself on 28.03.2010 upon the requisition received from the said police station.

Upon examination of the whisky bottle and glass tumbler, P.W.21 stated that he could develop a chance print on each of them. The print on the glass tumbler however emerged unfit for comparison but the print on the whisky bottle was found fit. P.W.21 further stated that on 19.05.2010, he received a letter from the Sub-Divisional Police Officer, Godavarikhani, along with the finger prints of A1 and A2 for comparison and on such comparison, he found that the finger print on the whisky bottle tallied with the right thumb impression of A1. This evidence by itself would have been worthy of credibility had it not been for the fact that the date of apprehension of A1 and A2 is open to doubt as P.W.1 stated that he saw A1 in custody in the police station on the second day after giving Ex.P1 report. Significantly, P.W.1 was not even re-examined by the prosecution on this crucial admission. If that be so, it cannot be ruled out that A1 was in the custody of the police on the night of 28.03.2010 itself and there was some manipulation in securing his finger print on the whisky bottle.

Further, though the prosecution claims that hair was recovered from the fists of D2 and D3 and the same was sent to the Forensic Science Laboratory for comparison with the hair samples secured from the accused, Ex.P53 report of the Andhra Pradesh Forensic Science Laboratories, Hyderabad, demonstrates

that the hair sample of A1 was never sent and comparison with the hair sample of A2 resulted in the finding that the morphological characters of his hair were dissimilar with the hair secured from D2 and D3. This evidence therefore did not help the prosecution's case at all.

P.W.7, the neighbour who claimed to have seen A1 and A2 leaving from the house of the deceased on the intervening night of 27/28.03.2010 at about 3.00 A.M., admitted that the wall of his quarter was six feet in height. If that be so, there was no possibility of his having seen A1 and A2 at all. This witness was obviously a planted witness.

P.W.8, a relation of A1 and A2, was stated to have been approached by them in the first instance to participate in the crime. According to P.W.8, he refused to do so and A1 asked him not to reveal it to anybody by promising to give him some gold after commission of the offence. He however admitted that he did not inform this to either the police or anyone else. Further, in his cross-examination, it was brought out that relations between A1 and P.W.8 were not good and it was put to him that A1 had beaten him and necked him out of his house earlier. It may also be noticed that this witness backed the police version that A1's motive was his doubting D3's fidelity, a story altogether different from that put forth by the family. The evidence of P.W.8 is therefore not trustworthy and does not inspire confidence.

The evidence of P.Ws.9, 10 and 11, who stated that the accused came to purchase iron rods, gloves and whisky respectively from them, also does not inspire confidence as they did not claim prior acquaintance with the accused, whereby they could have noted their purchases which ought to have been routine in their business activity, and did not explain as to how

they identified them in particular out of several routine customers after a gap of twenty to twenty five days. Further, the lack of consistency in the case of the prosecution is further brought out by the alleged purchase of hand gloves by the accused from P.W.10. Had they actually purchased gloves for committing the offence, there is no possibility of their leaving finger prints on the bottle and the glass tumbler. Even if they had not worn gloves at that point of time, the very fact that they allegedly purchased gloves indicates that they were aware of the risk of leaving finger prints and would have taken the trouble to wipe off their finger prints, if any, on the whisky bottle and glass tumbler after the event. The sale of the whisky bottle by P.W.11 is also rendered doubtful as a Kirana Shop would normally not sell liquor and again, P.W.11, being the Kirana Shop owner, did not state that he had prior acquaintance with A1 or A2 so as to remember them and identify them twenty to twenty five days later. Equally unbelievable is the evidence of P.W.12, who stated that A1 and A2 came to her tea shop at 4.00 AM. in the morning, after committing the offence, to consume tea. It is improbable that after committing such a ghastly offence, the perpetrators would linger near the scene of the offence and take time to relax and have a cup of tea. Again, there is no indication as to how P.W.12 could have identified the accused, had she seen them on the fateful day in the capacity of usual customers, after twenty days. She did not state that she had any prior acquaintance with them whereby she could have done so.

Insofar as the alleged recovery of gold ornaments is concerned, the said ornaments were not identified by any of the family members of the deceased as belonging to either D2 or D3. P.W.6, being the daughter-in-law of D2 and the sister-in-law of D3, would definitely have been in a position to identify their gold

ornaments. However, she was not subjected to any test identification parade for identifying M.Os.16 to 24.

Further, P.W.23 stated he seized the blood-stained chunni with which the accused allegedly strangled the deceased. Surprisingly, it was not produced in evidence. This is a crucial lapse in the prosecution's case.

Given the decision of the Supreme Court in **ANVAR P.V. V. P.K. BASHEER¹**, the video CD (Ex.P24) was not admissible in evidence as no certificate was filed therewith as mandated by Section 65-B of the Indian Evidence Act, 1872. This evidence therefore has to be eschewed from consideration. So too, the evidence regarding the mobile call data. Further, the significance of the call data is not even brought out in clear terms and does not, in any event, further the prosecution's case.

In the light of the aforesaid facts, the entire case of the prosecution would have to be viewed in a different light. All the more so, when P.W.1 stated in his cross-examination that he saw A1 in custody in the police station on the second day of giving Ex.P1 report. The claim of the police that they apprehended A1 and A2 only on 17.04.2010 therefore assumes a dubious character.

On the aforesaid facts, the case of the prosecution, resting solely on circumstantial evidence, cannot be accepted. The prosecution failed to establish an unbroken chain of events unerringly pointing to the guilt of A1 and A2 obviating any scope for inferring their innocence. On the other hand, the investigation seems to have been engineered and manipulated from the start as is evident from the delay in registration of the FIR and the ambiguity as to when A1 and A2 were apprehended.

¹ (2014) 10 SCC 473

Further, this is not a case attracting the 'last seen' theory as the evidence of P.W.2, which purports to bring in the said theory, cannot be treated as creditworthy. As pointed out by the Supreme Court in **NIZAM V/s. STATE OF RAJASTHAN**², the 'last seen' theory should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being last seen. In the present case, the evidence of P.W.2 fails to inspire confidence and the circumstances in which he claims to have been at the scene of the offence are not believable. The question of applying the 'last seen' theory to the present case therefore does not arise.

As pointed out in **SAHADEVAN V/s. STATE OF TAMIL NADU**³, in a case resting solely on circumstantial evidence, the onus lies upon the prosecution to prove a complete chain of events which points towards the guilt of the accused. Again, in **MADHU V/s. STATE OF KERALA**⁴, the Supreme Court pointed out that circumstantial evidence would have to be evaluated with care and caution and only circumstantial evidence of a very high order can satisfy the test of proof in a criminal prosecution. The Supreme Court further observed that in a case resting on circumstantial evidence, the prosecution must establish a complete unbroken chain of events leading to the determination that the inference being drawn from the evidence is the only inescapable conclusion and in the absence of such convincing circumstantial evidence, an accused would be entitled to the benefit of doubt.

Even in a case where the circumstances indicate that the theft of properties and the murder might have been committed at the same time, the Supreme Court held that where the only

² (2016) 1 SCC 550

³ (2012) 6 SCC 403

⁴ (2012) 2 SCC 399

evidence available was with regard to recovery of such stolen properties, it would not be safe to draw an inference that the person in possession of the stolen properties had committed the murder, as suspicion cannot take the place of proof (**STATE OF RAJASTHAN V/s. TALEVAR**⁵).

The learned Public Prosecutor for the State of Telangana relied on **BHARAMA PARASRAM KUDHACHKAR V/s. STATE OF KARNATAKA**⁶ in the context of the credibility of fingerprint evidence. However, in the present case, as we have already indicated, no value can be attached to the so called fingerprint evidence gathered from the whisky bottle.

Learned Public Prosecutor also cited **AFTAB AHMAD ANASARI V/s. STATE OF UTTARANCHAL**⁷. Therein, the Supreme Court held that when no suggestion was put to the witness that there was no source of light, his evidence that he had seen the accused running away from the place could not be doubted. This decision is relied upon in the context of P.W.7 seeing the accused leaving the quarter of the deceased at 3.00 A.M. on the intervening night of 27/28.03.2010. However, the judgment is of no avail to the prosecution as P.W.7 admitted that each quarter was surrounded by a six foot compound wall but did not explain as to how he could have seen A1 and A2 leaving the house of the deceased from the back at 3.00 A.M. on the intervening night of 27/28.03.2010 over the compound wall of his quarter and the compound wall of the quarter of the deceased.

On the above analysis, this Court is constrained to hold that the investigation seems to have been engineered and manipulated from the start. It cannot therefore be said to have been fair and

⁵ (2011) 11 SCC 666

⁶ (2014) 14 SCC 431

⁷ (2010) 2 SCC 583

unbiased. The delay in the registration of the FIR, the highly doubtful testimony of P.W.2 and the ambiguity as to when A1 was actually apprehended leave no doubt in the mind of this Court that the case of the prosecution was manipulated from square one with the intention of indicting A1 and A2. But for the testimony of P.W.2, there is not even an iota of evidence to link the homicidal deaths of D1 to D4 with A1 and A2. Overlooking these crucial aspects, the Sessions Court not only held A1 and A2 guilty of all the charges levelled against them but also held it to be a case falling within the category of the rarest of the rare cases, justifying capital punishment. This Court, on the other hand, finds that but for the fact that the deaths of D1 to D4 were homicidal; investigation by the police was not directed at independently seeking out the truth and finding the culprit(s) who was/were responsible therefor. It appears that the prosecution first decided as to who could be guilty and accordingly engineered the investigation to suit the said conclusion.

This Court therefore finds that the prosecution miserably failed to prove beyond doubt that A1 and A2 committed the murders of D1 to D4 and the various lesser offences in relation thereto. Even the offences under Section 498A IPC and Sections 3 and 4 of the Dowry Prohibition Act against A1 are not sufficiently proved. On the one hand, the prosecution alleged that the motive for the crime was A1's suspicion as to the fidelity of D3 and on the other hand, allegations were made to the effect that he was harassing her for registration of land. It is not in dispute that the land in question was already gifted to D3 by D1 and only the registration thereof remained. No concrete evidence was let in through any of the family members as to any demands by A1 for additional dowry. In such circumstances, insistence by A1 upon

such registration, even if true, does not attract the provisions of Section 498A IPC or Sections 3 and 4 of the Dowry Prohibition Act. The conviction of A1 for these lesser offences therefore cannot be sustained. As to the conviction under Section 380 IPC, this Court already found that it has not even been established that the gold ornaments recovered from A1 and A2 actually belonged to D2 and D3. In the absence of such evidence, Section 380 IPC would not stand attracted and the conviction visited upon A1 and A2 in this regard is also unsustainable.

The conviction of A1 and A2 in Sessions Case No.499 of 2011 on the file of the learned VI Additional District and Sessions Judge, Godavarikhani, in relation to all the charges framed against them and the sentences imposed in consequence of such conviction are therefore set aside. A1 and A2 are acquitted and shall be set at liberty forthwith in the event their confinement is not required in relation with any other case. Fine amounts, if any, paid by them shall be refunded. The appeal is allowed and the reference under Section 366 CrPC is answered accordingly.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

30th SEPTEMBER, 2016

**Note: L.R. copy to be marked
B/o Svv/PGS**

**Note: Communicate operative
portion of the common
Judgment forthwith.
B/o Svv/PGS**