

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

R.T.No.1 of 2014, CrI.A.No.418 of 2014
&
CrI.A.No.847 of 2016

COMMON JUDGMENT:

(per Hon' ble Sri Justice M. Seetharama Murti)

By the judgment dated 10.03.2014 passed in S.C.No.382 of 2012, the learned IV Additional Sessions Judge, Guntur, found A1 to A3 guilty of the offences punishable under Sections 379, 302 and 201 read with Section 34 IPC and convicted them of the said offences. Insofar as the offence punishable under Section 302 IPC is concerned, he imposed death sentence and fine of Rs.5,000/- each coupled with, in default, sentence of simple imprisonment for a period of one month each. Insofar as the offences punishable under Sections 201 & 379 IPC are concerned, he imposed rigorous imprisonment for seven years and three years each respectively and also directed A1 to A3 to pay fine amounts of Rs.5,000/- and Rs.2,000/- each respectively and to undergo simple imprisonment for one month each in default of payment of each of such fine amounts.

2. Since one of the sentences passed by the learned IV Additional Session Judge is a sentence of death, he had submitted proceedings to this Court in accordance with Section 366 CrPC, for confirmation. Therefore, Referred Trial No.1 of 2014 is taken on file.

3. A2 and A3 preferred CrI.A.No.418 of 2014 and A1 preferred CrI.A.No.847 of 2016 assailing the aforesaid judgment.

4. We have heard the submissions of Ms. Naseeb Afshan, learned counsel appearing for A1, Sri A. Samir Kumar Reddy, learned counsel for A2 & A3 and

the learned Public Prosecutor (AP) appearing for the State. We have perused the material on record.

5. Based on the material placed before him, the learned Additional Sessions Judge framed the following charges.

FIRSTLY:-

That A1 to A3 of you on 26.02.2011 at 19.30 hours got boarded the deceased Bodhya Naik at Vijayawada RTC Bus Station to go to Kodad and on the way to Kodad, you threatened the deceased Badya Naik and committed theft of Rs.10,000/- cash, gold chain, gold ring, wrist watch and ATM card and drawn Rs.4,000/- on knowing the secret PIN number from the deceased and you thereby committed an offence punishable under Section 379 IPC and within my cognizance;

SECONDLY:

That A1 to A3 of you on the same day after 22.30 hours during the course of same transaction mentioned above in charge No.1, at NSP canal on the outskirts of Mukundapuram, you committed murder of the deceased by tying a rope around the neck of the deceased and that you thereby committed an offence punishable under Sec.302 r/w 34 IPC and within my cognizance;

THIRDLY & LASTLY;

That A1 to A3 of you during the above transaction mentioned in first charge, you thrown the body of the deceased Badhya Naik in NSP canal and also thrown the rope used for commission of offence in NSP canal for causing disappearance of the evidence of the offence committed under Sec.302 IPC and that you thereby committed an offence punishable under Sec.201 of the Indian Penal Code and within my cognizance;

A1 to A3 of you committed the above offences in furtherance of common intention and I hereby direct that you be tried on offences punishable under Sections 379, 302 and 201 read with 34 IPC.

[Reproduced verbatim]

A1 to A3 pleaded not guilty and claimed to be tried.

6. At trial, PWs1 to 24 were examined and Exhibits P1 to P22 were marked on the side of the prosecution. MOs1 to 4 were also marked. No evidence was adduced on the side of the accused.

7. The case of the prosecution as unfolded by the evidence adduced to bring home the guilt of the accused for the offences with which they are charged and which needs a critical examination in these matters, in brief, is as follows:

7.1 PW2, Dharavath Suseela Bai, is the wife of Badhya Naik, the deceased. She is a teacher in Z.P.High School, Balaji Nagar, Kodad Mandal. The deceased used to work as Deputy Engineer in Irrigation Department, Nandigama. Their son, Daravath Visal, PW11, aged 15 years, was studying 10th class in KKR Gowtham International School, Gudavalli. On 26.02.2011, the deceased went to Nandigama to attend to his duty. PW4, Assistant Executive Engineer, Irrigation Department, Nandigama, saw the deceased attending to his work on that day and leaving the office at about 04:30 or 05:00 PM to Vijayawada in order to meet his son. PW6, a Senior Assistant in NSP Office, Nandigama, also noticed that the deceased came to the Office in the afternoon and signed in the records and thereafter left for Vijayawada at 05:00 PM in order to see his son who was studying in KKR Gowtham School, Vijayawada. The deceased having thus attended to his duty at Nandigama went to Gudavalli, Vijayawada, on the same day, to meet his son and enquire about his welfare. While in the company of PW11, his son, the deceased called his wife, PW2, on cell phone, and talked to her and also made his wife, PW2, speak to their son. Later, the deceased returned to Vijayawada to return to his house at Kodad. After boarding a bus at Vijayawada, he telephoned to PW2 and informed her that he was coming home and that there is a short delay in starting of the said bus. In the meanwhile, PW5, Burla Venkata Durga Prasad, who is a Junior Assistant in the irrigation department, who came to the said bus stand along with his pregnant daughter, saw the deceased at the bus stand between 06:30 to 07:00 PM. PW7, Tejavath Srinivas Rao, who is an electrical line man and who is the nephew of the deceased, also saw the deceased along with PW5 at the bus stand between 07:00 to 07:15 PM. While PWs 5 and 7 were with the deceased, A2 called the deceased and asked him to board a Green colour Qualis, which was going towards Hyderabad, by informing that there are already sufficient passengers in the vehicle and that the vehicle would start immediately on the deceased boarding the vehicle. PWs5 and 7 saw the deceased boarding the

said Qualis vehicle, MO4. By that time A1 and A3 were also in the said vehicle. The deceased sat by the side of A2, the driver of the vehicle. A1 and A3 sat in the back seat. However, as the deceased, who informed PW2, his wife, that he was returning by bus on that night itself, did not return to Kodad on that night, PW2, out of anxiety, made several phone calls to the deceased, her husband, and got a message in response that his cell phone was switched off. On the next day, 27.02.2011, she made enquiries with her relatives about the whereabouts of the deceased. Since her enquiries were of no avail, she first went to Kodad police station and informed the police that her husband was missing. However, the CI of Police asked her to lodge a complaint at the police station having jurisdiction. Therefore, she went along with PW3, B. Paghu, a teacher and her colleague, and others to Krishnalanka Police Station, Vijayawada City, and lodged a report, Exhibit P2, at about 08:00 PM. PW18, the in-charge ASI of the said police station received the said report, Exhibit P2, and registered a man missing case in Crime No.120 of 2011 and issued FIR, Exhibit P14. He collected the photograph of the deceased from PW2 and recorded her statement and that of PW3, B. Paghu, and LW10, Bhukya Gandhi, who also accompanied PW2 and PW3 to the police station. He sent photos and wire messages about the missing of the deceased to all the police stations concerned.

7.2 While so, in the morning hours of 28.02.2011, PW2 received information from the villagers that a dead body was found at Mukundapuram NSP canal. Police reached the said place for lifting the said dead body from the said canal. PW2 and her family members went to that place. She identified the dead body found in the canal as that of her husband. She noticed that the gold chain in the neck of the deceased, his wrist watch, ATM card, cash in his pocket and one chappal were missing. D. Kotya, PW1, who is the brother-in-law of PW2, also identified the dead body of the deceased and also noticed that gold neck chain, gold ring on the right finger, wrist watch and the diary of the deceased

were missing. Hence, on 28.02.2011, PW1 lodged a report, Exhibit P1, with PW22, the Sub-Inspector of Police, Munagala police station. On receiving the said report from PW1, PW22 registered a case in Crime No.28 of 2011 under Section 174 CrPC and recorded the statement of PW1 and issued FIR, Exhibit P19. PWs4 to 6, who also came to know about the death of the deceased, went to NSP canal and were present when the body of the deceased was lifted from the canal. PW22 visited the said scene along with PW23, the CI of police, Kodad. With the assistance of a Constable, G. Govardhan, PW17, and in the presence of mediators, viz., PW9, Mukya Kotya Naik, and PW16, Bolla Venkat Reddy, PW22 got taken the photographs, Exhibit P20, and video graph of the scene of offence and the corpse of the deceased. PW22 also prepared Exhibit P5, the scene of offence observation report, and Exhibit P6, rough sketch of the said scene. He held inquest over the dead body of the deceased and got prepared Exhibit P7, inquest report, in the presence of the said Panchayatdars and later forwarded the dead body to Government Hospital, Munagala, for post mortem examination. The witnesses and the relatives of the deceased present at that time opined that the deceased might have died due to the fall into the waters of the canal or for some other reasons.

7.3 PW14, Dr. Y. Ramesh, Medical Officer, Government Hospital, Munagala, having received the requisition from Munagala Police Station on 28.02.2011 at 03:00 P.M., conducted post mortem examination on the dead body of the deceased and prepared post mortem examination report, Exhibit P11. Having received the said report, PW22 addressed a letter to the said Doctor, PW14, seeking his opinion as to whether the death is homicidal or suicidal or accidental. On 24.03.2011, he received a medical opinion disclosing that the death of the deceased is homicidal. He therefore sent a letter of alteration to the Court of the learned Judicial Magistrate of First Class, Kodad, for alteration of Section of law to Section 302 IPC and informed the same to his superior

officers. Thereafter, on 28.03.2011, PW23, the CI of Police, Kodad, took up further investigation.

7.4 On 29.03.2011, PW23 went to SBH, Nakrekal branch, and obtained Exhibit P4, CD containing visuals of transactions done at ATM, and Exhibit P3, bank account statement of the deceased, from PW8, the Branch Manager, SBH. Exhibit P3 disclosed that in the early hours of 27.02.2011 somebody has withdrawn Rs.3,500/- from that account. Exhibit P4, CD, containing the visuals recorded by the CC camera installed at the ATM disclosed that one person withdrew Rs.3,500/- from the account of the deceased. On 30.03.2011, PW23 collected Exhibit P16, the register of vehicle movements of Toll Plaza of Nandigama, from PW20, K.V. Ram Prasad, who was the manager of the said Swarna Toll Gate Private Limited. Exhibit P16 contained information that in between 07:00 to 08:30 PM, four wheeler vehicle, MO4, passed through the said toll plaza gate situate on Highway between Vijayawada to Hyderabad.

7.5 While so, on 05.04.2011, PW24, the CI of Police, CCS-I, Guntur Urban, received information that the accused involved in Crime No.99 of 2011 of Kothapeta Police Station were coming towards Guntur. He secured the presence of mediators, viz., PW10, Banka Jaya Rao, VRO, Guntur, and LW17, Thummalagunta Sudhakar, and that of the informant in the said crime and proceeded to Old Club Road at Nandini Lodge, Guntur, by 08:40 A.M. He along with others noticed a red colour Tavera vehicle coming from Vijayawada side towards Guntur city. After the informant in the said crime identified the vehicle bearing registration no.AP7 R 6999, the same was intercepted. He found nine persons including the driver in the said vehicle along with nine Ganja packets in nine carry bags. The said informant identified five out of the said nine persons in the said vehicle and stated that the said five persons robbed him of his valuables. The Tahasildar, Guntur, came to the spot at 09:30 AM, and disclosed her identity to the said nine persons. On interrogation the

said nine persons disclosed their identity and stated that they committed several crimes and made confessions in regard to the said crimes. Their confessional statements were recorded by the police in the presence of the Executive Magistrate and mediators. While making confessions about various crimes, the accused in the instant case also made confessions about the subject crime before the said CI of Police, PW24. He caused the arrest of the said nine persons including A1 to A3 herein. He seized one wrist watch from A3. Thereafter, he along with the mediators and A1 to A3 herein went to Mahalaxmi jewellers, Piduguralla. There the said accused showed a person by name Srinivasa Rao and stated that they pledged a gold chain with him. The said Srinivasa Rao admitted the said fact and returned the chain to PW24 and the same was seized under a Mahazarnama. Thereafter, they all proceeded to Dachepalli village where A1 to A3 hid the vehicle which was used in the subject crime and seized it at SS Travels, Dachepalli, under a Mahazarnama. PW24 also examined the owner of the said vehicle. Thereafter, he produced all the persons arrested including A1 to A3 herein before a learned Magistrate and obtained orders of judicial remand. PW24 handed over the seized property to Gunadala Police Station.

7.6 On 06.04.2011, PW23 received a message that the accused involved in the instant crime confessed to the commission of the subject offences before PW24 of the CCS police. Hence, on 07.04.2011, PW23 obtained all attested copies of the said case record from CCS police and filed an application on 08.04.2011 before the learned Magistrate for issuance of PT warrant. On 19.04.2011, he brought the case property to his police station. On 20.04.2011, he conducted test identification parade of the disputed case property in the presence of panch witnesses including PW12, the VRO of Janakinagar of Nalgonda District. In that property test identification parade, PW2, the wife of the deceased, identified MO2, the Titan Wrist watch, and MO1, gold neck chain, of the deceased from out of five watches and five gold chains displayed

for identification. On 09.06.2011 he deposited the case property before the Court of the learned Magistrate. On 13.06.2011, the learned Magistrate granted police custody of the accused 1 to 3. On 15.06.2011, PW5 and PW7 identified A1 and A3 in a test identification parade held at Markapur sub-jail by PW21, the learned Additional Judicial Magistrate of First Class, Markapur. PW5 and PW7 also identified A2 in a test identification parade held on 06.06.2011 at Nuzvid sub-jail by PW13, the learned Additional Judicial Magistrate of First Class, Mylavaram. After the conduct of the said two test identification parades, PW23 took the accused into his custody (police custody) on 15.06.2011 and proceeded to the scene of offence on 16.06.2011 and secured panch witnesses, viz., PW15, the then VRO of Munagala, and LW20, Boska Suresh, VRO, Munagala, and discovered in their presence and under the cover of Exhibit P12, panchanama, the diary, MO3, of the deceased pursuant to the confessional statement of the accused. The said MO3 was later identified in his evidence by PW11, the son of the deceased, as the diary of his father. PW23 then surrendered the accused before the Court and filed the charge sheet after completion of the investigation.

8. Now we shall examine the evidence, wherever necessary, in juxtaposition with the submissions of both the sides.

9. The first short but vitally important question is as to whether or not the deceased, Badhya Naik, was strangled to death by a rope and his dead body was thereafter thrown into NSP canal as being sought to be canvassed by the prosecution. In fact, in view of the said specific case of the prosecution that the dead body of the deceased was discarded in the canal after strangulating him to death, a charge was also framed for the offence punishable under Section 201 IPC. In view of the importance of this issue and the answer to the said issue, which goes to the root of the matter, it is apt to reproduce, *infra*, the relevant charges:

SECONDLY:

That A1 to A3 of you on the same day after 22.30 hours during the course of same transaction mentioned above in charge No.1, at NSP canal on the outskirts of Mukundapuram, you committed murder of the deceased by tying a rope around the neck of the deceased and that you thereby committed an offence punishable under Sec.302 r/w 34 IPC and within my cognizance;

THIRDLY & LASTLY:

That A1 to A3 of you during the above transaction mentioned in first charge, you thrown the body of the deceased Badhya Naik in NSP canal and also thrown the rope used for commission of offence in NSP canal for causing disappearance of the evidence of the offence committed under Sec.302 IPC and that you thereby committed an offence punishable under Sec.201 of the Indian Penal Code and within my cognizance;

In Exhibit P1, report, PW1 did not state that he and others including PW2 noticed any strangulation mark on the neck of the dead body of the deceased. Be that as it may. Now it is to be first noted that the inquest proceedings as recorded in the inquest report, Exhibit P7, are first in point of time, since prepared soon after noticing and lifting the dead body of the deceased from the NSP canal. As per the settled legal position and the language of Section 174 CrPC, the scope and purpose of inquest are confined to the ascertainment of the apparent cause of death. Inquest proceedings are concerned with discovering whether in a given case the death was accidental or suicidal or homicidal or caused by animal etcetera; and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. [See: Pedda Narayana and Ors. V/ s State of Andhra Pradesh (1975) 4 SCC 15; Amar Singh V/ s Balwinder Singh and Ors. (2003) 2 SCC 518; and, Radha Mohan Singh @ Lal Saheb and Ors. V/ s State of UP (2006) 2 SCC 450]. Keeping in view the said legal position, when Exhibit P7 is perused, it reflects that none of the witnesses present at the time of inquest observed any injuries on the neck of the dead body of the deceased and therefore no such injuries, if any, on the neck of the dead body were noted in column No.7 of the inquest report. However, in the said column, where the condition of the dead body, injuries and properties, if any, found on the dead body and the particulars thereof are required to be noted, it is noted as under: 'The dead body, which was drenched and soaked to the skin, was floating over the waters of the canal.

Both the eyebrows, both ears, nose and parts of face were bitten and eaten away by aquatic animals and therefore bloody injuries are found on the said parts of the body.' A further perusal of Exhibit P7 reflects that the inquestdars opined that the deceased might have died due to fall into the waters or for any other reason. Thus, it is apparent from Exhibit P7 that the inquestdars, others and the police personnel present at the time of inquest have not observed any injuries on the neck of the dead body and none of them suspected that the death was homicidal and therefore there was a specific mention only to the effect that the cause of death might be due to fall into the waters or for any other reason. Though PW1, PW2, PW4, PW5, PW6 and PW16 deposed during trial that they found strangulation mark on the neck of the deceased, and albeit PW1 and PW2 had specifically stated that the strangulation mark appeared to have been caused by a wire, the said evidence of the said witnesses does not inspire confidence in view of the fact that the said witnesses or anybody else present at the time of inquest did not state at that time that they have noticed such strangulation mark on the neck of the dead body of the deceased. Be it noted that evidence was adduced to establish that the deceased might have been murdered on the night of 26.02.2011. It is borne out by evidence that the dead body was first noticed in the morning hours of 28.02.2011 and by that time the dead body was soaked in water to the skin and aquatic animals ate away parts of the dead body and the body was in a decomposed state. PW14 and PW1 also stated that the dead body was in a decomposed state. Exhibit P11, Post Mortem Examination Report, issued by PW14, the Medical Officer of Government Hospital, Munagala, on a perusal reveals that the said Doctor also did not note in his report any strangulation mark or injury on the neck of the dead body of the deceased. The doctor only noted two external injuries namely, bites by fishes, frogs and crabs on both the eyebrows and ears. Very weirdly and significantly the post mortem report reflects that the said injuries are ante mortem in nature. The conspicuous

absence of mentioning of the strangulation mark in Exhibits P1, P7 and P11 casts an indelible shadow of doubt on the version of the prosecution with regard to the presence of such an injury on the neck of the dead body. It is apposite to note that in column related to 'injuries to head and neck' in Exhibit P11, it is noted as under: 'Thyroid bone fracture and neck muscles semi decomposed'. PW14, the doctor, asserted the said aspect in his evidence as well. It is undisputed that in anatomical parlance there will not be any bone like a 'thyroid bone' but there will be only thyroid cartilage. The FSL report is not separately assigned an exhibit mark as it is an annexure to Exhibit P11. The presence of blood at the sites of ante mortem bite injuries caused by aquatic animals is indicia of the fact that the deceased was alive by the time of his fall into the waters of the canal. What is also to be further noted is that the said Exhibit P11, PME report, was prepared on 28.02.2011. On that day, it was noted in the said report that FSL report is awaited. Nevertheless, in the later entry made on 30.06.2011 in the same report, the cause of death was mentioned as 'Asphyxia due to strangulation'. Death by fall into waters may occur due to three possibilities viz., homicidal or accidental or suicidal. The evidence on record to the effect that the injuries caused to the ears and nose due to biting by the aquatic animals are ante mortem injuries without doubt reflects that the deceased was alive by the time he fell into the waters. To state in a different way, the evidence lays bare that the dead body of the deceased was not thrown into the waters after he was strangled to death. On the above analysis of the evidence afore-stated, it is to be held that there is no credible and decisive evidence to safely conclude that the death of the deceased was caused by strangulation of his neck and that later his dead body was thrown into the waters of the canal as being sought to be canvassed by the prosecution. The evidence on record, on the contrary, does not rule out the possibility of death due to other causes accidental or suicidal. In this evidentiary background, the finding of the learned Additional Session Judge to

the effect that the deceased was murdered by the accused by strangulating his neck, which does not find support from the evidence on record, does not stand the test of scrutiny. Hence, the said finding, which was recorded by the learned Additional Session Judge without properly looking into and appreciating the crucial aspects of the evidence, is liable to be over turned. As a corollary, it must be held that reasonable benefit of doubt, in the facts and circumstances of the case, should accrue to the accused.

10. Without disturbing the aforesaid conclusion and proceeding on the assumption that the deceased met with a homicidal death and that the cause of his death is 'asphyxia due to strangulation', it is necessary to now analyse the other relevant evidence. Careful scrutiny of the evidence narrated above would show that there are no eyewitnesses to the incident of murder by strangulation. So, the prosecution relies upon circumstantial evidence. Therefore, it is necessary to examine in seriatim, the circumstances relied upon by the prosecution to prove the complicity of the accused.

10.1 Adverting first to the circumstance in regard to recovery of incriminating material pursuant to the disclosure statements said to have been made by the accused on their arrest, learned Public Prosecutor contended that the said recoveries are sufficient to show the complicity of the accused and sustain the conviction recorded by the Court below. However, learned counsel appearing for the accused stated that the accused neither made any disclosure statements nor was there any evidence to show that such incriminating objects were seized at the behest of the accused. In this regard, what is to be noted is that the accused were first arrested on 05.04.2011 along with six other accused by PW24, the CI of Police, CCS-I, Guntur Urban, who is not the officer who was in charge of the investigation in the instant crime. According to the relevant evidence of PW24, he arrested nine persons including A1 to A3 herein on 05.02.2011 (sic 05.04.2011) at Nandini Lodge, Guntur, while they were

proceeding in a vehicle bearing registration No.AP7 R 6999 along with nine Ganja packets in nine carry bags and that on interrogation by the police in the presence of mediators and the Tahasildar of Guntur they disclosed their identity and that the accused herein made confessions about various crimes including the instant crime committed by them and that at that time a mahazarnama was drafted. A certified copy of the same is Exhibit P8. PW10, the mediator who was present at the time of Exhibit P8, Mazaharnama, deposed that the accused stated that A3 took the writ watch of the deceased. The other witness, Tahasildar, was not examined. According to the version of PW24, he seized MO2, the Wrist Watch said to be of the deceased, from the person of the 3rd accused. However, there is no specific mention of such seizure in Exhibit P8. Even the name of the company, which made the watch, is not stated in the mahazarnama. The identification details of the said watch like its shape and the nature of its belt are not noted in the mahazarnama, though it is stated that the watch is of gold colour. Similarly, PW24 was said to have seized MO1, gold chain, of the deceased, from Srinivasa Rao of Mahalaxmi jewellers, Piduguralla, on the accused making a confession/ disclosure that they pledged the same with him for Rs.10,000/- . It is important to note that there is no further statement made by any of the accused to the effect that they would lead the police party to Piduguralla and show the person by name Srinivasa Rao with whom they were said to have pledged the chain. The accused were said to have been arrested at Nandini Lodge, Guntur. How far Piduguralla was from the place of arrest of the accused is not borne out by the record. There is no mention in the original of Exhibit P8, about the seizure of the gold chain from the said Srinivasa Rao of Piduguralla. However, PW24 stated in his evidence that the said Srinivasa Rao of Piduguralla returned the gold chain to them (the police party). Even though PW24 stated that at that time a mahazarnama was prepared, the same was not exhibited. The evidence thus lends support to the defence that no such recovery of gold chain was ever

made and no such mahazarnama was prepared with details of the gold chain like its make and weight and the date and time of its alleged recovery. No record of the said Jeweller, showing the details of the person, who pledged the gold chain, and the date of pledge of gold chain etcetera, was seized. Even the said Srinivasa Rao was not examined. Further, there is no mention in Exhibit P8, Mahazarnama, that the accused made any disclosure statements about the identity of Srinivasa Rao and that their statements led to discovery of facts and that at their behest, the gold chain was recovered. To sum up, there is neither a mention of seizures of MO1, gold chain, and MO2, Titan wrist watch, in Exhibit P8, Mahazarnama, nor were separate seizure mahazarnamas, if any, prepared were exhibited. MOs 1 and 2 were said to have been recovered by PW24 on 05.04.2011; however, he did not produce the same before any Court of the learned Magistrate. In Exhibit P8 there is only mention of confessions and there is no mention any where of any disclosures by the accused which lead to the discovery of facts and also about seizure or recovery of any property. There is thus no record, much less reliable documentary evidence, to show the seizure or recovery of property by the police at the behest of the accused pursuant to their disclosure statements. There is no evidence that the property was kept in sealed envelopes in the presence of mediators. There is no record produced to show as to when PW24 handed over the said objects to any of the investigating officers investigating into the present crime. However, PW23 states that he brought the case property to his station on 19.04.2011. Except his oral testimony, there is no record to corroborate his version. Even after receiving the said property, PW23, did not deposit the same before the Court of the learned Magistrate and he further failed to make a request to the said Magistrate to conduct Test Identification parade of the said property. He states that he himself conducted a property test identification parade on 20.04.2011. Till 09.06.2011, he did not deposit the case property before the Court, even as per his testimony. Therefore, even

assuming for a moment that the said material objects, marked through witnesses, were of the deceased, in the absence of admissible and reliable evidence, the said objects exhibited do not advance the case of the prosecution any further. The findings of this Court find support from the scope and ambit of Section 27 of the Indian Evidence Act which were illuminatingly stated long ago by the Judicial Committee of the Privy Council in *Pulukuri Kotayya V/s King Emperor*¹. It runs as under:-

‘...it is fallacious to treat the "fact discovered" within the Section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A", these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.’

In *Mustkeem Alias Sirajuddin V/s State of Rajasthan*² with reference to Section 27 of the Indian Evidence Act, the Supreme Court observed as under:-

‘With regard to Section 27 of the Act, what is important is discovery of the materials object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the materials object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.’

10.2 Now dealing with the evidence in regard to discovery of MO4, Qualis vehicle, in which the deceased was said to have been taken by the accused on the date of incident, it is to be noted that the said vehicle was seized by PW24 from SS travels, Dachepalli. PW24 in his evidence, after speaking about the

¹ AIR 1947 PC 67

² (2011) 3 SCC (Ori) 473

return of gold chain by Srinivasa Rao to them, further deposed as under:

“Thereafter, we proceeded to Dachepalli village where the accused hidden the vehicle which was used for crime in this matter. We found the said vehicle at SS Travels, Dachepalli. We seized the said vehicle by recording a mahazarnama. We also recorded the statement of the owner of the said vehicle.” Any such mahazarnama was not exhibited. There is no mention in Exhibit P8 that the accused disclosed that they had hidden the said vehicle at any place. Further, the availability of the said vehicle at the said Travels at Dachepalli was not disclosed by the accused and no disclosure statement or confessional panchanama was drafted at the time of such disclosure, if any; and, hence, no such panchanama was marked. Further, the accused are not the owners of the said vehicle and the owner of the said vehicle was not examined as a witness before the Court below to explain as to how and when he lost possession of the vehicle till it was seized from SS travels at Dachepalli. No person concerned with the said travels was examined. The essential ingredient of the provision of law is that the information given by the accused must lead to the discovery of the fact which is a direct outcome of such information. Therefore, there is no evidence as to the information given by the accused, identification of the vehicle by any one of the accused and the delivery of possession of the vehicle to the police officer by any person concerned with the said Travels. Though the vehicle was said to have been seized on 05.04.2011, the seizure was not reported and the seized vehicle was not promptly produced before the Court of the learned Magistrate concerned. Therefore, mere marking of MO4-vehicle is also not helpful to establish the guilt of the accused.

10.3 Coming finally to the recovery of MO3, diary said to be of the deceased, the evidence of PW23, the investigating officer, and that of PW15, the then VRO, Munagala, discloses the uncovering of MO3, diary of the deceased, from

under a stone at the bund of Pothudurajupalli and its recovery on 16.06.2011 under cover of Exhibit P12, Panchanama, pursuant to the disclosure statement of the accused. It is pertinent to note that when A1 to A3 were arrested by PW24 on 05.04.2011, they were said to have disclosed to the said officer that the MO3 diary was kept by them under a stone at the bund of Pothudurajupalli. However, for reasons best known, the said police officer, PW24, has not recovered the same on the same day or at any time thereafter. What is admissible would be discovery of a fact which was not within the knowledge of the police and which is confirmed by the recovery of a physical object. Therefore, when the alleged existence of the diary at that place was disclosed to the police even as on 05.04.2011, its alleged recovery on 16.06.2011 by PW23 under Exhibit P12, panchanama, does not arise, as even by 05.04.2011 a disclosure was made to the police and the existence of the diary at that place as on 16.06.2011 is not within the exclusive knowledge of the accused.

10.4 On the above analysis it can safely be concluded that mere marking of MOs 1 to 4 does not establish the complicity of the accused. It is pertinent to also note that the deceased was found missing on the night of 26.02.2011 and the alleged recoveries were made after a long time after the arrest of the accused herein along with others on 05.04.2011. The failure on the part of the prosecution in marking the two mahazarnamas allegedly prepared at the time of recovery or seizure of MO1, gold chain, and MO4, Qualis vehicle, and the non production of the said MOs and MO2, wrist watch, promptly before a learned Magistrate and non examination of Srinivasa Rao, who returned the gold chain to the police, and the owners of the Qualis vehicle and SS Travels are clear indicia that the prosecution case regarding recoveries is shrouded in suspicion and is not worthy of trust.

10.5 As regards the next piece of circumstantial evidence, namely, Toll plaza data collected during the course of investigation regarding movement of MO4,

Qualis vehicle, in which the deceased was said to have travelled along with A1 to A3, the said evidence even if to be looked into only proves the movement of vehicle but is not helpful to establish as to who were the inmates of the vehicle.

10.6 Coming to the aspect of withdrawal of Rs.3,500/- on 27.02.2011 from the account of the deceased through the ATM located at Nakrekal by use of the ATM card, which was said to be in the possession of the deceased when he was allegedly in the company of the accused, and the CC TV footage furnished by the bank authorities related to the said ATM, it is to be noted that the CD, Exhibit P4, is inadmissible as it not accompanied by any certificate as required under Section 65(B) of the Indian Evidence Act and hence, the said CD cannot be looked into in view of the ratio in the decision in Anwar P.V. V/s P.K. Basheer³ wherein the Supreme Court held as under: - 'Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.' A certificate was not produced even subsequently or during the course of trial. Further, the content of the said CD was not displayed in open Court during the examination of any competent witness and the person appearing in the CD, i.e., the person who withdrew the money through the ATM, was not identified by any witness as any one of the accused herein. Though Exhibit P3, statement of the account of the deceased, discloses withdrawal of Rs.3,500/- from his account on the intervening night of 26/ 27.02.2011, the said document does not admittedly disclose the identity of the person who has withdrawn the said amount. Therefore, there is no evidence of required standard to show that the accused have withdrawn the said amount from the account of the deceased by use of his ATM card.

³ (2014) 10 SCC 473

11. The last circumstance which remains to be considered is the 'last seen theory'. Since the prosecution case on this aspect rests on the evidence of PWs5 and 7, it is necessary to first advert to the evidence of the said witnesses. PW5 stated that on 26.02.2011, he went along with his pregnant daughter from Nandigama to a hospital at Vijayawada and that he saw the deceased at about 06:30 to 07:00 PM at Vijayawada bus stand and that at that time A2 herein called the deceased and asked him to board the Green colour Qualis, which was going towards Hyderabad, by informing that there are already sufficient passengers in the vehicle and that the vehicle would start immediately after the deceased boarding the vehicle and that he and PW7 saw the deceased boarding the said vehicle, MO4, and that by that time A1 and A3 were also in the said vehicle and that the deceased sat by the side of A2, the driver of the vehicle and that A1 and A3 sat in the back seat and that on 28.02.2011 he came to know about the murder of the deceased. PW7 stated that he went to Vijayawada on his office work and that after completion of his work he went to Vijayawada bus stand in order to go to his house at Peddapuram and that he met the deceased and also PW5 and his pregnant daughter between about 07:00 and 07:15 PM at Vijayawada bus stand and that they chit chatted for some time and that in the meanwhile A2 asked them to board the vehicle going towards Hyderabad and that the deceased stated to him that he intends to go to Kodad and that on that A2 told to him that the vehicle would be stopped at Kodad and then the deceased sat by the side of A2, the driver of the said vehicle, and that by then A1 and A3 were already seated in the back seat of the said Qualis vehicle, MO4, and that after the deceased sat in the vehicle, he left for his destination and that later i.e., on 28.02.2011 he came to know about the murder of the deceased.

11.1 We have gone through the depositions in entirety of these witnesses.

11.2 The learned Public Prosecutor placed strong reliance on the oral testimonies of these two witnesses and contended that the last seen theory as established through these witnesses is sufficient to establish the guilt of the accused as the dead body was noticed in NSP canal on 28.02.2011, that is, within two days after the deceased was last seen in the company of the accused by PWs5 and 7. The defence of the accused is that the whole story of the prosecution is false and that as the police are of the opinion that A1 to A3 are habitual criminals and are indulging in several crimes, the police implicated them in this crime by creating a false 'last seen theory' and by implanting PW5, the office colleague, and PW7, the nephew of the deceased, as witnesses.

11.3 In the light of this defence, it is to be examined as to whether PWs5 and 7 were really present at the bus stand, Vijayawada, on 26.02.2011 between 06:30 and 07:30 P.M and saw the deceased boarding the Qualis vehicle, MO4, to go to Kodad from Vijayawada at the behest of A2, in which A1 and A3 were already seated. Admittedly, PW5 was present at the time of the inquest on the dead body of the deceased and PW7 personally went along with others and met PW2 having come to know of the death of the deceased. PW7 also attended the funeral of the deceased. PW5 in-fact deposed that he saw strangulation mark on the neck of the deceased though he did not state so at the time of inquest held on the dead body of the deceased. As noted earlier, in the inquest report no suspicion about the death of the deceased was expressed by anybody present at that time and therefore it was opined by the inquestdars that the deceased might have died due to fall in the waters of the canal or for any other reason. If really PWs5 and 7 have seen the deceased boarding the Qualis and were witnesses to A2 soliciting the deceased to board the MO4, Qualis vehicle, in which A1 and A3 were already seated, they ought to have stated so either to PW2 or PW1, who are the wife and the brother of the deceased, or the police officer holding inquest and

conducting investigation. The fact that they did not do so creates any amount of doubt as to their presence at the bus stand and their witnessing deceased boarding MO4, Qualis vehicle, in the possession of the accused. According to the prosecution, these witnesses did not disclose their respective versions to the police until they were examined. Since the defence is disputing the presence of these witnesses at the bus stand and is contending that these witnesses were implanted to support the false case of the prosecution, the crucial aspect would be the dates of the examination of these witnesses by the police. PW22 stated in his evidence that on 24.03.2011 he received medical opinion as to the cause of death and that he addressed a letter for alteration of Section of law to 302 IPC and thereafter the CI of Police, PW23, took up investigation. However, he states that he examined both PWs5 and 7 and recorded their statements. Though he specifically mentions in his evidence that on 14.03.2011 he visited the house of the deceased at Kodad and examined some of the witnesses including PWs2 and 3, he did not state as to on what dates he examined PWs5 and 7. He only states that he later visited NSP office, Nandigama and recorded the statement of PW5 at that place and later that of PW7. PW23, the CI of Police, stated that on 04.04.2011 he went to the house of PW1 and recorded his statement and the statements of other witnesses and that on 05.04.2011 he went to the office of the deceased at Nandigama and there he recorded the statements of PW4, PW5, PW6 and PW7 and thereafter he proceeded to Vijayawada and recorded the statements of two other witnesses [who were not examined before the Court of Session] and that on 06.04.2011 he received a message from the CCS police about the apprehension of the accused and the confessions made by them. Thus, he states that he recorded the statements of PWs5 and 7 one day before the apprehension of the accused. PW7 stated in his evidence that he is a resident of Peddapuram. Further, PW5 stated in his cross examination that on 06.06.2011 the SI of

police examined him and that he was again examined by the police on 15.06.2011 at Nandigama village between 02:00 and 03:00 PM. As already noted, the accused were arrested on 05.04.2011. Therefore, it is *ex facie* apparent from the evidence of PW5 that his statement was recorded by PW22 after the apprehension of the accused and not before. Since PW22 stated that after recording the statement of PW5 he later recorded the statement of PW7, it follows that even PW7 was examined and his statement was recorded after the apprehension of the accused. Further, PW23 in his cross examination stated that he re-recorded the statements of the witnesses in this matter on receiving instructions from the DSP to re-record the statements of witnesses. From the said statement it is apparent that PW23 recorded the statements of witnesses after the witnesses statements were earlier recorded by PW22. But, the two sets of statements recorded by both the police officers are not produced before the Court of committal and the Court of Session. Thus, the evidence adverted to supra does not conclusively establish the dates on which the statements of PW5 and PW7 were recorded by the police. It is for the prosecution to establish beyond doubt all the circumstances. Therefore, this Court is obligated to look into the dates on which the diaries are submitted by the police officers to the Court of the learned Magistrate. Before examining the said aspect, it is apt to note that both the police officers stated that they did not submit the statements recorded by them along with diaries to the Court promptly. In fact PW22 admitted that all the 161 CrPC statements were sent to the Court along with the charge sheet. PW23 also stated that he sent all the 161 CrPC statements along with the charge sheet to the lower Court. A police officer investigating into a cognizable case or a non cognizable case (under the orders of the Magistrate) is required by Section 172(1) CrPC to maintain case diary. The dairy is classified into part I and part II. Part I is generally known as case diary and is a privileged document. The statements of the witnesses

recorded under Section 161(3) CrPC are recorded in detail in part II and summary of the same is entered in part I also to make it a complete document by itself and to preserve the privilege. A police officer shall without fail enter his proceedings for the collection of the evidence in the case diary (part I) setting forth the time the information reached him, the time at which he began and closed the investigation, the place/s visited by him and a statement of circumstances ascertained through his investigation. Case diary, though not a substantive piece of evidence, can be taken in aid in the trial for appreciation of evidence. Case diary part I shall be sent to the Court along with the remand report. Failure on the part of the investigating officer to comply with the provision of Section 172 CrPC is a serious lapse resulting in diminishing the value and credibility of his investigation as observed by the Supreme Court in *Baleshwar Mandal and another v. State of Bihar*⁴. The failure of the investigating officers in this case therefore affects the credibility of investigation and hence an adverse inference can be drawn and as a sequel it is to be held that the contention of the defence that the statements of these witnesses were recorded after deliberations and after the arrest of the accused is probable. Therefore, the defence version that these witnesses were not present at Vijayawada bus stand on 26.02.2011 merits consideration and the prosecution version to the contra deserves to be doubted being not worthy of credence.

11.4 Another circumstance from the evidence of PW2, which supports the above view, needs advertence to at this stage. According to her version, after the deceased met his son at Gudavalli of Vijayawada, the deceased talked to her on his cell phone and also made her to speak to their son and that later the deceased returned to Vijayawada to return to his house at Kodad and that after boarding a bus at Vijayawada, he telephoned to her and informed her that he is coming home and that there is a short delay in

⁴ AIR 1997 SC 3471

starting of the said bus. However, according to her, as the deceased did not return home on that night, out of anxiety, she made several phone calls to the deceased, her husband, and got a message in response that his cell phone was switched off. Her said evidence shows that the deceased boarded a RTC bus at Vijayawada bus stand to return to his house at Kodad and also stated to her on cell phone that the bus will reach Kodad by 10.00 PM. The said fact was mentioned by PW2 in her report, Exhibit P2. It is in evidence that no private vehicles will be allowed inside the Vijayawada bus station. The law is well settled that in a case based on circumstantial evidence, the chain of circumstances must be complete and there should not be any missing links in the chain. However, there is no link evidence to explain as to why the deceased got down from the said bus and came out of the bus station to board a private vehicle. Though, PW22 stated that he addressed a letter to the Superintendent of the Police, Nalgonda, requesting to address a letter to the Cell phone service provider seeking call list of the cell phone of the deceased, the said call data, if any, collected is not produced and exhibited. If the circumstances in regard to last seen theory are examined in juxtaposition with the evidence of PW2 stated supra, the defence version that PW5 and PW7 are implanted witnesses gets fortified.

11.5 Since the very presence of PW5 and PW7 is doubtful and the defence version that they are not present with the deceased at the Vijayawada bus station between 06:30 and 07:30 P.M on 26.02.2011 is held to be more credible, the said witnesses identifying the accused in identification parades is in no way helpful to the case of the prosecution to establish the complicity of the accused.

11.6 Before concluding on this aspect, mere last seen theory even if it deserves acceptance, in a given case, must have some corroboration from any other source. In the light of the fact that we have held supra that there is no

other evidence showing the complicity of the accused in the instant crime, there is no such corroboration in this case. Even though last seen theory is an important event in the chain of circumstances that would completely establish and/or could point to the guilt of the Accused with some certainty, the Court must look for corroboration. Further, this theory should be applied while taking into consideration the case of prosecution in its entirety and also keeping in mind the circumstances that preceded and followed the point of being so last seen. In a murder trial based on circumstantial evidence the last seen evidence would not necessarily mean that the accused committed the murder. Therefore, as per settled law solely on the basis of last seen theory, no conviction can be recorded. Therefore, the view taken by the learned Session Judge that on the theory of last seen the accused could be convicted cannot be sustained. Under the Indian criminal jurisprudence the accused are presumed to be innocent until proven guilty and their liberty can be curtailed by putting them under imprisonment by due process of law only. If the entire case of the prosecution has been found to be unreliable and the prosecution, as a whole, has not been able to prove its case beyond reasonable doubt, then the benefit should accrue to the accused persons. [Vide:Sahadevan v. State of Tamil Nadu⁵].

12. At this stage, it is profitable to call in aid the decision of the Supreme Court in Chattar Singh and Anr. V. State of Haryana⁶ wherein the law on the appreciation of circumstantial evidence is stated as follows: “There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by this Court as far back as in 1952 in Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh (AIR 1952 SC 343), wherein it was observed thus:

⁵ AIR 2012 SC 2435
⁶ 2008 (8) Supreme 178

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

Further, in *Padala Veera Reddy v. State of A.P.*⁷ the Supreme Court laid down the principle that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

13. On a conspectus of the entire evidence, we are of the considered view that the prosecution failed to establish any circumstances from which the conclusion of the guilt of the accused could be drawn and that none of the circumstances, which are sought to be established, are of conclusive nature to exclude every hypothesis but the one proposed to be proved. Thus, the circumstances sought to be established do not form a chain so complete and sufficient to draw a conclusion that within all human probability the crime was committed by the accused and none else.

14. Before parting it is to be noted that the learned Public Prosecutor placed reliance on the decisions referred to, *infra*, dealing with imposition of death sentence and appreciation of evidence in criminal cases.

The decisions cited in *State of UP v. Om Prakash*⁸; *Devender Pal Singh Bhullar v. State (NCT of Delhi)*⁹; *Praveen Kumar v. State of Karnataka*¹⁰;

⁷ 1989 Supp (2) Supreme 706

⁸ 2015(2) ALD (CrI) 50 (SC)

State of U.P v. Satish¹¹; Shri Bhagwan v. State of Rajasthan¹²; Subhash Ramkumar Bind alias Vakil and another v. State of Maharashtra¹³; Machhi Singh and others v. State of Punjab¹⁴; and Vasanta Sampat Dupare v. State of Maharashtra¹⁵ are cases wherein there was consideration as to whether death penalty would be proportionate in the facts and circumstances of the said cases. In Machhi Singh case certain guidelines for imposing death sentence were also enumerated. The decisions cited in Mohd.Abdul Hafeez v. State of Andhra Pradesh¹⁶; Suryamoorthi and another v. Govindaswamy and others¹⁷; Harinath and another v. State of UP¹⁸; and Subhash and Shiv Shankar v. State of UP¹⁹ deal with appreciation of evidence concerning test identification parades. The decision cited in State of Himachal Pradesh v. Jeet Singh²⁰ provides guidance for appreciation of evidence concerning recovery of crime articles from a place which is open and accessible to others. In the cited case the Supreme Court reiterated the settled law that fact discovered embraces place of recovery and knowledge of accused as to it and not the object recovered. Anwar's case is already referred to by us while dealing with admissibility of electronic record. Placing reliance on the decision in Harsh Dhingra v. State of Haryana and others²¹, which deals with doctrine of prospective over ruling, it is sought to be contended that the requirement of production of certificate as stated in Anwar's case shall be prospectively applied. We are afraid the said contention is not well founded in view of the clear precedential guidance in Anwar's case. The decisions in Munshi Singh Gautam (dead) and Others v. State of M.P²²; and Ravirala Laxmaiah v. State

⁹ (2013) 6 SCC 195

¹⁰ (2003) 12 SCC 199

¹¹ (2005) 3 SCC 114

¹² (2001) 6 SCC 296

¹³ (2003) 1 SCC 506

¹⁴ AIR 1983 SC 957

¹⁵ (2015) 1 SCC 253

¹⁶ AIR 1983 SC 367

¹⁷ AIR 1989 SC 1410

¹⁸ AIR 1988 SC 345

¹⁹ AIR 1987 SC 1222

²⁰ (1999) 4 SCC 370

²¹ (2001) 9 SCC 550

²² (2005) 9 SCC 631

of AP²³ deal with appreciation of circumstantial evidence. Indeed, Munshi Singh Gautam case is a case dealing with police atrocities, custodial violence and custodial deaths. The said decision in Ravirala Laxmaiah is relied upon in support of the contention that the failure on the part of the accused to explain incriminating circumstance is an additional link to the chain of circumstances and that false explanation or absence of explanation by the accused would create a strong suspicion about the guilt of the accused. The learned Public Prosecutor would contend that when PWs5 and 7 have last seen the accused with the deceased, the accused are duty bound to explain the circumstances under which the deceased died. In the case on hand, we have already held that the prosecution failed to prove that the accused strangled the deceased to death and discarded his dead body in NSP canal. We further held that the defence version that PWs5 and 7 were not present at the bus stand and that they were implanted witnesses merits consideration. Thus, the legal principles in the cited decisions, which are undisputed, isolated from the facts of the present case, do not advance the case of the prosecution.

15. Overlooking all the crucial aspects, the Sessions Court not only held the accused 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, however, finds that the prosecution failed to establish the principal fact that the death of the deceased was caused by strangulation and that later his dead body was thrown into NSP canal. Further, the circumstantial evidence from which an inference of the guilt of the accused is to be drawn is not worthy of acceptance. As a corollary it must be held that the prosecution failed to establish the guilt of the accused beyond reasonable doubt and that the accused are therefore entitled to be acquitted.

²³ (2013) 9 SCC 283

16. The convictions of A1 to A3 in Sessions Case No.382 of 2012 on the file of the learned IV Additional Sessions Judge, Guntur, in relation to all the charges framed against them and the sentences imposed in consequence of such convictions are therefore set aside. A1 to A3 are acquitted. They 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 appeals are allowed and the reference under Section 366 CrPC is answered accordingly.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

25.11.2016

Note: L.R. copy to be marked

**Note: Communicate operative
portion of the common
Judgment forthwith to all the concerned.**

(B/o)
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