

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 193 OF 2001

Bhaskarreddy s/o Subbareddy Methu

Age : 38 years, occu.: agri.,

R/o Achenpalli, Taluka Bodhan,

District Nizamabad (Andhra Pradesh)

.. Appellant.

(original accused No.1)

Versus

The State of Maharashtra

Through Police Station, Kundalwadi,

Taluka Biloli, District Nanded

.. Respondent.

(original complainant)

Mr. S.B. Bhapkar, Advocate for the appellant.

Mr. R.V. Dasalkar, A.P.P. for the State.

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL,JJ.**

RESERVED ON : 02.08.2017

PRONOUNCED ON : 06.09.2017

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. This appeal is preferred by original accused No.1 against judgment and order dated 13.03.2001 passed by Additional Sessions Judge, Biloli in Sessions Case No.46/1999

convicting the accused under Sections 302 and 201 read with Section 34 of the Indian Penal Code (hereinafter referred as "I.P.C.").

2. Respondent is the State of Maharashtra.

3. Facts leading to institution of this appeal are that accused Nos.1 and 2 were prosecuted for the offences punishable under Sections 302, 201 read with Section 34 of I.P.C. Shorn off the unnecessary details, the prosecution case, in brief, is that M. Arunkumar @ Appi Reddy used to live at Achanpalli alongwith his brothers M. Sundar Reddy and M. Mallikarjun Reddy and their parents. At the relevant time of the occurrence, Mallikarjun used to live at Hyderabad for his occupation. Appi Reddy was in dairy business and his brother Sundar Reddy was in private service. One month before the incident, dispute arose in between Appi Reddy and his cousin Bhaskar Reddy on account of T.V. Cable connection. That time Bhaskar Reddy threatened to kill Appi Reddy. However, that dispute was pacified and their relations became normal.

4. On 30.04.1999 at about 4.30 p.m. Nirmalabai (PW-15), who is the mother as well as Sundar (PW-1), who is the brother of Appi Reddy, saw that Appi Reddy was going towards Bodhan by Scooter alongwith accused No.1 Bhaskar Reddy. Sundar Reddy (PW-1) also noticed that at short distance, the Scooter was stopped and accused No.2 Narayan Reddy also joined them as pillion rider and they proceeded towards Bodhan. Thereafter Appi Reddy never returned to his residence. On the next day morning Nirmalabai (PW-15) inquired with accused Bhaskar Reddy about her son. However, he could not furnish satisfactory explanation. Despite search for Appi Reddy, he could not be located. Therefore, on 03.05.1999 a missing report (Exh.29) was lodged to Police Station, Bodhan by Sundar Reddy (PW-1). However, missing Appi Reddy was not found.

5. On 07.05.1999 Police Station, Kundalwadi was informed by Police Patil Hashanna Totawar (PW-3) that a dead body of an unknown person was lying in the forest area within the jurisdiction of Kundalwadi Police Station. Therefore, P.S.I. Angadh Sudake (PW-17) registered A.D. and visited the spot

where dead body was lying. He prepared inquest panchnama (Exh.64) of the dead body and drew spot panchnama (Exh.65). As the dead body was decomposed and it was in partly burnt condition, Dr. Sunanda Kavthale (PW-2) performed autopsy examination of that dead body on the spot and by submitting postmortem notes (Exh.36), opined that cause of death of the said person cannot be given. Nobody claimed dead body within reasonable time. Therefore, after obtaining its photographs and after retaining the articles found on the dead body, P.S.I. Sudake (PW-17) cremated the dead body through Chief Officer, Municipality, Kundalwadi. The information was submitted to nearby police stations about unidentified dead body and inquiry was started in nearby villages.

6. The family members of missing Appi Reddy came to know that one dead body was found by the police at Kundalwadi in the Maharashtra State. Therefore, they approached Kundalwadi Police Station. By that time dead body was cremated. But the photographs of the dead body, clothes and wrist watch found on the dead body were retained by

police. After watching those photographs as well as cloth and wrist watch, the family members of Appi Reddy identified that the dead body found in the forest area of Kundalwadi was of Appi Reddy. The dead body was exhumed on 14.05.1999 in presence of the relatives of deceased. The identity of the deceased was confirmed by the relatives. Therefore the dead body was handed over to the relatives of deceased. On 14.05.1999 i.e. on the date of identification of the dead body, Sundar Reddy lodged F.I.R. (Exh.27) against the accused persons. In the result, offence was registered at Police Station, Kundalwadi against accused persons bearing Crime No. 29/99, under Sections 302 and 201 read with Section 34 of I.P.C.

7. During the course of investigation, P.S.I. (PW-17) visited the spot, drew inquest panchnama (Exh.64) and spot panchnama (Exh.65). He also recorded statements of witnesses. Both the accused were arrested on 14.05.1999. Clothes of accused were seized which they wore at the time of commission of offence. On 25.05.1999 Chetak Scooter was seized, which was used by accused persons at the time of

commission of offence. Special Executive Magistrate Ramrao Gaikwad (PW-6) held Test Identification Parade of accused (Exh.46). As per the disclosure statement given by accused No.1 Bhaskar Reddy, liquor bottle was seized near the spot of incident. All seized muddemal was referred to Chemical Analyzer, Aurangabad on 06.06.1999. Even specimen finger prints of accused No.1 Bhaskar Reddy and seized liquor bottle was referred to Finger Prints Expert. After completion of investigation, charge-sheet was submitted in the Court of Judicial Magistrate, First Class, Biloli.

8. Offence punishable under Section 302 of I.P.C. being exclusively triable by the Court of Sessions, this case was committed to Additional Sessions Judge, Biloli.

9. Charge (Exh. 11) was framed against accused Nos.1 and 2 for the offences punishable under Sections 302 and 201 read with Section 34 of I.P.C. They pleaded not guilty and claimed trial.

10. Defence of the accused is of total denial.

11. Prosecution examined total 17 witnesses. Defence did not examine defence witness. Therefore, after considering the evidence placed on record, the learned trial Court pleased to convict both the accused for the offence punishable under Section 302 read with Section 34 of I.P.C. and they were sentenced to suffer imprisonment for life and to pay fine of Rs. 2000/- each. Accused were also convicted for the offence punishable under Section 201 read with Section 34 of I.P.C. and they were sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs. 1000/- each. Therefore this appeal arises.

12. Mr. Bhapkar, Learned Counsel for the appellant has submitted that the Medical Officer Dr. Sunanda Kavthale (PW-2), who performed autopsy examination of the unknown dead body, could not submit opinion regarding exact cause of death. His next submission is that as the dead body was in highly decomposed and in burnt condition, nobody can properly

identify the dead body. Therefore, prosecution cannot establish that the dead body found in the Kundalwadi forest was of Appi Reddy.

13. In reply, learned A.P.P. for the State has drawn our attention towards the testimony of Sunder Reddy (PW-1) as well as Nirmalabai (PW-15) and submitted that the near relatives have identified the dead body on the basis of the face of exhumed dead body as well as on the basis of the photographs and seized wrist watch and cloth, which were found on the dead body.

14. After going through the evidence of Dr. Sunanda (PW-2), who performed autopsy examination of the dead body on the spot on 07.05.1999, it reveals that it was the dead body of a male person having green piece of cloth on the waist and grayish piece of shirt. Blackish burnt skin was present on the arm and face of the dead body. This Medical Officer also found that at abdomen no internal organ or part was present. At last, she deposed that it was not possible for her to state about the

cause of death. However, though the Medical Officer cannot give specific opinion regarding the cause of death, on the basis of the other circumstances on the spot, it can be ascertained whether it was the case of homicidal death or not.

15. By examining panch Rajeshwar (PW-14) the prosecution has proved the inquest panchnama (Exh.64) as well as spot panchnama (Exh.65). After going through inquest panchnama (Exh.64), it emerges that the dead body was lying in supine condition and it was partly burnt. No doubt, the lower part of the dead body was either eaten away by the animals or destroyed for other reasons. However, one wrist watch was found on the left hand of the dead body and the facial portion of the dead body was partly intact. Thus, it reveals that some culprits have tried to destroy the dead body by burning it. This fact itself indicates that the deceased did not die of natural death or suicidal death. This finding is also supported by spot panchanama (Exh.65), which shows that one plastic bottle was lying near the dead body and a piece of partly burnt shirt was also found on the dead body with label, over

which name "Ishwar" was printed. C.A. Report (Exh.89) shows that kerosene residues were found in plastic bottle, glass bottle, partly burnt piece of shirt, nylon rope as well as earth sample seized from the spot of incident. This indicates that somebody had tried to burn the dead body after pouring kerosene over it. These circumstances on record are definitely sufficient to show that though the cause of death of the deceased cannot be ascertained by Medical Officer, it was the case of homicidal death. Thus, our conclusion is that the deceased, whose dead body was found in Kundalwadi forest, died of homicidal death.

16. Now the question to be determined is whether the prosecution can establish the identity of the said dead body as the body of deceased Appi Reddy @ Arunkumar.

17. Sunder Reddy (PW-1), who is the brother and Nirmalabai (PW-15), who is the mother of deceased Appi Reddy and one Vijaykumar (PW-4), have categorically deposed before the Court that after knowing that unknown dead body was found in Kundalwadi forest area, they went to Police Station,

Kundalwadi and when they had seen the photograph of the dead body as well as piece of cloth of shirt and wrist watch found on the dead body, they identified that it was the dead body of Appi Reddy. From their testimony it emerges that on next day, the dead body was exhumed and the near relatives i.e. Sunder Reddy (PW-1) and Nirmalabai (PW-15) identified the dead body as of Appi Reddy. The testimony of these witnesses is also corroborated by P.S.I. Sudake (PW-17). It cannot be ignored that though the dead body was partly burnt, the near relatives like brother Sundar Reddy (PW-1) and mother Nirmalabai (PW-15) cannot make any mistake to identify Appi Reddy, who was day-to-day under their observation.

18. In the case of Sudama Roy Versus State of West Bengal, reported in [1998 Supreme Court Cases (Cri.) 391], the Apex Court accepted the identification of dead body of daughter by her mother even on the basis of skeleton of the daughter.

19. Therefore, considering the principle that the mother

cannot commit mistake in identifying the dead body of her partly burnt son, we have no hesitation to hold that the identification of the dead body of Appi Reddy by his brother Sunder Reddy (PW-1) and mother Nirmalabai (PW-15) after exhumation of the dead body and after identifying wrist watch, cloth piece and photograph of the dead body, is absolutely reliable and cannot be doubted. Even in the cross-examination of Nirmalabai (PW-15) identification of the dead body of Appi Reddy is not at all challenged by the accused. Thus, the conclusion can be drawn that the prosecution has established beyond reasonable doubt that Appi Reddy died of homicidal death and his dead body was found in the forest area of Kundalwadi.

20. Now, we have to examine whether the prosecution can establish the link in between accused and homicidal death of Appi Reddy. No eye witness is available who had seen accused Nos.1 and 2 while committing murder of Appi Reddy. The total prosecution case is based on circumstantial evidence.

21. Mr. S.B. Bhapkar, learned counsel for the appellant has submitted that the prosecution cannot establish motive behind the murder of deceased, because the trifling quarrel on account of cable connection cannot be a motive to kill the deceased. He also pointed out that no other evidence is available regarding illicit relations of deceased Appi Reddy with the wife of accused No.1 Bhaskar Reddy. He has submitted that when the case is based on substantial evidence, the motive plays very important role. He has placed reliance on the case of Dayanand Changdeo Zende and others Versus State of Maharashtra reported in [2008 (1) Mh.L.J. (Cri.) 74], wherein the Division Bench of this Court held that, “*where the prosecution case is entirely based on the circumstantial evidence, the prosecution is obliged to establish chain of circumstances so complete, that it unerringly establishes guilt of the accused and does not leave any scope for an inference consistent with their innocence. The circumstances relied upon by the prosecution must be incompatible with any hypothesis consistent with the innocence of the accused and should negate all possibilities of their innocence*”.

22. He also placed reliance on the case of **Sharad Biridhichand Sarda Versus State of Maharashtra**, reported in **(AIR 1984 Supreme Court 1622)**, wherein the Apex Court ruled that, *“it is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. Where various links in a chain are themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court”*.

23. In the case at hand, Sunder Reddy (PW-1) as well as Nirmalabai (PW-15) have deposed regarding quarrel in between Appi Reddy and accused No.1 Bhaskar Reddy on account of cable connection prior to the occurrence of the incident. However, from their evidence it also emerges that the quarrel was pacified and again the relations in between Appi Reddy and

accused No.1 Bhaskar Reddy became normal. Thus, obviously such type of trifling quarrel cannot become motive for commission of murder of deceased. In addition to this, Vijaykumar (PW-4) has also tried to bring on record a quarrel in between deceased and accused Bhaskar Reddy on account of relation of deceased with the wife of accused Bhaskar Reddy. However, from the examination-in-chief of Vijaykumar (PW-4) it emerges that after that quarrel again the relations in between deceased Appi Reddy and accused No.1 Bhaskar Reddy became normal. In the circumstances, we have no hesitation to hold that the prosecution cannot prove that accused had any motive to kill the deceased. However, if the circumstantial evidence available on record is free from all infirmities, then even in absence of motive, accused can be convicted.

24. Mr. S.B. Bhapkar, Advocate for the appellant has submitted that though Sunder Reddy (PW-1) claimed that he is an eye witness who had seen deceased Appi Reddy while going out alongwith accused Nos.1 and 2, in fact he is not eye witness of this occurrence, because in missing report (Exh.74) it is

specifically mentioned that he did not see deceased while going out alongwith accused persons.

25. However, learned A.P.P. has rightly pointed out that the document at Exh.74 cannot be a genuine missing report. The original missing report is filed by the prosecution at Exh.29. The document filed at Exh.74 was placed on record during the cross-examination of Sunder Reddy (PW-1) and it is an ordinary xerox copy of attested statement of Sunder Reddy (PW-1). This document being xerox copy is a secondary evidence and it has been not brought on record from the proper custody as well as with permission of the trial Court. In fact, the learned trial Court ought to have not accepted such xerox copy of the statement and should not have permitted the defence Counsel to cross-examine Sunder Reddy (PW-1) on the basis of such doubtful document. Therefore, xerox copy of the statement (Exh.74) deserves to be ignored in toto.

26. After going through the missing report (Exh.29) filed by Sunder Reddy (PW-1) on 03.05.1999 at Police Station,

Bodhan, it emerges that it is specifically mentioned in this missing report that on 30.04.1999 at about 4.30 p.m. Appi Reddy had gone alongwith Bhaskar Reddy on his Scooter from the house of Sundar Reddy (PW-1) and thereafter he never returned to his house. In this missing report it is also mentioned that while leaving the house, Appi Reddy wore light green Lungi and cement colour shirt and his height was 5 ft. 10 inches.

27. After identification of the dead body of Appi Reddy immediately on 14.05.1999 Sunder Reddy (PW-1) lodged F.I.R. (Exh.27). In F.I.R. the incident occurred on 30.04.1999 at about 4.30 p.m. is specifically mentioned. Sunder Reddy (PW-1) deposed before the Court that on 30.04.1999 when he was proceeding from Bodhan to Achanpalli, that time he saw that Appi Reddy was travelling as a pillion rider on the Scooter driven by accused No.1 Bhaskar Reddy and they were proceeding towards Bodhan. From the testimony of Sunder Reddy (PW-1) it further emerges that after going little ahead, Bhaskar Reddy allowed Narayan Reddy to sit on the same

Scooter as additional pillion rider and thereafter those 3 persons went away towards Bodhan. According to this witness, he returned to his house at 9.00 p.m. and thereafter he informed this occurrence to his mother Nirmalabai (PW-15). Nirmalabai (PW-15), who was present at her house at Achanpalli, deposes on oath that on 30th April when she was tethering buffaloes near her house, that time she saw that accused No.1 Bhaskar Reddy was taking away her son Appi Reddy on Scooter. She has also made it clear that on the date of incident, Appi Reddy wore cement colour shirt and green colour Lungi.

28. Learned Counsel for the appellant submitted that these two witnesses are contradicting each other regarding the presence of accused No.2 Narayan Reddy as a second pillion rider. However, we do not find any substance in this objection for the simple reason that Nirmalabai (PW-15) watched her son going away alongwith accused No.1 Bhaskar Reddy from her house at village Achanpalli. On the other hand, Sunder Reddy (PW-1) had noticed accused No.1 Bhaskar Reddy and Appi Reddy while travelling by Scooter from Bodhan to Achanpalli

road when he was returning from Bodhan. According to Sunder Reddy (PW-1), on that road accused No.1 gave lift to accused No.2 Narayan Reddy. Therefore, it was natural that at the residence of Nirmalabai (PW-15) she could not notice accused No.2 Narayan Reddy because Narayan Reddy did not sit on the Scooter at village Achanpalli, but he obtained lift at Bodhan road.

29. Mr. Bhapkar, Advocate for appellant has also pointed out that Sunder Reddy (PW-1) and Nirmalabai (PW-15) are contradicting each other as to who informed the occurrence to each other. However, it cannot be ignored that these both witnesses have deposed before this Court in the year 2000 i.e. after lapse of more than one year from the date of occurrence. Therefore, such minor inconsistencies emerging in the evidence of such rustic villagers deserve to be ignored.

30. Mr. Bhapkar, learned Counsel for the appellant has also assailed the testimony of Sunder Reddy (PW-1) and Nirmalabai (PW-15) on the ground that from the cross-

examination of Nirmalabai (PW-15) it emerges that the working hours of Sunder Reddy (PW-1) were 8.00 a.m. to 2.00 p.m. and after recess period upto 9.00 p.m. According to Mr. Bhapkar, when Nirmala (PW-15) admits in her cross-examination that Sunder (PW-1) was attending his duty on the day when Appi Reddy went alongwith Bhaskar Reddy on Scooter, it is impossible that Sunder can watch Bhaskar Reddy and Appi Reddy while passing by Bodhan road. However, we do not find any substance in this objection for the reason that on this count no questions have been asked to Sunder Reddy (PW-1) as to how he was passing by the road from Bodhan towards Achanpalli. Therefore, it is also probable that for office work Sunder Reddy (PW-1) might have gone to Bodhan and while returning towards Achanpalli he noticed Appi Reddy and accused persons while travelling by one Scooter. Therefore, for such trifling reason the testimony of Sunder Reddy (PW-1) cannot be doubted.

31. No doubt, the testimony of Vijaykumar (PW-4) that on 30.04.1999 he saw Bhaskar Reddy and Narayan Reddy

proceeding from bye pass road to Bodhan on Scooter, is not relevant as this witness did not speak regarding presence of Appi Reddy as one of the pillion rider. Even the version of Krishna Reddy (PW-5) that on 30.04.1999 when he was sitting in the hotel, he saw Bhaskar Reddy, Appi Reddy and Narayan Reddy while going towards Bodhan side by bye-pass road, cannot be believed as the same is proved as material improvement in his cross-examination.

32. However, it cannot be ignored that Sunder Reddy (PW-1) and Nirmalabai (PW-15) have no personal envy against both the accused persons to falsely implicate them in such serious offence. On the other hand, both the accused are near relatives of these witnesses and from the cross-examination of these witnesses, it also emerges that the relation amongst these both witnesses, deceased and the accused were cordial. Therefore, false implication of the accused by these both witnesses is out of question. In the result, we have no hesitation to hold that on the basis of truthful testimony of Sunder Reddy (PW-1) and Nirmalabai (PW-15) the prosecution

has proved that on 30.04.1999 at about 4.00 to 4.30 p.m. deceased Appi Reddy had gone towards Bodhan side by one Scooter alongwith accused No.1 Bhaskar Reddy and accused No.2 Narayan Reddy.

33. By examining Shaikh Mainuddin (PW-9) prosecution has tried to bring on record additional evidence that on the date of the incident accused persons and deceased were found near forest area of Kundalwadi. However, Shaikh Mainuddin (PW-9) has turned hostile and nothing helpful to the prosecution could be elicited in his cross-examination. In cross-examination by defence Counsel he has admitted that those three persons were at a distance of 60 ft. from him and there was darkness due to shadow of trees. Therefore, the identification of unknown persons from the distance of 60 ft. in the darkness is highly improbable. In further cross-examination he has totally washed out the case of prosecution regarding identification of accused persons by this witness in Test Identification Parade held by Special Executive Magistrate Ramrao Gaikwad (PW-6).

34. Even the testimony of Ramrao Gaikwad (PW-6), Special Executive Magistrate, who claims that in his presence Shaikh Bashir and Shaikh Mainuddin (PW-9) identified accused Nos.1 and 2, is useless for the simple reason that these both identifying witnesses have denied the identification of accused Nos.1 and 2 in Test Identification Parade. Otherwise also, identification by witness in Test Identification Parade is not a substantive evidence. Therefore, the testimony of Ramrao Gaikwad (PW-6) is nothing but a useless piece of evidence.

35. The next witness examined by the prosecution to prove that the deceased and accused were last seen together, is the Waiter Mohammad Mehboob (PW-7). Mohammad Mehboob Sarwar (PW-7) categorically deposes on oath that prior to 1 ½ year prior to date of recording of his evidence i.e. approximately on the date of the incident at about 5.00 p.m., three persons came to his Dhaba styled as "Highway Hotel" situated at bye-pass road, Bodhan and placed an order of roasted Chana and half bottle of Brandy. From the testimony of this witness it emerges that out of these three customers the

person who was the tallest amongst them, consumed more liquor than the others. This witness has also described the clothes on the body of that taller customer as greenish Lungi and gray colour shirt which resembles with the description of the clothes of deceased. According to this witness, the other two customers wore white Lungi and cream colour shirt and black pant and white shirt respectively, which resembles with the clothes on the person of accused No.2 and accused No.1 respectively. According to this witness, after consumption of liquor, those three persons went away by one Scooter towards Bodhan side. He has firmly identified accused Nos.1 and 2 as the same customers who accompanied the above referred taller customer. He has also identified that accused No.1 Bhaskar Reddy was driving the Scooter. Thus, in brief, this witness has proved that on the date of incident at about 5.00 p.m. onward both accused persons and the deceased were found together near Bodhan at "Highway Dhaba" situated at bye-pass road, Bodhan.

36. Learned defence Counsel cross-examined this

witness at length. However, except that this witness was brought to the Court by some persons from the village Achanpalli, nothing has been placed before the Court which is sufficient to disbelieve the testimony of this witness. Even the improvements brought on record regarding the clothes worn by accused and deceased are not material to view the natural testimony of this witness with suspicion. On the other hand, this hotel-cum-dhaba is situate near the spot of the incident, and therefore, the version of this witness regarding presence of both accused alongwith deceased at his Dhaba for consumption of liquor is most natural. On the other hand, through the Court question it has been brought on record that this witness has identified accused Nos.1 and 2 as companions of the deceased, because the photograph of the deceased was shown to this witness. Therefore, we have no hesitation to hold that if the testimony of Sunder Reddy (PW-1), Nirmalabai (PW-15) and Mohammad Mehboob Sarwar (PW-7) is considered together, the prosecution has proved beyond reasonable doubt that on the date of incident since 4.00 to 4.30 p.m. till the evening hours both accused were in the company of deceased and no third

person was in the company of deceased other than the accused.

37. From the testimony of Police Patil Hashanna Totawar (PW-3), it emerges that the decomposed dead body of the deceased was located for the first time on 07.05.1999. Therefore, from the stage of decomposing of the dead body it can be ascertained that the probable time of death of deceased is on the date of the incident at late evening hours. From the testimony of Sunder Reddy (PW-1) and Nirmalabai (PW-15) it also becomes clear that on the next day of the incident accused were present at village Achanpalli when Nirmalabai (PW-15) inquired with accused Bhaskar Reddy regarding her missing son. That time accused No.1 Bhaskar Reddy did not give satisfactory explanation about missing of Appi Reddy. Thus, with the aid of Section 106 of the Evidence Act, inference can be drawn that on the date of incident after killing the deceased in Kundalwadi forest, on next day morning accused persons safely returned to village Achanpalli and had given false explanation to Nirmalabai (PW-15) that the deceased was left on road on the earlier day. It cannot be ignored that on

30.04.1999 till evening the deceased was only with the company of accused Nos.1 and 2 and thereafter only the decomposed dead body of deceased was found after 7 days. Therefore, considering the time gap in between finding of accused with deceased together and the probable time of the death of deceased, only one conclusion deserves to be drawn that accused Nos.1 and 2 are the killers of deceased.

38. In the case of Mohamma Azad Versus State of West Bengal, reported in (AIR 2009 SC 1307) the Apex Court ruled that last seen theory requires possible link between the time when the person was last seen alive and the fact of death of deceased coming into light. There should be reasonable proximity of time between those two events. In the case of State of Goa Versus Sanjay Thakran, reported in [(2007) 3 SCC 755], the Apex Court ruled that there can be no fixed straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence laid by prosecution to remove the possibility of any other person meeting the deceased in the intervention period. In all cases it

cannot be said that the evidence of last seen together is to be rejected merely because the time gap between accused persons and the deceased last seen together and the crime coming to the light is after considerable long duration.

39. In the case at hand also the accused and deceased were last seen together at evening hours near Kundalwadi forest where later on the dead body of deceased was found in decomposed condition. Therefore, there was no possibility of intrusion to that place by any third party. Therefore, relatively wider time gap in between last seen together and finding dead body would not affect the prosecution case.

40. Learned defence Counsel has raised objection regarding delay in recording statement of Mohammad Mehmood (PW-7). However, such objection is not acceptable for the simple reason that in view of the case of **Ranbir Versus State of Punjab**, reported in (**AIR 1973 SC 1409**), the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in

examination of witnesses, the prosecution version become suspect.

41. In the case at hand, considering the typical nature of investigation of this matter, certainly the Investigating Officer would required reasonable time to locate the related witnesses who could have thrown light on the probable occurrence. Therefore, though there is certain delay in recording statement of Mohammad Mehmood (PW-7), on that count his testimony cannot be discarded.

42. In addition to the above-referred substantial evidence in the form of last seen together, the prosecution has also examined Mohanrao Pande (PW-10), who claims that on 16.05.1999 in his presence white shirt and grey blackish colour pant (Articles X-1, X-2) were seized from accused No.1 Bhaskar Reddy under seizure memo (Exh.53) and one shirt and Lungi (Articles X-3, X-4) were seized from accused No.2 Narayan Reddy under panchnama (Exh.54). This witness has categorically identified the clothes Articles X-1 & X-2 of accused

No.1 Bhaskar and shirt and Lungi i.e. Articles X-3 & X-4 as the clothes of accused No.2 Narayan. Despite sufficient cross-examination, this witness stood constant. Nothing could be elicited to disbelieve his version. Only because this witness does not know the name of the tailor who stitched the clothes of the accused and only because on the label fixed on the clothes name of the person from whom those were seized are not mentioned, the testimony of this witness cannot be discarded, when otherwise it is free from doubt. Only because the house of this witness is near Police Station, conclusion cannot be drawn that he is a habitual police punch, when no substance has been placed on record in the form of certified copies of depositions of this witness recorded in other cases to prove that he is a habitual police witness. Therefore, we have no hesitation to hold that the testimony of Mohan Pande (PW-10) together with the testimony of P.S.I. Sudake (PW-17) is sufficient to prove beyond reasonable doubt the seizure of clothes (Articles X-1 & X-2) from accused No.1 Bhaskar Reddy and clothes (Articles X-3 & X-4) from accused No.2 Narayan Reddy.

43. From the testimony of P.S.I. Sudake (PW-17) and Carrier Police Constable Mohan Modpate (PW-12) it emerges that all the seized articles in this crime were referred to Chemical Analyzer, Aurangabad on 06.06.1999 (Exh.60). C.A. Report (Exh.88) of these articles shows that on the shirt of accused No.1 human blood was found. So also, the human blood was also found on the shirt piece found on the dead body and nylon rope found near the dead body. Despite the opportunity to the accused persons in their statement recorded under Section 313 of the Code of Criminal Procedure, they have not furnished any explanation regarding human blood found on the shirt of accused No.1 Bhaskar Reddy. The detection of human blood on the shirt of accused No.1 Bhaskar Reddy without having any explanation for the same, together with the above evidence of last seen together, is definitely sufficient to connect accused No.1 Bhaskar Reddy with the homicidal death of deceased Appi Reddy. Blood stains on nylon rope found near the dead body of deceased Appi Reddy indicates that it was used for killing the deceased Appi Reddy. Thus, a complete chain of circumstantial evidence is available on record which

indicates finger towards accused No.1 Bhaskar Reddy as a killer of deceased Appi Reddy and ruled out every possibility of his innocence.

44. Before parting with the judgment, we must point out that the evidence placed on record in the form of recovery of liquor bottle and detection of finger prints of accused No.1 Bhaskar Reddy on the same liquor bottle is useless piece of evidence for the simple reason that from the testimony of panch Mohan Shirgire (PW-16) it emerges that the said liquor bottle was taken out by accused No.1 Bhaskar Reddy from the bushes and that time certainly it was handled by accused No.1. Therefore, finding a chance finger print of accused No.1 Bhaskar Reddy on the said liquor bottle is natural and this fact is of no help to the prosecution to prove the presence of accused No.1 Bhaskar Reddy near the spot.

45. However, as observed that the chain of circumstantial evidence is fully established by prosecution, which is sufficient to hold that on 30.04.1999 accused No.1

Bhaskar Reddy with requisite intention committed murder of deceased Appi Reddy. As accused No.1 Bhaskar Reddy partly burnt the dead body by pouring kerosene on it, the prosecution can also establish the charge under Section 201 of I.P.C. i.e. causing disappearance of the evidence of murder with intention of screening himself from legal punishment. In other words, conviction of accused No.1 Bhaskar Reddy under Section 302 and 201 of I.P.C. and sentence of imprisonment for life and fine of Rs. 2000/-, in default of payment of fine rigorous imprisonment for one year for the offence punishable under Section 302 read with Section 34 of I.P.C. and rigorous imprisonment for five years and fine of Rs. 1000/-, in default of payment of fine rigorous imprisonment for six months for the offence punishable under Section 201 of I.P.C. is just and reasonable and needs no interference.

46. Accused No.2 Narayan Reddy died during the pendency of appeal and Criminal Appeal No.172/2001 filed by him is also abated. This appeal being devoid of merit deserves to be dismissed.

47. Accordingly, we pass the following order.

ORDER

1. Criminal Appeal No. 193/2001 is dismissed.
2. The conviction of accused No.1 Bhaskarreddy s/o Subbareddy Methu for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code in Sessions Case No. 46/1999 passed by Additional Sessions Judge, Biloli is confirmed.
3. Set off be given under Section 428 of the Code of Criminal Procedure for the period already undergone by accused No.1 Bhaskarreddy s/o Subbareddy Methu
4. Accused No.1 Bhaskarreddy s/o Subbareddy Methu shall immediately surrender to his bail bonds before the trial Court to undergo the sentence.
5. At this stage, Mr. Bhapkar, learned Counsel for the appellant requested for granting time to surrender. It amounts to giving stay by the Appellate Court to the judgment and order of conviction and also sentence of life imprisonment. Therefore, the request is rejected.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

vdd/