

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

Crl.A.No.1586 of 2010

Between:

Karanam Nagaraju @ Snathakumar.

.....Appellant

And

The State of Andhra Pradesh,
rep. by the Public Prosecutor.

.....Respondent

JUDGMENT PRONOUNCED ON : **30.06.2017**

HON'BLE SRI JUSTICE : SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE : U.DURGA PRASAD RAO

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

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
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For Appellant : Sri M.K.Raj Kumar, Advocate.

For Respondent : Public Prosecutor.

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> Head Note:

? CITATIONS:

1. AIR 1997 SC 2960
2. 2010 (173) DLT 741
3. (2012) 191 DLT 225 (FB)

C/15



**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

CRIMINAL APPEAL No.1586 of 2010

JUDGMENT : (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged the judgment dated 23rd February 2010, passed by VII Additional District & Sessions Judge (FTC), Vijayawada, in Sessions Case No.171 of 2008, whereby, the appellant is held guilty for the offence punishable under Section 302 IPC and accordingly sentenced to suffer life imprisonment and to pay a fine of Rs.500/-, in default, simple imprisonment for one month.

2. Briefly, the case of the prosecution is that on 15.11.2006, Accused No.1 (appellant) brought Phanindra Kumar (the deceased) to the room on the upstairs of rented building of one Suryanarayana and tried to have homosex. The deceased refused, appellant insisted him for carnal intercourse. When the deceased tried to make cries, appellant shut his face with jeans pant and smothered him to death. Thereafter, latched the room from outside. On 16.11.2006 at 11 a.m., appellant reached at the scene of offence along with Accused Nos.2 and 3 with an intention to dispose of dead body, however, on account of movement of neighbours, having been afraid, they locked the room and went away. On 17.11.2006, on seeing the padlock to the room in the upstairs, PW-1 K.Uma Maheswari Devi, daughter of the building owner, reached the scene and applied another padlock. At 2.30 p.m., appellant and Accused No.2 reached the scene; unlocked the padlock and tried to break open the padlock applied by PW-1. Then, neighbour by name Uma (PW-2) objected and then appellant and Accused No.2 went away. On being

informed by PW-2, PW-1 came and sensing some foul smell from the room, reported to the Police at S.N.Puram Police Station and on arrival of Police, she unlocked the room. On entering the room, they found the dead body of the deceased in decomposed state. On the report of PW-1, A.S.I. registered Crime No.618 of 2006 and later Inspector investigated the case.

3. The case against Accused No.2 was abated as he died.
4. On appearance of Accused No.1 (appellant) and Accused No.3, they were charged under Sections 302 and 377 of IPC and under Section 201 r/w.511 IPC. They pleaded not guilty and claimed to be tried.
5. To substantiate its case, the Prosecution has examined PWs.1 to 22 and marked Exs.P-1 to P-28 and M.Os.1 to 11.
6. On completion of trial, the accused were examined under Section 313 Cr.P.C. explaining the incriminative material and evidence against them to which they denied, however, choose not to examine any witnesses on their behalf.
7. The point for determination before the trial Court was whether the accused has carnal intercourse with Phanindra Kumar, the deceased, and in such inter course, caused the death by shutting the face with jeans pant ?
8. On appreciation of oral and documentary evidence on record, the trial Court convicted Accused No.1 (appellant) for the offence under Section 302 of IPC, however, acquitted him of the offence under Section 377 of IPC. Accused Nos.1 and 3 were acquitted of the offence under Section 201 r/w. 511 IPC.

9. Challenging his conviction and sentence for the offence under Section 302 of IPC, this appeal has been preferred by Accused No.1.

10. We have heard learned counsel for the appellant and the learned Public Prosecutor appearing on behalf of the State.

11. Learned counsel appearing on behalf of appellant submits that in the present case, there are no eyewitnesses and the prosecution case depends only on the circumstantial witnesses. The conviction was based mainly on the evidence of PW-16, the ASI/Fingerprint Expert without considering the fact the fingerprints of A-1 were obtained after his arrest.

12. In expatiation, he argued, PW-1 gave complaint (Ex.P-1) to the Circle Inspector of Police, Satyanarayanapuram Police Station, stating that on 17.11.2006, when she was in school, one S.Uma, who is residing besides her father's house, contacted her over phone and informed that two boys, claiming to be the persons of Chinna Babu, were opening the lock of the room in the upstairs saying that they kept their luggage in that room. When she asked them to wait till the house owner come and give the keys, they left the place. On suspicion, when she went to the door and peeped into, she got foul smell. It is further stated in the complaint that at about 4 p.m., she went to the house and when she peeped into the room, she got foul smell. Then she informed the Police and after their arrival, with their help, the lock was broke opened. When they went inside, a boy of 12 to 13 years old was found dead, lying supine.

13. Counsel for appellant has argued that in view of the statement of PW-1, it is established that PW-1 was not present at the scene of offence at

the time of commission of the offence and therefore, her deposition cannot be relied upon. He further contended that PW-2, who is neighbour, has also not witnessed the offence.

14. Learned counsel further submitted that PW-7 V.V.Lakshminarayana, who is the father of the deceased Phanindra Kumar, came to know about the death of his son only when it was published in a newspaper. Thereafter, he went to the Police Station and identified the deceased as his son on seeing the video. PW-8 K. Padmanabhaiah has only accompanied PW-1 to the scene and informed about the incident to the Police and was present at the time when the shed was opened and dead body was found. PW-10 K. Narayana Rao is the house owner and he also came to know about the incident as informed by PW-1 and he advised PW-1 to give a report to the Police. He argued the evidence of these witnesses is of no use to connect accused to the offence. He further argued, PW-12 is a hearsay witness, who came to know about the incident from the Police. PW-13 is a Ticket Booking Clerk in Seshu Mahal theatre, who deposed that there is no identity for Ex.P-11 tickets that said tickets were issued in the year 2006. Thus, he argued, evidence of these witnesses is of no use.

15. He argued, PW-16 is concerned, he is the Sub-Inspector of Police, who visited the scene of offence along with clues team of concerned Police Station on 17.11.2006 at 7 p.m. at Door No.21/12-130 upstairs, Indira Colony, Madhuranagar. He examined the scene and found one steel box round in shape (M.O.8) and one water bottle in the almirah. He examined and developed chance prints on the steel tiffin box and water bottle. Two chance prints were traced on the tiffin box (M.O.8) and he marked the same

as 'A' and 'B' to facilitate for the photographs. The chance prints were got photographed by the clues team Photographer on the same day. He received the photograph from the clues team photographer on 18.11.2006. As the dead body was in de-composed state, he could not take the finger prints of the deceased. On verification of the photograph, he found that the chance print marked as 'B' was unfit for comparison. Thereafter, he compared the chance print marked as 'A' with local data base prints vide transaction No.73901233 and it remained un-identified. Accordingly, he sent report to the Inspector of Police by marking a copy to the Director, Finger Prints Bureau for information. He entered 'A' marked print as un-identified chance print. He further deposed that on 09.04.2007, he received one finger prints slip from the investigating officer along with letter dated 09.04.2007 for comparison of the unidentified chance print concerned in the present case. On the same day, he compared the same with un-identified chance print. The chance prints were found identical with the left middle finger impression of K. Nagaraju (appellant).

16. Severely criticizing the above evidence, learned counsel for appellant submitted that as stated by PW-16, initially, he found the chance print marked as 'A' not matched with the database finger prints. After arrest of A-1, his finger prints were manipulated on M.O.8 and the finger prints of appellant were sent to PW-16. Thus, the Police Officer had taken the finger prints of appellant in custody without the permission of the Court, which is in violation of the provisions of The Identification of Prisoners Act, 1920.

17. Learned counsel would thus submit that there is no direct and substantial oral evidence as to the involvement of the appellant in the

commission of the offence of murder of the deceased. The prosecution has mainly relied upon the circumstantial evidence i.e. availability of chance prints on M.O.8 tiffin box found at the scene of offence and the evidence of PW-16, who compared the photographs of chance prints with the specimen finger prints of the appellant received by him. He allegedly issued Ex.P-19 finger print report and Ex.P-20 photo comparison chart without sending them to finger print expert in FSL for comparison. Learned counsel submits that there is no evidence or material against the appellant, however, the trial Court has convicted the appellant based on assumption and presumption. Thus, the present appeal deserves to be allowed.

18. On the other hand, learned Public Prosecutor would submit that the present case is based on the circumstantial evidence i.e. the availability of chance prints on M.O.8 tiffin box found at the scene of offence and the evidence of PW-16, who compared the photographs of chance prints with the specimen finger prints of appellant received by him. Said witness issued Ex.P-19 finger print report and Ex.P-20 photo comparison chart. Ex.P-21 is the letter by the Inspector of Police, Finger Print Unit, CID, Vijayawada City, through which, Photo comparison chart (P-20) is sent to the Inspector of Police, S.N.Puram Police Station. Therefore, identical finger prints itself sufficient to warrant conviction against the appellant for causing the death of deceased.

19. Learned Public Prosecutor further submits that PW-16 is an expert qualified to examine the finger prints. He possessed the required certificate issued by All India Board Examination of Finger Print Expert. The said witness deposed that on 17th June 2006 at 7 p.m., he visited the scene along

with clues team of concerned Police and examined the scene and found one steel box round in shape (M.O.8) and one water bottle in the almirah and developed chance prints on the box and water bottle and marked the chance prints found on M.O.8 tiffin box as 'A' and 'B'. He further deposed that the chance prints were also photographed by the clues team photographer on the same day. On 09.04.2007, he received one finger print slip from the Investigating Officer along with letter for comparison of the chance prints and on the same day he compared the chance prints with the specimen finger prints of appellant and found they are identical with left middle finger impression of appellant. Accordingly issued Ex.P-19 finger print report and Ex.P-20 photo comparison chart. Ex.P-21 is the letter by the Inspector of Police, Finger Print Unit, CID, Vijayawada City, through which, photo comparison chart (Ex.P-20) is sent to the Inspector of Police, S.N.Puram Police Station. He submits that the evidence against the appellant is scientific one and cannot be disbelieved from any stretch of imagination, therefore, the trial Court has relied upon the same connecting the appellant to the offence and accordingly convicted him for the offence punishable under Section 302 of IPC.

20. The contention of learned counsel for the appellant is that the Prosecution has failed to establish that the seized article M.O.8, wherein, the chance prints are available, were not tampered before it reached the expert for examination as it was not packed and sealed; no evidence was led whether the Bureau expert received the packages with the seals intact, and further, M.O.8 tiffin box was not sent to the finger print expert, therefore, the case of the prosecution creates any amount of doubt. He further contended

that no permission was taken by the prosecution to obtain specimen finger print impression of the appellant in the presence of Magistrate. Therefore, the sole circumstance of connecting the appellant with the crime by way of finger prints, cannot be believed to arrive at a conclusion as to the guilt of the accused. He contends that on two earlier occasions, the finger prints taken were found not fit for comparison and on 3rd occasion, the finger prints were found identical, entertaining the doubt as to the procedure adopted by the investigating officer in sealing the seized articles; packing the same and later in sending the articles to the Finger Prints Bureau. Hence, he submits, in such a situation, as held in **Mohd. Khan v. State of Rajasthan**¹, the appellant cannot be convicted for murder.

21. It is pertinent to note that PW-16, the finger print expert, who gave his opinion, had visited the scene of offence along with the clues team and also the investigating officer PW-22; in their presence, found M.O.8 steel tiffin box and water bottle; marked two chance prints on the tiffin box as 'A' and 'B'; got photographed the chance prints by the photographer of clues team, and later, on receipt of specimen finger prints of appellant on 09.04.2007, he compared the same and found the chance prints are identical with the left middle finger impression of the appellant. In such a back ground, there is no necessity to put a seal on M.O.8 and pack it and send the same to FSL or somewhere, as PW-16 himself was a finger print expert. PW-16, on receipt of specimen finger print slip of appellant on 09.04.2007, compared the chance prints and found that the chance print marked 'A' is identical with

¹ AIR 1997 SC 2960

the left middle finger impression of the finger print marked S-1 on the finger print slip of the appellant. The expert PW-16 found 10 points of identity.

22. Here two pertinent aspects would arise for consideration :

1. Firstly, since PW-22/the Investigating Officer admitted that he obtained the finger prints of accused on 20.11.2006 but not before the First Class Magistrate, whether, he was required to obtain the permission of the concerned Magistrate for obtaining the finger prints of accused; and
2. Secondly, whether the evidence of PW-16 is acceptable.

23. On the issue raised by the counsel for the appellant that it is mandatory to obtain the permission of a Magistrate, or, the finger prints have to be obtained in the presence of a Magistrate, in the case of **K.K.Saini v. State**² decided by a Division Bench of High Court of Delhi, wherein, one of us (Suresh Kumar Kait, J) was one of the members, held as under :

“As noted above, the investigating officer, nor any other police witness, have thrown any light as to where, when and how the sample fingerprint impressions of the fingers of the appellant were taken. In any case, there is no proof that permission was taken from the competent Court to do so. There is no proof that the prisoner was duly identified as per the requirement of Section 5 of the Identification of Prisoners Act, 1920. Explaining the Constitutional Bench decision of the Supreme Court reported as AIR 1961 SC 1808 State of Bombay Vs. Kathi Kalu Oghad, in the decision reported as AIR 1980 SC 791 State of U.P. Vs. Ram Babu Mishra, which decision was followed with approval in the decisions reported as 1994 (5) SCC 152

² 2010 (173) DLT 741

Sukhvinder Singh & Ors. Vs. State of Punjab and State of Haryana Vs. Jagbir Singh & Ors. AIR 2003 SC 4377 it was held that unless permission is taken from the Court of competent jurisdiction and further unless the prisoner is identified as per the requirements of Section 5 of the Identification of Prisoners Act, 1920 reports of finger print expert based upon sample fingerprints taken when an accused is in custody of the police would be inadmissible in evidence. Thus, we discard the report Ex.PW-4/B of the fingerprint expert which has been used by the learned Trial Judge against the appellant.”

24. Thereafter, this very issue reached to the Full Bench of Delhi High Court in the case of **Sapan Haldar & another v. State**³ in Criminal Appeal No.804 of 2001, whereby, it is held;

“22. What happens if there is no manner prescribed for an investigating officer to take the measurements of a person accused of having committed an offence ? In the decision reported as AIR 1976 SC 69; Mahmood v. State of Uttar Pradesh, specimen finger print impressions taken by the investigating officer under Section 4 of The Identification of Prisoners Act, 1920, in the absence of a manner prescribed for taking the finger print impressions, was held to be a case of evidence not being admissible with respect to the finger prints obtained and the opinion of the expert thereon. The Supreme Court held that in said situation Section 5 of The Identification of Prisoners Act, 1920 ought to have been followed.

26. In the decision reported as 2003 Crl.L.J 2642; Thavaraj Pandian v. State, the Division Bench of the Madras High Court noted that no Rules were framed in the State of Tamil Nadu with respect to the manner in which an investigating officer could obtain the finger prints of a person accused of

³ (2012) 191 DLT 225 (FB)

an offence as contemplated by Section 4 of The Identification of Prisoners Act, 1920 but noted that there were executive instructions with respect to the manner in which finger print impressions could be taken by the investigating officer and therefore opined that in said circumstance evidence relating to finger print impressions obtained by the investigating officer would be admissible in evidence; but on facts noted that the said instructions were not followed and therefore held the evidence to be inadmissible.

27. *Thus, with respect to a handwriting obtained from a person accused of having committed an offence or from any person during investigation, the law is entirely different vis-à-vis finger print impressions and a handwriting. With respect to handwriting neither can the investigating officer obtain a sample writing nor can even a Magistrate so direct. The Identification of Prisoners Act, 1920 is applicable only to measurements which include finger print impressions. Even with respect to finger print impressions, the weight of the judicial pronouncements leans to hold that unless there is a manner prescribed, be it under the Rules framed by the State Government or an executive instruction issued, evidence pertaining to finger print impressions obtained by the investigating officer would be inadmissible in evidence; and even when the same is provided, as held by the Supreme Court in Mohd. Aman's case (supra), to obviate any suspicion, it should be desirable that procedure prescribed under Section 5 of The Identification of Prisoners Act, 1920 should be followed.*
29. *We note that the legislature has taken corrective action, when by virtue of Act No.25 of 2005, with effect from June 23, 2006, Section 311A has been inserted in the Code of Criminal Procedure, 1973 and has empowered a Magistrate to direct a person accused to give specimen signatures or handwriting. Section 311A reads as under :-*

“311A. Power of Magistrate to order person to give specimen signatures or handwriting :- *If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:*

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

31. We answer the reference as follows :-

- (i) *Handwriting and signature are not measurements as defined under clause (a) of Section 2 of The Identification of Prisoners Act, 1920. Therefore, Section 4 and Section 5 of The Identification of Prisoners Act, 1920 will not apply to a handwriting sample or a sample signature. Thus, an investigating officer, during investigation, cannot obtain a handwriting sample or a signature sample from a person accused of having committed an offence.*
- (ii) *Prior to June 23, 2006, when Act No.25 of 2005 was notified, inter-alia, inserting Section 311A in the Code of Criminal Procedure, 1973, even a Magistrate could not direct a person accused to give specimen signatures or handwriting samples. In cases where Magistrates have directed so, the evidence was held to be inadmissible as per the decision of the Supreme Court in Ram Babu Mishra’s case (supra). According to Section 73 of the Indian Evidence Act, 1872, only the Court concerned can direct a person appearing before it to submit samples of his handwriting and/or signature for purposes of comparison.*

32. *Though not falling for consideration in this reference, with respect to finger prints, which are included in 'measurements', the weight of the authorities is that if by way of Rules or Executive instructions the manner is prescribed to take the measurements, alone then can an Investigating Officer, under Section 4 obtain the measurements but strictly as per manner prescribed; but it would be eminently desirable, as per the decision in Mohd. Aman's case (supra) to follow the procedure ordained under Section 5 of The Identification of Prisoners Act, 1920.*
33. *Relevant would it be to further note that in relation to offences punishable with death or imprisonment for life, Section 4 of The Identification of Prisoners Act, 1920 would not be applicable because the said provision specifies a prerequisite; that the person concerned is accused of having committed an offence which is punishable with a sentence to undergo rigorous imprisonment for a term of one year or upwards i.e. the sentence must relate to imprisonment for a term and would thus exclude such offences where either capital punishment or imprisonment for life is the sentence contemplated.*

25. In the case in hand, the appellant is convicted and sentenced to undergo rigorous imprisonment for life. As per the settled law, cited above, if the sentence is for death or life, in such case, to take finger prints, permission of the Magistrate is not required. However, if the offence is punishable for a term of one year or upward, the prior permission of the Magistrate is required. Thus, if the sentence is upto a specified period of years, the permission is required but not in case of life and death sentence. Why such view has been taken by Courts mentioned above, we find no

answer even from the counsel appearing for the parties. It hardly makes difference whether the sentence is upto 10 years or life.

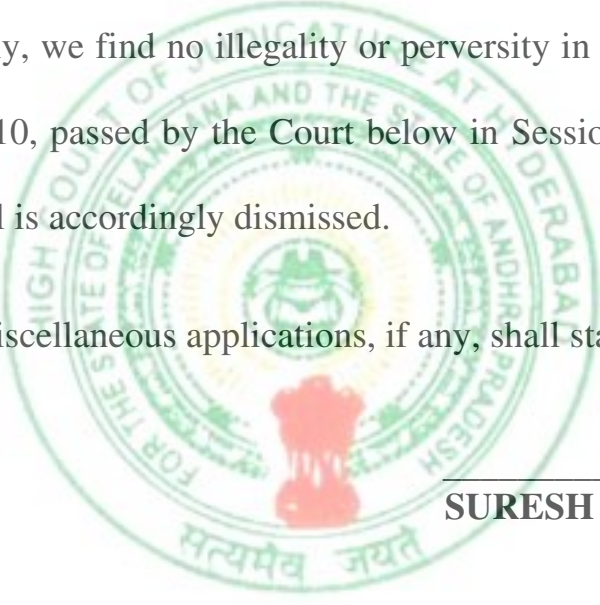
26. Be that as it may, in view of the decision of the Full Bench of Delhi High Court, the settled law is that Section 4 of The Identification of Prisoners Act, 1920 would not be applicable because the said provision specifies a prerequisite that the person concerned is accused of having committed an offence which is punishable with a sentence to undergo rigorous imprisonment for a term of one year or upwards i.e. the sentence must relate to imprisonment for certain term, and would thus, exclude such offences, where, either capital punishment or imprisonment for life is the sentence contemplated. Thus, in view of the settled law as discussed above, there is no substance in the submission of counsel for the appellant that the Police had taken finger prints of the appellant without permission of the Court.

27. So far as the evidentiary value of PW-16 is concerned, he is a fingerprint expert in the rank of S.I. of Police in Fingerprint Unit of CID, Vijayawada City. Thus, he is an independent Fingerprint expert working for CID. He stated that he passed All India Board Examination for Fingerprint and obtained certificate. He reached the scene of offence along with the Clues Team and also Investigating Officer and in their presence, he found M.O.8/Steel tiffin box and therefrom, he lifted two chance prints 'A' and 'B' and got those chance prints photographed by a photographer of the Clues Team and later, on receipt of specimen finger prints on 09.04.2007, compared the same and found the chance prints were identical with the left middle finger impression of K.Nagaraj(A-1). Since PW-16 reached the

scene of offence along with PW-22 and Clues Team and got photographed the chance prints then and there itself, there was no necessity for sealing M.O.8/Tiffin box and packing the seal and seizure of the same and sending the same to another expert. When Ex.P-20/report is perused, PW-16 could found '10' points of identity between the chance print developed on the stainless steel tiffin box (M.O.8) and the left middle finger impression of accused No.1. In view of the similarities in 10 ridge characteristics, which could not be challenged to be false or incorrect, the opinion of PW-16, in our considered view, can be accepted.

28. Accordingly, we find no illegality or perversity in the judgment dated 23rd February 2010, passed by the Court below in Sessions Case No.171 of 2008. The appeal is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

30th June, 2017

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