

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL No. 178 OF 2011

JUDGMENT: (*Per Hon'ble Dr. Justice Shameem Akther*)

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') questioning the judgment dated 19.01.2011, passed by the learned I Additional Sessions Judge, Kurnool (for brevity, 'the trial Court'), in Sessions Case No.170 of 2007, whereby the trial Court convicted the appellants-accused under Section 235(2) Cr.P.C. for the offences punishable under Sections 302, 201 and 404 of the Indian Penal Code, 1860 (for brevity, 'I.P.C.') and sentenced them to undergo imprisonment for life and to pay fine of Rs.1,000/- (Rupees one thousand only) each, in default, simple imprisonment for a period of two (2) months of the charge under Section 302 I.P.C.; rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.500/- (Rupees five hundred only), in default, simple imprisonment for one (1) month of the charge under Section 201 I.P.C.; and rigorous imprisonment for a period of seven (7) years and to pay fine of Rs.500/- (Rupees five hundred only), in default, simple imprisonment for one (1) month of the charge under Section 404 I.P.C.; giving liberty to the appellants to set off the period of remand already undergone by them. The trial Court further directed that all the sentences imposed against the appellants for the aforesaid offences shall run concurrently.

2. Heard Sri Adishesha Reddy, learned counsel appearing for Sri M. Karibasaiah, learned counsel for appellant Nos.1, 3 and 4, Smt. A.Gayatri Reddy, learned counsel for appellant No.2, and Sri Maheswara Rao Kunchem, learned Public Prosecutor appearing for the State.

3. The case of the prosecution, in brief, is as follows:

(a) Sri D.Ramakrishna Reddy, retired Executive Engineer, resident of H.No.87/011022 at Balaji Nagar, Kurnool, is the deceased in this case. Appellant No.1 worked as a driver on the vehicle of the deceased for 1½ years prior to the death of the deceased. Appellant No.1 developed an evil thought of kidnapping Ramakrishna Reddy for ransom, designed a plan, contacted appellant Nos.2 to 4 about 2½ months prior to the offence and to execute their kidnap plan, appellant No.1 hired ambassador car bearing No.GA-02-V-2388 owned by Vadde Hanuman Prasad Babu. On 31.03.2005 at about 5-30 p.m., when Ramakrishna Reddy was going to the Officers Club as usual, appellant Nos.1 to 4 took a car by his side and stopped it. Appellant No.4 enquired with Ramakrishna Reddy about the route to B.Camp bus-stand with an intention to kidnap him and they got Ramakrishna Reddy into the car, when he agreed to show the way to B.Camp bus-stop. It was witnessed by P.W.3-K.Nageswaramma, neighbour of Ramakrishna Reddy. Immediately, appellant Nos.1 to 3 dragged Ramakrishna Reddy to the back side of the car by holding his neck, gagged cloths into his mouth and tied a cloth around his mouth and eyes in

order to foil his attempts to raise cries. When Ramakrishna Reddy started struggling, appellant No.1 beat him with an iron rod on his head, due to which Ramakrishna Reddy fell unconscious. Thereafter, appellant Nos.1 to 4 bundled Ramakrishna Reddy into a gunny bag and appellant No.1 administered an injection. Appellant Nos.1 to 4 drove the car to Silpa Estates, to keep Ramakrishna Reddy in captivity, when they opened the gunny bag, they found Ramakrishna Reddy dead. After getting confirmed the death of Ramakrishna Reddy, appellant Nos.1 to 4 decided to dispose of the dead body, went to L.Banda Railway Crossing, took out the dead body of Ramakrishna Reddy from the gunny bag, took two gold rings, wrist watch and money purse from the dead body, placed the dead body on a railway track, situated in between railway line crossing milestone No.9/281 and 10/281, doused the dead body with petrol and burnt the dead body to screen the evidence and they distributed the stolen property among them.

(b) Basing on the complaint of P.W.1-wife of Ramakrishna Reddy, a case in Crime No.67 of 2005 was registered by Kurnool III Town Police under the head 'man-missing'. On 02.04.2005, P.W.16-K.V.Raju, Sub Inspector of Police, Railway Police Station, Kurnool, registered a case in Crime No.21 of 2005 under Section 174 Cr.P.C. on a report given by P.W.7-G.Ramaiah, Station Master, Kurnool Railway Station, about finding an unknown male cut off dead body on railway track between milestones No.9/281 and 10/281 near

Veldurthy. P.W.16 held inquest over the dead body in the presence of P.W.8-M.Achari and P.W.9-C.Gopi. P.W.17-Dr.L.C.Obulesu, conducted autopsy over the unknown male dead body.

(c) L.W.18-N.Bhaskar Naidu, Inspector of Police, Railways, Guntakal, transferred the case to P.W.15-C.Bhaskar Reddy, Inspector of Police, Dhane. Thereafter, the investigating officer, basing on the opinion of the doctor, altered Section of Law from 174 Cr.P.C. to Section 302 I.P.C., arrested the appellants, recorded their confessional statements in the presence of mediators, seized the material objects under the cover of mahazar in the presence of panchayatdars and sent the skull bone, two long thigh bones of the deceased along with blood samples and hair of P.W.2-daughter of the deceased to Forensic Science Laboratory, Hyderabad. After completion of investigation, the investigating officer filed charge sheet against the appellants for the offences punishable under Sections 364(A), 302, 379, 201 I.P.C. r/w Section 34 I.P.C.

4. After the case was committed to the trial Court by following due procedure, the prosecution to substantiate its case, examined P.Ws.1 to 19 and marked Exs.P.1 to P.29 and M.Os.1 to 14. The appellants did not adduce any evidence. The trial Court, on appreciation of the entire evidence on record, convicted and sentenced the appellants as mentioned above.

5. Learned counsel for the appellants would submit that the appellants are innocent persons, they are falsely

implicated in this case; the trial Court failed to appreciate the evidence on record; there is no cogent and credible evidence to establish the guilt of the appellants for the offences punishable under Sections 302, 201 and 404 I.P.C.; there are no eyewitnesses to the alleged offences; the so-called extra judicial confession said to have made by appellant No.1 is not reliable in view of the provisions of Section 126 of the Indian Evidence Act, 1872; there is no proper identification of the dead body; the DNA test report of the deceased has not tallied with the DNA profile of P.W.2 (daughter of the deceased); the conviction and sentence recorded for the offences under Sections 302, 201 and 404 I.P.C. is sustainable; and ultimately, prayed to set aside the conviction and sentence recorded against the appellants and acquit them of the charges framed against them.

6. On the other hand, learned Public Prosecutor would submit that there is proper identification of the dead body; the evidence of P.W.4 is reliable; there is no reason for P.W.4 to depose against the appellants; there is also circumstantial evidence to connect the appellants to death of the deceased; the trial Court has appreciated the facts and circumstances in correct prospective and rightly convicted and sentenced the appellants for the offences charged; there is nothing to take a different view; and ultimately, prayed to sustain the impugned judgment.

7. In view of the contentions put forth by both sides, the following points have come for determination:

- (1) Whether the dead body in question belonged to D. Rama Krishna Reddy?**
- (2) Whether the appellants caused the death of the deceased, i.e., D. Rama Krishna Reddy?**
- (3) Whether the conviction and sentence recorded against the appellants for the offences under Sections 302, 201 and 404 I.P.C. is sustainable?**

8. **POINT Nos.1 to 3:** In view of the above contentions, it is appropriate to refer the evidence available on record. P.W.1-Adilakshamma is the wife of the deceased. She deposed that the deceased Rama Krishna Reddy is her husband, P.W.2-D.Sangeetha is her daughter; she knew appellant No.1 and does not know other appellants; 1½ years prior to the death of the deceased, the deceased employed appellant No.1 as his car driver, i.e., after his retirement from service as Executive Engineer; at that time she was living with her husband at Balaji Nagar, C-Camp, Kurnool; the deceased daily used to go to officers' club on foot; on 31.03.2005 at about 5-30 p.m., the deceased left the house and informed her that he was going to the club, thereafter he did not return; the deceased did not return to his house as usual by 9-30 p.m. on that night, she got panic; thereafter, she searched for her husband but could find him and then she lodged Ex.P.1-report with the police. P.W.1 further deposed that on 08.04.2005, her daughter came from United States of America; on 01.04.2005, appellant No.1 attended to his duty and drove the car taking them to the police; appellant No.1 besides driving the car, used to attend to other

works. The evidence of P.W.2-D.Sangeetha reveals that she resides in United States of America along with her husband; the deceased is her father and P.W.1 is her mother; appellant No.1 was employed by her father as his car driver; on 01.04.2005 at early hours, her mother-P.W.1 telephoned her husband and informed the missing of the deceased; on 08.04.2005, she came to India, then appellant No.1 was available and still working as car driver; she enquired about her father with the relatives and friends; on 14.06.2005, the police informed her that appellant No.1 and his friends kidnapped and killed her father and the police shown her M.Os.1 and 2-gold rings, M.O.3-wrist watch, M.O.4-purse and M.O.5-pair of shoes relating to the deceased. She was examined by the police. P.W.3-K. Nageswaramma deposed about her living in the locality of the deceased and the deceased leaving his house at 5 or 5-30 p.m. daily; one year back at 5-30 p.m., the deceased left his house on foot towards C-Camp side, meanwhile, one white colour car came and stopped by his side, the persons in the car took him into the car and went towards C-Camp side; on the next day, the family members of the deceased informed her that the deceased was not found. P.W.3 was examined by the police.

9. The evidence of P.W.4-J.Jeevan Kumar reveals that he was appointed as Junior Civil Judge in the month of August, 2005; prior to that, he was practicing as an advocate in Kurnool; he was residing in Plot No.14, Challa Compound, Kurnool; on 14.06.2005 at 9-00 a.m., when he was in his office, situated

before Munsif Court, Kurnool, appellant No.1 came and stated that he worked as driver of one D. Rama Krishna Reddy (deceased) for 1½ years; the daughter of the deceased resides in America; the deceased has only wife with him; so with the help of appellant Nos.2 to 4, appellant No.1 hatched a plan to abduct Rama Krishna Reddy and demand some amount from him; accordingly, as per their plan on 31.03.2005 during the evening at about 5-00 p.m., they went by a car and stopped on the way and asked the deceased when he was going to the club to show the address of B-Camp, then the deceased entered into the car to show the address of B-Camp, then the appellants dragged him to the back side of the seat, gagged his mouth with cloth, beat with a rod on his head, tied him in a gunny bag and they went to Silpa Estate and opened the bag and found the deceased Rama Krishna Reddy had died; thereafter, they took the dead body near L.Banda railway track and set fire to the dead body on the railway track. P.W.4 further deposed that before that the appellants took two gold rings, wrist watch and purse of the deceased and returned, and appellant No.1 joined on duty on the next day morning as usual; the police suspected appellant No.1, so appellant No.1 came to P.W.4 and sought his help to save him from the clutches of the police. So P.W.4 thought that it is better to surrender appellant No.1 before the police and he took appellant No.1 to the police and surrendered him, as a duty bound citizen. Ex.P.2 is the report dated 14.06.2005 given by P.W.4 to the police, which was marked

subject to objection stating that it is a privileged communication and not admissible in evidence as per Section 126 of the Indian Evidence Act. P.W.4 further deposed that he was examined by the police.

10. The evidence of P.W.5-Y.Basava Raju reveals that he is a Teacher; he own a house at Silpa Estate; he fixed a To-let board to his house; on 28.03.2005 at about 12-00 noon, appellant No.1 contacted him by phone that he was working as driver in the car of the deceased-Rama Krishna Reddy and that he required the house on rent; he informed appellant No.1 that the rent was Rs.1,200/- per month and appellant No.1 paid Rs.1,200/- as advance; on 30.03.2005, appellant No.1 took the house keys from him and after ten days, he went to the said house and found that it was locked and unoccupied. The evidence of P.W.6-Boya Masthan reveals that he is a Key Man of Veldurthy railway station; in the month of April, 2005, when he was checking the track at KM No.281/9-10 track, he found burnt dead body of a human being, it was in two parts by the side of railway track; at about 11-00 a.m., he informed the same to his Station Master. P.W.6 further deposed that he was examined by the Sub Inspector of Police and two months later, he was examined by Kurnool police. The evidence of P.W.7-G.Ramaiah reveals that he is working as Station Master; on 02.04.2005 at about 11-25 a.m., Veldurthy Station Master by name Gafor informed him by phone that Key Man-Masthan found a dead body in two pieces, it was in burned condition, lying by the side

of T.P. signal at KM No.281/9-10 between Veldurthy and Bogolu. Ex.P.3 is his report. The evidence of P.W.8-R.Mahanandi Achari reveals that he held inquest panchanama on 02.04.2005 at the police station and Ex.P.4 is his signature. The evidence of P.W.9-C.Gopi reveals that he did not participate in any inquest panchanama and his signature is marked as Ex.P.5. The evidence of P.W.10-M.Govinda Reddy reveals that he is V.R.O. of Kallur; on 14.06.2005 he went to III Town Police Station, Kurnool at about 12-00 noon along with Venkata Rao, Panchayat Secretary; in his residence the Sub Inspector of Police examined appellant No.1; appellant No.1 confessed to the murder of the deceased and produced gold ring-M.O.1, the same was seized under Ex.P.6-panchanama; on the same day, appellant No.1 reached railway track near Madarpuram village road and Veldurthy road, there the police prepared a panchanama and seized the shoes, tie and photo of the deceased; the police also seized M.O.9-iron rod, M.O.10-syringe, M.O.11-medicine tube and M.O.12-photo of the deceased; all these articles were seized by the police at the time of Ex.P.7-observation panchanama; on the same day, at about 4-30 p.m., they all proceeded to Nethaji Housing Colony, appellant No.1 produced golden ring-M.O.1 from his house; and thereafter, Ex.P.8-panchanama was drafted.

11. P.W.11-Kesanna is the person who buried the unidentified dead body in this case. He deposed about the same and also deposed that two months thereafter he has shown the place of burial and assisted in exhumation of the dead body, the

dead body was found in a disintegrated condition and only bones were found. P.W.12-K. Mallikharjunudu was the then Mandal Revenue Officer, Kurnool. He deposed about the exhumation of a male dead body from the burial ground on 25.06.2005 at 10-45 a.m., in the presence of Railway Sub Inspector of Police, P.W.11 and others. He also spoke about the presence of P.W.2 and others. They found only the bones and on the instructions of Forensic Professor, two thigh bones, skull and pelvic bones were taken under Ex.P.12-panchanama.

12. P.W.13-D.Prabhakar was the Inspector of Police, Veldurthy Police Station. He deposed about the receipt of a copy of F.I.R. in Crime No.21 of 2005 for the offence under Section 302 I.P.C. along with case diary for investigation on the point of jurisdiction, the copy of F.I.R. was marked as Ex.P.13 and the original F.I.R. was marked as Ex.P.14. P.W.14-G. Ravi Kumar, Inspector of Police, Kurnool III Town Police Station speaks about the registration of Crime No.67 of 2005 on Ex.P.1-report lodged by P.W.1 with regard to man missing and Ex.P.16 is the F.I.R. He further deposed that when he was present in the police station, P.W.4-J. Jeevan Kumar came to the police station along with appellant No.1 and gave Ex.P.2-confession statement regarding kidnap and murder of the deceased-Ramakrishna Reddy, basing on Ex.P.2-confession, he registered F.I.R. under Sections 364-A, 302, 379 r/w 34 I.P.C. and informed their Circle Inspector, Ex.P.17 is the F.I.R. in Crime No.67 of 2005 of Kurnool III Town Police Station. The evidence of P.W.15-C.

Bhaskar Reddy, Inspector of Police, Dhone, reveals that on 13.05.2005, at about 9-00 p.m., he received copy of F.I.R. in Crime No.67 of 2005 from P.W.14, which was transferred to him earlier by railway police. He further deposed he visited the scene of offence, verified the investigation conducted and found it on correct lines, on the same day, at about 10-00 p.m., he received case property, i.e., (1) three small pieces of tied clothes, (2) one burnt piece of leather belt with buckle (M.O.8), (3) one burnt piece of black coloured pant of 32 size (M.O.6), (4) two burnt pieces of light gray coloured shirt, (5) one burnt piece of banian (M.O.7), (6) four burnt gravel stones and four samples, (7) nine photographs of the scene of offence with negatives (M.O.13); items 1, 4 and 6 were lost in the floods. P.W.15 further deposed that on a letter received from the Inspector of Police, Kurnool Town Circle on 18.06.2005, he transferred the case to him on the point of jurisdiction, as the scene of offence tallied with the case in Crime No.67 of 2005. The evidence of P.W.16-K.V.Raju, Sub Inspector of Police, Railway Police Station, Kurnool, reveals that on 02.04.2005 at about 11-50 a.m., he received death message from Gafoor, Veldurthy Station Master, through P.W.7-G.Ramaiah, Station Master of Kurnool that P.W.6-B.Masthan, Key-man of Veldurthy found two burnt pieces of male dead body at KM No.281/9-10 on railway track in between Veldurthy and Bhogolu stations, he made G.D. entry, registered a case in Crime No.21 of 2005, Ex.P.21 is the F.I.R., he recorded the statement of P.W.7, he made efforts to identify

the dead body, which was of a male body, in burned condition and in two pieces, the inquest panchanama was conducted in the presence of P.Ws.8 and 9 under Ex.P.22 on the same day.

13. The evidence of P.W.17-Dr. L.C. Obulesu, reveals that he was Professor and HOD of Forensic Medicine, Kurnool Medical College, on 03.04.2005 at about 10-30 a.m., on the requisition of railway police, Kurnool, he conducted post-mortem examination over one unknown male dead body aged about 40 years, he commenced the post-mortem examination at 11-00 a.m. and completed at 12-10 p.m., the dead body was in advanced stage of decomposition and it was in two parts, the head hair were black in colour, body muscles were eaten away by the animals, bones of the hands exposed, eyeballs and tongue were protruded and he found the following ante-mortem injuries:

"1. Three lacerated injuries present on the left side of the fore head, frontal and occipital region obliquely placed 1 to 1.5 cm distance extending from the frontal middle of the fore head to occipital region measuring 10 x 1.5 cm, 9 x 1.5 cm and 11 x 1.5 cm muscle deep with blood clots.

2. Two ante-mortem injuries were seen over the right side of neck, vertically placed measuring 5 x 2 cm and 4 x 2 cm, muscle deep and 1 cm distance with dried blood clots.

3. Right arm bone exposed and right forearm and hand is not seen. Muscles were gnawed by animals upto right shoulder joint.

4. Left upper limb were present and other tissue including muscles are gnawed by animals. The hand dried and parchment like.

5. Body was traumatically amputated and separated found into 2 parts from the 'level of nipples upper and lower'. Blackening present over the two parts of the body."

He opined that the death was due to head injury followed by traumatic amputation of the body due to run over by the train and the death occurred about 3 to 5 days prior to the post-mortem examination, Ex.P.25 is the post-mortem certificate issued by him. His evidence further reveals that on 25.06.2005, on a requisition of P.W.12-M.R.O., Kurnool, he attended exhumation of the dead body at Budavarpeta graveyard, he collected skull bone and two long thigh bones from the dead body and sent them for DNA test, he preserved blood and hair sample of P.W.2-daughter of Ramakrishna Reddy and sent the same to F.S.L., and thereafter, Ex.P.26-F.S.L. Report reveals that DNA was not extracted from the bones collected from the dead body, so no opinion was given in F.S.L. Report with regard to DNA test.

14. P.W.19-M. Siva Sankar Reddy, Inspector of Police, Kurnool Town Circle, was the main investigating officer in this case. He deposed about conducting of entire investigation, recovery of M.O.1-gold ring of the deceased, M.O.2-gold ring of P.W.1 and M.O.3-wrist watch of the deceased, pursuant to confession made by appellant Nos.1, 2 and 4 and also seizure of M.O.14-ambassador car under a cover of panchanama, etc.

15. Admittedly, there is no dispute that P.W.1 is the wife of Ramakrishna Reddy. There is specific evidence of P.W.1 that

appellant No.1 was the car driver of Ramakrishna Reddy working 1½ years prior to his death, after disappearance of Ramakrishna Reddy also, appellant No.1 worked with them for short time. There is also evidence that appellant No.1 used to attend the household works of Ramakrishna Reddy, he knows the transactions and family affairs of Ramakrishna Reddy. Ex.P.1 is the report lodged by P.W.1 on 01.04.2005 about missing of Ramakrishna Reddy. There is also evidence of P.W.1 that the deceased used to wear two gold rings always, she can identify those gold rings, one gold ring bears name of the deceased and the other gold ring bears her name. The prosecution has recovered M.O.1-gold ring, where the name of the deceased is engraved. P.W.14 is a panch witness, who has clearly and categorically deposed that M.O.1-gold ring was recovered pursuant to the confession made by appellant No.1. When identification parade was conducted, P.W.1 identified M.O.1-gold ring. P.W.1 also identified M.O.2-gold ring and M.O.3-wrist watch of the deceased. There is also specific evidence of P.W.19, M.O.1-gold ring was recovered pursuant to the confession made by appellant No.1, M.O.2-gold ring was recovered pursuant to the confession made by appellant No.2 and M.O.3-wrist watch was recovered pursuant to the confession made by appellant No.4. Appellant No.3 confessed that he received a sum of Rs.1,500/- from appellant No.1 towards his share and spent the said amount. Ex.P.8-panchanama reveals the confession made by appellant No.1 leading to recovery of

M.O.1-gold ring. Ex.P.9-panchanama reveals the recovery of M.Os.2 and 3-gold ring and wrist watch pursuant to the confessions made by appellant Nos.2 and 4. There is also the evidence of P.W.10-panch witness with regard to the recovery of M.Os.1 to 3 as exhibited in Exs.P.8 and P.9 pursuant to the confession made by appellant Nos.1, 2 and 4. P.W.1 also identified M.Os.3 and 4 in an identification parade conducted by the police. In M.O.4-purse, there was a photograph of the deceased. She has also identified other articles, i.e., M.O.5-pair of shoes, M.O.6-piece of pant near belt portion, M.O.7-piece of banian burnt and M.O.8-piece of belt with buckle. Though P.W.1 was subjected to cross-examination at length, she has denied the defence set up by appellants and stated that she enquired their friends and relatives about her husband. She also deposed about the bank transactions attended to by appellant No.1. There is also evidence about selling of house plots for Rs.20 lakhs and Rs.5 lakhs were deposited in Andhra Bank. The evidence of P.W.1 establishes the appellant No.1 has got full knowledge of the financial position as well as the amounts available with the deceased. Nothing was elicited in the cross-examination of P.W.1 to discard her testimony. P.W.2-daughter of the deceased also corroborated with regard to the material evidence of P.W.1. P.W.2 has given her blood samples, etc., for identification of the dead body in question and the DNA was not extracted from the bones recovered from the graveyard. Though

F.S.L. Report was marked as Ex.P.26, there is no identification of the dead body by scientific examination.

16. P.W.4-J.Jeevan Kumar is an independent witness. He was a lawyer. On the date of his deposition before the trial Court, he was selected and working as a Junior Civil Judge. He gave the details of place of practice and specifically deposed that on 14.06.2005 at 9-00 a.m., when he was in office, appellant No.1 came to him and gave the details, i.e., he worked as driver of Ramakrishna Reddy for 1½ years, the daughter of Ramakrishna Reddy was residing in America and had only wife with him, so appellant No.1 hatched a plan with the help of appellant Nos.2 to 4 to abduct Ramakrishna Reddy and demand ransom from him. P.W.4 further deposed that according to the plan, appellant Nos.1 to 4, on 31.03.2005 at 5-00 p.m., went in a car and stopped it on the way and asked the deceased to show the address of club of B-Camp, the deceased entered into the car to show the address, thereafter appellants dragged the deceased to the back seat, gagged his mouth with clothes, beat him with a rod on head, tied the deceased in a gunny bag and went to Silpa Estate and when they opened the bag, they found the deceased died, then they took the dead body near L.Banda railway track, set fire to the dead body on the railway track and took two gold rings-M.Os.1 and 2, one wrist watch-M.O.3 and one purse-M.O.4 and thereafter, appellant No.1 joined duty. P.W.1 also stated that on the next day onwards, appellant No.1 was working with them, she did not suspect him, but the police

suspected appellant No.1, so he went to P.W.4 and sought help to save him from the clutches of police. P.W.4 thought it is better to surrender appellant No.1 to the police, so he took appellant No.1 to the police station as a duty bound citizen and he has submitted a report to the police, marked as Ex.P.2. The objection taken by the learned defence counsel is that privilege communications are not admissible in evidence as per the provisions of Section 126 of the Indian Evidence Act, 1872. Section 126 of the Indian Evidence Act, 1872, is extracted hereunder:

"126. **Professional communications.**—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any illegal purpose;"

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client. Explanation.— The obligation stated in this

section continues after the employment has ceased.

Illustrations

(a) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me". As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue". This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment. This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure."

17. As per the evidence of P.W.4, he was a lawyer at that time, appellant No.1 approached him and confessed the commission of offence along with appellants 2 to 4. There is also specific mention in the evidence of P.W.4 that appellant No.1 came to him and sought help to save him from the clutches of police. The details of confession made by appellant No.1 are mentioned in Ex.P.2 report prepared by P.W.4 and given to the police, which is in the handwriting of P.W.4. P.W.4 denied that Ex.P.2 was drafted by the police. He has given the date of offence as '31.03.2005', though Ex.P.2 lodged with the police on 14.06.2005. P.W.4 denied that appellant No.1 was in the

custody of the police. P.W.4 stated that he surrendered appellant No.1 to the police. P.W.4 denied that he was deposing falsely. There is no suggestion to P.W.4 that appellant No.1 has engaged P.W.4 to defend him in the instant case. As per the evidence of P.W.4, P.W.4 has no prior acquaintance with the appellants. P.W.4 is an independent witness and he was not influenced by anybody. Further, P.W.4 has no animosity with the appellants and there is no reason to depose false against the appellants. Appellant No.1 was not in the police custody or being influenced by any person for undue gain, advantage, etc., when Ex.P.2 was prepared. When P.W.4 was not engaged and not discharging duty as a defence lawyer, Section 126 of the Indian Evidence Act, 1872 has no application to the instant case.

18. There is also specific evidence of P.W.3-neighbour who saw the deceased being taken by a car on that evening. There is also evidence of P.W.5-owner of the house that on 28.03.2005 at about 12-00 noon, appellant No.1 contacted him on phone to take his house on rent and paid Rs.1,200/- as advance and collected key on 30.03.2005, after ten days, none occupied the said house. P.W.5 is also an independent person, there is no reason for him to depose false against appellant No.1. Appellant No.1 also confessed that he along with appellant Nos.2 to 4 wanted to abduct Ramakrishna Reddy and extract money. There is also confession of appellant No.1 how the dead body was disposed of, the same has been corroborated from the first information reports, scene of offence, inquest

panchanama and the medical evidence produced in this case. When the entire incriminating evidence is put to the appellants in the examination under Section 313 Cr.P.C., simply they have denied the same and stated that they were falsely implicated in this case. There is specific evidence that M.Os.1 to 3 were recovered pursuant to the confession made by appellant Nos.1, 2 and 4, no satisfactory explanation has been offered. The names are engraved on M.Os.1 and 2 and it cannot be said that M.Os.1 and 2 do not belong to the deceased and were not identified by P.W.1. There is also evidence on record that M.O.4-purse of the deceased with telephone diary, M.O.5-pair of shoes, M.O.9-iron rod, M.O.10-syringe, M.O.11-medicine in plastic tube and M.O.12-photo of the deceased in purse, were recovered from railway track KM stone No.9/281 and 10/281, i.e., the place where the dead body was placed and burnt, confession made by appellant No.1 lead to the recovery of said material objects. If the dead body was not of the deceased, the above material objects, belonging to the deceased, would not have been found at the railway track and would not have been recovered as deposed by P.W.19-investigating officer and as shown in Ex.P.7. The wife of the deceased P.W.1 has also identified the material objects, i.e., M.O.4-purse, M.O.5-pair of shoes, M.O.6-piece of pant belt portion, M.O.7-piece of banian and M.O.8-piece of belt with buckle and she stated that they belong to her husband. There is also evidence of the doctor-P.W.17 that external injuries were found, the dead body was cut

into two pieces, injuries are ante-mortem and it can be safely concluded that the death in this case is a homicidal and the dead body in question belong to D.Ramakrishna Reddy. Merely because the DNA test was not conclusive, it cannot be said that the dead body did not belong to Ramakrishna Reddy.

19. The case is based on circumstantial evidence; there is specific evidence of P.W.4, in whose presence appellant No.1 made confession with regard to commission of offence along with appellant Nos.2 to 4. There is also unimpeachable evidence to believe that M.Os.1 to 3 were recovered pursuant to the confession made by appellant Nos.1, 2 and 4. Appellant No.3 had used Rs.1,500/- given to him by appellant No.1. There is also corroborative evidence of P.W.3 who has seen the deceased getting into a car just before his disappearance. There is also evidence of P.W.5 from whom appellant No.1 has taken the house on rent at the relevant point of time by paying an advance of Rs.1,200/-, and later not occupying the house is also an incriminating circumstance against the appellants.

20. The evidence on record has a definite tendency to unerringly point towards the guilt of the appellants. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the death was caused by the appellants and none else. 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 appellants and

such evidence should not only be consistent with the guilt of the appellants but should be inconsistent with their innocence. The death was caused in order to demand ransom from the deceased and his wife. As seen from the evidence on record that the trial Court has framed the charges under Sections 364-A, 302, 404, 201 of I.P.C., but convicted appellants 1 to 4 of the charges under Sections 302, 404 and 201 of I.P.C. and recorded acquittal of the charge under Section 364-A I.P.C. stating that the act of abduction was not completed. There is no charge framed under Section 302 r/w 34 I.P.C. It is apt to refer the decisions of the Hon'ble Supreme Court in **Willie (William) Slaney v. The State of Madhya Pradesh**¹ and **Vutukuru Lakshmaiah v. State of A.P.**² The Hon'ble Supreme Court in **Willie (William) Slaney's** case (supra 1), held as hereunder:

"45. In adjudging the question of prejudice the fact that the absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere; but if, on a careful consideration of all the facts, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature of the charge, or a total want of one, was taken at an early stage. If it was not, and particularly where the accused is defended by counsel [Atta Mohammad v. King Emperor] [1929] L.R. 57 Ind Ap 71, it may in a given case be proper to conclude that the accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted no further particulars,

¹ 1956 Cr.L.J. 291 = AIR 1956 SC 116

² (2015) 11 SCC 102 = (2015) 4 SCC (Cri) 299

provided it is always borne in mind that "no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused" [Abdul Rahman v. King Emperor [1926] L.R. 54 Ind Ap 96. But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases however alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even judges, are sometimes prone to argue and to act if there were."

21. The ratio laid down in **Willie (William) Slaney's** case (supra 1) was reiterated and applied in **Vutukuru Lakshmaiah's** case (supra 2). The absence of Section 302 r/w 34 I.P.C. did not cause any prejudice to the appellants. If any prejudice is shown or a substantial mistake has been demonstrated, the appellants are entitled for the benefit of doubt, but on careful consideration of all the facts and circumstances of the case, prejudice, or a reasonable and substantial likelihood of it, is not disclosed the conviction must stand. The appellants have been defended by a counsel and they have noticed as to what they were being tried for and their vicarious and collective liability. Therefore, no prejudice was caused to them by a defective charge. The Court must act with a broad vision and look to the substance and not to technicalities and the main concern should be seen, whether the appellants had a fair trial, whether they knew what they were being tried for, whether the main facts sought to be established against them were explained to them fairly and clearly and whether they were given a full and

fair chance to defend themselves. So, the conviction under Section 302 I.P.C. simpliciter is held to be legal and non-framing of charge under Section 302 r/w 34 I.P.C. cannot be a ground to extend the benefit of doubt in favour of the appellants.

22. The evidence in the instant case clinchingly established that appellant Nos.1 to 4 hatched a plan to abduct D.Ramakrishna Reddy and demand some amount from him, pursuant to that, on 31.03.2005 at about 5-00 p.m., they made him sit into the car to show the address of B-Camp, then they dragged him into the back seat of the car, gagged his mouth with clothes, beat him with rod, tied him in a gunny bag and took him to Silpa Estate, and when they opened the bag, they said to have found Ramakrishna Reddy died. Thereafter, they took the body near L.Banda railway crossing gate, i.e., KM stones 9 and 10/281 and set fire to the dead body on the railway track, before disposal of body, they took two gold rings M.Os.1 and 2, and one wrist watch-M.O.3 and also Rs.1,500/- from the body of Ramakrishna Reddy. The confession does not reveal that the abduction was to commit the murder of the deceased and but only demand ransom, but in the course of abduction, they hit the deceased with an iron rod, tied him in a gunny bag and on opening the bag, they found Ramakrishna Reddy had died. P.W.17-doctor held autopsy over the dead body and found number of injuries on the dead body and opined that the injuries are ante-mortem, the death is homicidal i.e., 3 to 5 days before his post-mortem examination. Ex.P.25-post-mortem examination

report also corroborated with the evidence of P.W.17-doctor. In the instant case, from the evidence of the doctor, it can be safely concluded that the death was caused by burning and running over by train. It is relevant to state that as per the post-mortem examination report, the age of the deceased was 40 years. It is pertinent to note that the dead body was found on railway track in two pieces, it was in a burned condition, some of the flesh and muscles were eaten by animals and bones of the hands were exposed. Therefore, it was not possible to the doctor to give correct age of the deceased.

23. In ***OGIBOYINA KOTAIAH V/s. STATE OF A.P. REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD***³, this Court held a conviction under Section 302 I.P.C. unsustainable on the ground that the death in the said case was not caused by the burns suffered by the deceased but due to an intervening infection. In ***SHAM MADHAVRAO RUPVATE V/s. STATE OF MAHARASHTRA***⁴, the Supreme Court was dealing with a case where the husband set fire to his wife but found that she died not due to the burns but due to septicemia and held the conviction for murder liable to be reduced.

24. In the instant case, the acts on the part of the appellants were not to kill the deceased, but in the course of abduction, they hit the deceased with an iron rod, tied him in a gunny bag and on opening the bag, they said to have found

³ 2007 (1) ALT (CrL.) 260 (D.B.) (A.P.)

⁴ 2000 CrL.L.J. 2389

Ramakrishna Reddy dead. In fact, by that time, the deceased did not die. Even then they have burnt the dead body by placing it on the railway track. Due to burns and run over by train, the death was caused in this case. All the appellants were aware of the consequences of their acts and it is in their full knowledge. Under these circumstances whether the appellants 1 to 4 can be held guilty for the offence under Section 302 r/w 34 I.P.C. or the case would fall within Part 1 or Part 2 of Section 304 I.P.C. which prescribes the punishment for culpable homicide not mounting to murder.

25. In **ALISTER ANTHONY PAREIRA V/s. STATE OF MAHARASHTRA**⁵, the Supreme Court drew a distinction between the two parts of Section 304 IPC:

"For punishment under Section 304 Part I, the prosecution must prove the death of the person in question; that such death was caused by the act of the accused and that the accused intended by such act to cause death or cause such bodily injury as was likely to cause death. As regards punishment for Section 304 Part II, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and that he knew that such act of his was likely to cause death.... "

26. Again, in **KASAM ABDULLA HAFIZ V. STATE OF MAHARASHTRA**⁶, the Supreme Court observed thus on this issue:

⁵ (2012) 2 SCC 648

⁶ (1998) 1 SCC 526

"....Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above the conclusion is irresistible that the death was caused by the acts of the accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the 1st Part of Section 304 IPC. The guilty intention of the accused to cause such bodily injury as is likely to cause death is apparent from the fact that he did attempt a second blow though did not succeed in the same and it somehow missed. In that view of the matter we are of the considered opinion that the High Court has rightly convicted the appellant under Section 304 Part I IPC.... "

27. This being the settled legal position and given the irrefutable fact in the case on hand that the appellants Nos.1 to 4 themselves are responsible for abduction, in that process the deceased was beaten with a rod, tied in a gunny bag and was thrown on railway track and burnt, makes it clear that all the appellants are fully aware of their action and probable consequences thereof. Even if they had no intention of causing the death of D.Ramakrishna Reddy, but they caused such bodily injuries as was likely to cause the death. So, the case would fall within Section 304 Part 1 I.P.C., as it transcends mere knowledge and verges on actual intention.

28. The learned counsel for the appellants has relied on the following decisions:

(1) **Sahadevan and another v. State of Tamil Nadu**⁷.

⁷ (2012) 6 SCC 403

- (2) **Yadlapalli Samuel @ Syam, Bushiraju Anand and another v. State of Andhra Pradesh, rep. by its Inspector of Police**⁸.
- (3) **Pancho v. State of Haryana**⁹.
- (4) **Jose alias Pappachan v. Sub-Inspector of Police, Koyilandy and another**¹⁰.
- (5) **Dinkar Bandhu Deshmukh and another v. State**¹¹.
- (6) **Pankaj v. State of Rajasthan**¹².

29. In **Sahadevan's** case (supra 7), the Hon'ble Supreme Court observed that extra judicial confession is weak piece of evidence, the Court must ensure that same inspire confidence and is corroborated by other evidence on record, and if extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, in such event, the Court fully justified in ruling such evidence out of consideration. In **Pancho's** case (supra 9), the Hon'ble Supreme Court observed that extra judicial confession made by the accused is a weak evidence and the Courts must look for corroboration from other evidence, whether there are other cogent circumstances on record to support it. In **Yadlapalli Samuel's** case (supra 8), the Hon'ble Supreme Court observed in paragraph No.25 as follows:

"As regards the recoveries, mere seizure of a towel from accused No.4, cell phones from accused Nos.1 and 6, LIC polices from accused No.1 does not prove the guilt of the accused in the absence of prosecution establishing all the links in the chain of circumstances. In Wakkar and another v. State of Uttar Pradesh 2011 3 SCC 306, the Supreme Court

⁸ 2016 (3) ALT (CrL.) 171

⁹ (2011) 10 SCC 165

¹⁰ (2016) 10 SCC 519

¹¹ AIR 1970 Bombay 439

¹² 2016 (3) ALT (CrL.) 205 (SC)

reiterated the settled dicta that recoveries of certain incriminating articles under Section 27 of the Indian Evidence Act alone cannot form the basis of conviction unless other relevant circumstances and the chain of events suggest the involvement of the accused. As discussed above, as the prosecution has miserably failed to prove the participation of accused Nos.4 and 5 in the commission of offence, all other circumstances pale into significance and therefore all the accused are entitled to benefit of doubt."

30. In **Jose alias Pappachan's** case (supra 10), the accused alleged to have strangled to death his wife in his house, the prosecution case was based on circumstantial evidence, links in the chain were not established and the accused was given benefit of doubt, the Hon'ble Supreme Court reversed the conviction and sentence recorded against the accused. In **Dinkar Bandhu Deshmukh's** case (supra 11), the Bombay High Court observed that discovery evidence is not subsidiary evidence but only corroborate evidence, on the basis of such evidence cannot sustain a conviction, but where there is plenty of other evidence to substantiate the prosecution case, discovery evidence is a valuable piece of evidence. In **Pankaj's** case (supra 12), the Hon'ble Supreme Court held that the effect of not proving the motive raises a suspicion in the mind and when the genesis and the manner of incident is doubtful, the accused cannot be convicted.

30. As it is evident from the record, there are no contradictions and omissions in the evidence of P.W.4 and there is no reason for P.W.4 to depose falsely against appellant Nos.1

to 4, P.W.4 being a responsible person surrendered appellant No.1 to the police. The record establishes appellant No.1 voluntarily followed P.W.4 and surrendered to police. There are other circumstances corroborating with the evidence of P.W.4. The prosecution laid cogent and convincing evidence with regard to the recovery and identification of material objects, belonging to the deceased. The extra judicial confession made by appellant No.1 is admissible against all other appellants also. There is also recovery of material objects pursuant to the confession made by the appellants in this case. The prosecution has proved the motive against all the appellants. The facts of this case and the facts of the cases relied on by the learned counsel for the appellants are quite distinct. So, no reliance can be placed on the said decisions to extend the benefit of doubt to the appellants.

31. On the above analysis, it is found that it is a case of culpable homicide, falling under Exception 4 of Section 300 I.P.C. attracting Section 304 Part 1 I.P.C. The conviction recorded against the appellants for the offence under Section 302 I.P.C. is liable to be modified to the offence of culpable homicide not amounting to murder under Section 304 Part 1 r/w 34 I.P.C. The appellants were defended by an advocate before the trial Court, the appellants were aware, what was being alleged against them and they were aware of the collective responsibility and consequences arise there from. On careful consideration of the evidence on record reveals no prejudice or

reasonable and substantial likelihood caused to the appellants for not framing a charge under Section 302 r/w 34 I.P.C. Therefore, non-framing of charge under Section 302 r/w 34 I.P.C. is not fatal. The manner in which the death is caused, the appellant Nos.1 to 4 deserves to be sentenced to undergo imprisonment for life. Accordingly, they are convicted and sentenced for the offence under Section 304 Part 1 r/w 34 I.P.C.

32. There is also ample evidence on record to demonstrate that the appellants have stolen M.Os.1 to 3 from the dead body and further they cause disappearance of evidence. Therefore, the trial Court had rightly convicted and sentenced them for the offences under Sections 201 and 404 I.P.C. In view of the circumstances of the case, there is nothing to reduce the sentence imposed against the appellants 1 to 4 for the offences under Sections 201 and 404 I.P.C.

33. In the result, the conviction and sentence recorded by the trial Court, vide judgment dated 19.01.2011 in Sessions Case No.170 of 2011, against the appellants 1 to 4 for the offences under Sections 404 and 201 I.P.C. is confirmed, whereas the conviction recorded against the appellants 1 to 4 for the offence under Section 302 I.P.C. is modified to the offence under Section 304 Part 1 r/w 34 I.P.C. and the appellants 1 to 4 are sentenced to undergo imprisonment for life. The substantial sentence of imprisonment awarded against the appellants 1 to 4 on all counts shall run concurrently.

34. With the above modification, this appeal is disposed of. As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand dismissed.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 18th September, 2017
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