

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

CRIMINAL APPEAL NO.175 OF 2011

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

By judgment dated 28.01.2011, the learned V Additional Sessions Judge (III Fast Track Court), Nalgonda at Miryalguda, convicted A1 and A2 under Section 302 IPC read with Section 34 IPC for intentionally causing the death of Jala Ramu (D1) and Vasthapuri Sridevi (D2) on 04.03.2009 at about 00.30 hours at Ibrahimpet Village, Anumula Mandal, Nalgonda District, and sentenced them to undergo life imprisonment apart from paying a fine of Rs.5,000/- each in default of which, they were to suffer simple imprisonment for a period of six months. A3 and A4 were however found not guilty of the charge under Section 302 IPC read with Section 34 IPC and were acquitted under Section 235(1) CrPC. Aggrieved by their conviction and sentence, A1 and A2 are in appeal under Section 374(2) CrPC.

The case of the prosecution was as under: P.W.1 presented Ex.P1 complaint to the Sub-Inspector of Police, Halia (P.W.16) on 04.03.2009 at 7.00 AM, who registered a case in Crime No.34 of 2009. Ex.P28 is the FIR. Thereupon, the Circle Inspector of Police, Halia (P.W.17), took up investigation and recorded the statement of P.W.1 at the police station. He then proceeded to Ibrahimpet bus stage along with his staff and found the bodies of D1 and D2 by the side of the road. He prepared the scene of the offence panchanama (Ex.P11) in the presence of mediators and secured their signatures therein. He also prepared a rough sketch (Ex.P12) which was attested by mediators. Under Ex.P11 scene of the offence panchanama, he seized blood-stained earth, controlled earth and four chappals

(M.O.1). Ex.P11 mentioned the presence of the motorcycle bearing No.AP 24 M 5939 belonging to D1. P.W.17 examined P.Ws.2 and 3, Jala Veeraiah (L.W.4), P.W.4, P.W.5 and P.W.6 and recorded their statements. He held an inquest over the bodies of D1 and D2. Exs.P13 and P14 are the inquest reports. He then examined P.W.8 and recorded her statement. He got the scene of the offence and the dead bodies photographed by P.W.7. He then sent the bodies for post-mortem. On 13.03.2009, he along with his staff apprehended A1 to A4 at Ali Nagar Cross Roads at 5.30 AM. In the presence of panchas, he recovered motorcycles (M.Os.2 and 3) from A1 and A4. He recovered M.O.4 iron rod under Ex.P17 panchanama from A1. He recovered M.O.5 knife from A2 under Ex.P18 panchanama and M.O.6 sickle from A3 under Ex.P19 panchanama. He also recovered M.O.7 iron rod from A4 under Ex.P.20 panchanama. On the information given by A1 to A4, he recovered their blood-stained shirts (M.Os.8 to 11) under Exs.P.21 to 24 panchanamas. He then sent A1 to A4 for remand after getting A4 medically examined for his injury. The seized properties, except the motorcycles, were sent for chemical examination. Ex.P.29 is the FSL report received upon such examination. He found out from A1 that his mobile number was 9000737427. From P.W.2, he collected the telephone number of D1, which was 9440076162. He obtained details of the telephone calls made from the phones of A1 and D1. Ex.P.30 is the call information given by BSNL while Ex.P31 is the call information given by AIRTEL. He deposited the case properties before the Court and upon completion of the investigation, he filed the charge sheet.

Upon committal, the Sessions Court framed the following charge against A1 to A4:

That you A1 to A4 on 04.03.2009 at 00.30 hours at Ibrahimpet village, Anumula Mandal, in furtherance of common intention, committed murder intentionally causing the death of the deceased No.1 Jala Ramu and deceased No.2 Vastapuri Sreedevi, by you A1 beat deceased No.2 Vastapuri Sreedevi with an iron rod over her head, while you A2 to A4 attacked the deceased No.1 Jala Ramu with iron rod, sickle and knife and beat him indiscriminately and thereby you committed an offence punishable under Sec.302 r/w 34 of I.P.C and within my cognizance'

All the four accused pleaded not guilty and claimed to be tried.

Thereupon, the prosecution examined 17 witnesses and marked in evidence 31 exhibits. Case properties were shown as M.Os.1 to 11. The accused did not let in any evidence, oral or documentary.

At this stage, it may be noted that A1 is the elder brother of D2, while A3 is her husband. A2 and A4 are stated to be relations of A1. D1 and D2 were also related to each other.

Salient points emerging from the evidence may now be noted:

P.W.1 stated that he knew A1 to A3 but did not know A4. He also knew D1 and D2, residents of Chinthalapalem Village, and stated that they were both related to him. They died on 04.03.2009 at Ibrahimpet bus stage. On that day at about 6.00 AM, when he was at his house, he came to know that a male and a female were murdered at the bus stage. He went to the bus stage on his motorcycle and found the dead bodies of D1 and D2 with injuries. He stated that he was of the opinion that they were hacked with axes. He also found the motorcycle of D1 fallen on the ground at that place. He said that D1 and D2 were married to different persons and also had children. He had learnt that some ten days prior to their death, they had eloped. On 03.03.2009, D1 telephoned and requested him to settle their matter as the brothers of D1 and D2 were coming to him. On the same day at about 2.00 PM, A1 and A2 came to his house. When he was talking to A1 and A2, D1 again telephoned and

informed him that he would come to his house even if it was late in the night on that day and the same was heard by A1 and A2. A1 was the brother of D2 and A2 was also her close relation. A1 and A2 then left his house. He said that he gave Ex.P1 police report after seeing the dead bodies on 04.03.2009. He said that he gave the said report to the police suspecting that A1 and A2 might have murdered D1 and D2. In his cross-examination, he said that A3 was the husband of D2. He presented Ex.P1 report to the police after writing it on his own. He said that he wrote Ex.P1 at the place of the dead bodies and presented it to the Circle Inspector of Police (P.W.17). He said that the police recorded his statement at the time of post-mortem of the dead bodies at Miryalguda hospital and his statement was recorded by the Circle Inspector of Police in the presence of the Sub-Inspector of Police and Head Constable at about noon time. Though D1 and D2 were both related to him, he said that D2 was a closer relative. He denied that D1 was more closely related to him than D2. He denied the suggestion that A1 and A2 never came to his house on 03.03.2009 and that they never heard D1 telephoning to him. He denied knowledge of D1 having disputes in Chinthalapalem Village with several persons. He said that it was not true to say that A1 to A4 had no connection with the death of D1 and D2 and denied that he falsely implicated them at the instance of the relations of D1. He said that he did not know whether any police report was given against D1 and his family members alleging that he had eloped with D2. He said that it was not true to say that D1 did not telephone him and inform him that the brothers of D2 and he would come to him and that he was deposing falsely. He said that he informed the police that a case was registered in Vijayapuri Town Police Station against D1, his

brother and parents, with regard to kidnap of D2 but denied that as a counterblast and at the instance of the brother and parents of D1, he gave a false report against the accused and was deposing falsely. He said that it was not true to say that A2 had no connection or relationship with the family of A1.

P.W.2, the elder brother of D1, stated that he knew P.W.1 and D2. He said that D1 and D2 were murdered at the bus stage of Ibrahimpet Village about a year and some months back and 11 or 12 days prior thereto, D1 and D2 had eloped from their village. A3 filed a kidnap case against them in Vijayapuri Town Police Station in that connection. He said that they informed the Sub-Inspector of Police that they would trace out D1 and D2 and meet him again. On 02.03.2009, he telephoned to D1 and enquired with him and D1 informed him that he along with D2 would be coming to Ibrahimpet Village on 03.03.2009 to the house of P.W.1 for settlement. On 03.03.2009, he again telephoned D1 as he did not come to the house of P.W.1 and D1 informed him that he was coming to Ibrahimpet. D1 again telephoned to him after coming to Ibrahimpet and he hired a car and waited at the Petrol Pump of Halia at about 9.30 PM as requested by D1. At about 11.30 PM on that day, D1 telephoned him and informed that he was on the way and would reach the petrol bunk within five or ten minutes. After half-an-hour, when he did not come, he stated that he again telephoned to D1's mobile and received information that the phone was switched off. After waiting till the morning, he said that he went to Nagarjunasagar and left the car at 6.00 AM. When he reached his motorcycle at Nagarjunasagar, he said that his brother-in-law telephoned and informed him that D1 and D2 had been murdered at Ibrahimpet on the road. He said that he went

and saw the dead bodies at that place and there were several persons, including P.W.1, at that place. He said that there were several injuries on the bodies of D1 and D2 and he opined that they were murdered. He said that A4 was a close relative of A2 and he suspected that A1 to A4 murdered D1 and D2. He said that he informed the police of the same. In his cross-examination, he said that on 23.02.2009, the Vijayapuri police called him and his parents to the police station in connection with the kidnap case of D2. P.W.4 bailed them out. He denied that D1 had illicit intimacy with four or five ladies of Chinthalapalem Village and that he had several enemies in their village. He said that he reached Ibrahimpet by about 9.00 AM on 04.03.2009 directly from Nagarjunasagar, which is at a distance of 26 kilometres from Ibrahimpet. He said that he went there by motorcycle. He denied the suggestion that D1 never telephoned to him on 02.03.2009 or 03.03.2009. He denied the suggestion that D1 did not inform him that he was coming to the house of P.W.1. He denied that some enemies of D1 murdered him and D2 and that he was deposing falsely as A3 had filed a kidnap case against them.

P.W.3, the mother of P.W.2 and D1, said that D1 had eloped with D2, the wife of A3, ten days prior to their death. She said that they found the dead bodies of D1 and D2 at the bus stage of their village in the morning. They went and saw them and found their bodies with injuries. A3 filed a police case and they were called to the police station in connection with the kidnap case of D2. P.W.2 informed her that D1 was going to come to the house of P.W.1. In her cross-examination, she said that her elder daughter informed her about the murder of D1 at 6.00 AM. Several persons in an auto came to Ibrahimpet at about 8.00 AM. She was examined by the police at

the place where the dead bodies were. She denied that D1 was having enmity with several persons in their village. She denied the suggestion that P.W.2 had never informed her that D1 was coming to the house of P.W.1. She denied that as a counterblast they filed this false case against A1 to A4.

P.W.4 said that he knew A1 to A4 and P.Ws.1 to 3. He also knew D1 and D2. He said that about seventeen months ago, D1 and D2 were murdered at Ibrahimpet bus stage. He bailed out P.Ws.2 and 3 and their family members in connection with the kidnap case of D2. After coming to know about the murder of D1 and D2, he went to Ibrahimpet bus stage but by that time the bodies had been shifted to Miryalguda Hospital. On the day prior to the elopement of D1 and D2 at noon time, A1 telephoned him when he was at Nagarjunasagar and requested him to chastise D1 about his illicit intimacy with D2. He said that he went home late in the night and by the morning, they had eloped. In his cross-examination, he said that he was the ex-Sarpanch of Chinthalapalem village and P.Ws.1 to 3 were related to him. He denied the suggestion that A1 had never telephoned him prior to the death of D1 and D2.

P.W.5, the elder sister of D2, said that she knew D1. By the time of their death six months prior to her deposition, she was residing at Halia. D2 used to reside at Chinthalapalem along with A3 and her children. After the death of D2, she visited Miryalguda Hospital and saw her dead body. She said that she knew A1 to A3 only and did not know A4. She denied that one day prior to the death of D2, A1 and A2 had come to her house for lunch. She said that she did not observe any injuries on the bodies of D1 or D2 at the hospital. At this stage, she was declared hostile and subjected to

cross-examination by the prosecution. She then stated that it was not true to say that she informed the police as in Ex.P2, her statement recorded under Section 161 CrPC, and that she was deposing before the Court falsely to help the accused.

P.W.6, the husband of P.W.5, stated that he knew A1 to A3 but did not know A4. After the death of D2, he visited Miryalguda Government Hospital and saw her dead body. He said that A1 and A2 had not come to their house one day prior to her death. He said that he found injuries on D2 and also D1. He said that the police did not examine him. At this stage, he was declared hostile and cross-examined by the prosecution. He then stated that it was not true to say that he informed the police as in Ex.P3, his statement recorded under Section 161 CrPC, and that he was deposing before the Court falsely to help the accused.

P.W.7, a photographer, stated that he took photographs of the dead bodies at Ibrahimpet bus stage and confirmed that Exs.P4 to P9 were the photographs along with the CD.

P.W.8 said that she knew A1 to A4 and that they were related to her. She also knew D1 and D2. She said that her parents-in-law were from Thallapally Village of Macherla Mandal and at the time of the death of D1 and D2, she and her children were residing at Halia, while her husband was working at Hyderabad. At about 7.30 or 8.00 AM., she came to know about the death of D1 and D2 at Ibrahimpet. She said that by the time they reached there, the bodies were shifted to the hospital. Later, she went to Miryalguda Hospital and saw the bodies. She said that her house was located at Sai Prathapanagar Colony, Halia, which is on the road leading to Halia from Miryalguda. She said that on the night previous to the death of D1 and D2, she

did not witness anything. She was treated as a hostile witness and cross-examined by the prosecution. She then stated that it was not true that she informed the police as in Ex.P10, her statement recorded under Section 161 CrPC, and that she was deposing falsely before the Court to help the accused.

P.W.9 attested the scene of the offence panchanama (Ex.P11) along with Eagala Roshaiiah (L.W.11) and also the rough sketch (Ex.P12) prepared by the police. In his cross-examination, he said that he did not observe whether the police seized four chappals under Ex.P11. He further stated that he did not know the contents of Exs.P11 and P12 and said that he signed on them without reading the contents thereof at the request of the police.

P.W.10, an inquest witness, stated that the inquest was held over the bodies of D1 and D2 at the Government Hospital, Miryalguda, and he along with K.Raghava Chary (L.W.13) and Eadudula Rangamma (L.W.14) attested the inquest reports (Exs.P13 and P14). In his cross-examination, he said that he signed on some papers at Miryalguda hospital at the request of the police and he could not say whether those papers were white papers or written papers. He said that the contents of Exs.P13 and P14 were not read over to him or read by him.

P.W.11 stated that he did not know A1 to A4. He knew P.W.12. He said that the police never recovered M.O.2 motorcycle from A1 under Ex.P15 recovery panchanama though it contained his signature. He said that the police never recovered M.O.3 motorcycle from A4 under Ex.P16 recovery panchanama though it contained his signature. He said that the police never recovered M.O.4 iron rod from A1 under Ex.P17 recovery panchanama though it contained his

signature. He said that the police never recovered M.O.5 knife from A2 under Ex.P18 recovery panchanama though it contained his signature. He said that the police never recovered M.O.6 sickle from A3 under Ex.P19 recovery panchanama though it contained his signature. He said that the police never recovered M.O.7 iron rod from A4 under Ex.P20 recovery panchanama though it contained his signature. He said that the police never recovered blood stained shirts, M.Os.8 to 11, from A1 to A4 respectively under Exs.P21 to P24 panchanamas respectively though they contained his signatures. He said that the Circle Inspector of Police, Halia, took his signatures on Exs.P15 to P24 at the police station, Halia, and they were blank papers at that time. He said that the police took his signatures on seven or eight blank papers at that time. He was declared hostile and cross-examined by the prosecution. He then stated that it was not true to say that he was deposing falsely.

P.W.12 said that he did not know A1 to A4 but knew P.W.11. He deposed on the same lines as P.W.11 and denied that the police recovered case properties from the accused though the recovery panchanamas contained his signatures. He stated that the Circle Inspector of Police, Halia, took his signatures on blank papers at the police station. He was declared hostile and in his cross-examination by the prosecution, he denied that he was deposing falsely.

P.W.13, the Civil Assistant Surgeon at the Government Hospital, Nagarjunasagar, stated that upon the requisition from Alwal Police Station, he examined A4 at 11.50 PM on 13.03.2009 as he was complaining of pain and suffering in the left thumb but did not find any external injury upon him. Ex.P25 is the wound certificate issued by him stating to that effect. In his cross-

examination, he said that A4 was treated as an out-patient for a period of 15 to 20 minutes and denied that A4 was never examined by him, as mentioned in Ex.P25.

P.W.14, the Civil Assistant Surgeon at the Government Hospital, Miryalguda, conducted the autopsy over the body of D1 on 04.03.2009 at 11.30 AM. He spoke of the various injuries, numbering twelve, found on his body. He stated that the stomach of D1 contained only blood and no food item was found. He said that the injuries found were possible with a sharp edged weapon like M.O.5 knife. He said that D1's death would have been within 24 hours prior to his examination and confirmed that Ex.P26 was the post-mortem examination certificate issued by him. The cause of death was stated to be due to multiple injuries. He stated that injury Nos.7, 9 and 20 were sufficient in the ordinary course of nature to cause death. He said that the stab injuries referred to in Ex.P26 certificate were not possible with M.O.5 knife, as the edge of the said knife was curved. In his cross-examination, he denied that injury Nos.7, 9 and 20 were not possible with M.O.5 knife. He denied that the injuries mentioned in Ex.P26 certificate were possible by a fall on a sharp edged object.

P.W.15, another Civil Assistant Surgeon at the Government Hospital, Miryalguda, conducted the autopsy over the body of D2. He detailed five injuries found by him on the body of D2. He said that all the injuries were possible with blunt objects like M.Os.4 and 7 iron rods. He put the death of D2 within 24 hours prior to the post-mortem examination and opined that the cause of death was due to head injuries, i.e., injury Nos.1 and 2 mentioned in Ex.P27 post-mortem examination certificate issued by him. He further stated that injury Nos.1 and 2 referred to therein were sufficient in the ordinary

course of nature to cause death. He stated that the stomach of D2 contained some semi-digested food. In his cross-examination, he denied that injury Nos.1 and 2 mentioned in Ex.P27 certificate were possible by a fall on a blunt surface. He denied that injury Nos.1 and 2 on the person of D2 were not possible with rods like M.Os.4 and 7.

P.W.16, the Sub-Inspector of Police, Halia, stated that on 04.03.2009 at 7.00 AM, he received Ex.P1 from P.W.1 and registered Crime No.34 of 2009 on the file of Halia Police Station. Ex.P28 is the FIR. In his cross-examination, he denied that P.W.1 did not come to the police station and present Ex.P1 to him and that they prepared Ex.P1 as directed by the Circle Inspector of Police (P.W.17).

P.W.17, the Circle Inspector of Police, Halia, spoke of the various steps taken by him during the investigation. In his cross-examination, he stated that on 04.03.2009, he was in the Circle Office, Halia, and received information about the FIR in this case at 7.20 AM. He received the case diary within five minutes and started recording the statement of P.W.1, which he completed within fifteen minutes. He reached the scene of the offence within five minutes thereafter and found that the scene of the offence had not been disturbed. He denied the suggestion that P.W.1 gave Ex.P1 complaint to him at the scene of the offence. He said that he collected panchas at the scene of the offence itself as they were present there. He started the scene of the offence panchanama (Ex.P11) proceedings at 8.00 AM and completed the same by 8.45 AM. He denied the suggestion that the cell phone covered under Ex.P30 call details information furnished by BSNL did not belong to A1. He said that P.W.2 gave details of the cell phone number of D1. He denied that the two cell phones did not belong to A1 and D1. He stated that he did

not collect the details of other telephone calls received by D1 on that day or made by him. He stated that as per the charge sheet, A1 and A2 went towards Nidamanoor from Ibrahimpet bus stage, whereas A3 and A4 went towards Halia side. The properties recovered on the information furnished by A1 and A2 were found near the fields of Rikkala Atchi Reddy of Ibrahimpet Village. He denied the suggestion that he did not recover the properties on the information given by A1 to A4 and that he had planted the properties himself. He stated that he did not seize any cell phones of A1 or D1 or the sim cards of the said cell phones. He denied the suggestion that they influenced the cell phone companies and obtained false information. He stated that the earlier report by A3 was against D1, P.W.2 and their parents in Vijayapuri Town Police Station and it was then improved by including P.W.3 and Jala Veeraiah (L.W.4). He denied that as a counterblast they were influenced by P.W.1, P.W.2 and P.W.3 to foist a false case. He said that it was not true to say that he did not recover any properties from A1 to A4. He stated that he did not find any fingerprints on the weapons seized from the accused. He said that it was not true to say that A1 never telephoned D1 and that he did not recover the motorcycles from A1 and A4.

By the judgment under appeal, the Sessions Court relied upon Exs.P30 and P31 call information furnished by BSNL and AIRTEL and came to the conclusion that A1 had telephoned D1 around the time of his death. Taking into account P.W.1's deposition to the effect that A1 and A2 were aware that D1 made a call to him informing him that he would be visiting P.W.1's house on the night of 03.03.2009, the Sessions Court opined that a complete chain of evidence was established leaving no scope for any conclusion consistent with the

innocence of the accused. However, as the case was built on circumstantial evidence and the evidence on record only proved the guilt of A1 and A2 and there was no evidence whatsoever to link up A3 and A4 with the offence, the Sessions Court opined that the benefit of doubt could be given to them and accordingly acquitted them. A1 and A2 were found guilty and sentenced accordingly.

Heard Sri P.Prabhakar Reddy, learned counsel for the appellants/A1 and A2, and the learned Public Prosecutor for the State of Telangana.

The prosecution's case rests solely on circumstantial evidence as there was no eye witness or direct evidence linking A1 and A2 to the alleged offence. Strong reliance was placed by the Sessions Court on Exs.P30 and P31, the call details information relating to the cell phones of A1 and D1. This information was furnished by BSNL and AIRTEL, the service providers. However, no one associated either with BSNL or with AIRTEL was examined and certificates, if any, issued by them were not marked in evidence. Exs.P30 and P31 were not even authenticated by the service providers. In the light of the decision of the Supreme Court in **ANVAR P.V. V. P.K. BASHEER**¹, this electronic evidence was not admissible as no certificate was filed therewith, as mandated by Section 65-B of the Indian Evidence Act, 1872. It therefore had to be eschewed from consideration. In the absence of Exs.P30 and P31 call details information, the only basis to link A1 and A2 with the alleged offence was the oral testimony of P.W.1 to the effect that they both knew of D1's impending visit to his house during the intervening night of 03.03.2009 and 04.03.2009.

¹ (2014) 10 SCC 473

In this regard, it may be noted that P.W.1 stated that A1 and A2 were present at his house on 03.03.2009 when D1 telephoned and informed him that he would come to his house even if it was late in the night on that day. According to P.W.1, A1 and A2 heard this information. It is not clear as to how A1 and A2 would have heard what was said by D1 on the telephone as, at best, they could have only heard P.W.1's side of the conversation with D1. P.W.1 did not say that he repeated within the earshot of A1 and A2 that D1 was proposing to visit him on that night. This tenuous link sought to be established by the prosecution may, at best, point the needle of suspicion towards A1 and A2 and no more. Further, the discrepancies between the versions of P.W.1 and P.Ws.16 & 17, the police officers, as to receipt of Ex.P1 and recording of the statement of P.W.1 by P.W.17, give scope to suspect manipulation of the investigation. However, when the case against A1 and A2 rests solely on circumstantial evidence, the prosecution must establish an unbroken chain of events unerringly pointing to their guilt.

Sri P.Prabhakar Reddy, learned counsel, placed reliance on **PADALA VEERA REDDY V/s. STATE OF A.P.**², wherein the Supreme Court pointed out that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

² AIR 1990 SC 79

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with its innocence.

He would also place reliance on ***DHAN RAJ ALIAS DHAND V/s. STATE OF HARYANA***³, wherein the Supreme Court observed to the effect that a Court must examine the evidence in its entirety in a case of circumstantial evidence and ensure that the only inference that can be drawn from such evidence is the guilt of the accused and if more than one inference could be drawn, then the accused must be given the benefit doubt, as it is not the job of the Court to assume and only when guilt of the accused is proved beyond reasonable doubt, then it would be fair to record conviction.

Though the learned Public Prosecutor placed reliance on ***VIKRAM SINGH V/s. STATE OF PUNJAB***⁴, it is relevant to note that the electronic evidence in the said case was a tape-recorded conversation, the original of which was produced. In such circumstances, the Supreme Court observed that as the tape-recorded conversation was not secondary evidence which required a certificate under Section 65-B of the Indian Evidence Act, 1872, being the original cassette by which the ransom call was tape-recorded, there could be no dispute as to its admission, as only secondary evidence of an electronic record would require a certificate as contemplated by Section 65-B of the Indian Evidence Act, 1872.

In the present case, the call details information furnished by BSNL and AIRTEL do not partake the character of primary evidence.

³ (2014) 6 SCC 745

⁴ AIR 2017 SC 3227

Exs.P30 and 31 are printouts of the call details of the two cell phone numbers in question. These exhibits therefore qualify as secondary evidence and production of a certificate under Section 65-B of the Indian Evidence Act, 1872, is mandatory in the light of **ANVAR P.V.**¹

Given the aforesaid legal position and as per the observations in **HANUMANT GOVIND NARGUNDKAR V. STATE OF M.P.**⁵, the circumstances from which the conclusion of guilt is to be drawn should be consistent only with the hypothesis of the guilt of the accused and should be so conclusive as to exclude every hypothesis but the one proposed to be proved. This principle was affirmed and applied by the Supreme Court in **MAJENDERAN LANGESWARAN V/s. STATE (NCT OF DELHI)**⁶ and **VIJAY SHANKAR V/s. STATE OF HARYANA**⁷. In the present case, except for the fact that the prosecution established that the death of D1 and D2 was undoubtedly homicidal in nature, no clinching proof was brought in to draw the one and only conclusion that A1 and A2 alone were responsible therefor. The recoveries made by the police of case properties warrant no consideration under Section 27 of the Indian Evidence Act, 1872, in the light of both the recovery panchanama witnesses (P.Ws.11 and 12) turning hostile.

That apart, the Forensic Science Laboratory did not detect any blood on the iron rods (M.Os.4 and 7) despite D2, who was alleged to have been killed with them, having suffered as many as five injuries, of which three were lacerated wounds. Further, the other case properties, which were found with blood, in terms of Ex.P29 report furnished by the Andhra Pradesh Forensic Science Laboratory, are of

⁵ AIR 1952 SC 343

⁶ (2013) 7 SCC 192

⁷ (2015) 12 SCC 644

no significance as there is no correlation of the blood group 'A' found thereon with either A1 and A2 or D1 and D2. In the absence of such correlation, mere mention of the blood group in Ex.P29 in relation to the blood stains found on the material objects yields no acceptable conclusion.

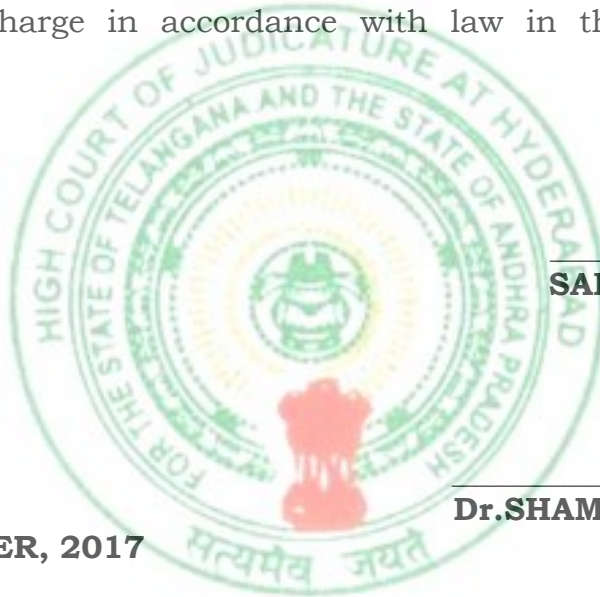
It is high time that Forensic Science Laboratories which undertake examination and testing of material objects in criminal cases strive to correlate the blood stains found or detected on such material objects with either the blood of the accused or that of the deceased. In most cases, it is distressing to note that no endeavour is made to even identify the blood groups of the deceased or an injured accused. The post-mortem examination report, which is usually a prepared proforma, does not even contain a column in relation to the blood group of the deceased. It is high time that the police and the forensic authorities take note of these lapses and lacunae in investigative processes.

On the above analysis, given the fact that Exs.P30 and P31 call details information could not have been taken into consideration as the same were inadmissible in evidence, the prosecution, at best, only established that the needle of suspicion turned towards A1 and A2 and no more. It is well settled that suspicion, however strong, cannot take the place of legal proof and no irresistible conclusion could therefore be drawn that A1 and A2 alone were responsible for the homicidal death of D1 and D2. Serious and strong suspicion against them would not be sufficient in itself to establish a complete chain of circumstances to incriminate them. (See **DASARI SIVA PRASAD REDDY V/s. PUBLIC PROSECUTOR, HIGH COURT OF A.P.**⁸).

⁸ (2004) 11 SCC 282

The conviction and sentence visited upon A1 and A2 by the Sessions Court therefore cannot be sustained.

The appeal is accordingly allowed setting aside the conviction of A1 and A2 by the learned V Additional Sessions Judge (III Fast Track Court), Nalgonda at Miryalguda, in Sessions Case No.544 of 2009 and the consequential sentences imposed upon them. Fine amounts, if any, paid by them shall be refunded. As A1 and A2 were enlarged on conditional bail pending this appeal, they shall present themselves before the Superintendent of Jails, Central Jail, Charlapally, Ranga Reddy District, for completion of due formalities for their discharge in accordance with law in the light of their acquittal.



SANJAY KUMAR,J

Dr.SHAMEEM AKTHER,J

1st SEPTEMBER, 2017

PGS/Svv