

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

CRIMINAL APPEAL No.240 OF 2011

Between:

Annepu Prasadarao, S/o.Chittibabu,
Aged about 30 years, R/o.Guttavalli
Village, Burja Mandal,
Srikakulam District.

Appellant.

And

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of Judicature at
Hyderabad.

Respondent.

Date of judgment pronounced

:

07-09-2017.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

1. Whether Reporters of Local newspapers
May be allowed to see the judgment?

Yes/No

2. Whether the copy of judgment may
be marked to Law Reporters/Journals?

Yes/No

3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

AND

***THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

+ CRIMINAL APPEAL No.240 OF 2011

%Dated: 07-09-2017

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Respondent.

! Counsel for the Appellant : Smt. A.Gayathri Reddy.

**^ Counsel for Respondent. : Sri.Posani Venkateswarlu.
{Public Prosecutor (A.P.)}**

< GIST :

> HEAD NOTE :

? Cases referred :

1. AIR 1984 SC 1622
2. AIR 2004 SC 4383
3. 2014 (2) ACR 1233 (SC)

THIS COURT MADE THE FOLLOWING:

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CRIMINAL APPEAL No.240 OF 2011

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

1. This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'the Cr.P.C.') questioning the judgment dated 28.02.2011, passed in Sessions Case No.205 of 2008 by the II Additional District and Sessions Judge (Fast Track Court), Srikakulam (for brevity, 'the trial Court'), whereby the trial Court convicted the appellant-accused under Section 235(2) Cr.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- (Rupees five thousand only), in default, to suffer simple imprisonment for two (2) months for the offence under Section 302 of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.'), to undergo rigorous imprisonment for a period of one (1) year and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for one (1) month for the offence under Section 404 I.P.C. and also to undergo rigorous imprisonment for a period of three (3) years and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for a period of two (2) months for the offence under Section 201 I.P.C. and directed that the substantive sentence of imprisonment imposed under Sections 404 and 201 I.P.C. shall run concurrently with life imprisonment for offence

under Section 302 I.P.C. and held that the appellant is entitled to the benefit of set off under Section 428 Cr.P.C.

2. Heard Smt. A.Gayathri Reddy, learned counsel appearing for the appellant-accused, and Sri. Posani Venkateswarlu, learned Public Prosecutor, appearing for the respondent-State (A.P.).

3. The case of the prosecution, in brief, is as follows: P.W.13 P.M.Naidu, Inspector of Police, Amadalavalasa circle, laid charge sheet against the appellant, who was already married to L.W.31 Annepu Ammaji and having a daughter through her, alleging that he lured a college girl by name Modalavalasa Nalini (Hereinafter referred to as 'the deceased'), who was studying Intermediate in Government Junior College for Girls in Srikakulam and used to travel by his bus, on the pretext of love, while he was working as a conductor in Sri Rama Krishna private bus during the years 2004-05. Subsequently, the deceased eloped with the appellant twice in the year 2005; later, her parents agreed for the proposal of deceased to perform her marriage with the appellant, but dropped their proposal when they came to know that the appellant was already married. Again, in the year 2006, at the time of Ugadi festival, the deceased eloped with the appellant; vexed with her attitude, parents of the deceased kept quiet. Thereafter, appellant started to live with the deceased and setup separate residence with her, in various houses at Visakhapatnam and Srikakulam, representing to his neighbours the name of deceased as Bujji

and Pavani *etc.*, subsequently, when the deceased got pregnant and started pressuring the appellant to marry her and make their affair become public, then the appellant hatched a plan to kill her and accordingly, on 03.05.2007, took her to the fields of Guttavalli village and at about 09:00 p.m. when they reached near sugarcane crusher of L.W.4 – Pulasari Narasimhappadu, killed Nalini by strangulation with a nylon thread (M.O.1), removed pair of silver toe rings (M.O.5) of the deceased, and to cause disappearance of the evidence, kept her dead body into jaggery pit, by putting sugarcane dried waste material and bamboo sticks, set fire to the dead body in that pit. On 04.05.2007 at 10:30 a.m. based on the report of P.W.1, village servant, a case in Crime No.16 of 2007 for the offences under Sections 302 and 201 I.P.C. was registered by the Burja Police Station and during the course of investigation, the culpability of appellant came to light, arrested the appellant and on his confession, M.O.1 – nylon thread, used to kill the deceased, and M.O.5 – pair of silver toe rings, worn by the deceased, and other articles were seized from the appellant.

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 15 and marked Exs.P.1 to P.28 and M.Os.1 to 9. The appellant, when put to examination under Section 313 Cr.P.C., did not adduce any evidence to defend his case. The trial Court, on appreciation of the entire evidence on record, convicted and sentenced the appellant as stated above.

5. Learned counsel for the appellant would submit that the appellant was working as conductor in a private bus; the deceased used to travel by R.T.C. bus and there was no occasion for them to come into contact. The Court below failed to note Ex.P-4 photo given by P.W.6, father of the deceased, to the police stating that it shows the deceased and the appellant. Appellant did not live with the deceased at Manguvarithota and later at Adivarampeta areas in Srikakulam. P.Ws.9 and 10, owners of the houses, denied the same. The mediators, in whose presence M.O.5 – pair of silver toe rings of the deceased were said to have been seized did not support the case of prosecution. The dead body, found in the jaggery pit by P.Ws.2 and 3, has not been identified and no D.N.A. test was conducted to establish the identity of the dead body. The case of the prosecution is based on the circumstantial evidence and the evidence does not clinchingly establish the guilty of the appellant. The prosecution miserably failed to connect the appellant with regard to finding of the dead body and as such the trial Court erred in convicting and sentencing the appellant for the offences under Sections 302, 404 and 201 I.P.C. and ultimately prayed to allow the Appeal by setting aside the conviction and sentence.

6. On the other hand, learned Public Prosecutor appearing for the respondent-State (A.P.) would contend that P.W.7, neighbour, clearly and categorically deposed that the appellant and deceased lived together at various places in Srikakulam and

he saw them number of times. P.W.8 also stated that the appellant and deceased were tenants in his house for five months and later they vacated his house. He identified the girl shown in Ex.P-4 photo as that of the girl resided in his house. There is also the evidence of other witnesses and the trial Court has rightly convicted and sentenced the appellant, as the circumstantial evidence clinchingly established the guilty of the appellant. There is nothing to take a different view and ultimately prayed to dismiss the Appeal by confirming the impugned judgment.

7. In view of the rival contentions put forth, the following **points** have come up for determination:

- 1) Whether dead body in question belongs to Modalavalasa Nalini (daughter of P.W.6 M. Ananda Rao)?
- 2) Whether the death is a homicidal?
- 3) Whether the appellant had caused the death of Modalavalasa Nalini (deceased)?
- 4) Whether the conviction and sentence recorded by the trial Court is sustainable?

8. **POINT Nos.1 to 4:** The specific case of the prosecution is that the appellant, who was working as a conductor in a private bus, developed intimacy with the deceased when she used to travel by his bus and thereafter the deceased, when she was studying Intermediate II year in 2006-07, got eloped with the

appellant and started living with him. Subsequently, she got pregnancy through the appellant. On 03.05.2007 at 09:00 p.m. the appellant committed the murder of Nalini at sugarcane crusher of L.W.4 Pulasari Narasimhappadu at Guttavalli village by strangulation, put the dead body in a jaggery pit and by putting the dried sugarcane waste and bamboo sticks, set fire to the dead body to escape from the legal punishment. To prove the accusation, the prosecution examined P.Ws.1 to 15 and got marked Exs.P-1 to P-28 and M.Os.1 to 9.

9. The evidence of P.Ws.2 and 3 reveals that on 04.05.2007 at about 07:00 a.m. they went to the sugarcane field, and found a dead body in the jaggery pit, informed the same to P.W.1, village servant, who lodged a report to the police under Ex.P-1. P.Ws.4 and 5 have deposed about the conduct of scene of offence panchanama and inquest panchanama over the dead body of deceased. P.W.6 is the father of the deceased. P.W.7 is the son of the friend of P.W.6. The evidence of P.W.6 is that his daughter Modalavalasa Nalini while studying Intermediate in Government Women's College at Srikakulam in the year 2006 used to go to college from their village *i.e.*, Gattudmudipeta daily by bus. When she was studying Intermediate II year, she eloped with the appellant twice; they made efforts and brought her back to their house; after 15 days, Modalavalasa Nalini again left the house. Having vexed with her attitude, P.W.6 did not make any efforts to get her back. After six months, he came to know through P.W.7 that his daughter was living with the appellant at

Manguvarithota in Srikakulam town. P.W.7 also informed him that he met Nalini. Thereafter, police came to his house and informed him that his daughter died.

10. The evidence of P.W.7 reveals that his father and P.W.6 are friends and he knew Nalini from his childhood. Nalini left her house twice, P.W.6 and others searched for her. Thereafter, they were informed that the Nalini was living with the appellant, who was conductor of a private bus. Initially, the parents of Nalini did not agree for her marriage with the appellant later they accepted the same. Thereafter, when the first marriage of appellant came to light, P.W.6 told the deceased that it is not proper to marry the appellant. Some time thereafter the deceased left her house. Vexed with her attitude, P.W.6 did not search for her. Appellant met P.W.7 at his school in Srikakulam and took him to his house at Manguvaritotao and shown him Nalini there, then she enquired about her parents, thereafter the appellant took P.W.7 to his house two or three times. When P.W.7 went to the house of the appellant after some time, he did not found appellant there. Thereafter, appellant met P.W.7 and informed him that he vacated the house as it was known to many of the villagers.

11. P.Ws.9 and 10 are the owners of the houses where the appellant and deceased said to have resided together at Manguvarithota area in Srikakulam and they did not support the case of prosecution, they turned hostile.

12. P.W.8 is the owner of the house where the appellant and deceased resided together at Adivarampeta area in Srikakulam town. The evidence of P.W.8 is that during the year 2006, appellant, disclosing his name as Prasad, took one of his houses on a monthly rent of Rs.500/- and resided with a girl by name Bujji. When a photo *i.e.*, Ex.P-4 was shown to him, he identified the girl appearing in the photo as that of the girl resided with the appellant in his house but he did not identify the man appearing in Ex.P-4 photo.

13. As per the prosecution case, Ex.P-4 photo was said to have been given to the Police by P.W.6, father of the deceased, stating that it belongs to Nalini and her husband. P.W.13, the Investigating Officer, also did not identify the man appearing in the photo. There is also evidence of P.W.7 that there was a quarrel between the wife of P.W.6 and a neighbour by name Punyavathi. In that quarrel, Punyavathi stated that the daughter of P.W.6 eloped with somebody and was killed and kept in a jaggery pit. When he heard the same, he tried to contact the appellant, and then the appellant told him that they were residing near a house at Bhashyam School in Srikakulam and asked him alone to come but due to fear, he along with another went to the address given by the appellant and found that it was wrong address. It is pertinent to state that wife of P.W.6 was not examined to prove the utterances made by Punyavathi and the presence of P.W.7 at that time. Further, there is no evidence on record to prove that P.W.6 or his wife or any of his relatives

made an attempt to find out the veracity of the statement made by Punyavathi. One month after the said quarrel, Police came and informed P.W.6 that his daughter is dead. There is no evidence on record how Punyavathi came to know about the death of Nalini in this case. P.W.7 only made efforts to search for Nalini and the appellant misled him.

14. The prosecution has also relied on the evidence of P.Ws.11 and 12 to prove the confession and recovery of material objects. P.Ws.11 and 12 deposed that the appellant confessed the commission of the offences and took them to the jaggery pit, where the dead body was found but they did not support that M.O.1 – nylon thread and M.O.5 - pair of silver toe rings, were recovered pursuant to the confession made by the appellant. There is inconsistency in the evidence of P.Ws.11 and 12.

15. The evidence of P.W.13, Inspector of Police, Amadalavalasa Circle, reveals that he conducted investigation in this case *i.e.*, conduct of scene of offence panchanama Ex.P-3 and inquest panchanama Ex.P-2 over the dead body of deceased and seizure of M.Os.1 to 9 and also deposed that M.O.5 – pair of silver toe rings are recovered pursuant to the confession made by the appellant.

16. The evidence of P.W.14, medical officer, reveals that he conducted autopsy over the dead body in question; the dead body was badly charred and tissues were dry and skeleton fractures were found, upper part of the skull was completely

burnt, both upper limbs were completely burnt and both lower limbs up to knee joint were completely burnt and absent. Maggots were present all over the body. Due to gross destruction of the body, age of the body could not be ascertained and opinion about rigor mortis putrefaction could not be given. On internal examination, he found a dead foetus of 4 to 5 months gestation and based on it he opined that the deceased was 4 or 5 months pregnant at the time of her death and that the death, due to severe burns, was caused 24 to 48 hours prior to post-mortem examination.

17. The evidence of P.W.15, Sub-Inspector of Police, Burja Police Station, reveals that he issued Ex.P-1 F.I.R. on receipt of report from P.W.1 and thereafter send the same to all the concerned. Ex.P-28 is the F.I.R. sent to the Magistrate.

18. The trial Court on relying on the evidence of P.Ws.6 to 8 and P.W.13 - investigation officer, and other oral and documentary evidence held that the appellant mislead P.W.7 having committed the heinous offence in this case and ultimately concluded that the appellant caused the death of Nalini, convicted and sentenced him as stated above. Admittedly, the entire case of the prosecution is based on the circumstantial evidence. At this stage, it is apt to refer the decision of the Hon'ble Supreme Court in ***Sharad Birdhichand Sarda Vs. State of Maharashtra***¹, wherein it was held as hereunder:

¹ AIR 1984 SC 1622

"When a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
- (iii) 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
- (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

11. The conditions required to prove the guilty of the accused based on circumstantial evidence are enunciated in the following cases also:

1. Hanumant Govind Nargundkar Vs. State of M.P.:

AIR 1952 SC 3442.

2. C.Chenga Reddy Vs. State of A.P.: (1996) 10 SCC 193."

19. P.W.7 is the neighbour and was a school going boy aged 14 years at the time of the death of deceased. Father of P.W.7 and P.W.6 are friends; he had narrated number of instances with regard to his going to the house of appellant and finding the deceased and appellant living together. He also deposed that two or three times the appellant visited the house of PW.6 but the evidence of P.W.6 did not reveal any such visits by the appellant to his house. Recovery of material objects was only spoken by the investigating officer. None of the independent witnesses have deposed that M.O.5 – pair of silver toe rings were recovered pursuant to the confession made by the appellant. P.W.8, who was the owner of the house at Adivarempeta in Srikakulam, where the appellant and deceased said to have resided together, did not give the dates or period of their stay in his house. Admittedly, none of the family members of deceased have seen the dead body of deceased and the appellant and deceased living together. There is no evidence on record from which date Nalini is missing. No D.N.A. test was conducted and there is no scientific examination to identify the dead body of deceased. The evidence of P.W.14, medical officer, reveals that as on the date of death, the deceased was four or five months pregnant and her

death was caused due to burns. Since the dead body is found in a jaggery pit, certainly it is a suspicious death. Ordinarily dead bodies are not disposed off in that manner. There is also evidence of P.W.14, medical officer, and other witnesses that the dead body was totally burnt. Therefore, it can be safely concluded that the death in question is homicidal. The man appearing in Ex.P-4 photo is distinct from the appellant. PW.13 – Investigating Officer has also conceded the same. As per the evidence of P.W.6, his daughter Nalini married the man appearing in Ex.P-4 photo. One photo of the appellant is marked as Ex.P-16 through P.W.13 – investigating officer.

20. The evidence of P.W.7 establishes that the appellant and Nalini lived together. There is also the evidence of P.W.8 that the appellant and Nalini were tenants in his house for about five months but he did not state the period or the dates, when the appellant and Nalini resided in his house. As per the case of prosecution, the house of P.W.8 is situated at Adivarampeta in Srikakulam. It is the further case of prosecution that the appellant and Nalini resided together at Manguvarithota in Srikakulam. There is no specific evidence when Nalini disappeared from the company of the appellant. A dead body of unknown woman was found on 04.05.2007 near the sugarcane crusher of L.W.4 – Pulasari Narasimhappadu, situated in Guttavalli village. Nobody has seen the appellant taking the deceased to that place on 03.05.2007. P.W.13 – investigating officer absolutely failed to collect any piece of evidence with regard to Nalini being last

found in the company of the appellant. There are material omissions and improvements in the evidence of P.W.7. P.W.6 did not see the appellant and Nalini living together at any point of time. There is also evidence that after eloping, Nalini used to visit her parents house now and then. At this stage, it is apt to refer the decision rendered by the Hon'ble Supreme Court in ***Dasari Siva Prasad Reddy Vs. The Public Prosecutor, High Court of A.P.***², wherein it was held as follows:

“24. A strong suspicion, no doubt, exists against the appellant but such suspicion cannot be the basis of conviction, going by the standard of proof required in a criminal case. The distance between 'may be true' and 'must be true' shall be fully covered by reliable evidence adduced by the prosecution. But, that has not been done in the instant case. If, coupled with the circumstance unfolded by the evidence of PW3, the evidence of PW4 had believed, it would have gone a long way in substantiating the prosecution case. But, in the instant case, apart from the fact that the appellant was at his house on the morning of 20th April 1996, there is no other circumstance whatsoever which connects the accused to the crime, though serious suspicion looms large about his involvement. The view taken by the trial Court that the prosecution could not establish the complete chain of circumstances incriminating the accused is a reasonably possible view and the High Court should not have disturbed the same. Having regard to the state of available evidence, the benefit of doubt given to the accused by the trial Court warranted no interference by the High Court.”

² AIR 2004 SC 4383

21. Admittedly, there is no direct evidence to the alleged offence; the whole case is based on circumstantial evidence. The circumstantial evidence must satisfy the circumstances from which the inference of guilt sought to be drawn, must be cogently and firmly establish the guilt of the appellant. The circumstances should be of definite tendency unerringly pointing towards the guilt of the appellant. The circumstances, taken cumulatively, should form a chain so as to complete that there is no escape from the conclusion *i.e.*, within all human probability, the crime was committed by the appellant 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 guilt of the appellant and such evidence should not only be consistent with the guilt of the appellant but should be inconsistent with his innocence. The facts so established should be consistent only with the hypothesis of the guilt of the appellant, that is to say, they should not be explainable on any other hypothesis except that the appellant had caused the death of Nalini.

22. The evidence adduced on behalf of the prosecution only establishes that the appellant and Nalini resided together. Admittedly, there is disappearance of Nalini. There is no identification of the subject dead body. Though F.S.L. report is placed before this Court, no D.N.A. test was conducted, neither the doctor nor the investigating officer made efforts to identify the subject dead body. There is no legally acceptable evidence to

believe that the dead body in question belongs to Nalini. From the circumstantial evidence placed on record, an inference of guilt of the appellant is not cogently and firmly established. The circumstantial evidence is not of a definite tendency unerringly pointing towards the guilt of the appellant. The cumulative effect of circumstantial evidence does not conclude that within all human probability, the death of Nalini was caused by the appellant and none else. In the instant case, the chain of events leading to the guilty of appellant is incomplete and capable of explaining other hypothesis than that of guilty of the appellant. The entire evidence placed on record is inconsistent with the guilt of the appellant and leads to a suspicion that the appellant may have caused the death of Nalini. The required standard of proof in a criminal case is proving the guilt of the accused beyond all reasonable doubt. The distance between '*may be true*' and '*must be true*' shall be fully covered by reliable evidence adduced on behalf of the prosecution; that has not been done in the instant case. The evidence of P.Ws.7 and 8 raises a suspicion against the guilt of the appellant in causing the death of Nalini. There is no other direct evidence to connect the appellant to the death in question. The trial Court has not appreciated the oral and documentary evidence available on record in correct perspective; the findings of the trial Court are contrary to facts of the case and the evidence on record. The trial Court ought to have given the benefit of doubt to the appellant. The conviction and sentence recorded by the trial Court for the offences under Sections 302,

404 and 201 I.P.C. is not sustainable. The appellant is entitled for acquittal of the charges framed against him under the aforesaid Sections.

23. In this case, Modalavalasa Nalini is said to be the deceased. The DNA sample from the subject dead body was not collected and compared with the siblings or parents of Modalavalasa Nalini to identify the dead body. The whole prosecution case is based on circumstantial evidence. So, the identification of dead body is essential to connect the suspect to the death in question. A precious life is lost, that too a woman having five months pregnancy. Absolutely there is no evidence with regard to the pregnancy of the subject dead body. The investigation in this case was conducted in a casual manner. No required efforts were made to identify the dead body and also collected the evidence with regard to the commission of the offence in this case. Every acquittal in a criminal case should be understood as a failure of the justice delivery system and in serving the cause of justice. It is apt to refer the decision of the Hon'ble Supreme Court in ***State of Gujarat Vs. Kishanbhai etc.***³, wherein a direction was given to the Home Department of every State Government to formulate a procedure for taking action against all erring investigating officers and equip the investigating officers with regard to techniques and skills of investigation from time to time. Paragraphs 19 to 23 of the decision are extracted hereunder:

³ 2014(2) ACR 1233 (SC)

"19. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused.

20. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10

glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

22. A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State

Governments and Union Territories, within one week. All the concerned Home Secretaries, shall ensure compliance of the directions recorded above. The records of consideration, in compliance with the above direction, shall be maintained.

23. We hope and trust the Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law."

24. In view of the aforesaid judgment of the Hon'ble Supreme Court in ***Kishanbhai's*** case, it is essential to direct that where there is an acquittala due to the laches on the part of the investigating officers, the responsible officers are required to be identified and suitable action be recommended against them. The erring investigating officers must suffer the consequences of their laches by appropriate departmental action. Taking into consideration the serious laches on the part of the investigating officers in this case and in view of the aforesaid decision of the Hon'ble Supreme Court in ***Kishanbhai's*** case, we direct the Director General of Police of both the States of Telangana and Andhra Pradesh to take action against the investigating officers in the instant case. It has been noticed that in some of the cases, the Medical Officers were not properly collecting the blood samples, soft tissues, hard tissues, hairs, etc., from the dead body and preserving the same to send them for DNA examination along with the admitted blood samples of the so-called relatives. The investigating officers shall send the aforementioned material to a Forensic Science Laboratory, where there are facilities to examine the DNA and submit reports.

25. The Registry is directed to transmit the copies of this judgment to the Home Secretaries and Directors General of Police of both the States of Telangana and Andhra Pradesh for compliance.

26. In the result, the appellant/accused is acquitted of the charges framed against him under Sections 302, 404 and 201 I.P.C. and consequently the conviction and sentence recorded against the appellant for the aforesaid offences by the trial Court in Sessions Case No.205 of 2008, dated 28.02.2011, is set-aside. The Criminal Appeal is allowed accordingly. However, as the appellant is on bail *vide* order of this Court in Crl.A.M.P. No.1792 of 2016, dated 16.11.2016, the appellant is directed to appear before the Superintendent, Central Prison, Visakhapatnam, forthwith, to set him free as per the established procedure, if he is not required in any other case.

27. As a sequel, miscellaneous petitions, if any, pending in this Appeal shall stand closed.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 07-09-2017
Dsh

HON'BLE SRI JUSTICE SANJAY KUMAR

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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CRIMINAL APPEAL No.240 OF 2011

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 07-09-2017

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