

THE HON' BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 454 of 2011

JUDGMENT: (per Hon' ble Sri Justice Gudiseva Shyam Prasad)

This appeal is arising out of the judgment dated 23.03.2011 in Sessions Case No.414 of 2007 on the file of IV Additional Sessions Judge (FTC), Warangal. By the impugned judgment, the learned Sessions Judge convicted the appellant/accused No.1 for the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life, and also to pay a fine of Rs.1,000/-; in default of payment of fine, to undergo Simple Imprisonment for six months. Accused No.1 was also convicted for the offence punishable under Section 364 IPC and was sentenced to undergo Rigorous Imprisonment for 7 years, and to pay a fine of Rs.500/-; in default of payment of fine, to undergo Simple Imprisonment for three months. Accused No.1 was also convicted for the offence punishable under Section 201 IPC, and was sentenced to undergo Rigorous Imprisonment for 3 years, and to pay a fine of Rs.500/-; in default of payment of fine, to undergo Simple Imprisonment for three months.

2. The case of the prosecution, in brief, is that A-3 is the son of A-4 and one Qumaruddin Ahmed. A-1 is the maternal uncle of A-3 and own brother of A-4. A-2, 5 and 6 are the friends of A-1 and they are residents of Hyderabad. PW-1 and PW-2 are the mother and father of the deceased. PW-2 and the father of A-3 are own brothers and they have jointly constructed a house at Jangaon. Later, PW-2 with his own funds constructed first floor on the said building. A-4 was living in Saudi Arabia with her husband and other children leaving A-3 in India. About three years prior to the incident, A-4 shifted to Jangaon. There were some misunderstandings between A-4 and PW-1 since a long time and they used to quarrel over petty reasons. PW-1 being the elder, she always maintained supremacy over A-4, which was not to the liking of A-4. Since the month of February 2006, the families got separated and A-4 with her children was residing in the upstairs portion constructed by PW-2. In the month of June 2006, PW-1 and PW-2 returned from Saudi Arabia and found A-4 in their house, upon which PW-1 grew wild and threw out the belongings of A-4 from the house. A-4 got annoyed over the said act of PW-1 and since PW-3, another brother of PW-2, was occupying the jointly constructed house, A-4 was forced to stay in an old dilapidated house in the same premises with her children including A-3. Later, PW-1 and PW-2 joined their children including the deceased in a school and PW-2 left for Saudi

Arabia and since then PW-1 was living in the first floor portion of the building.

PW-1 used to pick up quarrel with A-4 daily on some pretext or the other, harass and insult her on simple issues. Unable to bear the behaviour of PW-1 towards her and having got mentally disturbed, A-4 visited her parents' house at Hyderabad and revealed the harassment and jealousy of PW-1 and requested her brother –Accused No.1, to teach a lesson to PW-1 in this regard. In order to cause mental agony to PW-1, A-1 decided to kidnap her elder son i.e., the deceased, with the help of A-3. A-1 also revealed his plan to his friends i.e., A-2, A-5 and A-6, who also promised to help A-1 in kidnapping the deceased. In pursuance of their common object, on 17-9-2006, A-1, A-2, A-5 and A-6 went to Jangaon in a Omni Van provided by LW-5 on rent. A-2 talked to PW-1 on phone from a public booth installed by LW-12 and told that the father of the deceased i.e, PW-2, sent a parcel to them from Saudi Arabia and asked PW-1 to send the deceased to the telephone booth near a Hotel on Hyderabad to collect the parcel. PW-1 got confirmed with PW-2 over phone that no parcel was sent and refused to send the deceased. Later, A-1 talked to A-3 and asked him to convince and bring the deceased to Hyderabad road. On the same day at about 8.00 p.m., A-3 took the deceased near St. Mary's High School, Jangaon (Hyderabad

road) on the pretext of purchasing clutch wire. According to their plan, A-1 and A-2 sat in the said van and A-5 and A-6 went to A-4 and slapped him questioning about the papers of the two wheeler. On seeing the said incident, the deceased got frightened and escaped from there on his two wheeler, resulting in the failure of the plan of the accused to kidnap the deceased. Since then, PW-1 was suspecting the family of A-4 that they are planning to cause harm to her children.

In the last week of September 2006, A-4 visited the house of A-1 and revealed that PW-1 was continuing her harassment. Upon hearing the same, A-1 told A-4 that he will kill the deceased by bringing him to Hyderabad either kidnapping or luring the deceased and A-4 agreed to the said plan and advised him to take the assistance of A-3 also. A-1 contacted A-3 and asked him to bring the deceased near Aurobindo School, Grain Market Road, Jangaon. On 30-9-2007 at about 1.30 p.m., A-1 talked to A-3 over phone and asked him to bring the deceased to the bazaar without informing anybody. A-3 talked to the deceased and asked him to come to Hyderabad with A-1 to see Hyderabad. On the same day, A-1 and A-2 came to Jangaon on a motor cycle and in the mean time, A-3 motivated the deceased in coming out of the house without informing anybody. On confirmation, A-1 sent A-2 in a taxi and asked him to go to Hyderabad and wait for him and the deceased at his shop. Later, at

about 4.00 p.m., A-1 picked up the deceased near Aurobindo School, Jangaon and took him on his motor cycle to Hyderabad, met A-2 at his shop and from there A-1 and A-2 took the deceased to the rented house of A-1 situated in Andhe Langdon ki basti near Fatima Nagar, Hyderabad, where A-1 provided food and all of them had their supper. A-1 insisted the deceased to stay with him so that he can see the entire Hyderabad city but the deceased refused and requested A-1 to take him back to Jangaon and drop him at his house or that he will report the same to his parents. A-1 promised to take the deceased back to Jangaon on the following day and went to his house leaving the deceased and a-2 at the rented house. On 1-10-2006, after sahar time (Ramzaan breakfast time), A-1 came to the deceased on a scooter and told him that he will take him to Jangaon. A-1 told A-2 that they will take the deceased to the outskirts of the city and kill him and A-2 had also agreed to participate in the commission of the offence. Both A-1 and A-2 told the deceased that they were taking him to Jangaon and took the deceased on the scooter towards Chevella side which was witnessed by LW-18. At around 7 or 8 a.m., having reached a place near Chevella village and finding some herbs and shrubs on either side of the road, A-1 chose to kill the deceased and stopped the scooter on the pretext that the engine of the scooter got heated up. All the three got down from the scooter. A-1 took a small bed sheet from the

dickey of the scooter and gave it to A-2 and he also took out a thin green colour electric wire from the dickey of the scooter and kept it in his pant pocket. Both A-1 and A-2 took the deceased to a distance of 200 yards in the bushes where A-2 spread the bed sheet on ground and sat on it along with the deceased. A-1 came from behind and strangled the deceased while A-2 caught hold of the deceased and resisted his movements, due to which the deceased died on the spot.

A-1 removed the watch of the deceased from his wrist and gave it to A-2. He also removed the amulet of the deceased and threw it in the bushes near the scene of offence. On 2-10-2006 and 5-10-2006 at the instance of A-1, A-2 talked to the house of the deceased over phone under the guise of being the kidnappers of the deceased and demanded Rs.20 lakhs for his release with an intention to divert the attention of the Police and the parents of the deceased from A-3 and A-4 and to make believe that the deceased was kidnapped for ransom. On 9-10-2006, A-1 got rang up to the house of the deceased by A-2 and informed that he had booked a bus ticket to Bangalore and asked them to bring money and that they will have the deceased on the way.

On coming to know that police is calling A-2 and A-3 and also searching for him and having got afraid of the family of the deceased, A-1 called on LW-13 on 18-10-2006 and made an extra judicial confession about the commission of the offence. LW-13 advised A-1

to surrender before the police. On 19-10-2006 at 06.00 hours, A-1 along with A-3 surrendered themselves at Jangaon Police Station. PW-17, the C.I. of Police, recorded the confessional statements of A-1 and A-3 separately in the presence of the panchas – PW-13 and LW-24. PW-17 raided the house of A-4 and apprehended her. During interrogation, PW-17 seized the Indian Passport of A-4 in the presence of the above panchas. In pursuance of his confession, A-1 led PW-17 and the mediators and other staff to the scene of offence where the amulet of the deceased was recovered under the cover of a panchanama.

3. Originally, the Police, Jangaon Police Station, registered a case in Crime No.178 of 2006 on the complaint of PW.1 under the Head of 'boy missing' on 01.10.2006. The dead body of the deceased was traced on 3-10-2006 on the complaint given by PW-6 which was registered as Cr.No.229/2006 of P.S. Chevella, under Section 174 Cr.P.C. and investigation was taken up by the S.I. of Police, Chevella – PW-14. After conducting inquest, PW-14 sent the dead body of the deceased to the Government Hospital, Chevella for post mortem examination. PW-16 – Dr.G.Srinivas Reddy, Civil Assistant Surgeon, conducted autopsy over the dead body of the deceased and opined that the cause of death of the deceased was due to cardio respiratory arrest due to strangulation with a wire. During the inquest, PW-14

seized the clothes etc., of the deceased and also got the dead body of the deceased photographed through PW-10.

4. During the course of investigation, PW-17 visited the Chevella Police Station and learnt that a case in Cr.No.229/2006 was registered under Section 174 Cr.P.C. and collected the documents relating to the said crime and photographs of the deceased. Later, A-1 led the police and the mediators to the shop of A-2 at Falaknama, Hyderabad. PW-17 apprehended A-2 and interrogated him in the presence of the above mediators and drafted his confession and seized the wrist watch of the deceased from his possession. Later, A-1 led the police and panchas to house bearing No.19-3-1077, Safdarjuna colony, Hyderabad, where PW-17 seized the Indian Passport of A-1 at his instance. A-1 and A-2 led the police and the mediators to their workplace where PW-17 apprehended A-5 and A-6. PW-17 also recorded the statements of PW-4 and PW-5. After returning to Jangaon, PW-17 secured the presence of PW-2. When the photographs, clothes, amulet and wrist watch were shown to him, PW-2 identified the same as belonging to his missing son. PW-17 conducted identification of the clothes and other articles of the deceased under Ex.P-4 panchanama and altered the Section of Law and accordingly filed a Memo into the Court for the offences under Section 302, 364, 201 read with 511, 34 IPC. On completion of

investigation, PW-17 filed a charge sheet against Accused Nos.1 to 4 alleging that they committed the offence under Section 302, 364, 201 r/w 34 IPC, and the accused Nos.1, 3, 5 and 6 have committed offences punishable under Section 364 r/w. Sections 34 and 511 IPC.

5. The learned Judicial Magistrate of First Class, Jangaon, has taken the cognisance of offences on receipt of the charge sheet and registered the case in P.R.C. No.17 of 2007 and as the offences under Sections 302, 364, 201 IPC are exclusively triable by the Court of Sessions, committed the case to the Court of Sessions under Section 209 Cr.P.C.

6. Basing on the material on record, the learned Sessions Judge framed charges under Sections 302, 364 and 201 r/w 34 IPC against the accused Nos.1 to 6, read over the contents of the charges and explained to them, which they denied, and claimed to be tried.

7. During the trial, the prosecution has examined PW-1 to PW-17 and marked Exs.P-1 to P-21. Exs.D1 and D2 were marked in the evidence of PWs.2 and 8, respectively, during the cross examination of these witnesses by the counsel for the accused. After completion of the recording of evidence, the appellants/accused were examined under Section 313 Cr.P.C., in respect of the incriminating material against them and they the same. On consideration of the

evidence on record, the trial Court has convicted the appellant/accused No.1 for the offences punishable under Section 302, 364 and 201 IPC and sentenced him as aforesaid and acquitted Accused Nos.2 to 6 of the charges framed against them. Aggrieved by the conviction and sentence passed against him, the appellant/accused No.1 has preferred this criminal appeal.

8. Learned counsel for the appellant/accused No.1 mainly contended that this is a case based on circumstantial evidence and that the trial Court has convicted accused No.1 on the suspicion that he might have committed the offence. It is argued that in the complaint lodged before the Police by PW1, she expressed suspicion that one Tousif s/o. Mohd. Fasiuddin, accused No.3 and two others might have committed the offence as there were disputes between the complainant and the accused with regard to house property. Learned counsel further argued that no amount of suspicion can take the place of proof and, therefore, the conviction and sentence passed against the accused No.1 basing on suspicion is liable to be set aside.

9. Per contra, the learned Public Prosecutor argued that the trial Court has appreciated the evidence in proper perspective, and has come to the right conclusion and convicted and sentenced the appellant-accused No.1, and the same does not require interference.

10. The Point for consideration is whether the prosecution could prove the guilt of the appellant/accused No.1 beyond reasonable doubt ?

11. This case is based on circumstantial evidence. Therefore, the prosecution has to establish all the links in the chain of circumstances to bring home the guilt of the accused beyond reasonable doubt. The circumstances that appear against the accused No.1 are as follows:

- (i) The motive for commission of the offence was that there were house property disputes between PW.1 and accused No.4.
- (ii) Last seen theory that the appellant/accused No.1 and the deceased were found together by PW-5.
- (iii) The extra-judicial confession made by accused No.3 before PW.8.
- (iv) The recovery of material objects M.Os.6, 7 and 8 at the instance of the appellant/Accused No.1.
- (v) The identification of M.Os.7 and 8, i.e., amulet and wrist watch, of the deceased by PW-2.
- (vi) The identification of dead body of the deceased by PW.1 and PW.2 by seeing the clothes.

12. According to PW1-mother of the deceased, on 30-9-2016, the deceased received a phone call to their landline, and that after answering the said call, he went out stating that he has to give a book to his friend at about 4:30 or 5.00 PM and he did not return home, that she waited for him till 8.00 PM and approached PW.3 informing

him that the deceased boy did not return home, that they searched for him on that night and that on the next day morning i.e., on 1-9-2006 she lodged the complaint. PW-1 deposed that on 02.10.2006, she had received a call from unknown person that her son was kidnapped, that the caller demanded ransom of Rs.20 lakhs, that she informed the same to PW.2 and that on his advice she informed the police on the same day. PW.2 deposed that on 02.10.2006, he received a telephone call from PW.1 that some unknown offenders informed her that they kidnapped the deceased and demanded Rs.20 lakhs. On 05.10.2006, PW-2 also received a telephone call from the same offenders and he informed the same to the police. On 09.10.2006, PW-2 received another call that he should board the bus at Sangeetha Travels at Hyderabad, to Bangalore. PW.3 accompanied PW.1 to the police station for lodging the complaint. He expressed his suspicion against Accused Nos.1, 3 and 4 in the commission of the offence as there were disputes with regard to the house property between PW-1 and the said accused.

13. According to the prosecution, L.W.9-Begari Narsimlu was the first person who saw the dead body of the deceased at the scene of offence, and informed others, and on that information PW.6 Padala Prabhakar has lodged a complaint in Chevella police station, which was registered as a case in Crime No.229 of 2006 by Police, Chevella.

PW.14, the S.I. of Police, Chevella, has conducted the inquest over the dead body of the deceased in the presence of Panch witnesses Uradi Yadaiah and G. Srikanth. The medical officer PW.16 Dr.G. Srinivas Reddy, Civil Assistant Surgeon, Government Hospital, Chevella, had conducted autopsy over the dead body of the deceased and opined that the cause of death was cardio-respiratory arrest due to strangulation. It is the further case of prosecution that Faizal Ahmed (accused No.3) approached Md. Yasim (PW.8) and made confession of commission of the offence. The summary of the alleged confession was that accused No.3's mother was harassed by PW1 and due to that accused No.1 had developed grudge against the deceased who is the son of PWs.1 and 2, and that he telephoned to the deceased and asked him to come to Aurobindo school and accused No.1 would take him to Zoo Park, and accordingly the deceased went to Aurobindo School and from there he was taken away and brought to Hyderabad and that thereafter, on the direction of accused No.4, the deceased was killed. On the confession of accused No.3, PW8 advised accused No.3 to go to police station, along with accused No.1. Accordingly accused No.3 went to police station and made a confession before the police.

14. The prosecution has placed reliance on the extra-judicial confession made by the accused A3 before PW.8. It is the case of the

prosecution that accused No.3 approached PW.8 on 18.10.2006 at Jangaon and made an extra judicial confession that as PW.1 harassed his mother (Accused No.4), accused No.1 developed grudge, kidnapped the deceased and killed him and that PW.8 directed accused No.3 to go to police station along with accused No.1 and inform the same to police. PW.8 has not stated any reasons as to why accused No.3 has chosen to make the alleged extra judicial confession before him. The trial Court observed that the alleged confessional statement of accused No.3 before PW8 was not reduced into writing and that PW.8 did not produce accused No.3 before the police. While disbelieving the alleged confession of Accused No.3, the trial Court also observed that PW-8 had not disclosed the alleged confession of Accused No.3 to PW-1 and PW-2, who are his younger sister and brother-in-law or until he was examined by the Police.

15. In the instant case, the trial Court has convicted accused No.1 by placing reliance on the recovery of material objects M.O.7 (thaayath) and M.O.8 (wrist watch). The burden is on prosecution to prove the recovery of Material Objects M.Os.7 and 8. According to the prosecution, M.O.7 was recovered at the instance of accused No.1, and M.O.8 was recovered from accused No.2, at the instance of accused No.1. The trial Court observed that the prosecution proved the seizure of M.O.8 from the possession of accused No.2, at the

instance of accused No.1. It is the specific case of the prosecution that accused No.1 gave the wrist watch (M.O.8) to accused No.2. The trial Court has observed that mere recovery of M.O.8 from accused No.2 is not sufficient to conclude that accused No.2 participated along with accused No.1 in killing the deceased and given benefit of doubt to accused No.2. The trial Court based its conclusion on the alleged confessional statement of accused No.1 and leading the Police to the scene of offence and showing place where he had thrown M.O.7 and about how accused No.2 came into possession of wrist watch of the deceased.

16. The trial Court presumed that since the deceased is the close relative of accused No.1, he might have followed accused No.1 without any resistance. The trial Court also observed that merely because the prosecution failed to produce evidence that accused No.1 took the deceased with him, the entire case of the prosecution cannot be rejected. These observations of the trial Court are based on suspicion against accused No.1 without there being any cogent and consistent evidence. Only basing on the alleged recovery of M.O.7 from the thorny bushes, and the recovery of M.O.8-wrist watch from accused No.2 at the instance of accused No.1, the accused No.1 was convicted. The confession of the accused No.1 with regard to the seizure of M.Os.7 and 8 amounts to discovery of fact under Section

27 of the Evidence Act. The other part of the confession of the accused No.1, with regard to commission of offence, is hit by Sections 25 and 26 of the Indian Evidence Act. The recovery of M.O.8 alleged to have been made from the shop of accused No.2 is disputed by the appellant/accused No.1. It is contended that no independent witnesses were examined from the locality of shop of PW-5 where accused No.2 was working and from where the M.O.8 was recovered. In fact, PW.5, the owner of the shop who was alleged to have last seen accused No.1 and the deceased together, turned hostile and did not support the case of prosecution. Therefore, the very recovery of M.O.8 is not proved by the prosecution. The observations of the trial Court are based on the suspicion of PW.1 and PW-3.

17. The motive for the commission of the murder of the deceased was said to be family property dispute. In Ex.P-1 complaint, PW-1 suspected one Mohd. Tousif and Accused No.3 as responsible for the missing of the deceased. PW-3, who accompanied PW-1 to the Police Station for lodging the complaint, expressed his suspicion against accused Nos.1, 3 and 4 in the commission of the offence in view of the disputes with regard to the house property. The trial Court in para-15 of its judgment referred to the testimony of PW.1 about their family dispute with regard to the house property, as under :

“15. According to PW1 the ground floor of the house at Jangaon was constructed by PW2 and husband of A4. PW2 exclusively constructed first floor, at the request of A4 they allowed A4 to live in the first floor with her family while they stayed at Saudi Arabia. In the month of June 2006 she returned to India with her children and started to reside at Jangaon for the education of her children. When she requested A4 to vacate the first floor she reluctantly vacated first floor after quarrelling. Since then A4 developed grudge against her. It was suggested to PW1 at page 5 of cross examination as “it is not true to suggest that as we have ill-treated him, (Safiuddin S/o elder brother in law) he shifted his residence to Zidda and for that reason they are disputes between my family and family of Fasiuddin.”

The alleged motive does not appear to be probable for committing the offence of murder. As already observed supra, the observations of the trial Court are based on suspicion against accused No.1 without there being any cogent and consistent evidence. The prosecution failed to prove that the disputes regarding property was the driving force for committing murder of the deceased.

18. According to the version of prosecution, this is a case of murder of a young boy aged 13 years, committed by accused Nos.1 and 2, by kidnapping him from Jangaon with the help of accused Nos.3, 5 and 6, in view of the property dispute between PW-1 and Accused No.4. It is also the case of the prosecution that in order to divert the attention of the Police and the parents of the deceased, the accused had hatched the plan to make the entire episode appear as though that

the deceased was kidnapped for ransom. The prosecution has examined PW.12, the owner of the public telephone booth, to prove that accused No.1 got phone calls made by accused No.2 to PW.1 for ransom. PW.12 in her evidence deposed that three persons came to her telephone booth and made a call, spoke in Hindi and left the telephone booth and that she cannot identify those three persons. The call lists have also not been produced by the investigation officer to prove that the accused made such calls. Therefore, the trial Court rightly held that the testimony of PW.12 is of no help to the case of prosecution to prove that the accused made phone calls to PW.1 for ransom.

19. In fact, the testimony of PW.1 reveals that her marriage was performed with PW.2 about 26 years back, and they lived in Saudi Arabia, and returned to India for the education of their children. According to her testimony there was a dispute with accused No.4 with regard to the occupation of the ground floor, and she developed grudge against PW.1. Thereafter, PW.1 received phone calls from strangers on 17.09.2006 at 1.30 P.M. On 30.09.2006 at 2.00 P.M., the deceased left the house to give a book to his friend, and did not return to house on that day till 8.00 P.M, and then PW.1 searched for the deceased in the house of relatives on that night, and on the next day morning she informed her husband PW.2, and on his advise she gave

complaint to the police, Jangaon, expressing her suspicion against accused No.3.

20. It is evident that the prosecution has not produced the call lists to prove the receiving of phone calls from strangers about the alleged kidnap. On 04.10.2006, PW.2 returned to Jangaon from Saudi Arabia and he also received threatening call on 05.10.2006 from the said offenders, about their demand of ransom of Rs.20 lakhs. PW.2 informed the same to police on 09.10.2006. However, the investigation does not reveal about the collecting call lists and tracing the address of the caller.

21. The trial Court has rightly held that the prosecution failed to prove that accused Nos.1 and 2, with the help of accused No.3, 5 and 6 made attempts earlier to kidnap the deceased. According to the prosecution, accused No.5 is said to have hired a Maruthi Omni van to kidnap the deceased. The prosecution examined PW.4 – owner of four wheeler Maruti Omni van, to speak about the alleged hiring of his vehicle on 17.09.2006 to accused No.5 on rent of Rs.600/-, and that the vehicle was returned with broken glass on 18.09.2006 morning. But PW4 did not support the case of prosecution and stated that he doesn't know accused No.5 at all. In fact, PW.4 did not support the case of prosecution about lending his vehicle on rent to

accused No.5. Thus, the hiring of the vehicle of PW.4 by accused No.5 is not proved, which is crucial for proving the alleged kidnap of the deceased. Therefore, the very version of the prosecution that the accused kidnapped the deceased is not proved by any cogent evidence. These are the missing links in the chain of circumstances which the prosecution has failed to prove.

22. PWs.14, 15 and 17 are the investigation officers in this case. Ex.P1 is the complaint lodged by PW.1 about missing of the deceased, expressing suspicion against accused No.3 and one Tousif and two other Hindus. Ex.P4 is the complaint lodged by PW.6 on 03.10.2006 about the suspicious death, and the Investigation Officer PW.14 registered a case in Crime No.229 of 2006 of P.S. Chevella for the offence under Section 174 IPC and took up investigation and issued FIR (Ex.P15). Though the Clues Team and the Dog Squad were pressed into service, nothing incriminating could be seized at the scene of offence. He prepared Scene of Offence Panchanama (Ex.P16) and Rough Sketch (Ex.P17). He conducted inquest over the dead body of the deceased under Ex.P18 in the presence of mediators and sent the dead body to Government Hospital, Chevella for postmortem examination. On 19.10.2006, accused Nos.1 and 2 have surrendered before the Inspector of Police, Jangaon (PW.17) and he interrogated them. In pursuance of their alleged confessional

statements recorded in the presence of mediators, he seized the amulet (M.O.7 “Thayathu”) of the deceased from the bushes at the instance of accused No.1. Later, accused No.1 was said to have led the police and mediators to the Shop of accused No.2 at Falaknuma at Hyderabad and in pursuance of the confession of accused No.2, the wrist watch (MO.8) pertaining to the deceased boy was seized from possession of A2. The inquest report reveals that it was an unknown dead body of a male aged between 25 to 30 years. The Police have reduced the confessional panchanama of accused No.1 into writing, which is Ex.P10. PW.17-Investigating Officer, in pursuance of confessional panchnama of accused No.1 has seized M.O.7 (amulet) the deceased, hanging to a tree, under Ex.P12 seizure panchanama in the presence of panchas, and M.O.6 wire with which accused No.1 allegedly strangled the deceased. PW.13 seized M.O.8 (wrist watch) under Ex.P-13 from accused No.2, at the instance of accused No.1.

23. PW.17 has conducted Test Identification Parade of the clothes and other articles of the deceased. PW.2, the father of the deceased identified the clothes and articles as those of deceased, under Cover of Panchanama (Ex.P14). Ex.P14 is the identification panchanama which assumes importance for identification of the dead body of deceased and the link between the accused and crime of killing of deceased.

24. The prosecution has tried to link the accused No.1 with the crime basing on the recoveries made at his instance. During his cross-examination, PW.17 deposed that the scene of offence is situated in a forest area, near Chevella, on Hyderabad highway. The conduct of Test Identification Parade has to be proved by prosecution, which was allegedly conducted by PW-17 in the presence of PW.13 and one E.Srinivas (LW-24). PW-17 admitted that the M.R.O. Jangaon did not give written authorisation to PW.13 and LW.24 to act as Panch witnesses. Ex.P14 only shows that the M.Os.1 to 6 were seized in the presence of PW-13 and LW-24. Therefore, the recovery panchanama conducted in the presence of PW.13 raises any amount of doubt. Therefore, there was no Test Identification Parade of property conducted as per established procedure under criminal rules of practice.

25. PW.16 is the Civil Assistant Surgeon, at Community Health Centre, Chevella, who conducted autopsy on the dead body of the deceased and issued Post-Mortem Examination report (Ex.P20), which shows the age of the deceased as 25 to 30 years, that the dead body was that of an unknown male person and that the cause of death was 'cardio respiratory arrest due to strangulation with wire'. In the cross-examination, this witness stated that the age of the dead body was approximately 25 to 30 years, and the cause of death was cardio

respiratory arrest due to strangulation with wire. Ex.P20-report discloses that an unknown male dead body of 25 to 30 years was produced for PME examination, but however, in Page 2 'Schedule of Observation A- General' the same was mentioned as an unknown male dead body and the approximate age was mentioned as 16 years. The prosecution failed to explain the said discrepancy.

26. In a case based on circumstantial evidence, the prosecution has to establish all the links in the chain of circumstances pointing to the guilt of the accused beyond reasonable doubt. The very case of the prosecution is based on suspicion. The trial Court has convicted the accused No.1 basing on suspicion and conjectures. The trial Court has believed the suspicious version of prosecution, without there being cogent and consistent evidence. The trial Court, having disbelieved the testimony against accused Nos.2 to 6, who were alleged to have participated in the commission of kidnap and murder of the deceased, acquitted them and convicted only accused No.1, on suspicion that he being relative of deceased might have kidnapped the deceased due to the property dispute and that deceased might have gone with accused No.1 who was his relative. The sea of suspicion has no shore, and no amount of suspicion can take the place of proof.

27. On consideration of the evidence, it is obvious that the prosecution failed to prove the guilt of accused No.1 beyond reasonable doubt. Therefore, accused No.1 is entitled to benefit of doubt, as the other accused Nos.2 to 6, who are alleged to have participated in the kidnap and assisted in the murder of the deceased by accused No.1, were found not guilty by the trial Court. In view of the foregoing reasons, accused No.1 is acquitted of the charges framed against him.

29. In the result, the criminal appeal is allowed, and the judgment dated 23.03.2011 passed by the trial Court in Sessions Case No.414 of 2007 is set aside. The bail bond furnished by the appellant/accused No.1, pursuant to the order of this Court in Crl.A.M.P.No.2227 of 2016, dated 27.12.2016, shall stand cancelled and he is directed to be released forthwith, if not required in any other case.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

13th April, 2018

KSM

