

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

Criminal Appeal No.847 of 2011

Between:

Vadde Yadul @ Vadde Yadaiah @ Vadde Yadagiri

... Appellant

and

**State of Andhra Pradesh
Rep. by its PP
High Court of AP., Hyderabad**

...Respondent

Date of Judgment Pronounced: 18-06-2018

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

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

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

* The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice Gudiseva Shyam Prasad
+ Criminal Appeal No.847 of 2011

% Dated 18.06.2018

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! Counsel for the Appellant: Mr.T.D.Phani Kumar

^ Counsel for the respondent: Public Prosecutor (TS)

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The Hon'ble Sri Justice C.V.Nagarjuna Reddy

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...Respondent

Counsel for the Appellant: Mr.T.D.Phani Kumar

Counsel for the respondent: Public Prosecutor (TS)

The Court delivered the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The appellant, who is accused of a triple murder, has been convicted, after trial, for the offences punishable under Sections 302 and 380 IPC and sentenced to undergo Imprisonment for Life and to pay a fine of Rs.200/- for the former offence and to undergo Imprisonment for a period of three years and to pay a fine of Rs.200/- for the latter offence.

The case of the prosecution, as reflected from the charge sheet filed by the Police, briefly is as follows:

On 27-05-2010 at 9.00 a.m., PW.1 lodged a complaint with Raikode Police that on the intervening night of 26/27-05-2010, some unknown offenders went to the house of one Vadde Lakshmi (hereinafter referred as 'D.1'), and attacked on her and her mother *viz.*, Vadde Radhamma (hereinafter referred as 'D.2') and forcibly throttled their necks, hit them with sticks and small stone boulders on their heads and faces while they were sleeping in the verandah of their house, as a result of which, they sustained severe bleeding head injuries and died on the spot; that after committing their murders, the offenders committed theft of silver leg chains (5 'Tolas) from the person of D.2, went inside the house, opened the trunk box and scattered the clothes and articles here and there; that while fleeing with the booty, the offenders

forcibly entered the house of one Eadigi Sathemma (hereinafter referred as 'D.3'), which is 200 yards away, beat her with sticks and small stone boulders on her head and face, as a result of which, she sustained severe bleeding injuries and became unconscious; that the offenders, under the misapprehension that she might have died, committed theft of Gold Gundlu ($\frac{1}{2}$ Tola) and Gold Ear Studs ($\frac{1}{2}$ Tola) from her person and fled away; that the total stolen property was worth Rs.50,000/-; and that later, D.3 was taken to Government Hospital, Zahirabad, for treatment.

Based on the said Complaint, PW.17- Mohd. Maqbool Hussain, Sub-Inspector of Police, Raikode Police Station, registered a case in Crime No.26 of 2010 for the offences under Sections 394 & 396 IPC, issued Express FIRs to all the concerned and took up the investigation.

During the course of investigation, PW.17 recorded the detailed statement of PW.1 and visited the scene of offence situated in Indoor village at the house of D.1. Thereafter, PW.18- Circle Inspector of Police, Zahirabad (T) I/C Zahirabad (R) took up the investigation.

PW.18 secured the presence of PWs.2 to 4 and LW.5- Vadde Srisailam, who were the blood relatives of the deceased

persons, recorded their detailed statements, examined the dead bodies of D.1 and D.2 lying in a pool of blood and found small stone boulders having blood stains near their heads. PW.18 got photographed the scene of offence and the dead bodies of D.1 and D.2 by PW.12, secured the presence of the mediators-LW.17- S.Parvareddy and PW.13 and in their presence, prepared rough sketch of the scene of offence, conducted scene of offence panchanama and seized two blood stained stones, control earth and blood stained earth in respect of D.1 and D.2 separately under the cover of panchanama. Thereafter, under the supervision of PW.18, PW.17 held inquest over the dead bodies of D.1 and D.2 separately in the presence of LW.17- S.Parvareddy, PW.13 and LW.19- Vadde Shivamma and sent the dead bodies to the Government Hospital, Zahirabad, for Postmortem Examination. Thereafter, PW.18 along with the aforesaid three mediators visited the second scene of offence situated at the house of D.3, prepared a rough sketch of the scene of offence and conducted the scene of offence panchanama in their presence.

PW.15- Civil Assistant Surgeon held autopsy over the dead bodies of D.1 and D.2 and issued the Postmortem Examination reports opining that both D.1 and D.2 died due to shock and hemorrhage due to head injury caused by blunt object. Thereafter,

PW.18 drafted the seizure panchanama and seized the blood stained clothes of D.1 and D.2 separately in the presence of the aforesaid three panchas.

Subsequently, PW.19- Circle Inspector of Police, Zahirabad (R) took up the investigation. On coming to know that D.3, who was undergoing treatment at Gandhi Hospital, succumbed to injuries on 31-05-2010 at 5.15 hours, PW.19 went to the Gandhi Hospital, recorded the detailed statements of PWs.5 to 7 and LW.9- Pogula Shiva Goud, who are the relatives of D.3. All of them stated that D.3, while undergoing treatment, gained some consciousness and informed that their villager- Vadde Yadul attacked her. PW.8 stated that on 29.05.2010, his villager- Vadde Yadul telephoned to his Cell Phone (9640488050) with stolen Cell Phone (9704375904) of D.3 and told that he killed D.1 to D.3 and that he will kill his father- Ramulu also. Thereafter, PW.19 conducted inquest over the dead body of D.3 in the presence of LW.17- S.Parvareddy, PW.14 and LW.21- Katta Jyothi and subjected the dead body for Postmortem Examination. PW.20- Assistant Professor, Department of Forensic Medicine, Gandhi Medical College, Hyderabad, held autopsy over the dead body of D.3 and issued the Postmortem Examination report wherein he opined that D.3 died due to head injury. PW.19 went to Indoor

Village, recorded the statements of PW.9 and LW.12- Smt.Vadde Gouramma and ascertained that the stolen property was one silver arms bracelet (4 grams) of D.1; one silver arms bracelet (4 grams) and one silver chain (2 Tolas) of D.2; and one Gold Gundlu ($\frac{1}{2}$ Tola), one Airtel Cell Phone (9704375904) and net cash of Rs.2,000/- of D.3. PW.19 drafted the seizure panchanama and seized the blood stained clothes of D.3 in the presence of LW.17- S.Parvareddy and PW.13 and recorded the detailed statement of PW.12 .

On 11-06-2010 at 5.00 a.m., on reliable information, PW.19 along with his staff rushed to Singhtham Village road in Government Jeep and apprehended the appellant. On interrogation, the appellant confessed that he committed the offences. PW.19 secured the presence of PW.16, LW.23- Mohd. Muneeroddin and LW.24- Sara Durgadas Goud and in their presence, drafted the confessional –cum- recovery panchanama and seized one stolen Cell Phone (9704375904), which belongs to D.3, from his possession. In pursuance of his confessional statement, the appellant led the Police in the Government Jeep to a place near the house of D.3 and brought a wooden pestle from the bushes and stated that he used it to kill D.3. PW.19 drafted the seizure panchanama and seized the wooden pestle from the

possession of the appellant. Thereafter, the appellant led the Police to Khadeerabad Village, Manjira River Bank, and showed the hidden putty made with Thermacol used for catching fish in the river and stated that after committing the murders of D.1 to D.3, he utilized it to cross the river and entered into Khadeerabad Village. PW.19 drafted the seizure panchanama and seized the said putty. Thereafter, the appellant led the Police to Jogipet Market yard and shown PW.10 to them stating that he sold stolen silver arms bracelet to him for Rs.500/-. On examination, PW.10 stated that he had no knowledge that the said article was stolen and that therefore, he gave Rs.500/- to the appellant. PW.19 drafted the seizure panchanama and seized the said arms bracelet. Another silver arms bracelet (4 Tolas), which was sold out to an unknown person at Jogipet, was not recovered. PW.19 recorded the statement of PW.10. Thereafter, the appellant led the Police and panchas to BHEL, Lingampally, Bhavaninagar Colony, and showed PW.11 and LW.15- Vadde Pentaiah, who are stated to be the relatives of his wife, and stated that he has the mortgaged the stolen gold gundlu ($\frac{1}{2}$ Tola) and the Silver Chain (2 Tolas) to LW.15- Vadde Pentaiah for Rs.5,000/-. PW.19 drafted recovery panchanama and recovered those articles. LW.19 recorded the statement of PW.11, brought the appellant along with the

recovered stolen property to the Police Station at 16.30 hours, affected his arrest, issued arrest memo to him, after informing the grounds of his arrest to his father- Vadde Ramulu, and sent him to Judicial Custody on the same day. Thereafter, PW.19 deposited the material objects in the Forensic Science Laboratory, Hyderabad, and obtained the report as positive.

Based on the charge sheet and the material collected during the investigation, the trial Court framed the following charges:

Firstly:- That you Vadde Yadul @ Vadda Yadaiah @ Vadda Yadagiri in the intervening night of 26/27-05-2010 at about 1.00 hours committed murder intentionally or knowingly causing the death of Vadde Laxmi W/o Shamaiah, Vadde radhamma W/o Hananthu and Eadigi Sathemma W/o Ramulu by hitting their heads with sticks and stones and thereby committed an offence punishable U/Sec. 302 IPC and within my cognizance.

Secondly:- That you Vadde Yadul @ Vadda Yadaiah @ Vadde Yadagiri, S/o: Vadde Ramulu on or about 26/27/05-2010 at about 1.00 am committed theft in the houses which was used by Vadde Laxmi, Vadde radhamma and Eadigi Sathemma as human dwelling and taken away the gold and silver articles on their person and thereby committed offence punishable U/Sec.380 IPC and within my cognizance.”

As the appellant denied the charges, he was subjected to trial, during which the Prosecution examined PWs.1 to 20, marked Exs.P.1 to 27 and produced MOs.1 to 13. On behalf of the defence, no evidence has been adduced.

On appreciation of oral and documentary evidence, the Court below has disposed of the case in the manner as noted above.

We have heard Mr.K.V.Bhanu Prasad, learned Counsel for the appellant, and the learned Public Prosecutor for the State of Telangana.

This is a case based on circumstantial evidence where motive plays a prominent role. Though the chargesheet contains the allegations of motive, none of the witnesses made any whisper about the motive part attributed to the appellant in the chargesheet. In the absence of any evidence, the Prosecution miserably failed to prove the allegations of motive. The Court below has convicted the appellant based on the following three aspects *viz.*, (1) The purported oral dying declaration of D.3 made to PWs.5 to 7 and 9; (2) The alleged extra-judicial confession made by the appellant to PW.8; and (3) The confession leading to recovery.

We shall, therefore, consider the case in the aforementioned order of sequence.

(1) Oral dying declaration:

While D.1 and D.2 met with an instantaneous death, D.3, who was attacked on the intervening night of 26/27-05-2010, survived till 05-15 p.m., on 31-05-2010. It is not in dispute that neither the hospital authorities nor the Police have informed the Judicial Magistrate for recording her Dying Declaration. PW.5- husband of D.3, in his cross-examination, deposed that his wife was kept in Zaheerabad Hospital for two hours; that thereafter, she was shifted to Gandhi Hospital; that she was not in a position to speak while she was in the hospital at Zaheerabad; and that she was in an unconscious state on the first day of her admission at the Gandhi Hospital as she sustained severe injuries on her head and cheek bone. He has further deposed that D.3 was in the ICU at Gandhi Hospital till her death where no one will be allowed by the Hospital management. He has further admitted that the Doctors and the Nurses will be present round the clock in the ICU and that nobody was present near him when the deceased revealed the fact of the appellant beating her. He further admitted that he did not mention the date on which the deceased informed him about the appellant attacking her. He, however, added that on one night preceding her death, she gave the said information but the said fact was not informed to the Doctors, Nurses or

Police till 15 days after her death. The evidence of PWs.5, 6 and 9 are exactly on similar lines as deposed by PW.5.

PW.19- Investigating Officer, who filed the charge sheet, admitted that if the patient regained consciousness or semi-consciousness, it will be noted in the case sheet; that in Ex.P.13, inquest panchanama, it was not mentioned that D.3 regained semi-consciousness and gave statement to PWs.5 to 7 and 9 and that PWs.5 to 7 and 9 did not give any explanation as to why they have not informed the Police immediately after talking to D.3. He, however, sought to explain away this lapse by stating that as the witnesses were in a shock, they could not have informed the same to Police. He further admitted that he did not question PWs.7 to 9 as to when D.3 came to semi-conscious state.

While Dying Declaration itself is an exception to hearsay rule, when the same is not reduced into writing, it requires to be considered more carefully and minutely with reference to the conduct of the persons, before whom the oral statement is stated to have been made and the fit state of mind of the victim to make a statement. In **Heikrujam Chaoba Singh Vs. State of Manipur**¹, the Supreme Court held :

¹ (1999) 8 SCC 458

“An oral dying declaration no doubt can form the basis of conviction, though the courts seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. (Emphasis added)”

In **Laxman vs. State of Maharashtra**², the Supreme Court held :

“A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the **statement** of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. (Emphasis added).”

PWs.5 to 7 and 9 are the closest family members of D.3 being her husband, son and daughter respectively. All of them

² (2002) 6 SCC 710

have admitted that the patient was in the ICU in Gandhi Hospital into which others are not allowed. According to their evidence, the patient was unconscious through out the first day of her admission in Gandhi Hospital and was regaining semi-consciousness intermittently. When no one is allowed inside the ICU, the presence of any of these witnesses at the time of D.3, allegedly, regaining semi-consciousness was highly improbable. As admitted by PW.19, after D.3 regained consciousness or semi-consciousness, the same would have been mentioned in the case sheet maintained by the Hospital. For the reasons best known to the Prosecution, the case sheet has not been produced. Similarly, when the Doctors and Nurses were present in the ICU all-through, it is highly unnatural that PWs.5 to 7 and 9 in whose presence, the deceased, allegedly, made declaration have not brought the same to the attention of either those Doctors and Nurses or the Police, who was present in the outpost situated in the hospital premises. As noted herein before, PW.19 has admitted that in Ex.P.13- inquest panchanama of D.3, no reference was made to the alleged Dying Declaration, though PWs.5 to 7 and PW.9 were cited as witnesses. Moreover, no one spoke about the consciousness and fit state of mind of the deceased to make a statement, which is one of the essential

features of a dying declaration for being accepted by the Court. All these factors cumulatively taken into consideration lead the Court to conclude that the theory of the alleged oral Dying Declaration is set up by the Prosecution to lend credibility to this case. Therefore, we are not prepared to accept the prosecution case as regards the oral Dying Declaration of D.3.

2. Extra-Judicial Confession:

As regards the alleged extrajudicial confession of the appellant given to PW.8, as per the case of the Prosecution, the appellant, after committing three murders, took away the Cell Phone (9704375904), allegedly, belonging to D.3 and made a call to Cell Phone (9640488050), allegedly belonging to PW.8- a co-villager on 29-05-2010 and informed him that he has killed his own grand mother, paternal aunt and D.3 and that he will kill his father also. PW.19, in his evidence, admitted that in Ex.P.13-Inquest Panchanama of D.2, the aforementioned fact was not mentioned though PW.8 was cited as a witness. PW.19 also admitted that he did not obtain information as to in whose name MO.7- Cell phone (9704375904) stands. Ex.P.24 is the alleged call data showing that PW.8 has received three calls from MO.7- Cell Phone. No one connected with Ex.P.24- call list was examined to prove its authenticity. When the Prosecution failed to prove that

MO.7 belonged to D.3 and Ex.P.24 is an authentic call data, the same cannot be relied upon to connect the appellant to the alleged offence. Even assuming that PW.8 has received the calls as alleged by him, there is no proof that it is the appellant, who spoke to PW.8 from MO.7, which does not belong to the appellant. As noted above, PW.8 has categorically admitted that he did not inform the Police that he received missed calls while he was milking the buffallo in his house at Induru village. He also admitted that only four houses intervened between his house and that of the appellant and also four houses intervened between his house and that of D.2. When the appellant as well as PW.8 are residents of the same village and almost neighbours, it defies any reason or logic for the appellant to choose to confess to PW.8 on phone instead of his physically meeting him and making such a confession. Extra judicial confession being a weak piece of evidence, all the above factors do not persuade us to believe the version of the Prosecution that the appellant has confessed to PW.8 about his commission of offence.

3. Recovery:

As regards the alleged recovery of the material objects produced before the Court, M.Os.4 to 7 and 12 & 13 were stated to be recovered at the instance of the appellant. M.Os.4 and 5 are

silver arms bracelet and silver chain respectively, allegedly belonging to D.1 and D.2 respectively. M.Os.6 and 7 allegedly belonged to D.3 and M.O.12 is a pestle and M.O.13 is putty, used for crossing the river Manjira. Ex.P18 is the recovery panchnama, under which M.O.4 was allegedly seized from the possession of PW 10. Seizure was allegedly witnessed by three persons, including PW 16. PW 2, the husband of D.1 and father of D.2, identified M.Os.4 and 5. In his chief examination, PW 10 stated that he knows the appellant. However, in his cross examination, he admitted that he has no prior acquaintance with him. Admittedly, PW 10 and the appellant do not belong to the same place. While PW 10 is the resident of Jogipet, the appellant is the resident of Indoor village. Therefore, it is highly improbable that the appellant could have approached PW 10 to sell the stolen item. PW 10 has also deposed that he was not having Rs.500/- in his possession and he has borrowed money from his friend. He has admitted that he has not stated before the Police that he has borrowed money. He further admitted in his statement given to the Police that he has stated that an unknown person has offered to sell M.O.4 to him. As regards the seizure, the witness stated that he handed over the article to Police, and the Police have not

passed any receipt, and M.O.4 does not contain any specific marks.

Admittedly, neither a separate seizure panchanama was drafted nor PW 10 had at least attested Ex.P18 in proof of his handing over M.O.4 to Police. PW 16 admitted that he has been a mediator in several cases. He is a common witness to seizure of all the material objects. He is a Government servant, being a Panchayat Secretary. He admitted that the Police did not obtain any signatures from PW 10. No identification of property was held in respect of M.O.4. As regards PW 10, who has admitted that the article did not have any specific identification marks, the non-availability of money with him, his not informing the Police that he has borrowed money from some others, cast any amount of cloud on the case of the Prosecution regarding the genuineness of seizure of M.O.4 on the alleged confession of the appellant. Added to this, in the absence of prior acquaintance between PW.10 and the accused and the panchanama not containing the signature of PW 10, proving his handing over of M.O.4 to Police, it is highly difficult to accept the version of the prosecution that the appellant has sold M.O.4 to PW 10.

As regards M.Os.5 and 6, they were stated to have been seized under Ex.P20. It is stated therein that after M.O.4 was recovered at the instance of the appellant, he has led the Police to the house of Vadde Pentaiah, located at Bhavaninagar colony, BHEL Lingampally and informed the Police and Panchayatdars that he has pledged M.Os.5 & 6 with the said Vadde Pentaiah and received Rs.5,000/-, and that on enquiring with him, the said Vadde Pentaiah, while admitting that he has received two articles and paid Rs.5,000/- to the appellant, went inside his house and produced both the articles. The said Vedde Pentaiah was not examined. However, one Vadde Narasimhulu, who is stated to be the brother-in-law of Vadde Pentaiah, was examined as PW 11. He has stated that when the appellant approached him on 27.05.2010 at Lingampally and requested him to arrange him Rs.5,000/- on the ground that his wife and children were suffering from fever, he took the appellant to his brother-in-law (Pentaiah), who pledged those two articles and paid Rs.5,000/- to the appellant. He has further stated that his brother-in-law Pentaiah is not in a position to attend the Court, as he made an attempt to commit suicide by setting himself on fire, and was admitted in a serious condition in hospital. He stated that he could identify the articles seized. In his cross examination, he has stated that after

the appellant was arrested, he and his brother-in-law were kept in Police custody for 5 or 6 days. He admitted that pledging of M.Os.5 and 6 was not reduced into writing and the type of M.Os.5 and 6 articles is available in the market. He further feigned ignorance about the quality and weighment of articles and stated that Pentaiah resides in a hut. As in the case of PW 10, the Police have not obtained the signatures of Pentaiah on Ex..20 seizure Panchanama. Though PW 11 claimed that he has signed Ex.P20, his signature was not found thereon. Though the witness stated that he can identify M.Os.5 & 6, the Court has not recorded in the deposition of the witness that he has identified the said MOs. No separate identification of property was held, especially when the witness admitted that the articles similar to M.Os.5 & 6 are available in the market. Indeed, Rule 35 of the Criminal Rules of Practice and Circular Orders 1990 envisaged identification of the properties in the presence of the Magistrate. Such a test does not appear to have been conducted in this case. Moreover, it is not possible to believe that a person like Pentaiah, who is living in a hut, would have been holding a ready cash of Rs.5,000/- and paid the same to the appellant without even knowing the quality and weighment of the articles. Therefore, the seizure of M.Os.5 and 6

on the alleged information given by the appellant appears to be a make believe affair.

With regard to M.O.12-pestle, PW 16, the only attesting witness to Ex.P19, was examined by the Prosecution. PW 16 admitted that the place from which M.O.12 was seized was accessible to the public. Even PW 19, the investigating officer, also admitted the same. Therefore, it is difficult to believe that M.O.12, which was seized from the bushes near the house of D-3 at the instance of the accused, was so concealed that it was not noticed by any one. When a crime object is seized from a place, accessible to the public, it casts a serious doubt on credibility of the seizure. Therefore, the alleged seizure of M.O.12 does not advance the case of the prosecution, so as to connect the same with the offence allegedly committed by the appellant.

The last item is putty, used for crossing the river Manjira. The said object was stated to have been seized under Ex.P17. The same stock witness, i.e., PW 16, has spoken to the said seizure, apart from PW 19. The putty was also seized from a place accessible to public. Therefore, seizure of this item also suffers from the same shortcoming as seizure of MO.12.

The discussion undertaken above reveals that none of the material objects connected with the crime were seized from the exclusive possession of the appellant. Each of them was seized allegedly at the instance of the appellant from third parties or from public places and for various reasons discussed hereinbefore, the prosecution has failed to establish the credibility of the seizure of the articles. In the absence of any motive whatsoever and in the teeth of serious *lacunae* in its case as discussed above, the Prosecution failed to establish the links in the chain of circumstances so as to connect the appellant/accused to the alleged offences.

On the above analysis, the judgment of the lower court cannot be sustained.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 24.06.2011, in Sessions Case No.40 of 2011, on the file of the II Additional District & Sessions Judge (Fast Track Court), Sangareddy, are set aside. Consequently, the appellant/accused is acquitted of the charges framed against him. He shall be forthwith released from the custody, if he is not

otherwise required in any other case or crime. The fine amount, if any, paid by him shall be refunded to him.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 18th June, 2018

Note:
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