

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY
CRIMINAL APPEAL Nos. 575 OF 2013 AND 638 OF 2013**

COMMON JUDGMENT: {Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan }

Aggrieved by the judgment dated 25.06.2013 passed by the Additional District and Sessions Judge, Wanaparthy, two Criminal Appeals, namely, Criminal Appeal No. 575 of 2013, and 638 of 2013 have been filed before this Court. While Criminal Appeal No. 575 of 2013 has been filed by accused Nos. 1-6 (henceforth to be referred to as A-1 to A-6), Criminal Appeal No. 638 of 2013 has been filed by accused No. 7 (henceforth to be referred to as A-7).

By the impugned judgment, A-1 to A-7 have been convicted and sentenced as under:

Offence convicted for	Sentence imposed
Section 302 IPC	Suffer imprisonment for life each, and to pay a fine of Rs.5,000/- each, in default, to suffer simple imprisonment for six months.
Section 364 IPC	Suffer rigorous imprisonment for five years each, and to pay a fine of Rs.2,000/- each, in default, to suffer simple imprisonment for two months each.
Section 382 IPC	Suffer rigorous imprisonment for five years each, and to pay a fine of Rs.2,000/- each, in default, to suffer simple imprisonment for three months each.
Section 201 read with 34 IPC	Suffer rigorous imprisonment for three years each, and to pay a fine of Rs.3,000/- each, in default, to suffer simple imprisonment for three months each.

Briefly, the facts of the case are that on 01.11.2008, Smt. D. Parvathi Bai (P. W. 1) lodged a complaint (Ex. P. 1) before the Sub-Inspector of Police, Wanaparthy Town, wherein she claimed that *“on 29.10.2008 morning at about 11:00 a.m., myself and my*

husband went to Pedagadda, Wanaparthy, in our car to attend a marriage function at my relative's house. My husband had dropped me at my relative's house saying that he has business work and would go along with V. Ravi. My husband has also carried Rs.10,00,000/- along with him. My husband has not returned home since yesterday. He has also not made a phone call. When we tried to contact him, his phone was found switched off. Yesterday i.e., 31.10.2008, V. Rohini W/o. V. Ravi came to our house and informed that her husband went along with my husband on business affairs, and as her husband did not return home, on suspicion, caused enquiry. I also got suspicion (sic) as such I made enquiries with my relatives over phone and they informed that they did not know her husband's whereabouts. My husband's cell number and V. Ravi's cell numbers are 9440210238 and 9440244804. On 26.10.2008, I along with my husband while going to Kurnool for shopping, we noticed Ravi and Bhaskar Reddy standing near Wanaparthy Rural Police Station. On that, my husband stopped the car, and discussed with them for about ten minutes. Thereafter, Ravi went to his house, while Bhaskar Reddy came along with us up to Pebbair. When we were travelling, my husband and Bhaskar Reddy had a discussion. In that discussion, Bhaskar Reddy told my husband that he would arrange gold at a cheaper price, and for that purpose gather money. I suspect the involvement of Bhaskar Reddy, resident of Pebbair against missing of my husband, and V. Ravi, S/o Narayana. I request you to find the whereabouts of my husband and V. Ravi and hand over them."

On the basis of the said complaint (Ex. P. 1), the police registered a case for man missing, and started the investigation. However, subsequently with the recovery of the dead bodies of

Venkateshwar Rao (D-1), and V. Ravi @ V. Ravinder (D-2), a formal F.I.R., was registered, namely Crime No. 21 of 2009, for offences under Sections 302, 379, 201 read with 34 IPC.

During the course of investigation, all the seven appellants were arrested, and put up for trial. In order to support its case, the prosecution examined twenty-five witnesses, submitted thirty-seven documents, and produced fifteen articles. In turn, the defense examined a single witness, and submitted a single document. After completion of the trial, the learned Trial Court convicted and sentenced the appellants as aforementioned. Hence, these two appeals before this Court.

Ms. A. Gayatri Reddy, the learned counsel for A-1 to A-6, and Mr. Prabhakar Reddy, the learned counsel for A-7 have raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence. However, the prosecution has failed to establish all the links of the chain, which would unerringly point towards the guilt of the appellants.

Secondly, although the prosecution claimed that the bodies of both the deceased were discovered on 03.11.2008, but according to Sakshi newspaper of 03.11.2008 (Ex. D-1), a body was seen floating in Krishna River in a gunny bag on 02.11.2008 itself. Although, the Trial Court has doubted the recovery of both the bodies at the instance of A-1, the learned Trial Court has still convicted him for the aforementioned offences. Therefore, the Trial Court has erred in convicting A-1.

Thirdly, the bodies were discovered five days after disappearance of both the deceased persons. According to the testimony of Dr. Mallikarjun (P. W. 22), the bodies were

decomposed. Therefore, the bodies could not have been identified by D. Parvathi Bai (P. W. 1), wife of Venkateshwar Rao (D-1), and by Rohini (P. W. 6), wife of Ravinder (D-2). Therefore, the *corpus delicti* in the present case is conspicuously missing.

Fourthly, according to Dr. Mallikarjun (P. W. 22), skins had already peeled off from the bodies of both the deceased persons. Therefore, this witness is not justified in claiming that the deceased persons “died due to asphyxia due to strangulation, shock and hemorrhage, and injuries”. Therefore, the prosecution has failed to establish the fact that both the deceased persons died a homicidal death.

Fifthly, the prosecution has miserably failed to produce any evidence of the ‘last seen’. Not a single witness has claimed that they saw either of the deceased persons with the appellants. Moreover, not a single witness claimed that they saw the appellants either dumping the body of the deceased persons at the roadside, or in the Krishna River. Thus, there is not an iota of evidence with regard to the deceased persons being seen in the company of the appellants. Hence, there is a major gap in the case of the prosecution.

Sixthly, although the prosecution claims that A-1 took the police party to the house of his wife, and got recovered Rs.7,00,000/- from the said house, but merely having Rs.7,00,000/- in his house is not an incriminating evidence against A-1. For, A-1 was already in business of supplying water to the other villages. Since he is a businessman, his wife having Rs.7,00,000/- in her house is nothing unusual. Moreover, the recovery of Rs.1,71,600/- from the house of A-1 at Pebbair, cannot be read as an incriminating evidence against him. Furthermore,

even if A-1 had paid an amount of Rs.78,600/- to the Sriram Finance at Gadwal, and paid Rs.18,000/- to Bajaj Insurance Company at Kurnool, although the said fact has been testified by N. Mohan (P. W. 10), even then the said fact cannot be read as an incriminating evidence against A-1. For, as stated above, A-1 himself is a businessman. Therefore, learned Trial Court has erred in reading the said pieces of evidence against him.

Lastly, as far as A-1 is concerned, there is no motive for him to kill the two deceased persons. Therefore, A-1 has been convicted without any cogent evidence being against him.

As far as A-2 to A-7 are concerned, the learned counsel have raised the following arguments:-

Firstly, although the prosecution claimed that A-2 to A-7 were befriended by A-1 through P. Mahesh (P. W. 13), but P. Mahesh (P. W. 13) has turned hostile. Thus, there is no evidence to show that A-1 was friendly with A-2 to A-7.

Secondly, although the prosecution claims that A-2 to A-7 had helped A-1 not only in killing both the deceased, but also in getting rid of the evidence of the offence, the prosecution has not produced any cogent and convincing evidence on the said point. For, as argued herein before, there is no evidence of 'last seen' produced by the prosecution connecting the two deceased persons with A-2 to A-7.

Thirdly, although the prosecution claims that A-3 went to Moin Pasha (P. W. 15), and borrowed his black Ambassador car (M.O. 15), bearing Registration No. AP-21-F-8687 to abduct both the deceased persons, but as Moin Pasha (P. W. 15) has turned hostile, there is nothing to connect A-3 with the alleged crime.

Fourthly, though through M. Kiran Kumar Reddy (P. W. 18), the prosecution has tried to prove that it was at the instance of A-4 that a knife was recovered from his possession, but the said knife was never subjected to any forensic examination by the FSL. Thus, the mere recovery of a knife does not connect A-4 to the alleged crime. Moreover, M. Kiran Kumar Reddy (P. W. 18) has failed to identify B. Ayyappa (A-4) in the Court.

Fifthly, although M. Kiran Kumar Reddy (P. W. 18) has identified another knife allegedly recovered from B. Veera Reddy (A-7), but this witness has contradicted himself. For, in the examination-in-chief, he claims that no knife was recovered from B. Veera Reddy (A-7). Yet, in his cross-examination by the Additional Public Prosecutor, he claims that such a knife was seized from the possession of A-7. Moreover, he has failed to identify A-7 in the Court. Moreover, since A-7 was a stranger to him, A-7 has never been identified by the witness in a Test Identification Parade. Most importantly, it is not the case of the prosecution that a knife was ever used in commission of the crime. Further, even if a knife were recovered from the possession of B. Veera Reddy (A-7), even then the said knife has not been subjected to any forensic examination. Therefore, again mere recovery of a knife is not cogent enough evidence to connect A-7 to the alleged crime.

Sixthly, though V. Satyanarayana Rao (P. W. 17) claims that gold ring (M. O. 2) belonging to Venkateshwar Rao (D-1) was recovered from the possession of A-5, and he further claims that the cell phone (M. O. 4) belonging to Venkateshwar Rao (D-1) was recovered from A-6, neither of these two articles was ever subjected

to Test Identification Parade. Therefore, the alleged recoveries do not connect A-5, and A-6, to the alleged crime.

Seventhly, though K. Srinivasulu (P. W. 14) claims that Ramanjaneyulu (A-2) got the black Ambassador car (M. O. 15) recovered, and even a rope (M. O. 14) was found in the car, and that A-2 also got recovered a gold chain (M. O. 3), belonging to Venkateshwar Rao (D-1), and an axe (M. O. 13), allegedly used for killing V. Ravinder (D-2), but the gold chain (M.O. 3) was never subjected to Test Identification Parade. Moreover, even the axe (M. O. 13) was never subjected to a forensic examination. Therefore, the recovery of a gold chain, and the axe, at the instance of A-2 does not connect A-2 to the alleged crime. Furthermore, the mere recovery of black Ambassador car (M. O. 15) belonging to Moin Pasha (P. W. 15), and the recovery of a rope (M. O. 14), inside the car, does not necessarily connect A-3 to the alleged crime. For, as stated above, the prosecution has failed to prove the fact that both the deceased person were carried in the black Ambassador car (M.O. 15), and were, indeed, strangled with the rope (M. O. 14) recovered from the said car. Hence, the recovery of the black Ambassador car (M. O. 15), and of the rope (M. O. 14), is an irrelevant fact. The mere recovery of these two articles does not connect A-2 and A.3 to the alleged offence.

Eightly, Mohd. Afzal (P. W. 21) does testified that Srinivasa Reddy (A-3) handed over Rs.1,000/- to the police, while claiming that this was the amount given to him by A-1. However, this witness has given a self-contradictory testimony. Hence, he is an unreliable witness. Moreover, the recovery of just merely Rs.1,000/- does not necessary connect the accused to the alleged crime. For, Rs.1,000/- is not such a huge amount, which could not

be found in the possession of A-3. Therefore, the prosecution has miserably failed to connect A-2 to A-7 to the alleged crime.

On the other hand, the learned Public Prosecutor has raised the following counter-arguments before this Court as under:-

Firstly, the prosecution has well established its case through a series of links of circumstances which unerringly point towards the guilt of A-1 to A-7.

Secondly, according to the prosecution, both the deceased persons were residents of Wanaparthy Town. They were partners in real estate, in mineral water business, and in running a private educational institution. They were close friends. A-1 was also known to both the deceased persons as A-1 used to collect water bottles from the firm run by both the deceased persons, and used to supply the same to the customers at Pebbair village. A-1 became friendly with A-2 to A-7 through P. Mahesh (P. W. 13). A-2 to A-7 were in search of gullible persons whom they could dupe by offering gold ingots at low cost. Therefore, they asked A-1 to look for such innocent persons. It is A-1 who convinced both Venkateswara Rao (D-1), and V. Ravinder (D-2), that he would be willing to supply 9 kg of gold ingots for a sum of Rs.15,00,000/-. Moreover, on 21.10.2008, A-1 met both Venkateswara Rao (D-1), and V. Raviner (D-2). Initially the accused persons took V. Ravinder (D-2) in the black Ambassador car (M. O. 15), they strangled him, and dumped his dead body on the roadside. When the appellants noticed that V. Ravinder (D-2) was still breathing, A-2 hit V. Ravinder with an axe (M. O. 13) and caused incised injuries on his face. Subsequently, the appellants came back to the place, where Venkateswara Rao (D-1) was waiting; they also took him in the black Ambassador car (M. O. 15), strangled

him, and dumped his dead body near the place where the dead body of the V. Ravinder (D-2) was lying. They stole Rs.10,00,000/- from the possession of Venkateswara Rao (D-1). The appellants collected gold chain (M. O. 3) belonging to Venkateswara Rao (D-1), and a cell phone (M. O. 4) belonging to Venkateswara Rao. They distributed Rs.10,00,000/- amongst themselves, the lion's share was kept by A-1. After their arrest, not only part of Rs.10,00,000 was recovered from A-1, but other articles mentioned hereinabove were also recovered from different appellants. Even the rope (M. O. 14), and the axe (M.O. 13), used as a weapon in commission of the crime, were recovered at the instance of A-1.

Thirdly, D. Parvathi Bai (P. W. 1) has clearly stated that on 26.10.2008, while she and her husband were going to Kurnool, they had met Ravinder, and Bhaskar Reddy, (A-1), and her husband had a conversation with both the persons. While Ravinder left for his house, Bhaskar Reddy (A-1) came and sat in the car. There was a conversation between Bhaskar Reddy (A-1) and her husband, Venkateswara Rao (D-1) about buying of gold at a reduced price. On 28.10.2008, Ravinder (D-2) brought Rs.5 lakhs and gave it to her husband. The said amount was kept with another set of Rs.5 lakhs brought by her son from Hyderabad. On 29.10.2008, her husband Venkateswara Rao (D-1) took the said amount from her house, but he never came back. Even in the complaint (Ex. P. 1) filed by her, she had clearly stated that her suspicion was that Bhaskar Reddy (A. 1) is involved in the missing of her husband, and V. Ravinder. Therefore, the case against A-1 begins with the testimony of D. Parvathi Bai (P. W. 1).

Fourthly, although the defense claims that according to the news item, which appeared in Sakshi newspaper (Ex. D. 1) on

03.11.2008, it was clearly indicated that an unidentified body was discovered on 02.11.2008 in the Krishna River, but the fact remains that according to V. Satyanarayana Rao (P. W. 17), V. R. O. of Chittyal Village, both the bodies were discovered at the instance of Bhaskar Reddy (A-1) from the Krishna River. The bodies were identified through body identification *panchanama* of the deceased Venkateswara Rao (Ex. P. 17), and through the *panchanama* relating to the body of Ravinder (Ex. P. 18). Therefore, the prosecution has succeeded in establishing that both the bodies were recovered at the instance of A-1.

Fifthly, although both the bodies were decomposed, but according to the testimony of Dr. Mallikarjun (P. W. 22), the bodies were not “highly decomposed”. The bodies were not only identified by D. Parvathi Bai (P. W. 1), wife of Venkateswara Rao (D-1), and by V. Rohini (P. W. 6), wife of Ravinder (D-2), but were also identified by M. Kaladhara Chary (P. W. 4), and B. Srinivas Goud (P. W. 9), both of them were partners of Venkateswara Rao (D-1), and V. Ravinder (D-2), in their business. Furthermore, the bodies were also identified by V. Srinivasulu (P. W. 5), and V. Surender (P. W. 7), the brothers of V. Ravinder (D-2). The bodies were identified on the basis of the clothes they were wearing. Therefore, the *corpus delicti* does exist in the present case.

Sixthly, Dr. Mallikarjun (P. W. 22) has not only proven the Post Mortem Reports (Exs. P. 34 and P. 35), but in his examination-in-chief, he has clearly revealed that he carried out the autopsy on the body of Venkateswara Rao (D-1) that the tongue was present between the teeth, eye balls protruded, there was a mark present on the neck region, the Hyoid bone, both right and left corners were fractured. Moreover, while he conducted the

post-mortem examination of V. Ravinder (D-2), not only was the hyoid bone fracture on the both right and left, but also had suffered incised injury on the right side of the face. According to him, the cause of death of both the deceased persons was "*Asphyxia due to strangulation, and due to the shock and hemorrhage due to the injuries*". Thus, through his testimony, the prosecution has successfully proven that both the deceased persons had suffered homicidal death.

Seventhly, the prosecution has also successfully established the motive behind the killing of both the deceased persons, namely the motive to earn lakhs of rupees by duping both the deceased persons that they will be sold gold ingots at a reduced price. Further, the recovery of Rs.7,00,000/- from the house of A-1, has never been explained by A-1 himself. In fact, when an application was filed by D. Parvathi Bai (P. W. 1) for restoration of Rs.9,51,000/-, no objection was filed by A-1. Thus, his silence speaks about his guilt.

Eighthly, there was recovery of gold ring (M. O. 2), the gold chain (M. O. 3), Nokia cell phone (M. O. 4) and the said articles were identified by D. Parvathi Bai (P. W. 1), and Rohini (P. W. 6). Therefore, the recoveries of these articles from A-2, A-5, and A-6 unerringly point to their involvement in the rest of the funds.

Lastly, A-2, A-5, A-6 and A-7 have not explained the recovery of articles belonging to the deceased persons from their possession. Under Section 106 of the Evidence Act, once the prosecution has established the recoveries of these articles, the burden of proof shifts to the appellants to explain as to how the articles belonging to the deceased persons were recovered from their possession. Since A-2, A-5, A-6 and A-7 have failed to give any convincing

explanation, their silence points to their guilt. Therefore, the learned Trial Court was legally justified in convicting the appellants of the offences mentioned hereinabove. Hence, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned Judgment, and examined the record.

In the case of **Bodh Raj @ Bodha v. State of Jammu and Kashmir**¹, the Hon'ble Supreme Court has enunciated the principles to be applied while dealing with a case of circumstantial evidence. The principles are as under:-

(1) 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;

(2) 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;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude very possible hypothesis except the one to be proved; and

(5) 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.

Therefore, the issue before this Court is whether the prosecution has succeeded in establishing the links in the chain, which would unerringly point towards the guilt of the appellants or not?

¹ AIR 2002 SC 3164

Whether the chain of events is so complete that it does not leave an iota of doubt that it is, indeed, the appellants who have committed the murder of two persons or not?

D. Parvathi Bai (P. W. 1) in her examination-in-chief informs the Court that on 26.10.2008, while she and her husband were going to Kurnool, Ravinder stopped their car near the Wanaparthi Rural Police Station. She further informs that *“while I was sitting in the car, my husband got down from the car, and that my husband along with Ravi and another talked together and the other person again came and sat in our car along with my husband. I came to know that the name of the said person is Bhaskar Reddy, and he was saying with my husband that he should make cash ready for gold. When the car reached entry point of Pebbair, he got down from the car. After proceedings ahead, I enquired my husband about the conversation between himself and the said Bhaskar Reddy. My husband informed me that the said Ravi is also doing business who is a resident of Pebbair village. On the next day, my husband telephoned to my son who was at Hyderabad to bring the amount given to him for purchase of house at Hyderabad. On that night, my son came and returned the amount to my husband. On 28.10.2008, my husband and the said Ravi together went to Mahabubnagar on some work and returned. Ravi also gave an amount of Rs.5,00,000/- to my husband and the said amount of Rs.10,00,000/- was kept in an Elmira. On 29.10.2008 at about 11:00 a.m., my husband left me at Petagadda village to attend a function and went away. On the same evening at about 5:30 p.m., my husband and said Ravi came to our house and took away the amount of Rs.10,00,000/- with them and they went in our car. They did not return on that night. When I telephoned to the cell phone*

numbers of my husband and said Ravi, they were found to be switched-off". Later in her examination-in-chief, she further states that "on 30th October, 2008, the wife of Ravi asked me through telephone that my husband was available or not. On 01.11.2008, I came to know that our car was found in R.D.O's office at Wanaparthy. Then I informed to L.W.2, who is my father-in-law residing at Appaipally stating that my husband did not return along with another and that the car was found at R.D.O's office. As we could not get information suspecting A-1, I lodged a complaint to the police. On 03.11.2008, we came to know that there were two dead bodies traced in Krishna River kept in gunny bags. Then myself and along with my relations went there and identified the dead bodies with the help of clothes and Thayath (a magical charm worn by people). The relations of Ravi also identified his dead body which is kept in a gunny bag. The cell phone and gold jewelry which were worn by the deceased were found missing." Moreover, she informs the Court that "Subsequently, from the J.F.C.M. Court at Wanaparthy, I took interim custody of Rs.9,51,000/-, a Nokia cell phone, R.C. and the driving license of my husband, 10 grams chain, and 10 grams gold ring with navarathnas. The cell phone, gold ring and the gold chain belong to my husband are deposited before the court along with cash. M. O. 1 is the cash of Rs.9,51,000/-. M. O. 2 is gold ring with navarathnas. M. O. 3 is gold chain. M. O. 4 is Nokia cell phone. Ex. P.2 is the R.C. along with the driving licence." She admits that prior to the incident she did not know A-1 personally. However, she states that "On that day, when Bhaskar Reddy got into our car, my husband has informed his name as Bhaskar Reddy." In her cross-examination she does admit that "it is true the dead bodies were in decomposed state, and that there was no

possibility to identify on seeing the dead bodies.” However, this witness denied the suggestion that she did not identify the dead body on the basis of the clothes and the Tayath.

Likewise, V. Rohini (P. W. 6) informs the Court in her examination-in-chief that the deceased, V. Ravinder, her husband, was working at Wanaparthi in Water-shed on deputation. He was also doing business in real estate and water, besides running a college known as Gayathri Degree College as a partner. The deceased Venkateswara Rao (D-1) was also one of the partners in college and also in real estate business apart from others. She further states that *“I know one Bhaskar Reddy of Pebbair village who used to take water from our plant and that in turn he used to supply the water to other villages.”* She further claims that on 28.10.2008, around 11:00 a.m., her husband informed her that he would be going out on his business work. After returning from the college, she tried to contact her husband, his phone was switched off. *“Then I telephone (sic) to P.W. 1 who in turn also informed that the cell phone of Venkateswara Rao was also switched off. P. W. 1 has also informed me that she has doubt on Bhaskar Reddy as Bhaskar Reddy and Venkateshwar Rao earlier discussed about money and gold. 2 months prior to the death of my husband, I had an opportunity to hear my husband talking in cell phone about Bhaskar Reddy and also gold.”* She further states that *“on 27.10.2008, my husband took an amount of Rs.5,00,000/- from our house and gave the same to the deceased Venkateshwar Rao. We searched for my husband and also for Venkateshwar Rao on 30th and 31st of October, and as there was no information, a report was lodged on 01.11.2008, by P. W. 1. On 03.11.2008, police informed us that two dead bodies kept in gunny bags were traced. On receipt*

of the information from the police, our family members and the family members of P. W. 1 together went to that place. We found the dead bodies were kept in gunny bags and tied. On opening the first gunny bag, we found the dead body of the deceased Venkateshwar Rao. P. W. 1 has identified the body of her husband. On opening another gunny bag, I identified the body of my husband. He was wearing a red color shirt at that time and also identified the facial features of my husband. We did not also notice a gold chain and cell phone of my husband on his dead body. Now I can identify the clothes worn on the dead body of my husband at that time... Now, I can identify the gold chain and the cell phone of my husband. M.O. 3 is gold chain shown to me now belongs to my husband. M.O 4 is Nokia cell phone also belongs to my husband.”

In her cross-examination, she denied the suggestion that she could not identify the body of her husband since the condition of the body was in a decomposed state. She further denied the suggestion that the dead bodies recovered in the Krishna River do not belong to Venkateshwar Rao, or her husband, and that they are the bodies of unknown persons.

A bare perusal of the testimony of these two witnesses clearly reveals that Bhaskar Reddy (A-1) was known to both the deceased persons. There was a conversation between the deceased persons and Bhaskar Reddy (A-1) with regard to buying of gold. According to D. Parvathi Bai (P. W. 1), V. Ravinder (D-2) had given her husband an amount of Rs.5,00,000/-, her husband had taken the said amount along with the amount returned by their son. Thus, at the time of leaving the house, he had taken an amount of Rs.10,00,000/- with him. Since neither Venkateshwar Rao (D-1), nor V. Ravinder (D-2) came back home, D. Parvathi Bai (P. W. 1)

initially filed a complaint (Ex. P. 1) for missing persons. Even in her complaint, she clearly stated that she suspects Bhaskar Reddy's (A-1) involvement in disappearance of her husband. Lastly, both these witnesses have identified the dead bodies of their respective husbands.

Moreover, the body of Venkateshwar Rao (D-1) was identified by Shanker Rao (P. W. 2), the father of the deceased, by D. Vijaya Bhaskar (P. W. 3), the son of the deceased Venkateshwar Rao. Even according to him, the dead body was identified on the basis of the clothes and the Tayath. Even M. Kaladharachary (P. W. 4), the partner of Venkateshwar Rao (D-1), identified his body. Similarly, V. Ravinder's body was identified by V. Srinivasulu (P. W. 5). V. Srinivasulu (P. W. 5) further states in his examination-in-chief that *"As on the date of Vrathan, the wrist of my brother was tied with a thread, on the basis of the same, I identified his body."* Therefore, since all these witnesses have identified the bodies of the two deceased persons, the learned counsel for the appellants is unjustified in claiming that the *corpus delicti* is conspicuously missing. Hence, the said contention is unacceptable.

D. Parvathi Bai (P. W. 1) has clearly stated that her husband had taken Rs.10,00,000/- with him. According to the prosecution, the very motive of the appellants was to deprive the two deceased persons of the amount which they were carrying when they were met by A-1, and allegedly by A-2 to A-7.

According to the testimony of V. Satyanarayana Rao (P. W. 17), A-1 took the police party to his wife's house, and from there, Rs.7,00,000/- was seized consisting of Rs.1000/- notes bundles to a tune of Rs.6,00,000/-, and the remaining Rs.1,00,000/- in Rs.100/- notes bundles under cover of a panchanama (Ex. P. 22).

Moreover, according to V. Ravi Kumar (P. W. 20), on 12.11.2008, he was called by the Inspector of Police, Wanaparthy to the police station. He saw A-1 in the custody of police at that time. Subsequently, Bhaskar Reddy (A-1) took the police and other witnesses to his house at Pebbair village. At the instance of A-1 Rs.1,78,000/- was recovered, which was kept in police custody. The said amount was in 1000 rupees denomination of 100 bundles, and 500 notes denomination in 100 bundles and Rs.100 denomination in 214 numbers. The same was seized in the presence of these witnesses. Furthermore, according to this witness, from the house of A-1 at Pebbair village, the police party and he went to Gadwal, where the Sriram Finance Company was situated. A receipt was seized from the Manager of the said company at the instance of Bhaskar Reddy (A-1). An amount of Rs.78,600/- was seized from the Branch Manager of Sriram Finance Company under panchanama (Ex. P. 32).

According to D. Parvathi Bai (P. W. 1), she was given the interim possession of Rs.9,51,000/- upon an application filed by her. Interestingly, the said application filed by D. Parvathi Bai (P. W. 1) was not contested by A-1. Moreover, even in his statement given under Section 313 Cr.P.C., A-1 never claimed that the amount was recovered from his house, or recovered from Sriram Finance at Gadwal, were actually amounts belonging to him. Therefore, his non-explanation for the large amount of money recovered from his house, from the house of his wife, and from Sriram Finance at Gadwal, speaks volumes about the fact that Rs.9,51,000/- was part of the amount stolen from the possession of Venkateshwar Rao (D-1).

Furthermore, R. Chandrasekhar (P. W. 8) claims in his examination-in-chief that *“I am a resident of Wanaparthy. I am doing kirana shop business at new bus-stand. I used to sell empty gunny bags after the stocks in the said bags exhausted. I can identify the persons of neighbouring villages who used to come to my shop. I came to know that Venkateshwar Rao and Ravi were killed and their bodies were kept in gunny bags and thrown in River Krishna around 3 years ago. During the evening time, a person from Pebbair village who used to supply water purchased gunny bags from my shop. I can identify the said person if shown to me. He is present in the court as A-1. (witness identified the said person). On the date of purchase, while I was about to close my shop, A-1 came to me and purchased four empty gunny bags from my shop by paying money. Police enquired me (sic) in this regard and recorded my statement.”* This witness is not shattered in his cross-examination.

Although it is correct that the prosecution has not produced any evidence of the last seen against A-1, even then the prosecution has produced cogent and convincing evidence to connect A-1 to the alleged offence. For, the prosecution has clearly established from the testimony of D. Parvathi Bai (P. W. 1) that Venkateshwar Rao (D-1) and Bhaskar Reddy (A-1) were discussing about buying of gold at a reduced price, that Venkateshwar Rao (D. 1) had taken Rs.10,00,000/- with him on the fateful day. The prosecution has further proven its case against A-1 by the testimony of V. Satyanarayana (P. W. 17), and the recovery witness, V. Ravi Kumar (P. W. 20), by the testimony of V. Mohan (P. W. 10), Manager of Sriram Finance, and by the testimony of R. Chandrasekhar (P. W. 8), and lastly the testimony of

Dr. Mallikarjun (P. W. 22) testified to the homicidal death of the deceased persons. Therefore, the prosecution has succeeded in establishing a complete chain of circumstances which unerringly point towards the guilt of A-1 for the alleged offence.

According to the prosecution, a gold chain (M.O. 3), and an axe (M.O. 13) were discovered at the instance of A-2. The said fact has been testified to by Muralidhar (P.W. 19). Moreover, the gold chain (M.O. 3) belonging to Venkateshwar Rao (D-1) has been identified by his wife, D. Parvathi Bai (P.W. 1). In fact, the gold chain (M.O. 3) was temporarily given to D. Parvathi Bai (P.W. 1). When D. Parvathi Bai (P.W. 1) filed an application for seeking possession of the said gold chain, A-2 did not contest the said application. Moreover, in his statement under Section 313 Cr.P.C., A-2 did not claim that the gold chain (M.O. 3) belongs to him. Since the gold chain (M.O. 3) was recovered from his possession, as testified by Muralidhar (P.W. 19), the burden of proof shifted to A-2 to explain as to how a chain belonging to Venkateshwar Rao (D-1) was found in his possession. But he maintained a studied silence on the said issue. Hence, his silence clearly reveals his guilty mind. Therefore, the recovery of gold chain (M.O. 3) from A-2 clearly connects A-2 to the alleged crime. Hence, the Trial Court was justified in convicting A-2 for the alleged offences.

However, the learned Trial Court has misdirected itself while dealing with the recovery of the axe (M.O. 13) at the instance of A-2. Since the said axe was never subjected to a Forensic Examination, the mere recovery of the axe (M.O. 13) could not be read against A-2. But nonetheless, the prosecution has succeeded in proving its case against A-2. Therefore, the conviction of A-2 is legally justified.

Furthermore, according to the prosecution, a black Ambassador car (M.O. 15), belonging to Moin Pasha (P. W. 15), a rope (M.O. 14), which was discovered in the car, were recovered at the instance of A-3. Moreover, according to Mohd. Afzal (P.W. 21), the recovery witness, the police had also recovered a amount of Rs.1,000/- from A-3. Thus, according to the prosecution, it has succeeded in establishing the guilt of A-3.

However, the stand taken by the learned Public Prosecutor is highly misplaced. For, according to the prosecution, A-3 was a driver of Moin Pasha (P. W. 15). Moreover, according to the prosecution, A-3 had rented the black Ambassador car (M.O. 15) from Moin Pasha (P. W. 15), on 29.10.2008, for one day, for his personal use. Ten days later, A-3 had again borrowed the car, and kept it in front of his friend's house, from where the car was eventually seized at the instance of A-3. However, Moin Pasha (P.W. 15) has not supported the case of the prosecution, and has been declared as a hostile witness. Therefore, the learned Trial Court has erred in reading the confession, with regard to the use of the car, made by A-3 to the police while he was in police custody. For, the said statement made to the police while in police custody is hit by Section 25 of the Evidence Act.

Furthermore, the prosecution has not produced an iota of evidence with regard to the last seen. Not a single witness claims that he saw either of the two deceased persons in the company of A-3, or in company of any other appellant in a black Ambassador car. The black Ambassador car (M.O. 15), and its recovery has been read as an important piece of evidence only on the basis of confessional statement made by A-3, and other accused-appellants. However, those confessional statements, being made

in police custody, cannot be read either against A-3, or against other accused persons. Moreover, although the black Ambassador car (M.O. 15) may have been recovered by the police at the instance of A-3, no incriminating evidence was discovered in the black Ambassador car (M.O. 15). Therefore, its mere recovery at the instance of A-3 does not connect A-3 to the alleged offence.

Although according to Dr. Mallikarjun (P. W. 22), both the deceased persons died “due to Asphyxia due to strangulation”, but there is no evidence to readily connect the recovered rope (M.O. 14) to the act of strangulation. For, neither the rope (M.O. 14) was shown to Dr. Mallikarjun (P.W. 22), nor does he state that the strangulation was caused by the said rope (M.O. 14). Therefore, even the recovery of the said rope (M.O. 14) does not connect A-3 to the alleged crime.

According to Mohd. Afzal (P. W. 21), the recovery witness, he went to Warangal Police Station. He informs the Court that *“There, we observed a person by name Srinivas Reddy (A-3) in the custody of C.I. of Police”*. On enquiry, the said person informed the police about the plan hatched between the appellants for killing Venkateshwar Rao and Ravinder. Moreover, according to the said witness, *“For the said purpose, he was given an amount of Rs.2,000/-, and out of it, he spent an amount of Rs.1,000/-, and the remaining Rs.1,000/- was with him and so saying the said amount was produced by him and that the same was seized by the Inspector of Police in our presence under cover of panchanama. Ex. P. 33 is the relevant portion in the confessional cum seizure panchanama prepared in my presence and it bears my signature.”* This witness further identified A-3 in the court for the first time. In his cross-examination, he claims that *“I went to the police station at*

about 10:30 or 11:00 a.m. I have affixed my signatures at that time. Subsequently, I did not go to the police station on that day nor I affixed my signature in the police station on any subsequent occasion. After seeing the panchanama, dated 14.11.2008, the witness has stated that the said panchanama reads that it was prepared at 8:00 p.m., but my signature was affixed only in the morning. A-3 was not in the cell at that time, but he was outside the cell in the office of C.I.” “I observed A-3 in the office of C.I., and I affixed my signature in the C.I. office. I do not know since how many days he was in the police station or when he was brought to the police station. I do not also know from where A-3 was brought to the police station. A-3 has narrated to the police in my presence and I heard what he was narrating to the police. After affixing my signature, I return from the said place. Panchanama was prepared to the narration of A 3 in my presence. The said cash of Rs.1,000/- was in his pocket and he showed the same. The witness again says: A-3 was caught holding the cash in his hands. It is not true to suggest that I did not go the police station and that A-3 was not in the custody of police and that A-3 did not admit his guilt and that no cash was seized from his possession under cover of panchanama and that I am intentionally deposing false at the instance of police.

A bare perusal of the cross-examination of this witness clearly reveals that the witness has been shattered in his cross-examination. For, according to him, he went to the police station in the morning at 10:30 or 11:00 a.m., and he affixed his signature on the panchanama (Ex. P. 33) at that time. However, according to the panchanama (Ex. P. 33), the panchanama (Ex. P. 33) was drafted and signed on 14.11.2008 at 20:00 hours, i.e., at 8:00 p.m. Therefore, the facts narrated by this witness and contained in

panchanama (Ex. P. 33) cannot be relied upon. Hence, the recovery of Rs.1,000/- at the instance of A-3, is of doubtful origin. Therefore, the alleged recovery of Rs.1,000/- from the possession of A-3 does not connect A-3 to the alleged crime. Thus, the learned Trial Court has erred in convicting A-3.

A. 4 and A. 7 have been connected with the alleged crime ostensibly on the testimony of M. Kiran Kumar Reddy (P. W. 18). According to M. Kiran Kumar Reddy (P. W. 18), he was working as V. R. O., of Nagavaram village. *“On 06.11.2008, M.R.O. has instructed us to go to the office of C.I., of Police at Wanaparthy, as per the request of the C.I. of Police. At about 10:00 or 10:30 a.m., myself along with L. W. 21 together went to the C.I. office. ... Two persons were also in the custody of the police at that time. ... When one of the said two persons was called and enquired, he revealed his name as Ayyappa (A-4)”* *“A-4 has stated that he used to keep knife with him always and produced the knife. In our presence, police seized the said knife under cover of a panchanama (Ex. P. 25).”* *“After that we have also enquired with another person and revealed his name as Veera Reddy (A-7). No property was recovered from the possession of said Veera Reddy (A-7).”* However, when this witness was asked to identify A-4 and A-7, the learned Trial Court has noticed that *“witness could not identify the said two persons amongst the accused stood before the Court. He has identified A-5 Boya Hussain, and A-6, Boya Ramesh wrongly.”* At this stage, the Additional Public Prosecutor sought permission of the Court to examine this witness. In his cross-examination by the Additional Public Prosecutor, the witness admits that *“my signature is not seen (faded) on another knife shown to me now, but the signature of L. W. 21 Mohan Reddy is available. It is true a knife also seized at*

the instance of another person by name Veera Reddy (A-7), and panch chits with our signatures were affixed on it. M.O. 12 was the said knife seized. Ex. P. 27 is the relevant admissible portion in the panchanama relating to the said Veera Reddy”.

Although the prosecution has tried to connect A-4 and A-7 through the recoveries of two different knives, (M. O. 11, and M. O. 12), however, the recoveries are meaningless. For, it is not the case of the prosecution that the knife was used in order to kill either of the two deceased persons. According to the prosecution, both the deceased persons were strangled with the use of a rope (M.O. 14). Moreover, A-2 had hit V. Ravinder (D-2) with an axe (M.O. 13). Therefore, neither of the two knives is the weapon of offence. Furthermore, neither of the two knives was ever sent for forensic examination. Hence, the mere recovery of knives from A-4, and A-7, do not connect either of these two appellants to the alleged crime. Hence, their conviction is legally untenable.

This leaves us with the alleged involvement of A-5 and A-6 in the present case. According to the testimony of V. Satyanarayana Rao (P. W. 17), he was working as V.R.O. of Chittyal village of Wanaparthy Mandal. He knows the deceased Venkateshwar Rao, and Ravinder. He was called by the C.I. of Police, Wanaparthy. Therefore, he went to the police station. Initially in his testimony, he describes as to how Bhaskar Reddy (A-1) was interrogated by the police, how he accompanied Bhaskar Reddy (A-1) to his house where an amount of Rs.7,00,000/- were recovered. Subsequently, he stated that *“Then we returned to police station at Wanaparthy, by which time two persons were in the police station. On enquiry, they revealed their names as Boya Hussain (A-5) and Ramesh (A-6). Hussain (A-5) has stated that he took the ring of the deceased,*

Venkateshwar Rao, and the cell phone of Venkateshwar Rao was taken by Ramesh (A-6), the gold ring was seized from the possession of Hussain (A-5), and the cell phone was seized from Ramesh (A-6) in the police station under cover of panchanama (Exs. P. 23 and 24)". However, this witness could not identify either Hussain (A-5) or Ramesh (A-6) in the Court. But he did identify the gold ring (M.O. 2) and the Nokia cell phone (M.O. 4) before the Court. He also identified his signature on the panchanama (Ex. P.23) relating to the gold ring, and the panchanama (Ex. P. 24) relating to cell phone.

The gold ring (M. O. 2) and the cell phone (M. O. 4) were identified by D. Parvathi Bai (P. W. 1), in the court, as belonging to her husband, Venkateshwar Rao (D-1). Moreover, when she filed an application for recovery of these articles, neither A-5, nor A-6, objected to the handing over of these articles to her. Furthermore, despite the fact that the burden was upon them to establish as how the articles belonging to Venkateshwar Rao (D-1) were in their possession, they maintained a studied silence. In their statement recorded under Section 313 Cr. P. C., they have merely denied the recovery. Therefore, their silence speaks volumes about their guilt. Hence, the recovery of the articles belonging to the deceased Venkateshwar Rao (D-1), and its identification by the wife of the deceased Venkateshwar Rao, D. Parvathi Bai (P. W. 1), the non-explanation by A-5, and A-6 with regard to their possession of the stolen property is sufficient evidence to connect them to the alleged crime.

A holistic appreciation of the evidence produced by the prosecution leads to the conclusion that A-1, A-2, A-5 and A- 6 can easily be connected to the alleged offences mentioned hereinabove.

However, the prosecution has failed to prove its case against A-3, A-4 and A-7. Therefore, the Criminal Appeal No.575 of 2013 is partly allowed. While this Court upholds the conviction and sentence of A-1, A-2, A-5 and A-6, this Court acquits A-3 and A-4. The Criminal Appeal No.638 of 2013 filed by A-7 is hereby allowed. A-3, A-4 and A-7 are acquitted of the offences under Sections 364, 302, 382, 201 read with Section 34 IPC, and the Judgment dated 25.06.2013, passed by the Additional District and Sessions Judge, Wanaparthy, qua them, is set aside. The fine amounts paid by A-3, A-4 and A-7, if any, shall be refunded to them.

Since A-3, A-4 and A-7 are serving their sentences at Central Prison, Cherlapally, Ranga Reddy District, they are directed to be released forthwith, if they are not required in any other crime. Since the conviction and sentence against A-1, A-2, A-5 and A-6 has been upheld by this Court, they are required to serve the remaining part of their sentences.

Miscellaneous petitions, if any, pending shall stand dismissed.

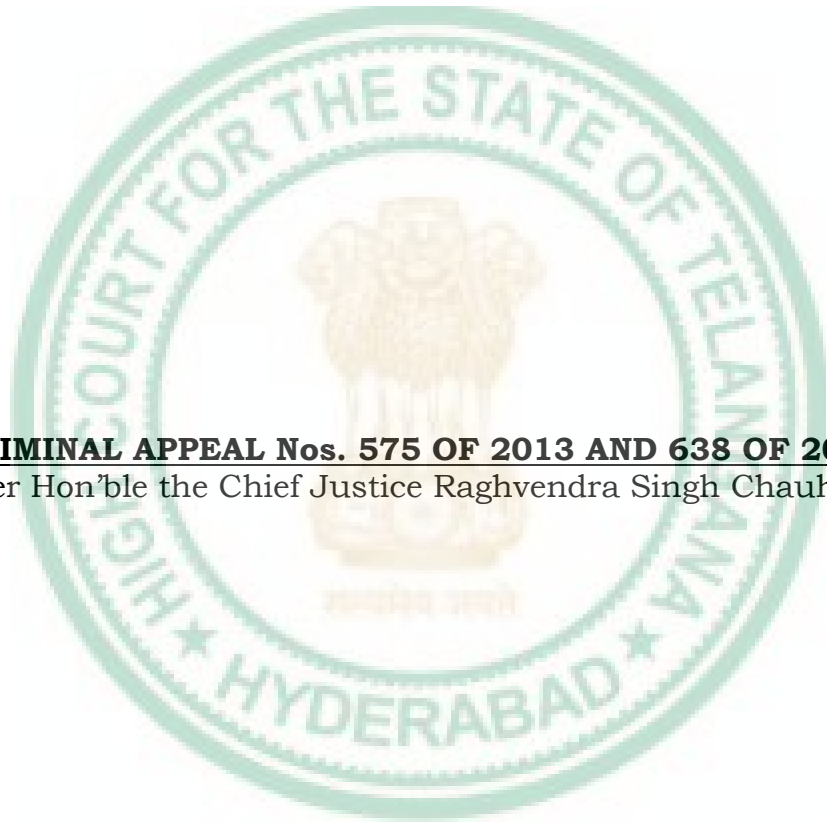
(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

29th April, 2020
pln

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL Nos. 575 OF 2013 AND 638 OF 2013
(Per Hon'ble the Chief Justice Raghvendra Singh Chauhan)



29-04-2020

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