APHC010211702021

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3350]**
(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

PRESENT
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

RT No.2/2021 and Crl.A.Nos.147, 148, 157, 163, 164, 168, 169, 193, 232, 249, 281 & 355 of 2021

Between:
The State Of Andhra Pradesh, **...PETITIONER**

AND

Mohammad Abdul Sammad Munna and Others **...RESPONDENT(S)**

COMMON JUDGMENT: (*Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The Referred Trials 2, 3 & 4/2021 wherein judgments are pronounced today, present chilling facts of diabolical and grotesque manner of killing the trailer drivers and cleaners by the ruthless gang of dacoits while they were transporting iron load on the highway between Ongole-Nellore Districts in Andhra Pradesh.

In S.C.No.73/2010, learned VIII Additional District & Sessions Judge, Ongole in his judgment dated 18.05.2021 convicted A1 to A17 for different offences and sentenced them with different punishments as narrated in the following table. Since among them, A1 to A11 and A15 are awarded death

punishment for the offences under Section 396 IPC under two counts, learned Judge submitted the entire case proceedings along with his judgment to this High Court under Section 366 Cr.P.C. for confirmation of death sentence and the Registry has registered the said referred proceedings as a Referred Trial No.2/2021 and listed before us. That apart, challenging the conviction and sentence, the accused have also preferred different Criminal Appeals as mentioned in the table below and those criminal appeals are also listed before us.

T A B L E

Accused No. (1)	Name of Accused / Resident of (2)	Charges Framed by the Trial Court (3)	Convicted and punished for the offences (4)	Referred Trial (RT No.) (5)	Criminal Appeal filed by accused (6)
A1	Mohammad Abdul Sammad @ Munna Ongole	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i. Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii. DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	RT-2/2021	Crl.A.No.164/21
A2	Shaik Riyaz, Ongole	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.193/21

A3	Syed Hidayatulla @ Babu Donakonda	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.281/ 21
A4	Mohammad Jamaluddin @ Jamal Bengalore	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii. 201 IPC** **iv.400 IPC;** **v. 402** **vi.414 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii. RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iii. Imprisonment for life for the offence U/s 400 IPC** **iv. RI for 7 years and fine of Rs.5,000/- IDSI 3 months** **vi.RI for 3 years for the offence U/s 414 IPC**	-do-	Crl.A.No.169/ 21
A5	Bathula Salmon Inamanamellur Village	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.163/ 21
A6	Yepuri Chinna Veeraswamy Reddypalem Village	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.169/ 21

A7	Yepuri Pedda Veeraswamy Reddypalem Village	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.169/ 21
A8	Gundu Bhanu Prakash @ Bhanu @ Gajani Kothasayampet	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.157/ 21
A9	Rachamalla Sampath, Kothasayampet	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.249/ 21
A10	Gundeboina Sridhar, Kothasayampet	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.168/ 21

A11	Shaik Hafeez, Ongole	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii.201 IPC** **iv.400 IPC;**	**i. Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii.RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC**	-do-	Crl.A.No.164/ 2021
A12	Arla Gangadhara Rao @ Gangadhar, Ongole	**i.396 r/w 120B of IPC;** **ii.400 IPC;** **iii. 414 IPC**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.Imprisonment for life for the offence U/s 400 IPC** **iii. RI for 3 years**	-do-	Crl.A.No.355/ 21
A13	Shaik Kamal Saheb @ Kamal @ Kamaluddin, Ongole	**i.396 r/w 120B of IPC;** **ii.400 IPC;** **iii.414 IPC**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii. Imprisonment for life for the offence U/s 400 IPC** **iii.RI for 3 years**	-do-	Crl.A.No.232/ 21
A14	Shaik Rahamathulla, Ongole	**i.396 r/w 120B of IPC;** **ii.400 IPC;** **iii.414 IPC**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii. Imprisonment for life for the offence U/s 400 IPC** **iii.RI for 3 years**	-do-	Crl.A.No.193/ 21
A15	Shaik Dada Peer @ Gani, Hindupur	**i.396 r/w 120B of IPC;** **ii.396 IPC;** **iii. 201** **iv. 400 IPC;** **v. 402** **vi.414 IPC;**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii.DEATH Punishment for the offence U/s 396 IPC UNDER TWO COUNTS** **iii. RI for 7 years and fine of Rs.5,000/- IDSI 3 months for the offence U/s 201 IPC** **iv. Imprisonment for life for the offence U/s 400 IPC** **v. RI for 7 years and fine of Rs.5,000/- IDSI 3 months** **vi.RI for 3 years for the offence U/s 414 IPC**	-do-	Crl.A.No.169/ 21

A16	Shaik Irfan	**i. 396 r/w 120B of IPC;** **ii. 400 IPC;** **iii.402 of IPC** **iv. 414 IPC**	**i.Imprisonment for life for the offence U/s 396 r/w 120B IPC** **ii. Imprisonment for life for the offence U/s 400 IPC** **iii. Rigorous Imprisonment for 7 years and to pay a fine of Rs.5000/- in default to suffer SI for 3 months** **iv. RI for 3 years for the offence U/s 414 IPC**	-	Crl.A.No.148/ 2021
A17	Shaik Rafi	**201 of IPC**	**Rigorous Imprisonment for 7 years and to pay a fine of Rs.5000/- in default to suffer SI for 3 months**	-	Crl.A.No.147/ 2021

II. <u>PROSECUTION CASE</u>:

A1, A2 and A11 to A14 are residents of Ongole; A3 is a resident of Donakonda; A4 is a resident of Bangalore; A5 and A6 are residents of Inamanamelluru of Maddipadu Mandal; A7 is the resident of Pata Malapalli village; A8 and A10 are the residents of Kottasayam Peta of Hanumakonda Mandal; A15 is a resident of Hindupur, Anantapur District and some of them are inter-related and all of them are known to each other, particularly A1, who is having criminal history being involved in several criminal cases. For instance, A2 and A3 are brothers-in-law of A1, and A14 is the father of A2. All the accused were closely associated with each other and they intended to earn easy money by committing highway dacoitees of iron load trailers and by selling the iron.

(a) It is alleged, A1 took rooms in Hotel Narayana Palace and also Tasty Hotel, Ongole during the months of July and August 2008 and had a criminal conspiracy in the hotel rooms with other accused and hatched up a plan to commit

dacoitees on highway by killing the crew of trailers moving with load of iron and sell the iron and get benefit as its cost was much. The staff of both the hotels witnessed the staying of A1 in their hotels having the negotiations with other accused.

(b) It is further alleged that in order to conceal the iron material and cut the stolen trailers into pieces, A1 required a big godown. So, A1 with the help of A12 obtained the godown of PW25 located at Seetharampuram Kostalu of Maddipadu Mandal on lease under a Lease Agreement.

(c) The offence took place near to Tettu Village and at Manneru River of Singaraya Konda Mandal (S. Konda).

(d) The deceased Bhushan Yadav (D1) and Chandan Kumar Mahatho (D2) belonged to Bilaspur Town of Chattisgadh and they were driver and cleaner respectively of trailer lorry No.CG 04 JB 0680 owned by PW.2.

(e) In pursuance of their conspiracy, A1 to A3, A5 to A11 went to the NH5 in the early hours on 23.08.2008 in a Verna Car belonging to PW.33 and a TATA Indica Car (a stolen property in Crime No.109/2008 of Nalgonda II Town PS) and two motor cycles belonging to A2 and A6 and they spotted trailer lorry bearing No. CG 04 JB 0680 at Tettu Village while the lorry was proceeding towards Chennai. The said lorry contains 26.30 Tonnes of Iron bars loaded at G.P Ispath Pvt Ltd., Urla, Raipur, Chattisgadh State and it was bound to Kanchipuram, Tamilnadu

State. The said lorry passed Toll Plaza at Tangutur in Prakasam District on National Highway on 23.08.2008 at 01:30 hours and proceeded towards Chennai.

(f) While so, on 23.08.2008 at about 10:00 AM the deceased stopped their trailer lorry on the road side margin near Tettu Village. Taking this opportunity, A1 to A3, A5 to A11 went there and asked the deceased to produce the records of the lorry in the guise of Police. When the deceased went to TATA Indica Car of the accused to produce the record, A1 to A3 and A5 to A11 pulled them into their car and strangulated the necks of D1 and D2 with the ropes till their death. A3 took the gold ring from the body of D1 while A11 took the wrist watch from the hand of D2. The dead bodies were packed in gunny bags and kept in the dicky of Indica Car. A2 went to Ongole and brought A17 to the scene of crime and A17 prepared a fake AP State registration number and attached to the trailer lorry by hiding its original number.

(g) Later, A1 to A3, A5 to A11 kept the dead bodies in gunny bags and shifted them in Indica Car towards Manneru River in S.Konda Mandal and there A1 to A3, A5 to A11 buried the dead bodies of D1 and D2 in a ditch in the river bed of Manneru along with packed gunny bags.

(h) Then A1 and A11 brought the stolen trailer lorry with iron rods to the godown of PW25. There on the instructions of A2, PW.31 along with some other

labourers unloaded the iron rods from the lorry and concealed in the leased godown of A1.

(i) Thereafter A1, A2, A11 and A16 took the empty trailer lorry to Tirupathi on 25.08.2008 and there met A4 and they all abandoned the stolen trailer lorry near Chittoor to screen the evidence. Since none has taken away the trailer lorry, after few days the accused decided to cut the trailer of the lorry into pieces and sell the cut iron pieces. Accordingly, A1 and A2 got the trailer lorry cut into pieces by employing L.W.18 - Shaik Kalaam near to Railway Koduru and they sold the cut iron pieces as iron scrap and shared the booty. The accused brought the power head back to the godown and kept for some days and later A1 sent the power head to Piduguralla through A4 and A6 and kept in the slate factory of P.W.13, with the aid of PW.12 – J. Vijaya Kirti who is the friend of A1.

(j) While so, it came to light that the present accused committed similar offences during the months of July and September, 2008 on the National Highway No.5 in between Ongole and Nellore and those offences are subject matter of (1) Crime No.140/2008 of Maddipadu PS and (2) Crime No.356/2008 of Ongole Taluk PS.

(k) On 17.10.2008 on the strength of a written report of Veerappan Kuppu Swamy (PW.1 in SC No.595/2010), Crime No.356/2008 was registered by the police of Ongole Taluk PS and the PW 56 – Inspector of Police herein took up

investigation in that case also and during the course of investigation he summoned A1, A3 and A11 from Bengaluru to Ongole Town PS and interrogated them and they confessed their guilt before the mediators – PW36 and LW2. Further, on 10.11.2008 the A1, A3 and A11 took the police and mediators to Manneru River and showed the place where they buried the dead bodies of the driver and cleaner after killing them. PW56 got drafted mediatornama and sent requisition to PW6 – the Tahsildar to conduct exhumation. Accordingly, on 10.11.2008, PW6 along with LW61 (died), LW 64 (died) went to Manneru river and there PW6 examined A1, A3 and A11 and recorded their statements and on the strength of their statements, disinterred the dead bodies from a ditch. Thereafter PW6 conducted inquest on the dead body of D1 in the presence of PW4, LW 39 - Pemala Ravi and LW.41- Ponduru Maruthi Rao and prepared Ex.P.8 - inquest report and thereafter forwarded the dead bodies for post-mortem to LW.64 – post-mortem doctor. LW.61 – the then Dy. Tahsildar, S.Konda held inquest over D2 in the presence of PW.17, PW.4 and LW.39 – Vemala Ravi and LW.41 – Ponduru Maruthi Rao and forwarded the dead body to L.W64 for post-mortem after preparing Ex.P11 - inquest proceedings. LW.64 held post mortem examination over the dead bodies of D1 and D2 and issued Ex.P101 and 102 – Post-mortem reports wherein he observed that cause of death was due to asphyxiation and spinal cord injury due to fracture of Atlas and Axis vertebrae.

(l) Thereafter on 10.11.2008 A1, A3 and A11 led the police and mediators PW.36, LW2 – K Sanjeeva Rao and PW 38 to the leased godown of A1 and showed the Verna Car used by accused for committing the offence and also the offences in Cr.No.356/2008 and Cr.No.140 of 2008. The police seized the Verna Car and other properties under the cover of mediator report. A1, A3 and A11 were produced before II AJMFC, Ongole and they were remanded to judicial custody. Basing on the mediator report-cum-confessional statements of A1, A3 and A11 dated 10.11.2008 which was sent by PW.56 to PW.45 – S.I of Police, S.Konda PS, the said officer registered Ex.P.107 – FIR, dated 14.11.2008 in Crime No.150/2008 for the offences U/s 302, 379, 201 r/w 34 IPC. Thereafter on the instructions of SP, Prakasam District, the file was sent to PW.56 for further investigation on 15.11.2008.

(m) On 15.11.2008 PW.56 – IO along with staff and mediators i.e., PW 36 and LW.2 went to Ratnamahal Cinema Hall Centre and arrested A9 and A10 and both of them confessed their offence. A mediatornama-cum-confessional statement was prepared. They led the police and mediators to S.Konda Poramboke of Inamalamelluru Village and shown the place where they buried the dead bodies of the deceased concerning to Crime No.356/2008 of Ongole Taluk PS. On that PW.6 issued requisition to PW.40 -the Tahsildar, Maddipadu who examined A9 and A10 and recorded their confessional statements and prepared the exhumation

proceedings concerned to Cr No.356/2008. Later, both of them were remanded to judicial custody by III AJFMC, Ongole in Cr.No.356/2008 on being produced by the Police.

(n) PW 56 obtained police custody of A1, A3 and A11 for interrogation in this case and in Cr.No.356/2008 and on 16.11.2008 those accused took the police to the scene of offence concerned to this case where they observed the scene of offence and prepared Ex.P.84 - rough sketch.

(o) On 20.11.2008 PW.56 examined A3 and A11 and recorded their statements in the presence of PW. 36 and LW.2 and on their statements he seized in the house of A3 a gold ring which was taken away by A3 from the dead body of D1 and so also PW 56 seized the wrist watch belonging to D2 from the house of A11 under the cover of mediator report.

(p) On 21.11.2008 A7 and A8 were arrested by PW.53 - Inspector of Police, Ongole Rural circle in the presence of PW.28 and LW 48 – P. Venkata Swamy under the cover of mediator report in Crime No.140/2008 of Maddipadu PS and they confessed about their knowledge and involvement in committing the presence offence along with other accused. They were produced in Court before Special Mobile Magistrate, Ongole and were remanded to custody in Crime No.140/2008.

(q) P.W.53 also arrested A5 on 26.11.2008 in the presence of PW.28 and L.W.50 in connection with Cr.No.140/2008 of Maddipadu PS and A5 confessed his offences.

(r) On 03.12.2008 P.W.53 arrested A15 in the presence of PW 27 and LW.56 – V. Ramanaiah in connection with Cr.No.140/2008 and seized MO.21-TATA Indica Car which is used in committing different offences. A15 admitted his guilt.

(s) On 27.11.2008 P.W.56 arrested A6 in the presence of PW.30 and LW.46 – B. Sankar Reddy and he confessed his involvement in the present offence and other offences and A6 led PW.56 and mediators to Piduguralla where P.W.56 examined PW.12 , PW.13, LW.24 – M..V. Subbaiah, LW.26 – M. Venkata Ramaiah and LW.27 – M. Kasamma and LW.28 – Perika Bujji with whom A1 had intimacy and concealed the power head and recorded their statements and seized the power head from the possession of PW.12 under the cover of mediators report.

P.W.56 also seized Bajaj Platina Motorcycle of A6 which was used for committing all these offences under a mediator report dt: 27.11.2008. A6 was produced before III AJFMC, Ongole in Cr.No.356/2008 and was remanded.

(t) During the course of investigation, PW.56 examined the staff of Narayana Palace and Taste Hotel and recorded the statements in the presence of PW.34 and L.W. 46. He also examined P.W26 and LW.13 who are the watchmen

of the godown which was leased out to A1. PW.56 also examined LW.18 – Shaik Kalam through whom the accused got the trailer cut into pieces.

(u) On 03.12.2008 Pw.56 arrested A2 in the presence of PW.36 and LW.2 under the cover of a mediator report. A2 confessed his guilt i.e., selling of load of iron bars at Chennai to PW.15 through PW.16, PW. 14 and LW.22 – Munu Swamy Subramanyam besides committing other offences. On the strength of his confession, P.W.56 seized Unicorn motorcycle used by A2 in committing all these offences and also air conditioner machine from the house of A2. A2 was remanded to custody by III AJMFC, Ongole in Cr.No.356/2008. Later PW.56 obtained police custody of A2 and A2 led the police and mediators i.e., P.W.16, P.W.18 and LW51 – K. Subba Rao to Chennai on 31.12.2008 and there P.W.47 secured the presence of P.W.14, P.W.15 and L.W.22 – M. Subramanyam. PW15 purchased the stolen iron rods from A2 & A14 with the help of PW14 & PW16. At Chennai, PW.47 – IO seized 16 MM iron rods weighing 16,275 Kgs and cash of Rs.1 lakh towards the sale amount of part of the iron rods from the possession of PW.15 in the presence of P.W.18 and LW.51.

(v) On 05.12.2008 P.W.56 arrested A2, A12 and A13 in the presence of PW.36 and LW.2 and he confessed his involvement in the present offence and other offences and they stated that they aided the accused to sell stolen property in Cr.No.356/2008.

(w) On the instruction of PW.56, PW.46 – the SI of Police visited Chattisgadh on 22.01.2009 and examined PW.2 who is the owner of the trailer lorry; PW.8 – the brother-in-law of D1; PW.3 – General Manger of GP Ispat Pvt. Ltd. Kurla and recorded their statements and seized the Xerox copies of RC book and photo of trailer lorry and the driver and cleaner etc., under the cover of mediator report in the presence of P.W.11 and L.W.53 – Jayaprakash Joshi. Later on 03.02.2009 PW.2, PW.8, PW.1 and PW.7 appeared before Pw.56 and PW.1 identified the cloths of D1 and a golden ring that was seized from A3. PW 7 identified cloths and wrist watch of D2 seized from A11. PW 4 and LW.55 - Shaik Tummala Cheruvu conducted property identification with P.W.2 and he identified the power head of the lorry under the cover of identification proceedings.

The IO during the course of further investigation examined other relevant witnesses connecting to Alto Car and Verna Car which were used for committing offences and also got conducted the TI parade of accused on 03.02.2009 through the relevant witnesses by the Magistrates. After completion of investigation he laid charge sheet against A1 to A17 showing A4, A14 to A16 as absconded. Later A14 and A16 obtained bails and appeared in the case and A4 and A15 were arrested. Thus all the accused A1 to A17 were committed to Sessions Court by AJFMC, Kandukur.

III. CHARGES:

The trial Court, on appearance of the accused, framed charges:

(i) U/s 396 r/w 120B against A1 to A16
(ii) U/s 400 IPC against A1 to A16
(iii) U/s 396 against A1 to A11 and A15 and
(iv) U/s 201 of IPC against A1 to A11, A15 and A17
(v) U/s 414 IPC against A4 and A12 to A16
(vi) U/s 402 IPC against A4, A15 and A16

The accused denied the charges and claimed for trial.

During trial, on behalf of prosecution, PWs 1 to 57 were examined; exhibits P1 to P162 were marked and MOs 1 to 21 were exhibited.

On behalf of accused exhibits D1 to D3 were marked.

After conducting 313 Cr.P.C examination, the trial Court heard the arguments of Public Prosecutor and the defence advocates.

IV. ARGUMENTS OF PROSECUTION AND DEFENCE BEFORE TRIAL COURT:

While the public prosecutor argued that with the voluminous oral, documentary and physical evidence the prosecution established the guilt of all the accused, the defence traversed it with the following main arguments:

It is contended that when the alleged offence took place on 23.08.2008, the FIR was belatedly registered on 14.11.2008 basing on the attested copies of

confessional statement and recovery panchanama and prosecution did not explain the delay and hence its story cannot be relied upon.

Secondly, it is contended that the prosecution did not file CC TV footage of the two hotels to prove the alleged conspiracy among the accused. It is further contended that the IO has not secured the call data particulars of the accused and produced before Court to prove the conspiracy and due to withholding the best possible evidence adverse inference has to be drawn against prosecution and conspiracy theory shall be rejected.

Thirdly, it is argued that prior to the identification parade the photos of accused which were published in the print and electronic media were shown to the witnesses and thereby the TI parade lost its significance and therefore the identification by the witnesses of the concerned accused cannot be given credence.

Fourthly, it is contended that the ropes which were allegedly used by the accused to strangulate the D1 and D2 have not been sent to FSL for examination.

Fifthly, regarding the exhumation proceedings, it is contended that only edited versions of videos covering the exhumation proceedings were filed to prejudice the mind of the Court against the accused and hence such evidence shall be discarded.

Sixthly, it is contended that though skeletal bones of D1 and D2 were sent for DNA profiling, however Ex.P162 – FSL Report showed that DNA profiling

could not be done which implies the dead bodies of D1 and D2 were not scientifically identified and therefore the accused cannot be held guilty of the charges.

Seventhly, it is argued that the hard discs from the computer systems of Toll Plazas were not seized and produced except the receipts and hence the information from the Toll Plazas cannot be relied upon.

Eighthly, it is contended that as per the version of IO, on 26.10.2008 he visited the tobacco godown at Sitarampuram Kostalu. However, he did not try to open and inspect the same nor did he keep surveillance at that place. It is only after arrest of A1, A3 and A11, a story was invented as if they led the police party and mediators to the said godown and informed as if A1 had taken lease of the said godown and showed some articles there to implicate the accused.

Ninthly, it is argued that all the mediatornamas-cum-confessional statements were not prepared at the respective places but they were leisurely prepared at the police station and signatures of mediators who are public servants and who will readily oblige police have been obtained at the police station. Hence the mediator reports and confessional statements have no legal sanctity.

Tenthly, on behalf of A12 and A13 it is argued that they did not commit any offence and they were falsely implicated in the case. PW.25 did not identify A12 and prosecution did not take steps to identify A12 by PW.25. It is further argued

that the stolen property was not produced before this Court and hence on that ground also A12 and A13 cannot be found guilty.

V. JUDGMENT OF TRIAL COURT:

(1) The trial Court set up the following points for determination:

(i) Whether the prosecution is able to prove that there is prior conspiracy in between Accused Nos. 1 to 16 to commit the offence alleged in this case, which is punishable under section 396 r/w 120-B of I.P.C ?

(ii) Whether the prosecution is able to prove the guilt of A.1 to A.11 & A.15 for the offence under section 396 of I.P.C, and whether the offence U/sec.396 of I.P.C was committed by A.1 to A.11 & A.15 in pursuance of conspiracy between A.1 to A.11 & A.15 ?

(iii) Whether, A.1 to A.11, A.15 & A.17 committed any act to screen the evidence of the commission of offence U/sec.396 of I.P.C, which is punishable offence under section 201 of I.P.C ?

(iv) Whether the prosecution is able to prove that all the Accused i.e., A.1 to A.16 are being members of Gang of Dacoits which is punishable under section 400 of I.P.C ?

(v) Whether prosecution is able to prove the guilt of the AccusedNo.4, 12 to 16 under section 414 of I.P.C ?

(vi) Whether prosecution is able to prove the guilt of the Accused No.4, 15 & 16 under section 402 of I.P.C ?

(2) Having recognized that the prosecution case depends on circumstantial evidence and after enumerating the principles laid down by the Hon'ble Apex Court for evaluation of circumstantial evidence, the trial Court proceeded to determine the above points.

(3) **Observations and Findings of the trial Court**:

(a) Basing on the evidence of PW.2 – the owner of the lorry bearing No. CG 04 JBO 680 coupled with the evidence of P.W.3 – The General Manager of Ispat Pvt Ltd, trial Court observed that the said lorry started from M/s GP Ispat Pvt Ltd., Urla, Chattisgadh with a load of 23.03 MTs iron rods with name Bhuland inscribed on the rods on 18.08.2008 to transport to Syntel International Pvt Ltd., Kanchipuram with the two deceased i.e., the driver and cleaner and last time the driver and cleaner made phone calls on 22.08.2008 to PW.2 and thereafter there was no communication from them.

(b) Regarding the fate of the lorry and the deceased driver and cleaner, the trial Court basing on the confessional statements of A1, A3 and A11 made in connection with S.C.No.595/2010 and other crimes, including the present crime and consequential exhumation of dead bodies of D1 and D2 in this case through P.W.6 – MRO and LW.61 – N Subramanyam, Dy. Tahsildar and other mediators and identification of dead bodies made by P.W.1, P.W 7 and P.W.8 – the relations of the deceased and the post-mortem certificate issued by L.W.64 - Dr. T.V. Seshagiri Rao to the effect that the cause of death of D1 and D2 was due to asphyxia due to strangulation, observed that the death of D1 and D2 was a homicidal death. Then basing on the evidence of PW.1, 2 3 and 54 the trial Court observed that the subject lorry was loaded with iron rods on 18.08.2008 to be delivered at Kanchipuram and the driver and cleaner were in active possession till their death. The trial Court further observed the PW.2 identified the power head.

(c) Then basing on the evidence of PWs 22, 23, 24, 32 and 37 coupled with documentary evidence i.e.., Ex.P.18 to 23, Ex.P63, Ex.P68 and P69 the trial Court observed that A1 and A3 stayed in Narayana Palace and Taste Hotel during the months of July, August, September, 2008 and met with all the accused during their stay and had Criminal Conspiracy.

(d) With the above and other observations the trial Court arrived at the following findings:

i) At the instigation of accused 2 and 14, the accused 1 to 11, 15 and A16 met in Room No.105 of Narayana Palace and conspired to commit the theft of iron loads from the lorries on the National High Way even by killing the driver and cleaner;

ii) The Accused 1 to 11 & 15 committed the murder of deceased 1 and 2, who are the driver and cleaner of trailer lorry bearing No. CG 04 JB 0680 in furtherance of their criminal conspiracy;

iii) After killing of the deceased 1 and 2, the Accused No.1 to 11 & 15 took the dead bodies in gunny bags and buried at Manneru river bank, and A.16 took away the trailer lorry and left the same at Chittoor High Way knowing that they have committed the offence of dacoity and murder and to cause the evidence of the commission of that offence to disappear with an intention of screening them i.e., Accused 1 to 11, 15 & 16 from legal punishment;

iv) The Accused No.4 with the help of A.12 to A.16 cut the trailer lorry into pieces knowing that they have committed the offence of dacoity and assisted in concealing and disposing the property which he knows that it is a stolen property.

v) A.1 to A.15 are the Common Accused tried jointly in this case (SC No.73/2010) and S.C.No.595/2010; Accused No.16 associated with A.1 to A.15 for the purpose of habitually committing dacoity as A.1 to A.15 participated in S.C.No.73/2020 and S.C.No.595/2010, which clearly shows he is one of the gang of persons of dacoity besides A.1 to A.15.

vi) Accused No.17 knowing that A.1 to A.15 committed dacoities with murders, at the request of A.1 and A.2, prepared the fake number plates and fake 'POLICE' board to facilitate the Accused to take away the lorries from the scene of offence and to cause the evidence of the commission of the offence and thereby screening the Accused from legal punishment.

The trial court accordingly convicted and sentenced the accused as stated supra.

Hence, the Referred Trial and the concerned Criminal Appeals.

VI. Heard arguments of following learned counsel for appellants in Criminal Appeal Nos.147, 148, 157, 163, 164, 168, 169, 193, 232, 249, 281 & 355 of 2021 and in RT No.2/2021 and Sri Y.Nagi Reddy, learned State Public Prosecutor representing the State.

Learned Senior Counsel Sri P. Veera Reddy, representing Sodum Anvesha, learned counsel for Appellant/A10 in Crl.A.Nos.168/2021; for Appellant/A4 in Crl.A.No.169/2021; and for Appellants/A2 & A14 in 193/2021

Sri B.N.V.Hanumantha Rao for Smt. Sridevi Jampani, learned counsel for Appellants/A1 & A11 in Crl.A.No.164/2021

Learned Senior Counsel Sri Posani Venkateswarlu for Sri Venkateswarlu Sanishetty, learned counsel for Appellant/A13 in Crl.A.No.232/2021.

Sri Srinivasa Rao Narra, learned counsel for Appellant/A9 in Crl.A.No.249/2021.

Learned Senior Counsel Sri Pappu Nageswar Rao for Sri P.Bhaskar, learned counsel for Appellants/A6 & A7 in Crl.A.No.169/2021.

Learned Senior Counsel Sri B.N.V.Hanumantha Rao for Sri R.Sameer Ahmed, learned counsel for Appellant/A15 in Crl.A.No.169/2021.

Sri N.Ashwani Kumar, learned counsel for Appellant/A16 in Crl.A.No.148/2021.

Learned Senior Counsel Sri Pappu Nageswara Rao, representing Sri Abhinav Krishna Uppaluru, learned counsel for Appellant/A8 in Crl.A.No.157/2021.

Sri Jada Sravan Kumar, learned counsel for Appellant/A3 in Crl.A.No.281/2021 and Appellant/A17 in Crl.A.No.147/2021.

Sri Pardhasaradhi A.V., learned counsel for Appellant/A5 in Crl.A.No.163/2021

Sri Thandava Yogesh, learned counsel for Appellant/A12 in Crl.A.No.355/2021.

VII. POWERS AND RESPONSIBILITIES OF HIGH COURT WHEN A DEATH SENTENCE IS SUBMITTED FOR CONFIRMATION BY A COURT OF SESSION:

This aspect has been dealt with and vividly explicated by the Apex Court in **Munna Pandey v. State of Bihar**[1]. Referring to Sections 366, 367 & 368 of

[1] MANU/SC/0965/2023=AIR2023SC5709

Chapter XXVIII and Section 386 & 391 of Chapter XXIX of Cr.P.C. a Full Bench of Apex Court speaking through Hon'ble Justice J.B.Pardiwala made the following observations:

i) Under Section 366 when a Court of Session passes sentence of death, the proceedings must be submitted to the High Court and the sentence of death is not to be executed unless it is confirmed by the High Court.

ii) Section 367 lays down the power of High Court to direct further enquiry to be made or additional evidence to be taken upon any point bearing upon the guilt or innocence of the convict.

iii) Section 368 lays down the power of High Court to confirm the sentence so imposed or annul the conviction. One of the powers that can be exercised under Section 368(c) is to "acquit the accused person". Pertinently, the power to acquit the person can be exercised by the High Court even without there being any substantive appeal on the part of accused challenging his conviction. To that extent, the proceedings under Chapter XXVIII of Cr.P.C. is a proceeding in continuation of the trial. The scope of the chapter is wider.

iv) Chapter XXIX of Cr.P.C. deals with appeals. Section 391 also entitles the appellate court to take further evidence or direct such further evidence to be taken.

v) Section 386 enumerates power of the appellate court which inter alia includes the power to "reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction subordinate to such appellate court or committed for trial". The powers of the appellate court equally wide.

vi) In the event of submission of death sentence for confirmation by a court of session and a Criminal Appeal being filed by the convict,

the High Court exercises powers both under Chapter XXVIII and XXIX of Cr.P.C.

vii) Ordinarily, in a Criminal Appeal against conviction, the appellate court under Section 384 Cr.P.C. can dismiss the appeal summarily, if the Court is of the opinion that there is no sufficient ground for interference, after examining all the grounds urged before it for challenging the correctness of the decision of the trial Court. It is not necessary for the appellate court to examine the entire record for the purpose of arriving at an independent decision of its own whether the conviction of the appellant is fully justified.

viii) The position is, however, different where the appeal is by an accused who is sentenced to death, so that the High Court dealing with the appeal has before it, simultaneously with the appeal, a reference for confirmation of the capital sentence under Section 366 Cr.P.C. On a reference for confirmation of sentence of death, the High Court is required to proceed in accordance with Section 367 & 368 respectively of Cr.P.C. which make it clear that the duty of the High Court in dealing with reference, is not only to see whether the order passed by the Sessions Judge is correct, but to examine the case for itself and even direct a further enquiry or the taking of additional evidence if the court considers it desirable in order to ascertain the guilt or the innocence of the convicted person. In disposing of such an appeal, the High Court should keep in view its duty under Section 367 Cr.P.C. and consequently, the Court must examine the appeal record for itself, arrive at a view whether a further enquiry or taking of additional evidence is desirable or not and then come to its own conclusion on the entire material on record whether conviction of the condemned prisoner is justified and sentence of death should be confirmed (emphasis supplied).

Keeping the above observations in view, we shall proceed to decide the reference and criminal appeals.

VIII. POINTS FOR CONSIDERATION IN THE APPEAL:

1. This is a case entirely based on circumstantial evidence. In a case of this nature, the Hon'ble Apex Court in the following decisions, laid down certain principles as to how the prosecution has to establish its case:

(1) Sharad Birdhi Chand Sarda vs State Of Maharashtra [2]

(2) Shailendra Rajdev Pasvan v. State of Gujarat[3]

(3) Laxman Prasad V. State of Madhya Pradesh[4]

The following are the golden principles for establishing the criminal case based on circumstantial evidence.

(i) The circumstances from which the inference of guilt is sought to be drawn must be cogently and firmly established.

(ii) Those circumstances should be of definite tendency unerringly pointing towards the guilt of accused.

(iii) That the circumstances taken cumulatively should be formed into a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by an accused and those circumstances should be incapable of explanation on any hypothesis other than that of the guilty of accused and inconsistent with his innocence.

2. From the above jurisprudence, the points that emerge for consideration in the appeal are:

[2] 1984 (4) SCC 116
[3] (2020) 14 SCC 750
[4] (2023) 6 SCC 399

(1) Whether the prosecution proved the following circumstances to draw an inference of guilt of the accused and those circumstances formed into a complete chain to prove invariably the guilt of the accused?

(a) Criminal conspiracy hatched by accused in Narayana Palace and Tasty Hotel, Ongole to commit dacoity of Iron load vehicles on the Highway.

(b) Missing of the trailer lorry bearing No.CG 04 JB 0680 and commission of its dacoity along with iron load by accused

(c) Killing of driver and cleaner and burying dead bodies by accused and their recovery by exhumation:

(d) Storage of iron rods in the godown taken on lease by A1.

(e) Selling of iron load by A2 and A14 to PW15 with the help of PW14 and PW16.

(f) Abandonment of the power head of the trailer by A4 & A6 on the instructions of A1 in the Slate Factory of PW13 at Piduguralla with the help of PW12 and its recovery by police.

(g) Recoveries basing on the confessions of different accused.

(2) If guilt of accused is proved by establishing the above circumstances, which sections of law will attract their offences?

(3) Whether the sentence imposed by the trial Court against the accused for different offences is legally sustainable?

(4) To what relief?

IX. ANALYSIS

1. Point No.1: As mentioned supra, the prosecution projected certain suspicious circumstances which, for convenient reference listed as (a) to (g). It has now to be seen whether these suspicious circumstances have been proved by the prosecution and whether they formed into a complete chain to invariably establish the guilt of accused.

(a) Criminal conspiracy hatched by accused in the two hotels. This aspect will be discussed a little while later after discussing the other circumstances.

2. Point No.1: (b) & (c): These two circumstances relate to the missing of trailer lorry bearing No.CG 04 JB 0680 with iron load and its dacoity by the culprits after killing the driver and cleaner and burying their dead bodies and subsequent recovery of dead bodies by exhumation. These aspects have been cumulatively deposed by PWs. 1 to 11, 36, 41, 46, 47, 49 and 54**.** Hence their evidence has to be scrutinized.

(a) It should be noted, the fundamental defence of the accused is that all of them are innocent and they have nothing to do with the alleged offence and they were falsely implicated in the case by the police. Of course, incidentally they contended that the prosecution miserably failed to prove the dacoity of trailer lorry with iron load and killing of the driver and cleaner by specific persons and further,

the prosecution also failed to identify the decomposed dead bodies found on exhumation with the driver and cleaner of trailer lorry bearing No. CG 04 JB 0680.

3. <u>Missing of Trailer Lorry bearing No. CG 04 JB 0680 along with iron load and its dacoity</u>:

Of the above witnesses, the evidence of PW.2 and 3 would depict the missing of trailer lorry bearing No.CG 04 JB 0680 along with iron load and its driver and cleaner.

PW.2 who is a resident of Bilaspur in Chattisgadh State and owner of the trailer lorry deposed that on the night of 18.08.2008 his lorry was loaded with iron rods at GP Ispat Pvt Ltd Company, Urla of Chattisgadh for transporting to Kanchipuram in Tamilnadu. Bhushan Yadav was the driver and Chandan Mahatho was the cleaner of the said vehicle. He was contacting the driver by phone and for the last time on 22.08.2008 he contacted the driver while the vehicle was at Nalgonda. The vehicle was expected to reach Kanchipuram by 24.08.2008. However, on 24.08.2008 when he made a phone call, the phone was switched off. He received a phone call from PW.3 stating that the vehicle did not reach the destination. This witness enquired the relatives of the driver and other lorry owners but could not get any information. So he gave Ex.P.131 written report in Tarbahar Police Station, Bilaspur about the missing of his vehicle. The police

advised him to report in the police station within whose jurisdiction the lorry started and endorsed on Ex.P.131 to that effect. He further deposed that on 27.08.2008 he met PW.3 and collected the invoice of Iron load, transportation copy and photo showing the lorry along with the load and driver and cleaner and thereafter went in search of his vehicle upto Kanchipuram and could only get information that his vehicle entered Andhra Pradesh through the check post at Lakkadkot border of Maharashtra and Andhra Pradesh (now Telangana). So he went back and presented Ex.P.131 (which was returned with endorsement by the Police of Tarabahar PS, Bilaspur) to the police of Urla PS. He further deposed that on 22.01.2009 PW.46 – the S.I of Police, Ongole came to his residence and informed that his vehicle was found near S.Konda and that the driver and cleaner were murdered. Then PW.2 handed over Ex.P.1 to P7 – lorry documents to P.W.46 under the cover of Ex.P14 – mediators report in the presence of two mediators i.e., PW.11 and LW.53 – Jai Prakash Joshi. PW.46 recorded his statement and asked him to come to Ongole to identify his vehicle. This witness further stated that he informed PW.7 & PW.8 who are brother and brother-in-law of deceased cleaner and driver. PW.1 further deposed that on 03.02.2009 he along with PW.7 & PW.8 went to Ongole PS and the police took them to the place where the lorry was kept. He checked the Engine Number and Chasis Number with the registration certificate available with him and identified his vehicle. On the

number plate, instead of his lorry number another number was available. There was no trailer to the lorry but only engine portion with six tyres was available which is MO.1.

(a) PW.1's evidence gets corroborated by other witnesses. **PW.3** – The General Manager of G.P Ispat Pvt Ltd., Urla deposed that their company manufactures iron with the brand name of "BULAND ISI TMT". He stated that on 18.08.2008, their company transported 26.03 MTs of iron rods in the trailer lorry bearing No. CG 04 JB 0680 of PW.2 under Ex.P1 and P2 - Invoice Nos. 131 and 132 to Kanchipuram in Tamilnadu through Siddhivinayaka Transport Co. After 15 days they received call from Kanchipuram that the load did not reach them. Then he contacted the Siddhivinayaka Transport Co and also P.W.2. The owner came to him and he gave the photograph of the lorry and other documents. This witness further stated that PW 46 came and informed that the driver and cleaner were killed and lorry was robbed. This witness gave all the necessary details to the PW.46 and he informed him that the iron material was at S.Konda PS and asked him to come and identify. About 10 days thereafter, PW.3 went to S.Konda PS and he was shown the iron rods and basing on the symbol "BULAND ISI TMT" he identified MO.3 - iron rods.

(b) Then **PW.46** also deposed in similar lines. He stated that on the instructions of Inspector of Ongole Town PS, he went to Chattisgadh and met

PW.2 and 3 and recorded their statements and collected Ex.P1 to P7 – the lorry documents from PW.2 in the presence of mediators PW.11 and LW.53 – Jai Prakash Joshi under Ex.P.14 – mediatornama dt: 22.01.2009.

(c) **P.W.11** who is a businessman in Bilaspur deposed that he knows PW.2 and he acted as a mediator when P.W.46 seized the documents from PW.2 under the cover of Ex.P.14 – seizernama and he signed on it.

(d) **P.W.54** who worked as Inspector of Police, Urla PS deposed that on 16.09.2008 PW.2 came to Urla PS and presented Ex.P.131 – report dt: 26.08.2008 which was returned with endorsement by the police of Tarabahar PS, Bilaspur District on point of jurisdiction and PW.54 registered the said report as a case in Crime No.240/2008 U/s 407 IPC and issued Ex.P.132 – FIR.

(e) Thus the above evidence of PWs.2, 3 11, 46 and 54 would clearly demonstrate that PW.2 is the owner of the trailer lorry bearing No. CG 04 JB 0680 which was transporting the iron load of PW.3's company from Urla to Kanchipuram and on the way it was subjected to dacoity and the driver and cleaner were murdered. Only MO.1 - power head and MO.3 – 175 bundles of iron rods with "BULAND ISI TMT" mark were recovered later and the said recovery aspect will be discussed after a while.

(f) All the accused cross-examined PW.2 and suggested that he was not the owner of the lorry but he denied the suggestion. Except above suggestion, no useful material was extracted to discredit his evidence. The defence suggestion that PW.2 was not the owner of trailer lorry bearing No. CG 04 JB 0680 and he was set up for the purpose of present case has no force. It should be noted that even long before the police of S.Konda Ps could know about the commission of offence in this case, PW.2 gave report dated 26.08.2008 initially to the police of Tarabahar PS, Bilaspur District claiming that he is the owner of lorry bearing No.CG 04 JB 0680 and the same was missing and later, on point of jurisdiction, he presented the said report before police of Urla PS on 16.09.2008 and the same was registered as Ex.P.132 – FIR No.240/2008. Therefore it cannot be presumed that PW.2 falsely claimed ownership of the subject vehicle at the behest of police of Andhra Pradesh.

(g) Now, the dacoity of lorry with iron load and murder of its crew etc., facts are concerned, we have mentioned supra that PW.46 – S.I of Police, Ongole went to Chattisgarh and informed the said fact to PW.2 and 3. At this juncture it is germane to discuss as to how the police of S.Konda came to know about these aspects when the FIR lodged by PW.2 was originated from a distant place at Urla PS. In this context, it should be noted that the present accused are involved not

only in the instant case but also two other similar offences covered by SC No.595/2010 (Crime No.356/2008 of Ongole Taluk PS) and SC No.91/2010 (Crime No.140/2008 of Maddipadu PS, Prakasam District). When Crime No. 356/2008 was under investigation, Accused Nos.1, 3 and 11 were apprehended by the IO on 10.11.2008 and they confessed about the commission of all the three offences and some other offences and basing on the admissible portion of Ex.P.79 – Mediator report-cum-confessional statement, PW.45 – SI of Police, S.Konda PS, registered Cr.No.150/2008, dt: 14.11.2008 in the present case and issued Ex.P.107 – FIR. Basing on the said FIR, the CI of Police, Ongole conducted investigation in the present case as well as the remaining two cases. Present case is concerned, on the basis of information provided by A1, A3 and A11, the dead bodies of the driver and cleaner were exhumed and during the further course of investigation, other accused were arrested and on the basis of their statements some properties including MO.1 – Power head of the trailer lorry bearing No.CG 04 0680 were recovered. Thus having regard to the progress made in the investigation in the instant case, PW.46 – the SI of Police, Ongole, on instructions of IO went to Chattisgarh and informed PWs.2 and 3 about the dacoity and murder of the driver and cleaner and recorded the statements of PWs.2 and 3 and obtained Ex.P1 to P7 from PW.2.

4. <u>Exhumation & Identification of Dead Bodies</u>:

It is already mentioned supra that while PW.56 – the IO was investigating the offence in SC No.595/2010 (Cr.No.356/2008 of Ongole Taluk PS) which is one of the three similar dacoity-cum-murder offences committed by the present accused, he apprehended A1, A3 and A11 and on the basis of admissible portions of their confessional statements, he got exhumed the dead bodies in the instant case and also recovered some properties including MO.1 – Power head. Thus in the context of the exhumation and recovery of dead bodies of driver and cleaner, we have the evidence of PWs 4, 5, 6, 36, 41, 47, 49, and 56 coupled with documentary evidence i.e., Ex.P8, P11 to P13, P79, P80, P123, P134 to P137 etc. The said evidence is succinctly discussed below

(a) **PW.56** - the I.O. deposed that during the course of investigation of the offence in Cr.No.356/2008 of Ongole Taluk PS, he secured the presence of A1, A3 and A11 from Varanchi Village, Hunsur Taluk of Mysore District by sending a team of police officers led by PW.47 – S.I of Police, Ongole II Town PS. Thereafter he served Ex.P168 to P170 - notices U/s 160 Cr.P.C to A1, A3 and A11 and interrogated them on 10.11.2008 in the presence of PW.36 and LW.2 – the mediators. During such interrogation, they confessed their guilt in all the three dacoity-cum-murder crimes which was recorded in Ex.P.79 – mediatornama-cum-

confessional statement. Ex.P92 and P133 are relevant portions of their statements in Ex.P.79.

(b) P.W56 further deposed that on the same day i.e., 10.11.2008, the A1, A3 and A11 led the police team and PW.36 and LW.2 - the mediators to the bank of Manneru River situated by the side of NH5 road near S.Konda village and informed that they would show the place where the dead bodies of driver and cleaner were buried by them. A mediator report under Ex.P80 was prepared. Then, PW.56 sent Ex.P.134 – requisition to PW.6 – the Tahsildar-cum-Executive Magistrate to disinter the dead bodies and accordingly PW.6 along with PWs.4 and 5 the mediators came to the spot near Manneru River Bridge. The IO also secured the PW.49 - the photographer to take photos and videos of the exhumation proceedings. PW.56 further deposed that A1, A3 and A11 led 50 feet downwards towards western side of Manneru Bridge and northern side of the river bank and there they located a place in S.No.108/5 and informed that at that place they buried the driver and the cleaner. PW.6 – the Tahsildar recorded the statements of A1, A3 and A11 under Ex.P.135 to 137. PW56 further deposed that PW6 got dug the identified place where they found two dead bodies (driver and cleaner) in two separate gunny bags. Then PW6 conducted exhumation proceedings and recorded under Ex.P13. Thereafter PW6 and LW.61- Deputy Tahsildar (who is no more)

conducted inquest over the dead body of lorry driver (D1) and cleaner (D2) prepared Ex.P8 & P.11- Inquest reports.

(c) PW.56 further deposed that on the requisition of Executive Magistrate, the LW.64-Dr.T.V.Seshagiri Rao (who is no more) conducted autopsy over dead bodies at the spot and issued Ex.P101 and P102 post-mortem reports. He preserved skulls and long bones of both dead bodies for referring to the DNA test. LW64 handed over the MO.7 to MO.9 clothes found on the dead body of D1 and MO5 and MO6 clothes found on the dead body of D2 to I.O. The I.O. also seized MO18 and MO19 gunny bags wherein dead bodies were stuffed under the cover of Ex.P81-mediatornama in the presence of PW36 and LW2. PW49 took Ex.P12-photographs and Ex.P123-videograph of the exhumation and inquest proceedings. It should be noted at this juncture that in the deposition of PW56 the trial Court mentioned that the prosecution with the permission of trial Court played the Ex.P123-video in Court in the presence of both the learned counsel, parties and witness. PW56 identified the presence of A1, A3 and A11 in the video recording. He also identified other police staff and witnesses present at the exhumation.

The above is the detailed version of PW.56 relating to the exhumation proceedings. His evidence was corroborated by other witnesses i.e., the Executive Magistrate and mediators.

(d) In corroboration, **PW6**-the Tahsildar-cum-Executive Magistrate deposed that on 10.11.2008 on the requisition of IO, she along with PW.5, LWs..39,41,42, 44 and 61 went to the Maneru Bridge and there the IO along with A1, A3 and A11 was present and on the instructions of IO, she enquired A1, A3 and A11 and they confessed their offence and stated that they would show the place where they buried the dead bodies of deceased. She recorded their statements under Ex.P.135 to 137. P.W.6 further deposed that A1, A3 and A11 led her, mediators and the police to the west of the Manneru bridge where a small vaagu joins Manneru canal. In that area they have specifically shown a place where they buried the dead bodies and then PW.6 conducted exhumation proceedings. She also summoned LW.64 to conduct PM examination. She stated that two gunny bags were found in the pit and when opened two dead bodies were found in a putrefied condition. Clothes were there on the dead bodies basing on which they concluded that they were male dead bodies. PW.6 and LW.61 conducted inquest over D1 and D2. PW.4, LW.39 and LW.41 acted as mediators. Ex.P8 and P11 inquest reports were prepared. Basing on the statements of A1, A3 and A11 and the position of dead bodies in the gunny bags, the inquest mediators opined that the two persons were killed and buried.

(e) **PWs. 4, 5 and 36** are the mediators for confessional statements made by A1, A3 and A11 and consequent exhumation proceedings. They deposed in

mutual corroboration with each other and also corroborated the evidence of PWs.6 and 56.

(f) **LW.64** – Dr. T.V. Seshagiri Rao conducted PM examination over the dead bodies of D1 and D2 and issued Ex.P101 and 102 – post-mortem reports wherein he observed that cause of death was due to asphyxiation and spinal cord injury due to fracture of Atlas and Axis vertebrae. It should be noted that LW.64 died in or about 2010 and so PW.41 – Dr. N. Srikanth Rao, CAS Area Hospital, Kandukur who worked along with LW.64 identified the handwriting and signatures of LW.64 on PM reports. He stated that the fracture to the C1 and C2 would certainly cause the death of a human being.

5. We have carefully scrutinized the above oral and documentary evidence. The Ex.P79-mediator-cum-confessional statement contains the signatures of A1 and A3 and LTM of A11 which would indicate that they gave those statements. The admissible portions in Ex.P79 U/s 27 of the Evidence Act would manifest that on the own showing of A1, A3 and A11, the IO got exhumed the dead bodies through the PW.6 – The Executive Magistrate. The post-mortem Doctor opined that the cause of death was due to asphyxiation and spinal cord injury due to fracture of Atlas and Axis vertebrae. Thus it is clear that the aforesaid two male persons met with homicidal death.

(a) So far as identification of dead bodies is concerned, admittedly at the time of exhumation the dead bodies were in putrefied state and skeletal structures with some tissues were only available. The relations of the deceased were also not available at the time of exhumation. Hence in all the relevant records i.e., exhumation proceedings, inquest reports and PM reports the deceased were referred to as unknown male persons. Though the IO sent skulls and long bones of both dead bodies for DNA test, the report could not be furnished by FSL.

(b) Basing on the above deficiencies, learned counsels for appellants/accused, particularly learned counsel for appellant/accused No.1 Sri B.N.V. Hanumantha Rao, while referring to Ex.P.79 – mediator report, firstly argued that the confessional statements of A1 and A3 were marked as Ex.P92 and Ex.P.133 respectively which statements were made before the police officer and hence they are not the substantial piece of evidence under law and hit by Section 25 and 26 of the Evidence Act. On this point he placed reliance on **Tekam Laxmi v. State of A.P**[5]**.** He further argued that in Ex.P.135 to 137 - statements recorded by PW.6, the signatures of A1, A3 and A11 are not found which implies Ex.P135 to P137 were fabricated to suit the case of the prosecution as if the accused led police and mediators to the burying place of the dead bodies and showed them under Ex.P.134 to 137. He thus vehemently argued that the exhumation of dead

[5] 2019 (2) ALT (Crl) 25

bodies cannot be attributed to A1, A3 and A11., On the identification of dead bodies, he further argued that since dead bodies were highly decomposed and only skeletal structures were available and DNA profiling also could not be secured by the prosecution, the dead bodies found on exhumation cannot be claimed as that of the driver and cleaner in the instant case. He thus concluded that the accused cannot be held guilty of murder of the driver and the cleaner as the very death of former and complicity of accused could not be established.

(c) On a careful scrutiny of oral and documentary evidence, we are unable to countenance the above arguments of the appellants. It is true that no confession made by an accused to a police officer or by any person whilst he is in the custody of a police officer to a third party shall be proved against such person in view of the embargo created U/s 25 and 26 of the Evidence Act. However, the exception is that a fact discovered in consequence of the information provided by an accused can be proved as laid U/s 27. It is in the light of aforesaid provisions, the admissibility of Ex.P79, 92 and 133 has to be scrutinized. As already discussed supra, Ex.P79 is the mediator-cum-confessional statements of A1, A3 and A11 recorded by PW.56. From out of Ex.P.79, the trial Court specifically marked only the admissible part of the confessional statement of A3 as Ex.P.133. Precisely, Ex.P.133 would depict that A3 informed to police and mediators that if they come along with him, he would show the place where A1, A3 and A11 buried the dead

bodies. However, A1 & A11 are concerned, the trial court committed error in marking the entire admissible and inadmissible statements of A1 and A11 as Ex.P92 and Ex.P79 respectively instead of marking only the admissible portions. Thus the question is, on account of the procedural error committed by the trial court, whether the admissible portions of the statements of A1, A3 and A11 also have to be discarded. In **Tekam Lakshmi**'s case (Supra 5) a Division Bench of Common High Court of Andhra Pradesh having found that in Ex.P7 - confessional statement, the trial court has not marked only the relevant portion of such document, held that the said document was not admissible under law. It observed that had the trial court marked the relevant portion in Ex.P7, the legality of the same would be otherwise. We respectfully disagree with aforesaid observation of the Division Bench. Merely because the trial court committed a mistake in marking both admissible and inadmissible portions of a confessional statement, that cannot be a ground to discard the entire statement which also contains admissible portion U/s 27 of the Evidence Act. The trial court at a later stage or the appellate court can accept the admissible portion of the statement leaving aside the inadmissible portion. Instead, if the entire statement is discarded, prejudice will be caused to the prosecution. Our view gets corroborated by the judgment of Apex Court in **Venkatesh @ Chandra v. State of Karnataka**[6]. While

[6] 2023(1) Supreme 414

deprecating the practice of marking the entire statement of accused, the Apex Court in that case has taken only admissible portion of the statement by observing thus:

> "18. As was observed by the Privy Council **(Pulukuri Kotayya and others v.King Emperor (AIR (34 1947 PV 67)** the words – "with which I stabbed A" were inadmissible since they did not relate to the discovery of knife in the house of the informant. Applying this logic, only that part of the statement which leads to the discovery of certain facts alone could be marked in evidence and not the entirely of the statement. Coming to the instant case and going by the principle and the illustration highlighted by the Privy Council, out of the statement of accused No.1, only the following portion except the words printed in "italics" would be admissible and can be marked in evidence: (Emphasis Supplied)
>
> > "….If I am taken there, I will show the spot where we committed murder, and we will show the place where we have thrown the knife and the rod. And we will show the shop in which we sold the jewelleries."
>
> The expression "where we committed murder" must not come on record. Similarly, all the earlier facts narrated in the statement about past history which are in the nature of self-implication, would be inadmissible as amounting to a confession made to a Police Officer. All the statements namely, Exhs.P-21 to P-24 must be read accordingly.
>
> 19.We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them." (Emphasis Supplied)

In **Aloke Nath Dutta v. State of West Bengal**[7] the similar view was expressed by the Supreme Court stating thus:

> "53. It is, however, disturbing to not that a confession has not been brought on record in a manner contemplated by law. Law does not envisage taking on record the entire confession by marking it an exhibit incorporating both the admissible and inadmissible part thereof together. We intend to point out that only that part of confession is admissible, which would be leading to the recovery of dead body and/or recovery of articles of Biswanath; the purported confession proceeded to state even the mode and manner in which Biswanath was allegedly killed.It should not have been done. It may influence the mind of the court. (See *State of Maharashtra v. Damu,* SCC at p.282 para 35) (Emphasis Supplied)

[7] (2007) 12 SCC 230 = (2008) 2 SCC (Cri) 264

> 54. In *Anter Sing v. Stateof Rajasthan* it was stated: (SCC p.663, para 11)
>
> "11. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in *Pulukuri Kotayya v. Kind-Emperor* in the following words, wich have become locus classicus: (AIR p.70, para 10)
>
> 'It is fallacious to treat the "fact discovered" within the Section as equivalent to the object produced; the fact discovered embraces the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added "with which I stabbed A" these words are inadmissible since they do not related to the discovery of the knife in the house of the informant.'"
>
> (But see *Dhanunjoy Chatterjee v. State of W.P.* SCC at pp.234-35.)
>
> 55. Therefore, we would take note of only that portion of the confession which is admissible in evidence."

(d) In the light of above judgments of Apex Court when Ex.P79, P92 and P133 are perused, they contain both admissible and inadmissible portions of the statements of A1, A3 and A11. When only admissible portions are considered, they would depict that those accused revealed the place where they buried the dead bodies of driver and cleaner and also led the police and mediators to that place and consequently the police discovered the dead bodies by exhumation. Hence the exhumation can be said to be effected through the discovery of fact made in terms of Section 27 of the Evidence Act.

(e) The further argument of the accused that Ex.P135 to P137 do not contain the signatures of A1, A3 and A11 and therefore those documents should be held as fabricated is concerned, the same has no force. In Ex.P79-mediator-cum-confessional statements of A1, A3 and A11, the mediators, police and also the A1 and A3 affixed their signatures and A11 put his LTI. Ex.P79 is the main document which contains the admissible portion of their statement intending to show the burying place of the dead bodies. Whereas Ex.P135 to P137 recorded by PW.6 are only consequential documents pursuant to Ex.P79. Therefore, we do not find any serious lapse or infirmity due to the absence of their signatures on Ex.P135 to P137. Added to it, the appellants have not shown any relevant provision of law which mandates affixture of signatures of accused on certain specific documents. In similar circumstances in **Kishore Bhadke v. State of Maharashtra**[8] the Apex Court observed thus:

> "22. It was then argued that the recovery Panchnama (Exh. 76A) did not contain signature of the accused and for which reason the same was inadmissible. Even this submission does not commend to us. In that, no provision has been brought to our notice which mandates taking signature of the accused on the recovery Panchnama. Admittedly, signature of accused was taken on the statement recorded Under Section 27 of the Evidence Act (Exh. 76 and 77 respectively). The statement of accused No. 3 (Exh. 77) bears his signature. Therefore, even this argument does not take the matter any further."

6. So far as arguments on DNA test is concerned, PW56-the I.O. sent the skull and long bones of the two deceased along with the blood samples of PW1 and

[8] (2017) 3 SCC 760 = MANU/SC/0011/2017

PW7 who are the brothers of the two deceased to the FSL. However, Ex.P162-FSL reports would show that the experts in the FSL could not give the DNA reports of the deceased for the reason that amplifiable DNA could not be extracted from the long bone and skull bone of the two deceased. Thus, because of the said technical issue opinion could not be given. Learned Public Prosecutor argued that on that ground alone the dead bodies cannot be held unidentified and prosecution case cannot be discarded. He relied on **Sunil v. State of Madhya Pradesh**[9]**.** We agree with learned P.P. The DNA test is only one mode of establishing prosecution case. If other reliable evidence is produced by prosecution, the Court can accept it. In **Sunil**'s case (supra 9) Apex Court laid the said principle thus:

> "3. From the provisions of Section 53A of the Code and the decision of this Court in Krishan Kumar (supra) it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishan Kumar (para 44) Section 53A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favoring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered."

(a) In the instant case, though the dead bodies were putrefied and DNA report could not be obtained, still by virtue of their clothes, concerned witnesses have identified those dead bodies.

[9] (2017) 4 SCC 393

PW.4 who is the mediator for exhumation of the dead bodies, deposed that he himself and other mediator went along with PW6-the Tahasildar to the Maneru Bridge on 10.11.2008 where the police brought A1, A3 & A11 who showed a place and on digging the same two gunny bags were found and on opening the same they found one dead body in each bag. He further deposed there was no flesh on the dead bodies but only bones and clothes were available. The PW6 and LW61 conducted inquest over one dead body each and this witness and LW39 & LW41 acted as mediators for the inquest conducted by PW6. On one dead body they found white colour banian (MO7), white colour lungi (MO8) and blue colour underwear (MO9). Ex.P8-inquest report was prepared and he signed on it. This witness further deposed that on 03.02.2009 himself and LW55 at the behest of police of Ongole Rural PS conducted identification of properties i.e., one gold ring and watch through PW1 and PW7. PW1 identified the golden ring of his brother Bhushan Yadav and PW7 identified watch of his brother Chandan Mahatho and Ex.P9-identification report was prepared on which all of them signed.

(b) **PW.5** is another mediator for exhumation and inquest. He deposed that on 10.11.2008, on the requisition of I.O., PW6 and LW61 conducted exhumation and inquest over the two dead bodies and by virtue of the clothes available on the dead bodies, they opined that the deceased were male persons.

(c) **PW.6**-the Executive Magistrate also deposed in similar lines and stated that on the revelation of A1, A3 and A11, they conducted exhumation at West Maneru river place and found two dead bodies in gunny bags and they were in a putrefied condition and basing on their clothes, they identified the dead bodies as male persons and conducted inquest and prepared Ex.P8 and P11-inquet reports.

(d) Then **Ex.P8 and P11**-inquest reports would reveal that at the time of inquest the mediators found MOs 5 & 6 clothes on the dead body of cleaner and MO7 to 9 clothes on the dead body of the driver. After post-mortem examination, LW64-the P.M.Doctor handed over the clothes on the two dead bodies to PW43 and PW44-the two constables who submitted them in the Taluka Police Station, Ongole.

(e) **PW.56-I.O** confirmed that PW43 produced MO7 to MO9 and PW44 produced MO5 & MO6 before him.

Added to above, during the evidence of PW56 the trial Court vide its order in Crl.M.P.No.2124/2017 dt.02.02.2018, permitted the video display of exhumation proceedings and observed the dead bodies with clothes. Later, the above referred clothes were identified by their relations i.e., PW1, PW7 & PW8.

(f) **PW.1** - the own brother of Bhushan Yadav (the deceased driver) deposed that they are five brothers belonging to Assoyea village in Bihar State and the deceased was the youngest one and they were all residing together in the village

and the deceased was working as lorry driver under PW2. He further deposed that his brother left the house in the 2nd week of August 2008 for Bilaspur and from there he informed by phone that he was going in their lorry with iron load to Kanchipuram and thereafter he did not pass on any information. He stated that his brother used to wear pant, shirt, banian and lungi and a gold ring. In January, 2009 PW2 informed by phone that his brother and cleaner were killed near Ongole in A.P. Thereafter, himself, PW2, PW7 & PW8 went to Ongole and met PW56 and he stated that he can identify the belongings of his brother. He was shown at the Police Station the clothes and ring and he identified lungi, banian, underwear and ring of his brother i.e., MOs 7 to 10. Of course he could not identify the ring in the Court.

(g) Then **PW.8** who is the brother-in-law of the deceased driver deposed that he is a resident of Bilaspur in Chhattisgarh State and both the deceased used to reside along with him in a room at Bilaspur and on 18.08.2008 both of them went on duty in the lorry of PW2 and on 19.08.2008 Bhushan Yadav contacted him on phone stating that they were going to Kanchipuram with iron load but thereafter there was no communication from him. Two months thereafter PW2 informed him that Ongole police intimated about the murder of those two persons and so he along with PWs 1 2 & 7 went to the Ongole Police Station. This witness identified MOs 7 to 9 clothes and MO10 golden ring of the deceased Bhushan Yadav.

(h) Then **PW.7** who is the brother of deceased Chandan Kumar Mahatho (the cleaner), deposed in similar lines and stated that on the information of Police of Ongole, himself, PWs1, 2 & 8 went to Ongole P.S. on 03.02.2009 and there he identified Mos 5 & 6-clothes and MO4-watch of his brother under Ex.P9-mediator report.

(i) Thus, the above oral and documentary evidence explicates that there were clothes on the dead bodies by which the police and mediators identified them as male persons and later their relations identified those dead bodies as their brothers. The witnesses being the own brothers and brother-in-law of the deceased, their identifying knowledge cannot be doubted. The above witnesses were extensively cross-examined but nothing useful could be extracted to impeach their credibility.

7. Sri A.V.Pardhasaradhi, learned counsel for appellant/A5 would argue that *corpus delicti* has not been established by the prosecution. He would mean, the dead bodies exhumed could not be identified as that of the driver and cleaner and further, it was not established that the driver and cleaner indeed met with homicidal death. This argument, it must be said has no force. The Indian law has widely expounded jurisprudence on the rule of *corpus delicti* i.e., production of dead body of the victim for proof of murder. It has been held that a murder can be proved also by other cogent evidence without producing the dead body of victim as *corpus delicti* is only a rule of prudence but not rule of evidence. In **Rishi Pal v.**

State of Uttarakhand[10] while reiterating this principle, several judgments were quoted as follows:

> "9. xxxx In **Rama Nand and Ors. v. State of Himachal Pradesh MANU/SC/0209/1981 : (1981) 1 SCC 511**, this Court summed up the legal position on the subject as:
>
> *... In other words, we would take it that the corpus delicti, i.e., the dead-body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand Appellant? It is true that one of the essential ingredients of the offence of culpable homicide required to be proved by the prosecution is that the accused caused the death" of the person alleged to have been killed.*
>
> *28. This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead-body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict", said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead". This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the deadbody of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead-body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply because they were cunning and clever enough to destroy the body of their victim. In the context of our law, Sir Hale's enunciation has to be interpreted no more than emphasising that where the dead-body of the victim in a murder case is not found, other cogent and satisfactory proof of the homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But where the fact of corpus delicti, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a*

[10] MANU/SC/0081/2013=(2013)12SCC551

prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned.... (emphasis supplied)

10. To the same effect is the decision in **Ram Chandra and Ram Bharosey v. State of Uttar Pradesh MANU/SC/0107/1956 : AIR 1957 SC 381**, where this Court said:

It is true that in law a conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable.

11. Reference may also be made to **State of Karnataka v. M.V. Mahesh MANU/SC/0176/2003 : (2003) 3 SCC 353** where this Court observed:

It is no doubt true that even in the absence of the corpus delicti it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In this case no such material is made available to the court.

12. In **Lakshmi and Ors. v. State of Uttar Pradesh MANU/SC/0715/2002 : (2002) 7 SCC 198** the legal position was reiterated thus:

16. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence Under Section 302 Indian Penal Code This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in absence of identification of the body and cause the death."

It was held in **Rama Nand and Ors v. State of Himachal Pradesh**[11]**:**

"**24.** xxxx In other words, we would take it that the corpus delicti, i.e., the dead-body of the victim was not found in this case. But even on that assumption, the question remains whether the other circumstances established on record were sufficient to lead to the conclusion that within all human probability, she had been murdered by Rama Nand appellant ? It is true that one of the essential ingredients of the offence of culpable homicide required to

[11] MANU/SC/0209/1981=(1981) 1 SCC 511

> be proved by the prosecution is that the accused the death" of the person alleged to have been killed.
> **25.** This means that before seeking to prove that the accused is the perpetrator of the murder, it must be established that homicidal death has been caused. Ordinarily, the recovery of the dead-body of the victim or a vital part of it, bearing marks of violence, is sufficient proof of homicidal death of the victim. There was a time when under the old English Law, the finding of the body of the deceased was held to be essential before a person was convicted of committing his culpable homicide. "I would never convict", said Sir Mathew Hale, "a person of murder or manslaughter unless the fact were proved to be done, or at least the body was found dead". This was merely a rule of caution, and not of law. But in those times when execution was the only punishment for murder, the need for adhering to this cautionary rule was greater. Discovery of the dead-body of the victim bearing physical evidence of violence, has never been considered as the only mode of proving the corpus delicti in murder. Indeed, very many cases are of such a nature where the discovery of the dead-body is impossible. A blind adherence to this old "body" doctrine would open the door wide open for many a heinous murderer to escape with impunity simply became they were cunning and clever enough to destroy the body of their victim. In the context of our law, Hale's enunciation has to be interpreted no more than emphasising that where the dead-body of the victim in a murder case is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness, or by circumstantial evidence, or by both. But where the fact of corpus delicti, i.e. 'homicidal death' is sought to be established by circumstantial evidence alone, the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world, and absolute certainty is a myth. That is why under Section 3, Evidence Act, a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculpating circumstances which definitely lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned. xxxx”

Therefore, the argument of learned counsel does not hold water. Even otherwise, in this case the dead bodies were produced and their identity was also satisfactorily established.

8. Then, it is faintly argued that MOs 5 to 9 - clothes brought to police station by PW 43 & PW44/constables from the P.M.Doctor were not formally seized by

the I.O. in the presence of mediators and thereby MOs 5 to 9 cannot be accepted as a conduit for the alleged identification of the dead bodies by their kith and kin. This argument has no teeth, for, the unimpeachable evidence i.e., Ex.P8 & P11-inquest reports, which are the earliest documents after exhumation, would clearly depict the presence of clothes on the dead bodies with descriptive particulars. The very same clothes were identified by the relations of the deceased. In that view, their informal seizure will not vitiate the prosecution case. Above all, it should not be forgotten, the exhumation was done on the own showing of location by A1, A3 & A11 and also on their admission that the dead bodies were of driver and cleaner of lorry bearing No. CG 04 JB 0680. Therefore, it is preposterous for the appellants to contend that the dead bodies were not identified as that of driver and cleaner.

9. As the dead bodies concerning to this case were exhumed on the information of A1, A3, and A11 they owe a responsibility to speak of their knowledge about the dead bodies and the cause of their death, who buried them and the reason for burying them. In the absence of any plausible explanation by the accused, the said circumstance along with others will point out an accusing finger against the accused. Regarding this aspect the Apex Court held as follows:

(i) In **Sandeep v. State of U.P**[12] the Supreme Court observed thus:

[12] 2012(6) SCC 107 = MANU/SC/0422/2012

> "29.xxx. We find force in the submission of learned senior Counsel for the State. It is quite common that based on admissible portion of the statement of accused whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the Court as to the nature of recoveries and as to how they came into possession or for planting the same at the places from where they were recovered. (Emphasis supplied)
> Similarly this part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount to mere admissions which can be relied upon for ascertaining the other facts which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused into the offence directly."

(ii) In **Anuj Kumar Gupta v. State of Bihar**[13] the Supreme Court observed thus:

> "16. In such circumstances, in the absence of any convincing explanation offered on behalf of the Appellant Accused as to under what circumstances he was able to lead the Police party to the place where the dead body of the deceased was found, it will have to be held that such recovery of the dead body, which is a very clinching circumstance in the case of this nature, would act deadly against the Appellant considered along with rest of the circumstances demonstrated by the prosecution to rope in the Appellant in the alleged crime of the killing of the deceased. Therefore, once we find that there was definite admission on behalf of the Appellant by which the prosecuting agency was able to recover the body of the deceased from a place, which was within the special knowledge of the Appellant, the only other aspect to be examined is whether the Appellant came forward with any convincing explanation to get over the said admission."

Applying the above rule, in the instant case none of the accused, particularly A1, A3, and A11 have offered any explanation for the plight of the two dead bodies which were recovered consequent upon their information. Therefore, this is

[13] AIR 2013 SC 3013 = MANU/SC/0741/2013

one of the strong circumstances against the accused pointing out accusing finger towards them.

Thus on a conspectus we hold that prosecution could prove items (b) and (c) of point No.1 to the effect that the trailer lorry bearing No.CG 04 JB 0680 with iron load was subjected to dacoity and its driver and cleaner were murdered.

10. Point No.1: (d) & (e):

Taking godown on lease by A1 and storing the stolen property by the accused:

Items (d) and (e) are interrelated as they relate to the storing of stolen property in the leased godown of A1 and later selling the same by A2 and A14 to PW.15 with the help of PW.14 and PW.16.

In this context, the prime aspect is about A1 taking the godown situated in Sitaramapuram Kostalu in Maddipadu Panchayat on lease from P.W.25 apparently for iron furniture business but for keeping the stolen iron and vehicles. Prosecution examined P.Ws.25, 26, 33, 35,36 and 38 to establish this fact.

11. (a) **P.W.25** is the owner of Praveen Tobacco Godown. He deposed that he knows A12, who earlier worked as attender in Mandal Praja Parishad, Racherla, when this witness worked as MPP. In September, 2008, A12 requested him to lease the godown as it was vacant by then. He agreed to let out on a monthly rent of Rs.40,000/- and asked him to pay four months rent as advance. The witness

again stated that A12 came in the month of August, 2008 to him for preparing agreement with advance amount and at that time, he told that godown was given to one of his friends by name Munna, a Muslim Man, to keep his old saman. Then, he asked A12 to obtain signature of that person to take godown on lease and then only, he would sign. Accordingly, A12 brought the agreement with the signature of the said person and then, this witness, his wife and son signed on the agreement. The witness produced photocopy of agreement marked as Ex.P.52. P.W.25 further stated, the original lease agreement was taken away by A12. The lease agreement was executed on 01.09.2008. He received amount of Rs.1,60,000/- towards advance. G.S.Prasad Reddy and K.Anjaneyulu were attestors to the said lease agreement. He further deposed that the tenant did not pay the rent amount and three or four months later, godown was vacated.

(b) It should be noted that at this juncture prosecution prayed to declare this witness as hostile on the ground that he deviated from his earlier 161 Cr.P.C statement to the extent covered under Ex.P53. As per Ex.P.53, along with A12, A1 also went to PW.25 and A12 introduced A1 to him as Munna and told that he was doing business in scrap iron and he required godown to store his stock and PW.25 agreed. However, in his evidence, P.W.25 did not state that A1 personally approached him along with A12. Learned public prosecutor cross-examined him and this witness denied to have stated as contained in Ex.P.53. It is to be further

noted that during the evidence of P.W.25, A12 was deliberately absent and therefore, learned public prosecutor requested the trial court to record that the witness identified A12. Added to it, A12 did not cross-examine P.W.25. So also, A1 did not specifically cross-examine the witness to the effect that he did not take on lease his godown.

(c) From the evidence of PW.25 two aspects arise for consideration. Firstly, whether A1 has taken the godown on lease from PW.25 through A12 and secondly, if so from which month. In the evidence of PW.25 though at first he stated that A12 approached him in September, 2008, later he stated that A12 came to him in the month of August, 2008 for preparing agreement with the advance amount and at that time he stated that the godown was given to his friend Munna to keep his old Samaan. It should be noted that Ex.P52 – lease agreement is dated 01.09.2008. Therefore, the question of A12 approaching in the month of September, 2008 for obtaining lease of godown is highly improbable as by 1st September, 2008 itself the lease agreement was entered. Therefore, it should be understood that A12 might have requested PW.25 for leasing the godown somewhere in the August, 2008 and obtained possession and given to his friend Munna and stated to PW.25 that it was given to his friend Munna to keep his old Samaan. Therefore, PW.25 asked A12 to obtain signature of the said Munna to take godown on lease and A12 obtained his

signature and thus the Ex.P.52 – lease agreement might have been entered on 01.09.2008. The next aspect is whether the said Munna is the A1 in this case.

(d) It is true that the oral evidence of P.W.25 coupled with Ex.P52 - agreement would only show that P.W.25 let out his godown to one Sayyad Mohammad Abdul Samad Kareem on the negotiation of A12. However, since P.W.25 did not support prosecution case further, his evidence is not useful for prosecution to confirm that the lessee under Ex.P.52 is A1 himself. Therefore, the other available evidence has to be scrutinized in this regard.

(e) Then **P.W.26** is the watchman in the godown of P.W.25. He deposed that himself and one Venkat Reddy worked as Watchmen in the godown of P.W.25 during 2007-08. In the month of September, 2008, A1, A2 and A12 approached them and enquired whether the godown was vacant and they told the accused to contact P.W.25. Within three or four days, A1, A2 and A12 again came and informed them that they contacted P.W.25 and took the godown on lease at Rs.40,000/- per month. Venkat Reddy contacted P.W.25 and confirmed the lease and handed over the keys of godown to A1 and A1 took possession of the godown. This witness further deposed that both of them continued as watchmen of the godown on the instructions of A1. He further deposed, A1, A2, A12 and some others used to come to the godown in Cars. A1 informed them that he was doing iron business. One day, they brought a welding machine to the godown. Another

day, they brought a trolley lorry containing iron and kept in the godown. P.W.26 further stated that himself and Venkat Reddy heard some sounds from the godown during night time. They went and peeped into the godown and saw that A1, A2, A12 and some others were cutting the iron with welding machine. When they enquired, the accused reprimanded them and asked them not to come there and stay at the gate only. Since they were doing iron business, the watchmen did not think anything more about the incident. In the cross-examination, he stated that he did not inform police or the owner of the godown about the suspicious circumstances prevailing. He again stated that after peeping into the godown, he reported the suspicious circumstances to the Maddipadu police and they reduced the same into writing and they signed on it. The Maddipadu police visited the godown and inspected it. He denied the suggestion that he was deposing falsehood. He denied the suggestion of A1 that he has not seen the accused at any point of time.

(f) When we carefully scrutinize the evidence of P.W.26 in juxtaposition with P.W.25, both the depositions would cumulatively explicate that the person who took lease of the godown from P.W.25 is none other than A1. We will find in the evidence of P.W.26 that he saw A1, A2 and A12 coming to the godown and enquiring about its vacancy position and thereafter, again coming and informing that they obtained lease of the godown from P.W.25 and Venkat Reddy, the other

watchman having confirmed the same from P.W.25 handing over keys of godown to them and their cutting the iron with a welding machine in the godown and when enquired, the accused scolding them etc., facts. It should be noted that unless the watchmen confirmed from P.W.25 about leasing of the godown, they would not have handed over keys to A1. There is no identity problem for this witness as he along with Venkat Reddy saw A1, A2 and A12 for so many days and interacted with them. It is argued on behalf of appellants particularly A1, A2 and A12 that P.W.26 is a set up witness to create the story of lease. It is argued, if really, he was the watchman of the godown and reported to the police of Maddipadu PS, they should have taken action and thereby, the complicity of A1, A2 and A12 might have revealed at that time and since there is no such action, the evidence of P.W.26 cannot be relied upon. We find no much force in this argument. The evidence of P.W.26 would make it clear that though initially both the watchmen suspected the iron cutting activities of accused during night time, however, they reconciled later because the godown was taken on rent for iron business purpose. For the same reason, the police of Maddipadu also might not have initiated any action at that juncture. However, by their inaction, the evidence of P.W.26 cannot be disbelieved and discarded. On the other hand, the connection of A1, A2 and A12 with the godown as spoken by P.W.26 is fortified by episode of MO.13 – Verna car as we presently discuss.

(g) **P.W.33** was previously an advocate in Kakinada and presently doing real estate business at Rajamundry. He deposed that in the year 2007-08 he laid a venture in the name of "Platinum City" near Rajahmundry and in connection with the said business, one Pullaiah a real estate broker brought A1 and introduced him saying that A1 was also doing business in sale of plots. A1 talked with PW33 and informed that he would sell plots in an extent of 4000 Sq Yds. In that connection, A1 visited the office of the PW33 for five or six times in different cars stating that he was having good business circle in Bengaluru and other places and he would arrange business for him also. Then P.W.33 gave Rs.3 lakhs to A1 towards business expenses. His further version is that once A1 came to his office in an Alto car and told that he was going to Bengaluru to secure customers and requested PW33 to give his Verna Car as it was difficult to go to Bengaluru in Alto Car and took his Verna Car and left his Alto Car with PW33. The Alto Car stands in the name of PW35 who is the cousin brother of A1. When A1 did not turn up for few months, PW33 insisted PW35 to see that A1 returned his car because he was facing difficulty to move in Alto Car which has no permanent registration. On that PW35 requested him to send the Car so that he would get permanent registration. Accordingly he obtained permanent registration and sent back the Alto Car to PW33. While so, there was no communication from A1. Sometime after, PW33 came to know that A1 was involved in some offences by using his Verna Car. So

he contacted Police of Ongole PS and on 23.01.2009 he went to the police station along with Alto Car and handed over the same along with documents to the Inspector of Police, Ongole under Ex.P61-mediator report. As the police seized Verna Car, he obtained interim custody of the same from the Court. He stated that the registration number of Alto Car is AP31AX8678 or 8679. The temporary registration number of Verna Car was AP05YCTR2312 and permanent Registration No. is AP05BL5879. MO.12 is the Alto Car and MO.13 is the Verna Car. None of the witnesses cross-examined him and hence cross-examination recorded as 'nil'. As such, the evidence of PW33 stood unrebutted. Thus A1 left his Alto Car with PW33 and took away his Verna Car with him. Presently we will see that MO.13-Verna Car has relevancy with the godown which was taken on lease by A1. Before that the evidence of PW35 is also to be mentioned.

(h) **PW.35** is the cousin of A1 and he is the owner of MO.12-Alto Car. He partly supported the prosecution case. He stated that he is the resident of Visakhapatnam and engaged in furniture business and he purchased Alto Car in the year 2008 and even before it was registered, A1 took the Car for attending the marriage works of his sister. Three or four months thereafter, PW35 came to know that the said Car was in Ongole PS. It should be noted that this witness did not support the evidence of PW33 to the effect that he obtained permanent registration number to his Alto Car and sent back to PW33. On that aspect he was declared

hostile and cross-examined by the public prosecutor. His non-cooperation can be understood in view of his close relationship with A1. However, that will not debilitate the evidence of PW33 who is an independent witness and a victim in the hands of A1. He being an advocate and a businessman at a far of place in Rajahmundry, there is no need for him to speak falsehood to support police. Thus it is established that A1 has taken away MO.13-Verna Car of PW33 by leaving MO.12-Alto Car with him. Now the other relevant evidence will presently establish that the MO.13-Verna Car was concealed by A1 in the godown and same was recovered.

(i) **P.W.36** and L.W.2 are the VROs of Ongole II Town. They acted as mediators for arrest of A1, A3, A11 and for recording their statements, which contain their confession and also other facts admissible under Section 27 of the Indian Evidence Act. These witnesses also acted as mediators for recovery of certain property, documents and other things including the Verna Car belonging to P.W.33 and also the cut lorry pieces from th`e Praveen Tobacco Suppliers Godown at Sitarampuram Kostal.

(j) **P.W.36** deposed that on the instructions of their Tahsildar, himself and L.W.2 acted as mediators for the interrogation and arrest of A1, A3 and A11 by PW.56. He further deposed that in their presence, on 10.11.2008, A1, A3 and A11 gave independent statements which inter alia contain their confession of

different offences including the offence in the present case and their concealing of properties concerning to different cases. He stated that a mediator report under Ex.P.79 was prepared which was signed by the mediators, Police, A1 and A3. The A11 put his thumb impression on Ex.P.79. It should be noted that on the same day A1, A3 and A11 led the mediators and police to Praveen Tobacco Suppliers Godown in Sitarampuram Kostalu and on their revelation, the police have seized MO.13 – Verna Car and also lorry cut pieces and tyres etc., under the cover of mediators report which is marked as Ex.P.122 in the other connected SC No.595/2010**.** P.W.56 – the I.O. confirmed the said fact**.**

(k) We have carefully scrutinized the above evidence which would pellucidly show that after apprehension of A1, A3 and A11 on 10.11.2008, they were thoroughly interrogated and on their revelation, the property relating to this case and other cases was recovered. The important recovery-cum- seizure relating to this case is M.O.13 - Verna Car belonging to P.W.33 and lorry tyres and other cut pieces covered by M.Os.2 to 7 in SC No.595/2010. It should be noted that in Ex.P.79 - mediator report –cum- seizure panchanama, the signatures of A1, A3 and A11 are found. Though P.W.36 was intensely cross-examined nothing specific could be elicited to discredit the probative value of his evidence.

(l) It is argued before us that the same witnesses i.e., P.W.36 and L.W.2 were the mediators in the present case and the remaining two other cases i.e., S.C.

No.595/2010 and S.C. No.91/2010 and therefore, they are stock witnesses. We are unable to appreciate this argument. Ex.P.79 – mediator report would show that A1, A3 and A11 disclosed before P.W.36 and L.W.2 about the commission of different offences including the present offence and concealment of the properties. Ergo, naturally P.W.36 and L.W.2 would appear as witnesses in all those cases which were disclosed under a common mediator report. It is further argued that P.W.36 is a stock witness and he gave evidence for police in other cases also. This argument also has no much force because P.W.36 is a VRO and one of his duties is to appear as a mediator in criminal cases, and to assist the police to maintain law and order. As such, the evidence of P.W.36 can be safely relied.

(m) Thus when the evidence of P.Ws. 25, 26, 33, 35, 36 is carefully analyzed, the same would establish that A1 has taken Praveen Tobacco Suppliers Godown on lease from P.W.25, ostensibly for doing iron business but he and other accused used the godown for hiding the stolen iron rods and vehicles and cutting them into pieces. Further, the retrieval of Verna car belonging to P.W.33 and stolen trailer lorry pieces in the godown would clearly manifest the complicity of A1, A2, A3, A11 and A12 in the offence. Thus, the prosecution established the incriminating circumstance (d) in point No.1.

12. <u>Selling of iron rods by accused</u>:

According to prosecution, the iron rods which the accused got by dacoity were sold to PW.15 - an iron merchant at Chennai through A2 and A14. To establish the same, prosecution examined PWs.14, 15, 16, 18, 36, 47 and 56 besides producing Ex.P17 – mediator report and P119 – FD Receipt.

The substance of the evidence of PW.14 to 16 with regard to the crucial fact of selling of stolen iron rods by the accused is thus:

(a) **PW.14** is a resident of Chennai and he is a supervisor in Jagriti Steel and Aren Enterprises. P.W.15 is his friend and he also knows PW.16. Whereas, **PW.15** is also a resident of Chennai and he is the Director of Varishta Ispat Udyog Pvt Ltd, Chennai and he deals in scrap and finished iron goods. **PW.16** is a resident of Mangalagiri Area in Guntur District of Andhra Pradesh and he is doing old iron business on commission basis in Narasraopet, Guntur, Darsi, Addanki, Ongole and Chennai. He purchases agricultural equipment at Chennai and sells the same to the foundry units of above places.

(b) In September, 2008 when PW.16 was at Chennai, A14 informed him by phone that he purchased iron rods from a contractor (the stolen iron rods) and asked him to arrange a party to sell the same. PW.16 informed the said fact to PW.14 and he told that he was not in need of iron rods but he informed to PW.15, who agreed to purchase the iron rods after checking the quality of the same.

PW.14 introduced PW.16 to PW.15 by phone. Within one or two days, PW.15 sent his supervisor LW.22 - Muniswami Subramanyam alias Mani (died) to Ongole to verify the quality of iron rods. LW.22 went to Ongole in Navjeevan express and P.W.16 received him at railway station and took him to A14 and introduced him and asked him to show the iron rods. Then A14 sent LW.22 with A2 who is his son for verification of the material. LW.22 verified the material and informed PW.15 by phone that the material was good and can be purchased. Then PW.15 and A14 negotiated by phone and fixed the price of the iron rods @ Rs.27,000/- per metric ton. A14 went to Chennai and there PW.15 paid an advance of Rs.2,15,000/-. Two or three days thereafter P.W15 received 22 MTs of iron rods. Few days thereafter A14 sent PW.16 to Chennai to receive the balance amount and accordingly PW.16 went to PW.14 and requested to contact PW.15. Accordingly, PW.14 phoned to PW.15 and he sent balance amount of Rs.3,80,000/- to PW.14's shop through LW.22. There PW.16 received the amount and returned to Ongole and remitted to A14 and received Rs.1,000/- as commission from him.

(c) **PW.56** - The IO came to know above transaction while he arrested A2 on 03.12.2008. On that date he arrested A2 in the presence of PW.36 and LW.2 - the mediators before whom A2 made a confession of his guilt in different offences including the present case under Ex.P.89 – mediator-cum-confessional statement.

The admissible portion of his statement U/s 27 of the Evidence Act, *inter alia* reveals that the iron rods concerning to this case were sold by the accused at Madras through PW.16. On perusal, we noticed Ex.P89 contains the signatures of IO, PW.36, LW.2 as well as A2. PW.36 also confirmed above facts in his evidence. It should be noted that since A14 was absconding, the IO could not arrest and interrogate him.

(d) Then on instructions of IO, a police party led by PW.47 – S.I of Police, Ongole II Town PS alongwith A2, PW.16 and PW.18 went to Chennai on 31.12.2008 and met PW.14 and through him ascertained the address of PW.15 and went to his godown and examined PW.15 and LW.22. They revealed before the police and mediators that PW.15 purchased 22 MTs of 16 mm size iron rods from A2 and A14 in September, 2008 and sold away 5 ½ tones for Rs.1,00,000/-. PW.15 returned the remaining iron rods in 175 bundles each weighing 93 Kgs. PW.47 seized those 175 bundles of iron rods which is MO.3 and also seized cash of Rs.1,00,000/- under Ex.P17 – mediator-cum-seizure report. We perused Ex.P.17 which contains the signatures of the police, PWs.15, PW.16, PW.18, LWs.22 and 51 and also A2. The above witnesses were vigorously cross-examined by the defence side but no useful material was elicited to impeach their credibility. Added to it, we don't think businessmen of Chennai would budge to

the police of Andhra Pradesh to create a false story of recovery of iron material from his godown connecting to this case.

Thus the evidence on record established that A1 took the godown situated in Sitarampuram Kostalu on lease wherein the accused have stored the stolen property concerning to this case and other cases and later sold the iron rods relating to this case to PW.15 through PWs.14 and 16. The prosecution thus proved items (d) and (e) in Point No.1 and established the complicity of A1, A2, A3, A11 and A14 in this regard.

13. Point No.1: (f):

Abandonment of the power head of the trailer by A4 & A6 on the instructions of A1 in the Slate Factory of PW.13 at Piduguralla with the help of PW.12 and its recovery by police:

As per prosecution, after dacoity, the accused brought the lorry with iron load to the godown taken on lease by A1 and dumped the iron rods and thereafter proposed to abandon the empty trailer lorry at a far off place and accordingly A1, A2, A11 and A16 drove the vehicle to Tirupathi and called A4 from Bengaluru by phone and instructed him to abandon the empty vehicle on Tirupathi-Bengalore Highway Road and he obliged. However, since nobody has taken away the empty vehicle, again A1, A3 and A11 brought the empty vehicle to the house of one Subba Raju at Railwaykoduru and there on the instructions of A1, A2 took L.W.18

– Shaik Kamal a gas cutter and through him cut the trailer into pieces and brought the cut pieces to Ongole in his lorry and later the accused sold the cut pieces and shared the booty. So far as MO.1 - power head is concerned, A4 and A6 on the instructions of A1, drove the power head to the Pruthvi Industries Slate Factory at Piduguralla where PW.12, who is the friend of A1 was working and left the power head in the said industry. These facts are manifested from the admissible portions of the confessional statements of A1, A3 and A11 under Ex.P.79 and also the confessional statement of A6 under Ex.P.58. Added to it, basing on the confessional statements of above accused, the IO has seized MO.1 – power head on 27.11.2008 in the presence of mediators i.e., PW.30 and LW.46 – Vaka Sankar Reddy under the cover of Ex.P.60-mediatore report. Later PW.2 – the owner of the vehicle identified the MO.1.

To establish above facts, the prosecution examined PWs, 2, 12 , 13 , 30, 56-IO and produced Ex.P.58, 60 and P79.

14. As already discussed in the earlier points, the IO arrested A1, A3 and A11 on 10.11.2008 and they confessed their guilt in the present offence and other similar offences under the cover of Ex.P79-mediator-cum-confessional statement. The admissible portions of their statements in Ex.P.79 under Section 27 of the Indian Evidence Act would *inter alia* disclose the method and manner of concealment and disposal of MO.1 – power head. Ex.P.79 contains the signatures

of A1 and A3 and LTI of A11. Further, PW.36 one of the mediators avouched their confession under Ex.P.79. Similarly, the IO has apprehended A6 on 27.11.2008 in the presence of the mediators i.e., PW.30 and LW.46 – Vaka Sankar Reddy, in whose presence A6 confessed his guilt in the present case and in other similar crimes which is recorded under Ex.P.58 – mediator-cum-confessional report. We will find the signature of A6, besides PW.30, PW.56 – the IO and other police staff. A6 also disclosed about the mode of disposal of MO.1 – power head. Basing on the aforesaid confessions, the IO proceeded to the Pruthvi Industries Slate Factory, Piduguralla belonging to PW.13 and seized MO.1 – power head in the presence of mediators.

(a) In the above context, **PW.12** deposed that earlier he worked as clerk in a Slate Factory at Markapur owned by Makkela Ram Prasad who is a friend of A1. As A1 used to come to Ram Prasad, this witness got acquaintance with A1 who proclaimed that he is a Ayurvedic Doctor and knows Vaastu. In March, 2008 PW.12 shifted to Piduguralla to work in the Slate Factory of PW.13 which was taken on lease by his brother-in-law Mandla Venkata Subbaiah (LW.25-died). His further version is that one day A1 met him and took his phone number and called him on the night of 19.10.2008 and requested to keep his lorry in the Slate Factory as there was some finance problem in respect of the lorry and promised to take back the lorry within two days. After one hour PW.12 received a phone call

stating that lorry came on to the Highway Road. Then he went to the Guntur-Macherla Highway road and found the lorry with two persons. They are A4 and A6. They brought the lorry and kept in the factory. This witness informed A1 about the said fact by phone. A4 and A6 also talked to A1 and left. The PW.12 further stated that the vehicle brought by A4 and A6 was only a engine in red colour with six tyres. He identified MO.1 as the said engine. On the next day his brother-in-law enquired about the said vehicle and scolded him for keeping the vehicle in Slate Factory but he pacified his brother-in-law. The said vehicle remained in the slate factory for one month as A1 did not turn up. PW.12 phoned A1 but it was not in working condition. He further deposed that on 27.11.2008 the police came to the slate factory along with A6 and seized MO.1.

(b) **P.W.13** who is the owner of the Pruthvi Slate Industries Slate Factory also deposed in tune with PW.12 and stated that he leased out his slate industry to the brother-in-law of PW.12 on a rent of Rs.2 lakhs per year and he maintained the same for about 2 years. He deposed that in the year 2008 when he once went to the said slate industry to seek loan from his lessee, he saw the power head stationed there and he enquired about it and Venkata Subbaiah replied that the said vehicle belongs to the friend of his brother-in-law. PW.13 further deposed that in the month of November, 2008 the police took him to the slate industry and in his presence they have seized MO.1.

(c) PW.30 who is one of the mediators for arrest of A6 and seizure of MO.1 deposed that on 27.11.2008 the IO arrested A6 near Mangamma College, Ongole and interrogated him and A6 admitted his guilt in different offences including the present one under the cover of Ex.P.60-mediator-cum-confessional statement. Regarding MO.1, A6 stated that the same was kept at Pruthvi Industries Slate Factory by himself and A4. He agreed to show the properties concerning to different offences committed by them. Accordingly, the IO along with A6 and mediators went to Pruthvi Industries Slate Factory and seized the MO.1 – power head under the cover of Ex.P.60-mediatore report.

(d) Then PW.2 who is the owner of the trailer lorry bearing No. CG 04 JB 0680 deposed in his evidence that on 22.01.2009 PW.46- the SI of Police visited Bilaspur and informed PW.2 about the dacoity of vehicle and murder of the driver and cleaner and collected Ex.P1 to P7 documents relating to the vehicle from him. This witness further deposed that on 03.02.2009 he went to Ongole and met the IO and identified MO.1 – power head by checking the engine number and chasis number with reference to Ex.P7 – RC book. It should be noted that in Ex.P.60 – seizure report, the IO mentioned the chasis number of MO.1 as 447207ERZ305441 and the same number is reflected in Ex.P7 – RC book.

(e) Thus the above oral and documentary evidence pellucidly discloses that the MO.1 – power head relates to the vehicle bearing No.CG 04 JB 0680 and the

same was concealed by the accused at the slate factory for sometime after the offence. Thus the complicity of A1 to A4, A6, A11 and A16 was established and item No.(f) of Point No.1 is proved by the prosecution.

15. Point No.1 (g)

Recoveries basing on the confessions of different accused:

Apart from the recoveries discussed supra, there are few other recoveries made from the concerned accused, which the prosecution claims having connection with the present case. Hence, such recoveries have to be examined now.

(i) Arrest of A1, A3 and A11 and recovery of MO.10 - golden ring of deceased driver from A3 and MO.4 – wrist watch of deceased cleaner from A11: As per prosecution, the IO arrested A1, A3 and A11 on 10.11.2008 and they confessed their guilt in the instant case and other offences under Ex.P.79-mediator-cum-confessional statement. Further, A3 and A11 confessed to have taken MO.10 – gold ring from deceased driver and MO.4 – wrist watch from deceased cleaner respectively. Later the accused were remanded to judicial custody by the learned III Additional Munsif Magistrate, Ongole in Cr.No.356/2008. Subsequently, police custody of the above accused was obtained and during the course of further investigation on 20.11.2008, the IO recovered MO.10 – gold ring from the house of A3 in Donakonda and MO.4 – wrist watch from the house of A11 in Sanjay Gandhi Nagar, Ongole in the presence of PW.36 and LW.2 – the mediators under

the cover of Ex.P85 to P88 – mediator reports. Later PW.8 – the brother-in-law of deceased driver identified MO.10 – gold ring as that of the deceased and PW.7 – the brother of deceased cleaner identified MO.4 – wrist watch as that of his brother under Ex.P9 – property identification report in the presence of the mediators i.e., PW.4 and LW.55 – Shaik Tummala Cheruvu.

(a) Learned counsel for Appellants/A3 and A11 vehemently contended that the alleged identification of MO.4 – wrist watch by PW.7 and MO.10 – gold ring by PW.8 is legally impermissible for the reason that as per Rule-35 of Criminal Rules of Practice and Circular Orders, 1990 issued by A.P. High Court, an identification parade for properties shall be conducted in the Court of concerned Magistrate where each item of property shall be mixed with four or five similar objects and then witness shall be called to identify the property. However, they argued, in the instant case such a procedure was given a total goby and thereby the identification made by the witnesses during trial before the Court lost its sanctity. They further argued that when such identification made by PWs.7 and 8 is omitted, there will be no other evidence to hold that MOs.4 and 10 belong to the two deceased and consequently the complicity of A3 and A11 cannot be established.

(b) We are constrained to disagree with this argument. It is true that, when a witness identifies a stranger for the first time in the Court as the person who committed offence some time ago or identifies a particular property for the first

time in Court as being connected to the crime, naturally the identifying capacity of such witness will be under scan because a strange person or a thing which were seen for a glimpse cannot be retained in memory for long and if any witness claims to have remembered till the trial, such remembering power should be proved by an identification test before a Judicial Authority even before the trial. The purpose of such a test identification is to strengthen the trustworthiness of identifying witness in the Court. Rules 34 & 35 of Criminal Rules of Practice are intended to provide such procedural safeguards. While Rule 34 delineates the method of conducting identification parades of suspects through the Magistrates, Rule 35 provides for holding identification parade of properties before the concerned Magistrate. Now the question is whether holding of T.I.Parade for suspects/property is mandatory in every case and whether such T.I.Parade serves the purpose as a substantive evidence and non holding of T.I.Parade debilitates the credibility of a witness. Law is no more *res integra* in this regard.

(i) In **Dana Yadav and others v. State of Bihar**[14] the Apex Court having examined several decisions, has formulated certain guidelines thus:

> "(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.
>
> b) xxxx But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto cannot be a ground for throwing out evidence of identification of an accused in Court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in Court to the identity of

[14] (2002) 7 SCC 295

the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in Court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in Court.

(c) Evidence of identification of an accused in Court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence yet not substantive one, and the same can be used only to corroborate identification of accused by a witness in Court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable despatch for the purpose of enabling the witnesses to identify either the properties which are subject-matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in Court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in Court of an accused by a witness and the same is a rule of prudence and not law. (Emphasis supplied)

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in Court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in Court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

(ii) In **Malkhansingh and others v. State of Madhya Pradesh**[15] the Apex Court observed:

"As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. **(emphasis supplied)** The identification parades belong to the stage of investigation, and there is no

[15] 2003 (5) SCC 746

> provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

(iii) In **Kishore and others v. State of Punjab**[16] the Apex Court observed:

> "8. It is true that a test identification parade is not mandatory. The test identification parade is a part of the investigation. It is useful when the eyewitnesses do not know the accused before the incident. The test identification parade is usually conducted immediately after the arrest of the accused. Perhaps, if the test identification parade is properly conducted and is proved, it gives credence of the identification of the accused by the concerned eyewitnesses before the Court. The effect of the prosecution's failure to conduct a test identification parade will depend on the facts of each case." **(emphasis supplied)**

Thus the jurisprudence on this aspect is that T.I.Parade is only a procedural safeguard and a rule of prudence but not rule of evidence. It serves the purpose of ensuring and strengthening the trustworthiness of a witness. Though identification of the witness for the first time in Court is a weakling still the Court having regard to the facts and circumstances may accept and act upon such evidence. It should be noted though above decisions were rendered in the context of holding T.I.Parade for suspects, they can be made applicable for holding T.I.Parade for properties also.

(c) Applying the above law to the present case, we have gone through the above evidence. The deceased driver and cleaner resided along with PWs.8 and 7 respectively till the incident. Therefore, the identifying capacity of PWs.7 and 8 cannot be doubted in our view. In the cross-examination except giving a denial

[16] 2024 (2) Supreme 257

suggestion that the MO.4 and MO.10 do not belong to the deceased nothing specific could be elicited to destabilize the evidence of PWs.7 and 8. Hence the identification made by them can be accepted.

(ii) **The arrest of A5 - Bathala Salmon**: According to prosecution, on 26.11.2008 the P.W.53-I.O. arrested A5-Bathala Salmon at the Auto Nagar in Trovagunta Panchayat of Ongole Mandal in the presence of two mediators i.e., P.W.28 and L.W.50-Paleti Venkateswarlu. On interrogation, A5 gave statement before the mediators about his complicity in different offences including the present offence under Ex.P56-mediatornama-cum-confessional statement. Ex.P129 is the relevant portion of Ex.P.56 concerning to the present case. It should be noted that no consequential discovery of any fact was affected on the strength of his statement. Except his alleged confessional statement which is not admissible in evidence, no other recovery was made in terms of Section 27 of Indian Evidence Act to connect A5 to the offence. Therefore, A5 deserves benefit of doubt in the present case. However, since A5 is also an accused in the connected RT Nos.3 and 4 of 2021, his complicity in those cases will be examined independently.

(iii) **Arrest of A7, A8, A9, A10, A13 and A17:** It should be noted that so far as the complicity of A7 to A10 and A13 in the present case is concerned, we made an intense enquiry into the facts and evidence. We found, except their confessional

statements, which are inadmissible in evidence, no consequent discovery of any fact was effected. There is no other substantial evidence either to rope in them in the present offence. Therefore, the present case is concerned, they deserve benefit of doubt. However, since these accused are also arrayed as accused in RT Nos.3 and 4 of 2021, their complicity if any in those cases will be independently and distinctly evaluated and decided.

A17 is concerned, according to prosecution after the drivers were killed, A2 went to Ongole and brought A17 to the scene of offence where A1, A3 to A5 and A11 were waiting along with stolen trailer lorry. Then it is alleged, A17 who runs a vehicle stickering shop in Islampet, Ongole made a vehicle sticker with fake registration number and attached to the trailer lorry so as to hide its original registration number CG 04 JB 0680 so as to facilitate the accused to take the vehicle and the iron load to the godown. The trial Court framed charge U/s 201 IPC against him. However, except the confessional statements of the co-accused, there is no reliable material to prove the complicity of A17 in this case. Hence he deserves benefit of doubt.

(iv) **Arrest of A15 and seizure of Indica Car bearing registration No.AP 29AB 8908**: According to prosecution, the accused have used M.O.26 - Verna Car and M.O.57 – Indica Car bearing registration No.AP 29AB 8908 (original No.AP 16 AP 8785). As per prosecution, on 03.12.2008, PW49-I.O. has arrested

A15 near Bhavani Centre on the road leading from Addanki to Darsi and Narsaraopeta in the presence of the two mediators i.e., P.W.27 and L.W.15-Onguri Ramanaiah while A15 was moving in a Tata Indica car bearing registration No.AP 29 AB 8908 and A15 said to have confessed his guilt in different offences including the present case and said to have used the said car in commission of offences. The chassis number of the said car is 605121ETZP 77210/06 and engine No.379001153804. The mediatornama-cum-confessional statement was recorded under Ex.P-71 signed by mediators, police and also A15. The said Tata Indica car is marked as M.O.57. The said car is identified as related to S.C.No.230/2012 on the file of III Additional District & Sessions Judge's Court, Nalgonda (Cr.No.109/2008 of Nalgonda II Town P.S.).

P.W.27 supported the prosecution and deposed above facts

Further, **P.W.50** is the resident of Vijayawada and owner of Tata Indica car bearing No.AP 16 AP 8785 was examined by the prosecution to explain the circumstances under which his car was stolen and his driver was murdered. He deposed that he is the owner of MO.21 - TATA Indica Car bearing No. AP 16 AP 8785 of 2006 model and on 03.07.2008, on the request of his friend he sent his car along with his driver to drop his friend at Shamshabad Airport. At 09:00 PM on that night his friend reached airport and informed PW.50 that he reached airport and sending back the vehicle. However, his driver did not return with the vehicle

and after waiting for few days he gave report in Machavaram PS on 08.07.2008, as a man missing case. Sometime thereafter he received phone call from Nalgonda II Town PS stating that they found an unidentified burnt dead body and asked him to identify. Accordingly, PW.50 and the family members of his driver went and identified the dead body as the driver by his clothes and cheppals and photos of the dead body. After some time he received phone call from Ongole PS intimating that his TATA Indica car was traced out but another number was displayed over the original number and told me to take delivery of the car from the Court at Nalgonda. The police informed him that his driver was murdered by the culprits. Accordingly, PW.50 obtained custody of his car from the Court at Nalgonda. The said car is marked as MO.21 in the present case. In the cross-examination he stated that he does not know about the facts in the present case.

Be that as it may, the facts would show that MO.21 which is concerned with Sessions Case No.230/2012 on the file of III Additional District and Sessions Judge, Nalgonda was found with A.15 and most importantly the original registration number i.e., AP 16 AP 8785 was masked with a duplicate number AP 29 AB 8908. While so, it is vehemently argued by the counsel for appellants/accused No.15 that the theft of car and alleged murder of its driver are the facts concerned to Sessions Case No.230/2012 on the file of III ADJ, Nalgonda and merely because A15 was found with the said car, no role can be attributed to

him in the present cases, inasmuch as, except the confession statement of A15 no independent material is available in this case to show that the said car was used in commission of the present offence and other two dacoities. This argument apparently looks sound but bereft of substance. The facts in the present case and other two cases would clearly manifest that the *modus operandi* of the accused was to fallow the vehicles carrying iron loads and commit the murder of drivers and rob the vehicles with iron load and then to bury the dead bodies at an isolated place. To implement this wicked idea, they need a group of bravados and also vehicles like two wheelers and four wheelers to chase gullible vehicles and their crew. Most importantly, in order to shift the dead bodies from the scene of offence to an isolated place to bury them, the accused required four wheelers to stealthily transport the dead bodies. It is evident that in all the three cases the accused at first took the robbed vehicles to the godown to dump the iron load where some of the accused followed the load-vehicle with their vehicles. Later some accused took the dead bodies in gunny bags through their vehicles to an isolated place to bury them. One of the vehicles used in the offence i.e., Verna Car was admittedly found in the godown at Sitarampuram Kostalu which was taken on lease by A1. In this backdrop the prosecution claim that the TATA Indica car was also used in commission of present offence and others cannot be brushed aside easily. As per prosecution, after dacoity, the accused brought the lorry with iron load to the

godown taken on lease by A1 and dumped the iron rods and thereafter proposed to abandon the empty trailer lorry at a far off place and accordingly A1, A2, A11 and A16 drove the vehicle to Tirupathi and called A4 from Bengaluru by phone and instructed him to abandon the empty vehicle on Tirupathi-Bengalore Highway Road and he obliged. While taking the empty lorry to Tirupathi, TATA Indica car also followed the said lorry so as to bring back A1, A2, A11 and A16 after leaving the empty lorry at Tirupathi. In order to go from Ongole to Tirupathi, the vehicles have to necessarily pass through the Sunnambatti toll plaza. To show that the above two vehicles passed through the said toll plaza, the prosecution presented reliable material. PW.10 who worked as Chief Admin Officer in Tanguturu in toll plaza Prakasam District deposed that on the enquiry made by the IO, he verified the counter foils of the receipts in the toll plaza and stated that the vehicle No.CG 04 JB 0680 i.e., the subject vehicle passed towards Chennai through Tanguturu toll plaza on 23.08.2008. While so, PW.9 who worked as Chief Admin Officer in toll plaza at Sunnambatti in Nellore District deposed that on the request of IO, he verified the records and informed that the vehicle No.CG 04 JB 0680 crossed their toll plaza on 25.08.2008 and proceeded towards Chennai. Thus their evidence would show that the vehicle No. CG 04 JB 0680 has passed through the Tanguturu toll plaza on 23.08.2008 and it also passed through the Sunnambatti toll plaza only on 25.08.2008. If really the said vehicle was not subjected to dacoity, it had to

pass through Sunnambatti toll plaza on 23.08.2008 itself as the distance between the two toll plazas is not more than 100 kilometres and it also had to reach Kanchipuram within one or two days. However, that was not the case here. It indicates that the vehicle after passing the Tanguturu toll plaza on 23.08.2008 was subjected to dacoity. Thereafter it appears the accused proposed to abandon the said lorry by taking it to Tirupathi. That was why on 25.08.2008 the said vehicle happened to pass through Sunnambatti toll plaza. Apart from the above oral evidence, Ex.P157 – statement relating to passage of vehicle through Sunnambatti toll plaza given by the Project Director, National Highway Authority of India discloses that the vehicle CG 04 JB 0680 passed through the said toll plaza on the intervening night of 25.08.2008 – 26.08.2008 at 01:34 hrs towards Chennai. Not only that the TATA Indica car bearing No. AP 29 8908 which was following the empty lorry also passed through the said toll plaza on the night of 25.08.2008 at about 01:28 hrs towards Chennai. Thus Ex.P157 strikingly reveals that the TATA Indica car also played crucial role in the present offence. As otherwise there was no reason why the said vehicle which was already a subject matter of theft-cum-murder should go along with the empty lorry which too was subjected to dacoity-cum-murder. Therefore, A15 cannot naively contend that he was innocent. The prosecution established their case in the instant case.

16. Point No.1 (a):

Criminal Conspiracy hatched by accused in the two hotels: According to prosecution, all the accused hatched criminal conspiracy in Narayana Palace and Tasty Hotel, Ongole to commit dacoity of iron load vehicles passing on the High Way by killing the drivers. Before discussing the evidence adduced by prosecution in this context, it is germane for us to delve on the legal contours of the offence of criminal conspiracy under Section 120A and B of IPC.

(a) The Section 120A of IPC defines criminal conspiracy thus:

> "120A. Definition of criminal conspiracy:- When two or more persons agreed to do, or cause to do done,
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."
>
> *Explanation.* It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

As can be seen, Section 120A and 120B are introduced by the Criminal Law (Amendment) Act, 1913 with a view to make the criminal conspiracy itself as a distinct and substantive offence and to make the conspirators liable for punishment for mere agreement to commit any offence. Prior to the amendment, unless an overact took place in furtherance of the conspiracy it was not indictable. The most important ingredient of offence of conspiracy is the agreement between two or

more persons to do an illegal act. In pursuance whereof, even if no criminal act was done, still the conspirators are punishable for entering into the agreement to do a criminal offence. The proviso is in respect of limb (2) and it says that no agreement except an agreement to commit an offence shall amount to criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement. Thus as per the proviso, where the agreement is not an agreement to commit an offence, the agreement does not amount to cosnpiracy unless it is followed by an overtact done by one or more persons in pursuance of such agreement. It was so held by the Apex Court in **Lennart Schussler and Anr. v. Director of Enforcement and Anr.**[17] Another important facet of conspiracy is that all conspirators are liable for the acts of each other of the crime which has been committed as a result of conspiracy. Criminal conspiracy is like a partnership in a crime and each conspirator is the agent of other.

(b) While so, on the aspect of mode of proof of conspiracy, a slew of decisions have been rendered.

(i) In **Yash Pal Mittal v. State of Punjab**[18] the Apex Court observed:

> "9. The offence of criminal conspiracy under Section 120A is a distinct offence introduced for the first time in 1913 in Chapter VA of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in

[17] MANU/SC/0117/1969=1970 CrlJ 707
[18] MANU/SC/0169/1977=(1977) 4 SCC 540

> which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences, may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy."

(ii) In **Mohammad Usman Mohammad Hussain Maniyar and Ors. v. State of Maharashtra**[19] the Apex Court observed:

> "17. xxx
> The contention of learned Counsel is that there is no evidence of agreement of the appellants to do an illegal act. It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication."

(iii) In **Ajay Agarwal v. Union of India (UOI) and Ors.**[20] the Apex Court observed:

> "11. The question then is whether conspiracy is a continuing offence. Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy. Yet, in our considered view, the agreement does not come to an end with its making, but would endure till it is accomplished or abandoned or proved abortive. Being a continuing offence, if any acts or omissions which constitutes an offence are done in India or outside its territory the conspirators continuing to be parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Govt. All of them need not. be present in India nor continue to remain in India."

(iv) In **E.K.Chandrasenan v. State of Kerala**[21] the Apex Court observed:

> "As, however, Shri Lalit appearing for accused 1 made efforts, and sincere efforts at that, to persuade us to disagree with the finding relating to this accused being hand in glove with others, let us deal with the submissions of Shri Lalit. He contends that there is nothing to show about this accused being a conspirator inasmuch as in the

[19] MANU/SC/0180/1981=(1981) 2 SCC 443
[20] MANU/SC/0265/1993=(1993) 3 SCC 609
[21] MANU/SC/0205/1995=(1995) 2 SCC 99

> meeting which had been taken place on or about 18.8.1982 with accused 9 this accused was not present. This is not material because conspiracy can be proved even by circumstantial evidence; and it is really this type of evidence which is normally available to prove conspiracy."

(v) In **State through Superintendent of Police, SBI/SIT v. Nalini and Ors.**[22] the Apex Court explicated broad principles governing the law of conspiracy some of which are:

> "i) Criminal conspiracy is committed when two or more persons agree to do or caused to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overtact is necessary.
> ii) Not only the intention, but also agreement to carry out the object of intention is essential to constitute criminal conspiracy.
> iii) Conspiracy is hatched in privacy and in secrecy. Hence it is rarely possible to establish it by direct evidence. Usually, both the existence of conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
> iv) Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not essential for the crime of conspiracy that all the conspirators need to agree to play the same or an active role.
> v) It is not necessary that all the conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of intended objective and all are equally responsible.
> vi) The criminal conspiracy being a partnership in crime, the act of each of the conspirators make others jointly responsible. The joint responsibility extents not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to the main act.
> vii) A man may join a conspiracy by a word or by deed one who commits an overtact with the knowledge of the conspiracy is guilty. One who tacitly consents to the object of conspiracy and goes along with other conspirators, actually standing by while the others took the conspiracy into the affect, is guilty though he intends to take no active party in crime."

(vi) In **Baliya v. State of M.P.**[23] the Apex Court observed:

> "13. More often than not direct evidence of the offence of criminal conspiracy will not be forthcoming and proof of such an offence has to be determined by a process of inference from the established circumstances of a given case. The essential ingredients of the said offence; the permissible manner of proof of commission thereof and the approach of the courts in this regard has been exhaustively considered by this Court in several pronouncements of which, illustratively, reference may be made to E.K.Chandrasenan v. State of Kerala MANU/SC/0205/1995 : 1995 (2) SCC 99, Kehar Singh and Ors. v. State (Delhi Administration) MANU/SC/0241/1988 : 1988 (3) SCC 609, Ajay Aggarwal v. Union of India MANU/SC/0265/1993 : 1993 (3) SCC 609 and Yash Pal Mittal v. State of Punjab MANU/SC/0169/1977 : 1977 (4) SCC 540."

[22] MANU/SC/0945/1999=5 (1999) SCC 253
[23] MANU/SC/0838/2012=(2012) 9 SCC 696

(vii) In **Chandra Prakash v. State of Rajasthan**[24] the Apex Court observed:

> "70. While dealing with the facet of criminal conspiracy, it has to be kept in mind that in case of a conspiracy, there cannot be any direct evidence. Express agreement between the parties cannot be proved. Circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Such a conspiracy is never hatched in open and, therefore, evaluation of proved circumstances play a vital role in establishing the criminal conspiracy."

(viii) In **In re: Kodur Thimma Reddi and Ors.**[25] High Court of Andhra Pradesh held thus:

> "20. Now, the last point that remains for consideration is whether there is any proof of criminal conspiracy for which all the accused have been convicted. In a criminal conspiracy, what is to be proved is agreement and common design. It is true that this proof need not be by direct evidence and that existence of a conspiracy may even be a matter of inference deduced from criminal acts done in pursuance of a common criminal purpose. But, unless a detailed and specific proof against each of the accused that they participated in a particular design to do a particular thins has been established, there can be no conviction under Section 120B."

(c) Thus, the essential jurisprudence that percolates down from the above decisions is:

For criminal conspiracy essential ingredient is the agreement between two or more conspirators to do an illegal act or an act which is not illegal by illegal means. The presence of all the conspirators right from beginning till end to achieve the objective of the conspiracy is not essential and it is also not essential that all the members of conspiracy and their assigned acts should be known to each other.

[24] MANU/SC/0457/2014=(2014) 8 SCC 340
[25] MANU/AP/0071/1957=AIR 1957 AP 758

Suffice they know and agree for the main criminal object. Since, conspiracy is hatched in secrecy, securing direct evidence is seldom possible. Hence, conspiracy can be proved by inference. Circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Since conspiracy is never hatched in open, therefore, evaluation of proved circumstances play vital role in establishing the criminal conspiracy.

It has now to be seen whether the prosecution could establish the criminal conspiracy of the accused in this case.

17. The prosecution examined PWs.19, to 24, 32, and 37 to establish the conspiracy. Hence their evidence has to be scrutinized.

(a) P.Ws. 19, 20, 23 & 32 are the workers in Tasty Hotel. P.W.19 was the receptionist worked from June 2008 to 2010, he deposed that A1 stayed in their hotel in Room No.103 for four days from 01.08.2008 by paying Rs.2.782/-. Again he stayed for one day in Room No.103 on 20.08.2008 by paying rent Rs.1,354/-. Exs.P18 to P21 are the concerned record of their hotel showing his stay. He further deposed during the period of his stay several persons came and met him, but he cannot say who they were. He identified A1 in the Court. A1 used to come in Verna car to their hotel - One Gangadhar informed their Manager about the arrival of A1.

In the cross-examination he stated that one Srinivas is one of the partners of the hotel and he is the cousin brother of said Srinivas. It is elicited from the witness that Ex.P.18 and P20 Guest (G) registration form books contain original and duplicate receipt sheets with same serial number i.e., white sheet is original and pink sheet is duplicate and white sheet will be issued to guest and pink sheet will be retained by the hotel. It is also elicited that Ex.P20 contains both original and duplicate receipts issued in favour of two different persons i.e., original in the name of B.Y. Aravind and duplicate in the name of MAS Kareem (A1). It is further elicited that the computer generated bills will be issued to the customers.

(b) P.W.20 is also a receptionist in Tasty hotel worked from April 2008 to December 2010. He stated that A12 used to book room for A1. A1 occupied Room No.109 from 19.07.2008 to 21.07.2008 and paid rent of Rs.4,655/-. Again he stayed in Room No.106 for one day on 06.08.2008 and vacated on 07.08.2008 and paid Rs.1,616/- as room rent. Exs.P22 & 23 are the guest registration forms. The witness stated that A1 used to come in black Verna car and about 20 to 25 persons used to visit him. He specifically stated that all the accused in the Court used to visit him.

In the cross-examination, he admitted that Ex.P22 and P23 do not contain his signatures and they do not reveal that the rooms were booked by A12 for A1. Like PW.19, he too admitted that Ex.P18 and 20 books contain original and

duplicate receipts in white and pink colours respectively but the original of Ex.P22 stands in the name of one K. Veerraju whereas its duplicate stands in the name of A1. He stated that their hotel maintains occupancy register which contains the details of the persons occupied the rooms in the hotel but he did not hand over the occupancy register to the police. He specifically stated that on 19.07.2008 and 06.08.2008 he saw the accused and therefore, he was identifying him in the Court. He denied the suggestion that he did not work as receptionist and giving false evidence.

(c) P.W.23 is the room boy in Tasty Hotel worked from 2008-2009 he deposed that during July and August of 2008, A1 who is present in Court and whose name is M.A.S.Kareem occupied Room Nos.103, 106 & 109. He further stated that around 10 persons who were aged 25 to 30 years used to meet him in the Hotel and they used to talk in Urdu with regard to some business. It should be noted that since this witness did not depose in tune with Ex.P51 which is his 161 Cr.P.C. statement as per which he identified those visitors, Public Prosecutor got him declared hostile and cross-examined.

In the defence cross-examination he stated that the persons who used to visit A1, were discussing about iron business and lorries and as this witness worked as room boy he entered in the room of A1 and heard them. He however stated that he cannot identify those persons. In the cross-examination of defence side, he stated

that he has not seen the accused before coming to the Court after the date of his occupation of the room in the hotel. He deposed that he stated before Police that M.A.S.Kareem was short with beard.

(d) P.W.32 worked as Manager of Tasty Hotel from June 2006 to 2010. He deposed that during July and August 2008 A1 stayed in the Tasty Hotel for about eight days i.e., in Room No.109 from 19.07.2008 top 21.07.2008 and in Room No.103 from 01.08.2008 to 04.08.2008 and in Room No.106 from 06.08.2008 to 08.08.2008. Again he stayed for two days i.e., 20.08.2008 and 21.08.2008 in Room No.103. A12 who was working in D.R.D.A. Department booked room for A1. A number of persons used to visit A1 and they stayed with A1 for hours together. This witness identified A2 and A4 standing in the Court as the persons visited A1. He identified Exs.P18 to P23 as the relevant records of their hotel. He further stated that Exs.P63 to P68 are the bills and Ex.P69 is the occupancy statement which he submitted to the police.

In the cross-examination he stated that he worked for four years in Tasty Hotel from 2006 to 2010. Though he admitted that in Ex.P18 & 20-guest registration books every receipt is maintained in duplicate i.e., white colour as original and pink colour as duplicate, however, he assertively stated that their hotel did not use the two colours as printed for. He stated that he cannot say who others

stayed in Room No.108 & 110 from 19.07.2008 to 21.07.2008. He denied the suggestion that he did not work in the said hotel and deposed falsehood.

The above is oral and documentary evidence projected by the prosecution to show that A1 stayed in Tasty Hotel and had criminal conspiracy with other accused. First we will examine the documentary evidence and later the oral evidence.

18. Ex.P18 to 23 and Ex.P63 to 69 is the documentary evidence. Ex.P18 and P20 are the Guest (G) Registration Form books got printed by Taste Residency Hotel to register the particulars of the guests stayed in their hotel. Each book contains Serial Nos.1 to 100 both in original and duplicate. As per the oral evidence of witnesses, the original is in white colour and duplicate is in pink colour and original will be issued to the customer while the duplicate will be preserved by the hotel. Ex.P19, 21, 22 and 23 are the receipts in Ex.P18 and 20 books. As per prosecution witnesses the stay of A1 on different occasions in the months of July and August, 2008 was noted in the aforesaid receipts. We perused them.

(a) Ex.P19 (in Ex.P.18 book) is the Original Receipt No.69 which shows the guest's name as MAS Kareem and date of arrival as 01.08.2008 and occupying Room No.103 (203 is re-written as 103) and containing guest's signature.

(b) Ex.P21 (in Ex.P.20 book) is the Duplicate Receipt No.37 which shows the guest's name as MAS Kareem and date of arrival as NIL and occupying Room No.103 and containing guest's signature.

(c) Ex.P22 (in Ex.P.18 book) is the Duplicate Receipt No.23 which shows the guest's name as MAS Kareem and date of arrival as 19.07.2008 and occupying Room No.109 and expected date of departure as óne day'and containing guest's signature'.

(d) Ex.P23 (in Ex.P.18 book) is the Original Receipt No.85 which shows the guest's name as MAS Kareem and date of arrival as NIL and occupying Room No.106 and expected date of departure as 'one day' and containing guest's signature.

(e) Ex.P63 and P64 are the computerized-cum-printed receipt and bill dated 21.08.2008 respectively of Room No.103 in the name of MAS Kareem for a net amount of Rs.1,259/-.

(f) Ex.P65 and P66 are the computerized-cum-printed receipt and bill dated 06.08.2008 respectively of Room No.106 in the name of MAS for a net amount of Rs.1,496/-.

(g) Ex.P67 and P68 are the computerized-cum-printed receipt and bill dated 21.07.2008 respectively of Room No.109 in the name of MAS Kareem for a net amount of Rs.2,315/-.

19. While so, the main contention of the appellants, particularly appellant / accused No.1 is in respect of Ex.P18 to 23. It is argued that when Guest (G) registration books contain original and duplicate receipts with an intention to provide original receipts to the guest and duplicate for preservation, it is unusual and highly doubtful that Ex.P19 – Receipt No.69 original contains the name of MAS Kareem (A1) and its duplicate contains a different name of one M. Nijalingaiah; Similarly, Ex.P.21 – Receipt No.37 in duplicate contains the name of MAS Kareem (A1) and its original contains a different name of one B.Y. Aravind; so also, Ex.P22 – Receipt No.23 in duplicate contains the name of MAS Kareem (A1) and its original contains the name of one K. Veerraju; while so, Ex.P.23 - Receipt No.85 in original contains the name of MAS Kareem (A1) and its duplicate contains the name of one N. Vinodh Kumar. It is vehemently argued that these documents cannot be relied upon to conclude that A1 stayed in the Taste Hotel.

(a) We have meticulously gone through these documents and found no much substance in the said argument, for the reason, PW.32 in his cross examination has clarified this anomaly stating that though the Ex.P18 and 20 - books are printed

with two colours for each receipt, however the hotel authorities have not used those books with the two colours as printed for. That is why, each individual page whether it is in white or pink colour was used for registration of each individual guest. This is manifest from a perusal of all the receipts contained in the Ex.P18 and 20 – books and it is not an isolated incidence for A1 alone. May be there is an irregularity in the manner of using those G-Form Registration Books but they cannot be suspected to be manipulated for the purpose of this case. Added to it Ex.P18 to 23 are supported by Ex.P63 to 69 - cash bills and receipts corresponding to the G-Forms. The appellants could not challenge the veracity of those bills and receipts. Hence it is evident that one MAS Kareem has stayed in Taste Hotel in different spells in July and August, 2008.

20. So far as the identity of the said named person as A1 in this case is concerned, we have PWs.19, 20, 23 and 32, who have specifically identified A1. Besides, PW.20 and PW.32 stated that A12 used to book rooms for A1. PW.20 further identified A2 and A4 as the persons who among others used to come and meet A1 in the hotel. Besides, these witnesses have identified A1 and some other accused in the test identification parade conducted by P.Ws.42 and 48 – Magistrates.

(a) As can be seen, PW.42 – the II AJMFC, Ongole conducted TI parade on 03.02.2009 vide Ex.P106 – TIP Report, wherein P.W.20 identified A1 but could

not identify A3. Severely fulminating the TI parade, learned Senior Counsel Sri B.N.V. Hanumantha Rao for A1 and also another learned Senior Counsel Sri P. Veera Reddy, learned counsel for A4 firstly argued that though A1 was arrested on 10.11.2008 TI parade was conducted belatedly on 03.02.2009 and in between, the witnesses might have seen A1 in the newspapers and TV Channels wherein the crime was reported. During TI parade also A1 submitted his objection to the effect that PW.20 might have seen his face in the newspapers or TV Channels and hence the TI parade lost its significance. They relied upon the judgments of Apex Court in **Satrughana Alias Satrughana Parida v. State of Orissa**[26] and **Mahabir v. State of Delhi**[27] to contend the delay vitiates TI parade. Nextly they argued that PW.20 has seen A1 at the Hotel with beard. However, while conducting TI parade no non-suspect was having beard and thereby A1 was easily identified rendering TI parade a mockery. In this regard, he relied upon **Rajesh Govind Jagesha v. State of Maharashtra**[28].

(b) Regarding the first objection, it is true that under law the TI parade shall be conducted at the earliest point of time after the accused is apprehended. There is no denial of the mandate of law. Its avowed purpose is to prevent the possibility of police exposing the accused to the identifying witnesses in advance. In this case

[26] 1995 Supp (4) SCC 448
[27] 2007 (139) Delhi LT 155
[28] (1999) 8 SCC 428 = MANU/SC/0703/1999

there is a delay of about 2 months in conducting TI parade. However the question is whether the delay has defeated the very purpose of TI parade. It is not the case of prosecution that P.W.20 and other similar witnesses had seen A1 only once at the time of commission of offence. On the other hand, their case is that these witnesses who are the employees in the two hotels happened to see A1 and possibly some other accused for considerably long period when A1 stayed in those two hotels during July and August, 2008. The stay of one MAS Kareem in Taste Hotel during the said period is a proved fact. In that view, their witnessing him is not confined to a lone occasion at the time of commission of offence. Therefore, their identifying capacity need not be doubted merely because of the delay in conducting the TI parade. The apprehension that due to delay, the police might have shown A1 to them to facilitate their identification does not hold good in this case because of the association of witnesses with A1 for a reasonable period to recognize him. Hence, in our view, in this case, delay cannot be a ground to reject the identifying capacity of P.W.20.

(c) Second contention of A1 is concerned, PW.42 in his cross-examination admitted that P.W.20 gave the descriptive particulars of A1 to the effect that he was a short man and red chap having long beard. P.W.42 stated that in Ex.P.106 – TIP Report he did not specifically mention whether the non-suspects were having beard or not. He further admitted non-suspects did not belong to Muslim religion.

In that back-drop, it is argued as if A1 alone was having beard and other non-suspects did not have the beards and thereby identification became easy. We are unable to accept this contention. In Ex.P.106, P.W.42 did not specifically mention as to whether non-suspects were having beard or not. Be that as it may, if really A1 alone was having beard and other non-suspects did not have beards, A1 must have raised his objection to that effect as he raised objection on other aspects. His non-objection at the relevant time gives a clear inference that the other non-suspects must also had beards during TI parade or A1 might not have beard.

(d) The cited decision in **Rajesh Govind Jagesha'**s case (Supra 28) can be distinguished on facts. In that case as per FIR the complainant mentioned names of two persons and also two other unknown persons out of whom one was riding Yamaha Motorcycle with a beard. So the eye-witnesses had no acquaintance with remaining two but they could identify one of them by his beard. Despite the same, TI parade was conducted through the eye-witnesses to that accused without beard and flanked by the non-suspects also without beards which was deprecated. That is not the case here. Hence, the identification of A1 by P.W.20 need not be doubted.

(e) Then P.W.48 the III AJMFC, Ongole conducted TI parade on 24.10.2009 and submitted Ex.P.122 - TIP Report whereunder P.W.19 and P.W.32 identified A1. They could not identify A2, A3, A5, A6, A7, A8, A9, A10, A11 & A13. Here

also same objections as earlier were taken by the appellants. However, the reasons mentioned above will apply to present instance also.

Thus the above oral and documentary evidence would clearly show that A1 in the name of MAS Kareem has stayed in Taste Residence Hotel during July, and August, 2008 and some persons used to come and meet him and they were discussing about the iron business.

21. P.Ws.21, 22, 24 and 37 are the workers in Narayana Palace Hotel. Hence their evidence has to be scrutinized to know whether A1 and other accused stayed in the hotel and hatched criminal conspiracy.

(a) **P.W.21** was the receptionist in Narayana Palace Hotel from June, 2008 to February, 2009. In his chief examination, he did not support prosecution case. He only stated that he did not have any idea whether the persons standing in the Court were ever stayed in the Narayana Palace Hotel during his tenure. The Public Prosecutor got him declared as hostile and cross-examined. He admitted to have submitted the record of their hotel covered by Ex.P.24 to P.36 to the police. Though in the TI parade conducted by P.W.43 he identified A1 to A3 as the persons stayed in their hotel, however in the cross-examination of public prosecutor he stated that he don't have idea about the persons whom he identified in the jail. Thus, his evidence is of no avail to the prosecution to establish its case.

(b) **P.W.22** was the receptionist in Narayana Palace from 01.01.2008 to November, 2008. This witness specifically stated that in the months of August, September and October, 2008 A1 and A3 took rooms in their hotel for about 48 days. He identified A1 and A3 in the Court. He stated that A1 and A3 used to stay in one room and several people used to come to their room and stay for more than one hour. He stated that since A1 and A3 stayed in their lodge he identified them in the TI parade conducted by the Magistrate. He however stated that he cannot identify the persons who used to visit A1 and A3. On this aspect he was declared hostile by the public prosecutor and cross-examined. During cross-examination, he stated that Ex.P.24 to P33 were maintained in their lodge showing the stay of customers. He further stated that the guest under Ex.P.25 to P33 is the A1. He also stated that while A1 and A3 booked rooms, this witness was personally present. In the cross-examination of defence side he denied the suggestions that he was giving false evidence and identified the persons at the instance of police.

(c) **P.W.24** was the room boy in Narayana Palace during 2008-2009. He deposed that in the September and October, 2008 A1 stayed in Room Nos.101, 103, 105 and 106 of their lodge and some persons in the age group of 25-50 years used to come to A1 and they used to talk in phones by locking the doors with regard to lorries and iron. He further stated that all the accused used to come to their lodge to meet A1. He said that he identified A1 to A3 in the TI parade.

In the cross-examination of defence side he stated that as he has seen the photo of A1 in the newspaper, he could identify him in TI parade. He denied the suggestion that he did not work in the Narayana Palace.

(d) **P.W.37** worked as Manager in Narayana Palace from April, 2008 to December, 2010. He deposed that P.Ws.21, 22 and 24 and LW.7 – Akumalli Moulali worked in their hotel. He further stated that A1 took room in their lodge in the month of August, 2008 and stayed for about 48 days. The witness identified A1 in the Court and further stated that A1 used to visit and stay in their lodge often. During said period several persons used to come and meet A1. He stated that Ex.P.47 contains his signature. Since this witness did not speak about the stay of A3 in their lodge, learned public prosecutor got him declared hostile and cross-examined.

In the cross-examination he admitted to have stated before police about the stay of A3 and A1 in different rooms for different spells. He stated that he participated in TI parade held in the District Jail, Ongole and identified A1. In the cross-examination of defence side he stated that he saw the A1 on TV and daily newspapers prior to conducting TI parade.

(e) P.W.43 conducted TI parade wherein the above witnesses identified A1 and A3.

(f) When the above oral and documentary evidence is perused, the documentary evidence covered by Ex.P.24 to P.47 shows that MAS Kareem and Syed Hidaytullah have stayed in the Narayana Palace Hotel during August, September and October, 2008. Oral evidence is concerned, P.Ws.21, 24 and 37 have not supported the prosecution case in identifying the accused, inasmuch as, P.W.21 stated that he don't have the idea about the persons whom he identified in the jail and he cannot identify the persons standing in the Court. Whereas, P.Ws.24 & 37 stated that by seeing A1's photo on the TV and newspaper, they identified A1.

However, P.W.22 has clearly stated that A1 and A3 stayed in their hotel for about 48 days in August, September and October, 2008. He further stated that when the rooms were booked by A1 and A3, this witness was personally present. The documentary evidence corresponds with his evidence. Though P.W 43 conducted TI parade belatedly, however so far as identifying capacity of P.W.22 is concerned, there can be no doubt in view of the fact that A1 and A3 stayed in their hotel for a long period of 48 days between August – October, 2008 and when they took rooms this witness was personally present.

22. Thus, the oral and documentary evidence discussed supra would pellucidly explain us that A1 and A3 stayed in Taste Residency Hotel and Narayana Palace Hotel in different spells between July, 2008 – October, 2008 and many people used to visit them and they discussed about the lorries and iron business. With this

proved fact, whether criminal conspiracy of all the accused can be inferred is the sentient point. As we discussed earlier, criminal conspiracy since hatched in secrecy, securing direct evidence on this aspect is seldom possible. Therefore, taking into the circumstances that were proved before, during and after the occurrence, criminal conspiracy can be inferred. Ergo, the nature of the crime and facts that were proved before, during and after the crime have to be considered to decide the existence of criminal conspiracy.

(a) In this case and also in other similar cases as depicted by different mediator reports, the offences were occurred between July and September, 2008**.** All the offences were occurred on the national highway between Ongole and Nellore. The modus operandi in all these cases is identical i.e., the culprits committed dacoity of trucks passing with iron load on Highway by killing the drivers and concealing the dead bodies. From the nature of the crimes, it is evident that no single person can accomplish the task without the help of a group of culprits. Further, a diabolical design, meticulous division of tasks among the group of persons and ruthless execution are essential to achieve the fruition. That being so, the proven facts would show A1 and A3 occupied the two hotels during the relevant period of the three crimes and had discussions with some persons relating to lorries and iron business. The other facts proved would show A1 with the connivance of A12 took the godown of P.W.25 on lease during the relevant period. There A1, A2 and A12

were witnessed to have brought trailor lorry with iron load and clandestinely undertaken the task of cutting the empty lorry into pieces (MOs. 2 to 7 in SC No.595/2010). A1, A2, A11 and A16 took empty trailer lorry to Tirupati on 23.08.2008 and called A4 and with his help left the vehicle at Tirupathi –Chittoor road. Later, on the instructions of A1, A4 and A6 left the MO.1- power head in the slate factory of PW.13 at Pidguralla with the help of PW.12 and later recovered by the police. A1, A3 and A11 revealed the place where the two dead bodies were buried. A2 and A14 revealed about the sale of stolen iron rods to PW.15 with the help of PWs.14 and 16.

All the above instances would show that unless there was a prior criminal conspiracy among the accused, their wicked act could not have been materialized. Therefore, we can safely presume the brooding of criminal conspiracy by A1, A2, A3, A4, A6, A11, A12, A14, A15 and A16 in the Taste Residency, Narayana Palace Hotel, Ongole and some other places. Hence Point No.1(a) has been established by the prosecution.

23. <u>Proved circumstances completing the chain</u>:

(a) We have elaborately discussed the incriminating circumstances and the evidence by which they were proved by the prosecution supra. When all these proven circumstances are systematically arranged, in our considered view, they will form into a complete chain invariably projecting the guilt of Accused Nos.1 to

4, A6, A11, A12, A14, A15 and A16. Running the risk of pleonasm, all of them are part of the criminal conspiracy to commit dacoity of iron loaded trucks proceeding on National Highway by killing the drivers and in pursuance of such wicked design, each one of them played his assigned role in fulfilling the object. Therefore, the circumstantial evidence unerringly established that none other than Accused Nos.1 to 4, A6, A11, A12, A14, A15 and A16 had criminal conspiracy pursuant to which each one of them played different roles and achieved the result of dacoity and murder of the two drivers. On behalf of appellants it is argued that the case is based purely on circumstantial evidence and all the links have not been established to form into a chain and in view of the missing links, benefit of doubt should go to the accused. Learned Senior Counsel Sri P. Veera Reddy placed reliance on **Digamber Vaishnav v. State of Chhattishgarh**[29] wherein it is held thus:

> "**19**. It is also well-settled principle that in criminal cases, if two views are possible on evidence adduced in the case, one binding to the guilt of the accused and the other is to his innocence, the view which is favourable to the accused, should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

There is no demur about the principle. However, in this case as already observed, the prosecution could successfully establish its case beyond doubt. Hence this argument is of no avail.

[29] (2019) 4 SCC 522

(b) However, in our considered view, the prosecution failed to prove the complicity of A5-Bathala Salmon, A7-Yepuri Pedda Veeraswamy, A8- Gundu Bhanu Prakash @ Bhanu @ Gajani, A9-Rachamalla Sampath, A10- Gundeboina Sridhar, A13 – Shaik Kamal Saheb @ Kamal @ Kamaluddin and A17 – Shaik Rafi. As already discussed earlier, except their confessional statements and the confessional statements of co-accused, which are inadmissible in evidence there is no tangible material to prove their complicity in the present case. Hence these accused are entitled to benefit of doubt.

However, our above observation regarding A5, A7, A8, A9, A10, A13 & A17 is confined to the present case having regard to the facts circumstances and evidence and the said observation will have no influence on other connected cases, wherein, their complicity if any, has to be evaluated independently.

24. <u>Additional Arguments Advanced by the appellants</u>: Some additional arguments are also advanced by the appellants which are required to be mentioned.

(a) It is argued that though the offence was occurred on the night of 23.08.2008, FIR was belatedly registered on 14.11.2008 and there was no proper explanation for the delay. This argument, it must be said, has no venom. Though the offence was occurred on the night of 23.08.2008, none including P.W.2- the owner of trailer lorry and the relatives of deceased knew about it. Since the lorry did not

reach the destination at Kanchipuram by the end of August, 2008, P.W.2 waited for considerable period then lodged a report initially in Tarabahar PS, Bilaspur District and later on point of jurisdiction he presented the report before Urla PS on 16.09.2008 and same was registered as FIR No.240/2008 (Ex.P132). While so, A1, A3 and A11 were arrested in connection with Crime No.356/2008 and they confessed about commission of different offences including the present offence. Therefore, Inspector of Police, Ongole sent relevant papers to PW.45 – the SI of Police, S. Konda PS basing on which Cr.No.150/2008 was registered on 14.11.2008 in the present case. In these circumstances one cannot criticise that there is a delay in lodging FIR. Even if there is a delay as contended, the same was well explained by the prosecution. When delay in lodging FIR is properly explained, prosecution case cannot be discarded as laid in **State of Madhya Pradesh and Ors. v. Chhaakki Lal and Ors.**[30]

(b) It is argued that as per prosecution all the accused have committed three similar offences in a calendar year covered by SC No.73/2010, SC No.91/2010 and SC No.595/2010 and as such in terms of Section 223(c) of Cr.P.C, the trial Court ought to have conducted joint trial of all the three offences. Instead the trial Court conducted separate and parallel trials for the three offences causing much prejudice to the accused. Hence on that ground, the trial is vitiated in all the three cases

[30] 2019 (1) ALD Criminal 276 Supreme Court

including the present case and hence conviction and sentence are liable to be set aside. We find no force in this contention. As per Section 223 of Cr.P.C joint trial can be conducted by the trial Court if the circumstances narrated in Clause (a) to (g) of the said Section are satisfied. Joint trial is optional as per the discretion of the Court since the word "may be" is employed at the beginning of Section 223 Cr.P.C. Unless strong prejudice is established, the accused cannot contend that the separate trial vitiated the prosecution case. In this regard, the Apex Court in **Nasib Singh v. State of Punjab**[31] explicated certain principles on the aspect of joint trial / separate trial with reference to Section 218-223 Cr.P.C as follows:

> "39. From the decisions of this Court on joint trial and separate trials, the following principles can be formulated:
>
> (i) Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219-221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with may be conducted. Similarly, Under Section 223, a joint trial may be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied;
>
> (ii) While applying the principles enunciated in Sections 218-223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate trial will prejudice the defence of the Accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.
>
> (iii) The possibility of conducting a joint trial will have to be determined at the beginning of the trial and not after the trial based on the result of the trial. The Appellate Court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of Accused or the prosecutrix;
>
> (iv) Since the provisions which engraft an exception use the phrase 'may' with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice; and

[31] (2022) 2 SCC 89

> (v) A conviction or acquittal of the Accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be."

In the instant case the appellants could not show any prejudice or miscarriage of justice due to the separate trial in the above three cases. Hence this argument does not hold water.

(c) It is further argued that the I.O. in his evidence gave a vivid account of the facts relating to not only the present case, but also the other two connected cases and therefore, while cross-examining the I.O., the defence side had to make a herculean task of cross-examining the I.O., not only with reference to the present case, but also the other cases.

We find no much force in this contention. As the three cases are identical and committed within short span by almost same accused under similar circumstances and as the witnesses are mostly common and as the accused after apprehension, while giving confessional statements, narrated about their complicity successively in all the three crimes, the I.O. while giving evidence, had to give brief description of other offences in his deposition. However, the defence side while cross-examining him, mostly confined to the facts relating to the present case rightly. Therefore, we do not find any prejudice being caused to them.

25. POINT NO.II:

Offences committed by accused attracting different Sections of IPC:

Having confirmed that A1 to A4, A6, A11, A12, A14, A15 and A16 were involved in the crime of dacoity with murder of the two drivers, it has now to be seen which Sections of Law will attract their offences.

(a) A1 to A4, A6, A11 and A15 are found guilty for the offence of dacoity with murder punishable U/s 396 IPC;

(b) A1 to A4, A6, A11, A12, A14, A15 and A16 are found guilty for the offence of Criminal Conspiracy to commit dacoity with murder and hence punishable U/s 396 r/w 120(B) IPC;

(c) A1 to A4, A6, A11 and A12 are found guilty for the offence of belonging to a gang of persons associated for the purpose of habitually committing dacoity, inasmuch as these accused have also participated in similar offences relating to RT No.3 of 2021 and RT No.4 of 2021 wherein also the judgment is pronounced today and hence liable to be punished U/s 400 IPC.

(d) A1 to A4, A6, A11 and A15 are found guilty for the offence U/s 201 IPC for causing the evidence of the commission of the offence to disappear with an intention to screen themselves.

(e) A4, A15 and A16 are found guilty of the offence U/s 414 IPC for taking away the trailer lorry from the place of offence to Praveen Tobacco Godown along with iron load and then taking the power head of the trailer lorry to a different place for concealing or disposing of the same which they know or reason to believe to be stolen property.

The above accused are liable to be punished for the offences as stated supra. Point No.2 is answered accordingly.

X. Point No.III:

(a) This point relates to the aspect whether the sentence imposed by the trial Court against the accused for different offences proved against them is legally sustainable.

In the above context, so far as A1 to A11 & A15 are concerned, the trial Court held them guilty of the offence U/s 396 IPC and awarded death punishment on two counts for killing two drivers. It should be noted, in the instant Referred Trial as well as concerned Criminal Appeals, we held that A5, A7, A8, A9, A10, A13 & A17 are not guilty of any of the offences. In that view, the offence U/s 396 IPC is concerned, we found A1 to A4, A6, A11 & A15 alone are guilty. For the offence U/s 396 IPC, the punishment shall be death or imprisonment for life or R.I. for a term which may extent to ten (10) years and also fine.

(b) It is trite that under Section 354(3) Cr.P.C., the trial Judge shall, while awarding sentence of death, state the "special reasons" for such sentence. In the instant case, the trial Court upon the observations that A1 to A10 pursuant to their criminal conspiracy, brutally and mercilessly murdered the driver and cleaner by strangulating them with ropes for the purpose of committing dacoity and the crime committed by them is a rarest of the rare case and that the accused are habitual offenders as they are involved in other offences also wherein judgments are pronounced by the trial Court and therefore, there was no possibility for the accused to reform themselves and hence, no lenient view can be taken to consider imposition of alternative punishment and accordingly awarded death penalty to A1 to A10. Therefore, it has now to be seen whether the death penalty awarded by the trial Court against A1 to A4, A6, A11 &A15 is sustainable under law.

26. Learned Public Prosecutor vehemently argued that the trial Court was perfectly justified in awarding capital punishment to A1 to A4, A6, A11 & A15 for, there exists multiple aggravating circumstances viz., i) the accused have nurtured a diabolical motive of committing theft of the vehicles transporting iron load on highway even by killing the crew of such vehicles for wrongful gain, ii) in the process, they killed hapless, innocent, unarmed drivers and cleaners in a number of cases out of which three cases could be brought to book resulted in S.C.No.73/2010, S.C.No.91/2010 and S.C.No.595/2010 and thus the accused have

criminal track record, iii) the habitual manner of committing highway dacoities coupled with murders has created shocking effect on the society on one hand and had adverse impact on the trade and transportation on the highway as the road transportation, in our nation is the main artery for trade and commerce which is being clogged, iv) the accused being the habitual offenders, expecting them to get compunction or contrition is unwarranted and therefore, except the capital punishment, any alternative punishment will not yield desired result.

Learned Public Prosecutor placed reliance on:

In **Susheel Murmu v. State of Jarkhand**[32] the Apex Court held:

> "in rarest of rare cases when collective conscience of the community is so shocked that it will expect holders of the Judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty death sentence can be awarded".

In **State of U.P. v. Shri Kishan**[33] the Apex Court held:

> "8. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result- wise counterproductive in the long run and against societal interest which needs to be cared

[32] AIR 2004 SC 394
[33] (2005) 10 SCC 420

> for and strengthened by string of deterrence inbuilt in the sentencing system.
>
> 9. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should confirm to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".”

27. Per contra, learned counsel for appellants while referring to the observation of the trial Court dated 24.05.2021 in its judgment, vehemently argued that the trial Court simply noted down the aggravating circumstances in its view and unfortunately did not make any endeavour to note down the mitigating circumstances and then placing them in juxtaposition with the aggravating circumstances and making a balanced auditing to know whether aggravating circumstances weigh over-and-above the mitigating circumstances to conclude that it is one of the rarest of the rare cases so as to invariably award capital punishment or to see whether the mitigating circumstances outweigh the aggravating circumstances to award an alternative punishment. Thereby, great injustice was done to accused taking them to the gallows. Learned counsel would further argue that there are indeed plausible mitigating circumstances worthy of consideration but the trial Court did not endeavour to ascertain from the defence side.

Then quoting the mitigating circumstances, he would submit that primarily the case on hand is based on circumstantial evidence, inasmuch as, there is no direct evidence for proving the dacoity-cum-murder. In expatiation, he would submit, the prime link of exhumation of dead bodies was based on the confessional statement of few accused and rest of the accused were roped in basing on the principle of criminal conspiracy. However, as a whole, the case pivots on circumstantial evidence alone. In that view, he would emphasize, in a case of this nature, awarding capital punishment to A1 to A11 & A15 is unwarranted. Nextly, he argued that all the accused barring one or two are young in age and leading family life having wife, children and parents to fend. The trial Court ought to have obtained a report from the concerned authorities regarding the social status of the accused to evaluate whether awarding capital punishment is justifiable or not. He lamented that the trial Court miserably failed in that regard. He would further submit that in view of the young age of the accused, there is every possibility for their reformation having regard to the advancement in the field of medicine and psychology and through an apt counselling, reformation is not impossible. However, the trial Court has not bestowed its attention on this important aspect. Learned counsel thus prayed to take lenient view and commute the death sentences into suitable alternative sentences.

28. We have given our anxious consideration to the above respective arguments. In **Bachan Singh v. State of Punjab** [34]the Apex Court exhorted that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the ***rarest of rare*** cases when the alternative option is unquestionably foreclosed. Further, law is no more *res integra* as to the exercise that has to be undertaken by the Courts to decide whether a case falls in the phraseology of "rarest of the rare" or not. In a slew of judgments Hon'ble Apex Court has reiterated that Courts are under solemn duty to conduct a balanced audit between the aggravating and mitigating circumstances which weigh against and in favour of a convict for assessing the nature of sentence. For instance, in **Rameshbhai Chandubhai Rathod v. State of Gujarat**[35] the Apex Court held:

> "34. Similarly, in Machhi Singh v. State of Punjab MANU/SC/0211/1983 : 1983CriLJ1457 the position was summed up as follows: (SCC p. 489)
>
> > 38. In this background the guidelines indicated in Bachan Singh's case (surpa) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's case (supra):
> >
> > (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

[34] 1980(2) SCC 684
[35] (2009) 5 SCC 740,

> (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.
>
> (iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
>
> (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.(emphasis supplied)"

29. In the light of the above principle, when we perused the judgment, as rightly argued by learned counsel for appellants, the trial Court, except recording the aggravating circumstances, did not make an honest attempt to ascertain and list out the mitigating circumstances for comparison with aggravating circumstances to come to a judicious conclusion on imposition of just sentence. Needless to emphasize, Penology expounds doctrine of proportionality of punishment to every crime. To arrive at such proportionality in capital punishment, the Court must invariably make balanced audit which is lacking in this case. Therefore, to that extent, injustice was caused to the accused. In **Manoj v. State of Madhya**

Pradesh[36] the Apex Court emphasized the need to collect the mitigating circumstances at the stage of trial. It was observed thus:

> "213. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.
>
> 214. To do this, the trial court must elicit information from the Accused and the state, both. The state, must-for an offence carrying capital punishment-at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the Accused. This will help establish proximity (in terms of timeline), to the Accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh."

Hence, we have undertaken that solemn exercise to find out whether the mitigating circumstances projected by the learned counsel for appellants will over weigh the aggravating circumstances to conceive of an alternative punishment to the accused in this case.

30. It is true that it is a case wholly and solely based on circumstantial evidence. It is also true that the main link of exhumation of dead bodies was found on the strength of the confessional statements of one or two accused. However, merely because the case rests on circumstantial evidence, that itself cannot be treated as a mitigating circumstance. That can be treated as a catalyst to consider with reference to the other factors.

[36] (2023) 2 SCC 353

31. The next circumstance projected is that almost all the accused are young persons, leading normal social and family life with wife, children and parents. As per the charge sheet, except few accused, others are aged between 25-40 years as on the date of offence. Therefore, there is some truth in the submission of appellants that they are young and having regard to the advancements in the realm of medicine and psychology, the chances of their reformation in the prison by a systematic and proper counselling cannot be ruled out. Added to it, pursuant to the directions of this Court dated 24.01.2023 given on the strength of judgment in **Manoj's** case (supra 36) concerned District Probation Officers and Jail authorities furnished reports on the conduct and lifestyle of accused. A perusal shows, the accused are by and large leading family life except A1 whose wife divorced and living separately along with children. The conduct of most of the accused in jail is reported to be satisfactory. Thus, taking the overall facts into consideration, we are of the considered view that there are reasonable mitigating factors which out-weigh the aggravating circumstances to commute the death sentence awarded by the trial Court to A1 to A4, A6, A11 & A15 into life imprisonment. Then in view of the observations made by the Apex Court in **Swamy Shraddananda (2) v. State of Karnataka**[37] that the sentence of life imprisonment when awarded as a substitute

[37] (2008) 13 SCC 767

for death penalty would be carried out strictly as directed by the Court and as approved by a Constitutional Bench of the Hon'ble Apex Court in **Union of India v. V.Sriharan @ Murugan and Ors.**[38]**,** and followed in **Raju Jagdish Pasawan v. State of Maharashtra**[39]**,** and also having regard to the nature of the crime and manner in which it was perpetrated by the accused, and other attending circumstances, we are of the view that the Appellants/A1 to A4, A6, A11 & A15 do not deserve for remission before completion of 45 years of imprisonment meaning thereby, they shall undergo imprisonment for a total period of 45 years without remission.

32. Added to above, we seriously ponder over the wretched plight of the bereaved families of the deceased driver and cleaner. We are constrained to note that lack of proper patrolling on the highway also contributed for the gruesome and 'serial murders' of hapless drivers in a series of cases. The State being *parens patriae*, is obligated to look after the safety, security and lives of its citizens. Therefore, we hold that the dependent family members of the deceased are entitled to compensation from the State Government.

33. Thus, in terms of the mandate under Sub Section 2 of Section 357A of Cr.P.C., we direct the District Legal Services Authority, Ongole in Prakasam

[38] 2016 (7) SCC 1
[39] 2019 (6) SCC 380

District to ascertain the particulars of dependent family members of the deceased and issue notice to them and conduct enquiry as per the guidelines prescribed under the **A.P.Victim Compensation Scheme, 2015** and decide quantum of compensation payable to those dependent family members of the deceased within two (2) months from the date of receipt of a copy of this judgment. Since, this exercise will take some time, in order to provide immediate succour to the dependent family members of the deceased, we direct the State Government of Andhra Pradesh to pay *ex gratia* of Rs.5,00,000/- to the dependent family members of each deceased in this case through the District Collector, Prakasam District within fifteen (15) days from the date of receipt of a copy of this judgment and report compliance to the Registrar Judicial of this High Court.

34. Accordingly, the Referred Trial and concerned Criminal Appeals are decided as follows:

1) **R.T.No.2/2021:**

The death sentence awarded on two counts to accused 1 to 11 & 15 in S.C.No.73/2010 by the VIII Additional District & Sessions Judge, Ongole and referred in this R.T.No.2/2021 is answered to the effect that the conviction and sentence recorded for all the charges against A5-Bathala Salmon, A7-Yepuri Pedda Veeraswamy, A8-Gundu Bhanu Prakash, A9-Rachamalla Sampath and A10-Gundeboina Sridhar is set aside and they are acquitted and whereas A1 to A4, A6,

A11 & A15 are concerned, the death sentence is commuted to the sentence of imprisonment for a total period of 45 years without remission on two counts which shall run concurrently.

2) **Crl.A.No.147/2021 (filed by A17):**

Criminal Appeal filed by Appellant/A17-Shaik Rafi is allowed and conviction and sentence passed against him is set aside and he is acquitted of all charges.

3) **Crl.A.No.148/2021 (filed by A16):**

Criminal Appeal filed by Appellant/A16 is dismissed by confirming the conviction and sentence passed against him for different charges.

4) **Crl.A.No.157/2021 (filed by A8):**

Criminal Appeal filed by Appellant/A8-Gundu Bhanu Prakash @ Bhanu is allowed and conviction and sentence passed against him is set aside and he is acquitted of all charges.

5) **Crl.A.No.163/2021 (filed by A5):**

Criminal Appeal filed by Appellant/A5-Bathala Salmon is allowed and conviction and sentence passed against him is set aside and he is acquitted of all charges.

6) **Crl.A.No.164/2021 (filed by A1 & A11):**

Criminal Appeal filed by Appellants/A1 & A11 is concerned, the death sentence imposed for the offence under Section 396 IPC is commuted to imprisonment for a period of 45 years without remission and sentence imposed for other charges is confirmed.

7) **Crl.A.No.168/2021 (filed by A10):**

Criminal Appeal filed by Appellant/A10-Gundeboina Sridhar is allowed and conviction and sentence passed against him is set aside and he is acquitted of all charges.

8) **Crl.A.No.169/2021 (filed by A4, A6, A7 & A15):**

Criminal Appeal filed by Appellant/A7-Yepuri Pedda Veeraswamy is allowed and conviction and sentence passed against him is set aside and he is acquitted of all charges.

Criminal Appeal filed by Appellants/A4, A6 & A15 is concerned, the death sentence imposed for the offence under Section 396 IPC is commuted to imprisonment for a period of 45 years without remission and sentence imposed for other charges is confirmed.

9) **Crl.A.No.193/2021 (filed by A2 & A14):**

Criminal Appeal filed by Appellant/A2 is concerned, the death sentence imposed for the offence under Section 396 IPC is commuted to imprisonment for a period of 45 years without remission and sentence imposed for other charges is confirmed.

Criminal Appeal filed by Appellant/A14 is dismissed by confirming the conviction and sentence passed against him for different charges.

10) **Crl.A.No.232/2021 (filed by A13):**

Criminal Appeal filed by Appellant/A13-Shaik Kamal Saheb @ Kamal @ Kamaluddin is allowed and conviction and sentence passed against him is set aside and he is acquitted of all charges.

11) **Crl.A.No.249/2021 (filed by A9):**

Criminal Appeal filed by Appellant/A9-Rachamalla Sampath is allowed and conviction and sentence passed against him is set aside and he is acquitted of all charges.

12) **Crl.A.No.281/2021 (filed by A3):**

Criminal Appeal filed by Appellant/A3-Syed Hidayathulla is concerned, the death sentence imposed for the offence under Section 396 IPC is commuted to

imprisonment for a period of 45 years without remission and sentence imposed for other charges is confirmed.

13) **Crl.A.No.355/2021 (filed by A12):**

Criminal Appeal filed by Appellant/A12 is dismissed by confirming the conviction and sentence passed against him for different charges.

All the sentences imposed against accused shall run concurrently.

Before parting, we will be failing in our duty if we do not extend words of our appreciation to the patient and erudite arguments of learned Public Prosecutor, learned counsels for appellants and apt and sublime assistance rendered by Court Officers, Court Masters and Law Clerks to discharge our pious obligation.

U.DURGA PRASAD RAO, J

GANNAMANENI RAMAKRISHNA PRASAD, J

Dated: 10.05.2024

Note: Registry is directed to forward a copy of this judgment forthwith to:
1) The Chief Secretary, Government of Andhra Pradesh, Amaravati.
2) The District Collector, Prakasam District, Andhra Pradesh.

B/o
KRK/NNN