

*** THE HON'BLE Dr. JUSTICE G. RADHA RANI**

+ CRIMINAL APPEAL No.1443 of 2007

% 28.01.2022

Thonne Michael @ Mahesh
S/o.S. Kallappa @ Peter,
Age:23 years, Occ: Auto Driver,
R/o.27-7-79/4/N2, Subashchandra Bose Nagar,
Jeedimetla, Cyberabad

.... Appellant

Vs.

\$ State of A.P., through
Public Prosecutor by
Inspector of Police, P.S. Begumpet.

..... Respondent

!Counsel for the appellant : Sri Mohd. Muzaffarullah Khan

Counsel for the Respondent : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

- 1) 2019 (1) ALD (CrI) 821 (TS)
- 2) AIR 1990 SC 79

THE HON'BLE Dr. JUSTICE G. RADHA RANI**CRIMINAL APPEAL No.1443 of 2007****ORDER:**

This Criminal Appeal is filed by the Appellant-A1 aggrieved by the conviction and sentence inflicted by the III Additional Metropolitan Sessions Judge, City Criminal Courts, Hyderabad in SC No.243 of 2007 vide judgment dated 08.10.2007 convicting him to undergo Rigorous Imprisonment for a period of 8 years and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for 4 months for the offence punishable under Section 304-I IPC.

2.1. The case of the prosecution in brief was that on 26.08.2006 at 4.00 AM, P.C. No.6448 of Begumpet Police Station lodged a written report in the police station stating that while he was on crime beat patrolling duty in the limits of Begumpet Police Station along with LW.2 – HG 5883 and were patrolling in Shyamlal area on the intervening night of 25/26.08.2006 at about 3.00 AM while proceeding towards Dhaniyalagutta area, found an unknown male dead body lying on the road in a pool of blood. On observing it, they noticed severe bleeding injuries on head and face of the deceased by smashing with granite stones which were found nearby the body. There was pool of blood near the head of the deceased and found blood stains spilled over the rocks nearby. On further observation, they noticed that the deceased seemed to be a Hindu. They also found three empty arrack sachets near the dead body. On their enquiry with hut dwellers, situated about 100 meters from the scene of offence

towards Tatachari Colony, Shyamlal buildings, it came to light that a few persons went in an auto rickshaw about 1.00 AM towards Dhaniyalagutta and after twenty minutes, the auto returned back and they also heard hue and cries from Dhaniyalagutta side. The complainant gave the descriptive particulars of the body and the clothes that were found on the dead body and the identification marks which they observed. Basing on the said report, a case in Crime No.300 of 2006 under Section 302 IPC was registered.

2.2. A press note was issued along with the photograph of the deceased and the same was published in the news papers. On seeing it, the blood relatives of the deceased approached the police and stated that since 26.08.2006 Mr. Satish @ Chinna did not return home and found missing along with Auto bearing No.AP 28 W 9994. While they were searching for him, they found the auto abandoned with damages in front of Sree Ramulu Theatre, Bharat Nagar, Moosapet, Hyderabad and one of the witnesses, by name, N. Janardhan, employee of Sai Leela Fast Food Centre, opposite Sree Ramulu theatre, Moosapet, Hyderabad informed that on the intervening night of 25/26.08.2006 at about 00.15 hours the driver of the auto bearing No.AP 28 W 282 came in high speed and hit the stationed auto bearing No.AP 28 W 9994 and caused damage, due to which both the auto drivers quarrelled, in the meantime, the driver of auto bearing No.AP 28 V 7709 came there and both the drivers of the autos bearing No.AP28 V 7709 and AP 28 W 282 attacked the other auto driver and forcibly took him away in the auto AP 28 V 7709 towards Fathenagar

side leaving the damaged auto at the accident site. On coming to know the auto numbers, the owner of the auto bearing No.AP 28 W 9994, by name, K. Shiva, cited as LW.10, identified the names of the auto drivers as Michael, Jeevan and Satish and stated that he gave auto No.AP28 W 9994 on hire to the deceased Satish. The witnesses - LWs.8 to 10, i.e. Suresh, Mohd. Jahangir and K. Shiva suspected the involvement of A1 and A2 that they might have killed the deceased Satish. The Inspector of Police secured the presence of another witness cited as LW.5 Mohd. Ahmed Khan Masoom @ Masoom and recorded his statement, who stated that on the night of 25.08.2006 he followed the accused person in auto AP 28 V 7709 to Dhaniyalagutta along with the deceased and the accused informed their intention to kill the deceased and when he tried to prevent, the accused asked him to go away from there as such he left the place, later he came to know that the accused had killed the deceased with boulders. The Inspector got recorded the statement of LW.5 Mohd. Ahmed Masoom @ Masoom under Section 164 Cr.P.C. by the Magistrate and recorded the statements of the owners of the autos bearing Nos.AP 28 W 282 and AP 28 V 7709, who disclosed identity of their drivers as Jeevan and Michael. The Inspector stated in the charge sheet that efforts were made to apprehend them, but found both the said persons absconding from their residence since the incident. On 06.09.2006 at 4.30 PM on credible information, the Inspector along with his staff apprehended A1 and A2 at S.R. Nagar Auto stand and brought them to the Begumpet Police Station. On thorough interrogation, both the

accused admitted to have committed the offence along with A3 Syed Jahangir. The Inspector secured the presence of mediators, recorded the confession cum seizure panchanama of A1 and A2 and seized the auto bearing No.AP 28 V 7709 which was used in the commission of offence as material evidence.

2.3. In pursuance of the confession of A1 and A2, they led the police and panch witnesses first to the accident site in front of Sree Ramulu Theatre, Bharatnagar, Moosapet and from there to the house of A3 at Indir Gandhi Puram. The police apprehended A3 and took him into custody from his house. From there, A1 to A3 led the police to the Dhaniyalagutta and had shown the spot where they killed the deceased. Later the Inspector effected the arrest of A1 to A3. He also recorded the confession of A3 in the presence of the same panch witnesses and produced them before the Court.

2.4. After completing the investigation charge sheet was filed against A1 to A3 under Section 302 read with 34 IPC stating that from the investigation and evidence collected, it was established that on the night of 25/26.08.2006, A1 drove his auto rickshaw bearing No.AP 28 W 282 in a rash and negligent manner and hit the stationed auto bearing No.AP 28 W 9994 of the deceased and caused damages to it in front of Sree Ramulu Theatre, Bharathnagar, Moosapet, Hyderabad. Due to which the deceased picked up quarrel with A1 and caused damage to the windscreen glass of the Auto rickshaw of A1. In the meantime, A2 came there and joined with A1 and both of them attacked the deceased and bet him severely due to which the deceased

became unconscious. Then A1 and A2 decided to eliminate the deceased, lifted him and forcibly put him in their auto bearing No.AP 28 V 7709 and went to Fathenagar, from there, they picked up A3 Syed Jahangir and LW.5 Mr. Masoom and as per their plan, came to an isolated place at Dhaniyalagutta under Begumpet limits in the same auto. On reaching that spot, LW.5 - Masoom refused to join hands with the accused to kill the deceased and as such fled away from the place as A1 and A3 did not listen to his request. They pulled the deceased from the auto rickshaw and thrown him on the open place in Dhaniyalagutta and lifted boulders and smashed the head and face of the deceased and caused his death instantly at the spot and fled away from the spot. Thus, the accused Nos.1 to 3 with common intention killed the deceased with boulders and committed the above offence.

2.5. Cognizance of the said offence was taken by XI Additional Chief Metropolitan Magistrate, Secunderabad, registered it as PRC No.15 of 2007 and committed the case to the Metropolitan Sessions Division, Hyderabad. The Metropolitan Sessions Judge made over the case to the III Additional Metropolitan Sessions Judge, Hyderabad. The III Additional Metropolitan Sessions Judge framed charges against A1 to A3 for the offences under Section 302 read with 34 IPC and as they pleaded not guilty, proceeded with the trial.

2.6. The prosecution got examined PWs.1 to 18 and got marked Exs.P1 to P15 and MOs.1 to 6 on its behalf. No defence witnesses were examined on behalf of the accused. Ex.D1, a portion of the 161 Cr.P.C. statement of PW.9, was marked for the defence. After the

prosecution evidence was closed, the accused were examined under Section 313 Cr.P.C., explaining the incriminating circumstances appearing against them. After hearing the learned Additional Public Prosecutor and the learned Defence Counsel and after considering the oral, documentary and material evidence on record, the trial Court acquitted A2 and A3, but convicted A1 for the offence under Section 304-I IPC and sentenced him to undergo Rigorous Imprisonment for a period of 8 years and to pay a fine of Rs.2,000/- as stated above.

2.7. Aggrieved by the said conviction and sentence inflicted against him, the appellant-A1 preferred this appeal contending that the trial court failed to appreciate that when once the benefit of doubt was extended to other accused, the same ought to have been considered in respect of the appellant-A1 also, when the evidence adduced was one and the same against all the accused. The trial court based the conviction of the appellant basing on the testimony of PWs.5 and 13. The trial Court failed to appreciate that PW.5 did not support the case of the prosecution and admitted that the police tutored him to speak falsehood in the court by confining him in the police station for 3 to 5 days and released him without implication, with a promise that he would be made as a witness, though the first finger of accusation was pointed out towards him. Thus, the judgment of the Court below suffered from mis-appreciation of facts. PW.13 was a stock witness. He was panch witness for the confessional statements of the accused which were inadmissible in law. The trial Court did not consider that the recovery of material objects was not at the behest of the accused.

As per PW.13, the boulder and the auto rickshaw were already in the police station and they would not prove any connection between the crime and the accused. No evidence was adduced with regard to the origin of the incident. No clinching and believable evidence was brought on record to bring home the guilt of the accused particularly against A1. The entire case of the prosecution was based on circumstantial evidence and as per the established principles of law, each and every chain of the events had to be linked with other chain. In this case, there was no proper forming of chain of circumstances, which pointed out to the guilt of the accused. The trial Court without discussing the law sustained the conviction, as such prayed to allow the appeal.

3. Heard the learned counsel for the appellant - A1 and the learned Additional Public Prosecutor.

4. Learned counsel for the appellant - A1 submitted that A1 was in judicial custody since 17.11.2021, when this Court cancelled the suspension of sentence and directed to arrest him on Non-Bailable Warrant. As the earlier counsel on record for the appellant expired, he could not represent the matter. The petitioner was not aware of the proceedings before the Court, as such he was in custody since then and argued on the same lines as raised in the grounds of appeal and relied upon the judgment of this Court in **Parvatham Pentaiah and others v. State of Andhra Pradesh**¹.

¹ 2019 (1) ALD (CrL) 821 (TS)

5. Learned Additional Public Prosecutor supported the judgment of the trial Court and contended that PW.5 had last seen the deceased in the company of A1 to A3 and basing on the evidence of PW.5 and panch witnesses examined as PW.13, the trial Court recorded the conviction which was on sound grounds and prayed to dismiss the appeal.

6. Now the point for consideration is whether the judgment of the trial Court in convicting and sentencing the appellant-A1 for the offence under Section 304-I IPC is sustainable or requires any interference by this Court?

7. Perused the evidence of the prosecution witnesses. PW.1 is the Police Constable No.6448 of Begumpet Police Station, who lodged the complaint. He stated about finding the dead body of the deceased with bleeding injuries, lying near Dhaniyalagutta on the road side while he was conducting patrolling duty along with the Home Guard Saidi Reddy. The Home Guard was examined as PW.2 and he also stated in a similar manner as that of PW.1.

8. The father of the deceased was examined as PW.3. He stated about missing of his son and that his son went out from the house along with auto rickshaw 11 months ago and did not turn up and they searched for him and on the second day noticed the auto rickshaw near Sashikala theatre in a damaged condition and that they came to know about the death of the deceased on seeing the newspaper with photograph of the deceased and went to the Police Station and identified the dead body as that of their son in the

Mortuary of Gandhi Hospital, Secunderabad. He stated that on enquiry, some Auto rickshaw-walas informed that three persons caused the accident to the auto of their son and bet his son. The details of the auto rickshaw-walas, who gave the said information, was not stated by the witness.

9. The elder brother of the deceased was examined as PW.4. His evidence is also to the extent of identification of the dead body only.

10. PW.5 Mohd. Ahmed Khan Masood is a material witness who found the deceased last seen in the company of A1 to A3. He stated that on 25.08.2006 night he went to the house of A3 Syed Jahangir for dinner. A1 and A2 came to the house of A3 along with an auto rickshaw. A1 and A2 asked him and A3 to come along with them in the auto rickshaw and they went to Dhaniyalagutta area. A2 Jeevan drove the auto. He noticed another person in the auto and when questioned, A1 and A2 informed that he was their friend and he was also an auto driver. All the five persons including A1 to A3 sat near water pipe at Dhaniyalagutta. A1 to A3 and the other person consumed original choice liquor brought by A1 and A2 in their auto. A1 and A2 secretly told him that they had to kill the other person, for which he objected. He went on the pretext of bringing water and did not go back. Two days thereafter, he came to know that the person who was brought by A1 and A2 was killed. He did not witness the assault made by A1 to A3 on the deceased and he did not enquire from A1 to A3 nor did they inform him as to what had happened. He

was declared as hostile by the Additional Public prosecutor and in his cross examination he admitted that he along with four others including A1 to A3 went to Dhaniyalagutta in an auto bearing No.AP 28 V 7709 at about 1.00 AM on the night of 25.08.2006 and the said auto was driven by A2. But he denied that he stated before the police as in Ex.P2 that on reaching the spot A1 to A3 began assaulting the deceased and the deceased was unconscious at that time. He denied stating before the police that on the next day when he went to the house of A3 Jahangir, the latter informed that they had killed the deceased during the said night with boulders as in Ex.P3. He admitted that his 164 Cr.P.C. statement was recorded by the Magistrate.

11. In his further cross examination by the defense counsel, PW.5 admitted that five days after 25.08.2006, he was taken to the police station and he found A1 to A3 in the police station and he was kept in the station for about 2 or 3 days. He stated that he gave the 164 Cr.P.C. statement as per the instructions of the police. In his further cross examination by the defence counsel on a subsequent date, he stated that he was kept under illegal detention for about 8 days by the police. He stated that he did not know A1 and A2 prior to the date of offence.

12. PW.6 was a witness who stays in a hut at Dhaniyalagutta who was alleged to have stated to the police about noticing some persons going in auto rickshaw towards Dhaniyalagutta and hearing the hue and cry of a person. This witness turned hostile and stated that he did not witness anything and denied that he stated before the

police about hearing the sounds of auto rickshaw and noticing some persons going in auto towards Dhaniyalagutta as in Ex.P4. PWs.7, 8 and 9 were the owners of the autos bearing Nos.AP 29 W 9994, AP 28 W 282 and AP 28 V 7709 respectively.

13. PW.7 stated that two days prior to the Ganesh festival, the deceased took his auto rickshaw bearing No.AP 29 W 9994 on hire and did not return and he came to know that his auto rickshaw was found damaged near signal at Moosapet and along with the father of the deceased went there and got back the auto rickshaw.

14. PW.8 stated that A2-Jeevan took his auto rickshaw on hire on 25.08.2006 night as he was taking it on hire during night times and used to return it in the morning at 8.00 AM, but A2 did not return his auto rickshaw on 26.08.2006 at 8.00 AM as per the practice and he came to know through an auto driver by name Shannu that his auto rickshaw met with an accident in front of Sree Ramulu theater, went and noticed damages, went to the house of A2 to enquire but found him not there and the brothers of A2 advised him to take away the auto and as such he took away the auto and got it repaired. He stated that the family members of A2 told him that A2 went to a village.

15. PW.9 stated that A1 took his auto bearing No.AP 28 V 7709 on hire at about 7.00 PM on 25.08.2006, but failed to return on the next day morning. Four or five days thereafter, he came to know that his auto rickshaw was in Begumpet police station. He enquired with the police and they informed him that his auto was used in the commission of offence of murder. He did not know as to how it was

involved and had not seen A1 to A3 in the police station. Ex.D1 was marked in the cross examination of this witness. The witness denied that he stated before the police that Jeevan (A2) took his auto on hire. The said portion was marked as Ex.D1. As per his chief examination it was A1 who took his auto on hire, but as per Ex.D1 he stated that A2 took his auto on hire.

16. The doctor, who conducted Post Mortem Examination of the deceased, was examined as PW.10. The doctor stated about the ante-mortem injuries 13 in number found on the body of the deceased and gave his opinion that the deceased appeared to have been died due to head injury. The time of death was approximately about 12 to 24 hours prior to post mortem examination.

17. PW.11 was a panch witness for the scene of observation cum seizure panchanama and rough sketch of the scene of offence. He stated that on the date of Ganesh festival in the year 2006 about 12 noon, he along with Mallaiah (LW.14) were present at Dhaniyalagutta side and police observed the crime scene and seized blood stained stones, blood stained earth, control earth, blood stained kerchief under the cover of panchanama and drafted rough sketch of the crime scene in their presence.

18. PW.12 was the panch witness for inquest panchanama conducted on the body of the deceased at the mortuary of Gandhi Hospital, Secunderabad. He stated that he observed the injuries on the dead body during the inquest and police drafted the inquest panchanama on which he along with the other witness signed and

police seized the pant, shirt and banian of the deceased at the time of conducting the panchanama.

19. PW.13 was the witness for confession cum seizure panchanama of A1 to A3. PW.13 stated that on 5th or 6th September 2006, he along with his friend Prakash went to Begumpet police station at about 5.30 PM or 6.00 PM, on their work and the Inspector requested them to act as panch witnesses. They noticed the presence of A1 to A3 in the custody of the police. On the instructions of Police, they enquired with the accused, A1 confessed about the commission of offence of killing an auto driver in Dhaniyalagutta and at his instance, police seized an auto rickshaw parked in front of the police station. In his cross-examination, the witness stated that they went to the police station to obtain the character certificate for his friend to secure a job in Hyderabad Airport and they obtained the said certificate.

20. PW.14 was the photographer, who took photographs of the dead body and the crime scene. The photographs (10 in number) were marked as Ex.P13.

21. PW.15 was the Scientific Officer of clues team of Hyderabad city, who stated that on 26.08.2006 at about 5.00 AM he received information from the Inspector of Police, Begumpet Police Station about the murder at Dhaniyalagutta behind Hyderabad Public School and he along with his equipment reached the spot and collected two granite boulders (MO.1), one hand kerchief soaked in blood (MO.2), bloodstained earth, controlled earth and three empty ID

liquor sachets and handed over the same to the Investigating Officer so as to forward them to the Forensic Science Laboratory for examination and report.

22. PW.16 was the police constable who stated that on 06.09.2006 at 4.30 PM he accompanied the ASI of Police along with another constable to S.R. Nagar chowrasta and apprehended A1 and A2 along with Auto bearing No.AP 28 V 7709 and produced them before the Inspector. He also stated that at the instance of A2, they along with A2 went to the house of A3-Jahangir in Indiramma Nagar, Fathenagar and apprehended him and brought him to the police station and produced before the Inspector.

23. PW.17 was the SI who registered the FIR. PW.18 was the Inspector of Police of Begumpet police station, who conducted the investigation and filed charge sheet against A1 to A3. He stated about the investigation conducted by him.

24. The trial Court, after considering the evidence on record observed that the entire case of the prosecution rested on circumstantial evidence and the evidence of PWs.5 and 13 were crucial in deciding the case and considering the evidence of PWs.5 and 13 convicted A1, observing that PW.13 did not depose about A2 and A3 admitting the commission of offence along with A1, acquitted them.

25. Now the point for consideration before this Court is whether the said evidence is sufficient to hold the appellant-A1 guilty for the offence under Section 304-I IPC?

26. There was no evidence of direct witnesses who had seen the commission of murder of the deceased in this case. The entire case rests upon the circumstantial evidence. It is well settled that when there is no direct evidence against the accused and when the prosecution case rests upon the circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances unerringly point to the guilt of the accused and found to be incompatible with the innocence of the accused. In other words, there must be a chain of evidence so complete as not to leave any reasonable doubt for a conclusion inconsistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. All the links in the chain of circumstances must be complete and should be proved through cogent evidence.

27. The Hon'ble Apex Court in **Padala Veera Reddy v. State of A.P.**² held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) The circumstances from which an inference of guilt is sought to be drawn on must be cogently and firmly established.
- (2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
- (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
- (4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other

² AIR 1990 SC 79

hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

28. In the light of these settled principles, the evidence need to be considered. Though the prosecution had given a story that A1 drove his auto bearing No.AP 28 W 282 in a rash and negligent manner and dashed the stationed auto bearing No.AP 28 W 9994 of the deceased due to which the deceased picked up quarrel with A1 and caused damage to the windscreen glass of the auto of A1, and A2 came there and joined with A1 and both of them attacked the deceased and bet him severely due to which he became unconscious, no eye witnesses were examined from the said place to prove the said fact. Though in a case of direct evidence motive may not play an important role, but in the case of circumstantial evidence, motive also plays a vital role to prove the guilt of the accused. But, in the present case, no witnesses were examined to prove the motive of the accused in causing the death of the deceased.

29. Though the prosecution case was that the hut dwellers near the scene of offence at Shyamlal Buildings stated that a few persons went in an auto rickshaw at about 1.00 AM on 26.08.2006 and they heard hue and cry from Dhaniyalagutta side, only one witness was examined to prove the said fact and the said witness examined as PW.6 also turned hostile and not supported the prosecution case. Thus, there were no witnesses to prove the fact that the deceased was taken in an auto and he was murdered at the said place by some persons.

30. The evidence of PW.5 is crucial as observed by the trial Court, as he was the person who had last seen the deceased in the company of the accused before the murder. As per the prosecution story, A1 and A2 bet the deceased severely in front of Sree Ramulu Theater, Bharatnagar, Moosapet due to which he became unconscious and with an intention to eliminate him, they lifted him and forcibly put him in the auto bearing No.AP 28 W 7709 and went to Fathenagar, from there they picked up their friend A3 Jahangir and LW.5 Mr. Masood and all of them went to an isolated place at Dhaniyalagutta under Begumpet limits in the same auto. Thus, the deceased was in unconscious condition and he was forcibly taken in the auto by A1 and A2. This itself is a contradiction in the prosecution story that if the deceased was unconscious, he need not be taken forcibly. The evidence of PW.5 would disclose that while he was taking dinner in the house of A3 along with him, A1 and A2 came to the said place and asked them to come along with them and he noticed another person in the auto rickshaw and when questioned A1 and A2 informed them that he was their friend who was also an auto driver and all the five persons including A1 to A3 sat near water pipe at Dhaniyalagutta. A1 to A3 and the other person consumed original choice liquor brought by A1 and A2 in their auto rickshaw.

31. Thus, the evidence of PW.5 would disclose that the deceased was conscious and he voluntarily accompanied with A1 and A2 and consumed alcohol along with A1 to A3 which would not disclose that there was any altercation between them or resistance by

the deceased to come along with A1 and A2. The evidence of PW.5 would not disclose whether he found any injuries on the body of the deceased by that time. One more contradiction observed was as per the prosecution story empty arrack sachets were found near the dead body but PW.5 stated that they consumed original choice liquor. Thus, the evidence of PW.5 is in contradiction with the prosecution story. PW.5 also stated that A1 and A2 secretly told him that they had to kill the other person for which he objected and went on the pretext of bringing water and did not go back. He further stated that he did not witness or knew about the assault made by A1 to A3 on the deceased and that he did not enquire from A1 to A3 as to what happened after he went from there. Thus whatever the witness stated as observing prior to the death of the deceased was not consistent with the prosecution case. How far his evidence has to be relied upon also has to be seen as he stated in his cross examination that he was taken by the police and was kept in the police station under illegal detention. He initially stated that he was kept in the police station for about two or three days and subsequently stated that he was under illegal detention for 8 days. Whatever be the number of days, his evidence would disclose that he was taken into custody by the police and was kept under detention for some days prior to recording his 164 Cr.P.C. statement. He also stated that he gave statement under Section 164 Cr.P.C., as instructed by the police. Thus, no reliance can be placed upon his 164 Cr.P.C. statement also, as it was not voluntary and given by the witness as stated by the police. The last seen theory itself is a

weak piece of evidence and shall be corroborated by other evidence to believe it.

32. The other evidence relied by the trial court in convicting the appellant was that of the evidence of PW.13, the panch witness for confession cum seizure panchanama of A1. As per the prosecution story in the charge sheet, A1 and A2 were apprehended by the Inspector at S.R. Nagar auto stand along with auto bearing No.AP 28V 7709. As per the evidence of PW.16, he along with another constable, by name, Koteswara Rao, accompanied the ASI Sri Kameswar Rao to SR Nagar chowrasta and apprehended A1 and A2 while they were sitting in the auto bearing No.AP 28 V 7709 and they brought A1 and A2 along with the auto to the police station. As per PW.13, after recording the confession of A1, Police seized the auto rickshaw parked in front of the police station. Thus, the auto which was already brought by the police and kept at the police station cannot be considered as a fact discovered at the instance of the accused so as to consider it admissible under Section 27 of the Evidence Act.

33. The judgment relied upon by the learned counsel for the appellant of this Court in **Parvatham Pentaiah** (1 supra), would reiterate the principles that the trial courts to be kept in mind while dealing with the confessional statements of the accused under Section 27 of the Evidence Act. This court held that:

“Whatever information is given by the accused in consequence of which a fact is discovered, only such information is protected by Section 27 of the Evidence Act. Thus only such part of confession statement is admissible as evidence against the accused. The basic idea

embodied under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non- inculpatory in nature, but if it results in the discovery of a fact it becomes reliable information. The "fact discovered" as envisaged under Section 27 embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

34. Thus, the auto rickshaw bearing No. AP 28 V 7709 marked as MO.6 which was already produced by the police at the time of apprehension of A1 and A2 in the police station cannot be considered as a material object discovered on the basis of the confession of the accused. No circumstances are even proved by the prosecution to connect MO.6 to the crime or to the deceased. The recovery of MO.6 cannot be considered as a discovery of a fact or an object to guarantee that the information supplied by the A1 was true or that it was anyway inculpatory in nature to connect A1 with the crime. Thus, the trial Court placing reliance on the confession of A1, which was an inadmissible piece of evidence and the seizure of the auto, to convict the appellant is considered as not based on sound legal principle.

35. The chain of circumstances should be so complete that there must be no escape of conclusion that the crime was committed by the accused and none else. But in the present case, except proving that the deceased was last seen in the company of A1 to A3 there was no other evidence against the accused persons. This last seen evidence is also a very weak circumstance, which is not having a definite

tendency pointing towards the guilt of the accused. The evidence of PW.5 is also not cogent enough to place reliance upon it, as it is inconsistent with the prosecution story and he was also declared as hostile by the prosecution as not supporting their theory. Basing a conviction against A1 on such evidence, while acquitting A2 and A3 on the same evidence by giving them benefit of doubt and not extending the same to A1 by trial court, is considered as improper. The evidence led by the prosecution does not give rise to any inference that it was the accused who in all human probability committed the crime against the deceased. The facts, which form the basis of drawing the legal inference must be clearly proved beyond reasonable doubt by the prosecution. But the prosecution failed to discharge the said burden. As such, the conviction and sentence rendered by the trial court against the appellant-A1 is considered as not based on proper factual aspects and on sound principles of law and hence, liable to be set aside.

36. In the result, the Criminal Appeal is allowed and the conviction and sentence inflicted by the III Additional Metropolitan Sessions Judge, City Criminal Courts, Hyderabad in SC No.243 of 2007 vide judgment dated 08.10.2007 for the offence punishable under Section 304-I IPC is set aside and the appellant – A1 is acquitted of the said offence. As the appellant – A1 is in judicial custody, he is directed to be released forthwith if he is not required in any other case/crime. Fine amount, if any, paid by the appellant - A1

shall be refunded to him. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

January 28, 2022

Note:

L.R. copy to be marked.

B/O.

KTL