

**IN THE HIGH COURT OF ANDHRA PRADESH ::
AMARAVATI
(Special Original Jurisdiction)**



[0]

**THURSDAY ,THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR
PRESENT**

NO: 386 OF 2016

Between:

AND

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

SPECIAL DIVISION BENCH

CRL.A.No.386 OF 2016

Between:

1. Shaik Khasim Basha,
S/o.Shaik Mahaboob,
Aged 27 years, Muslim,
R/o.Ambedkar Nagar,
Dinnedavarapadu Village,
Kurnool Mandal.

2. Deva @ Jani, Aged 25 yeas,
R/o.Ambedkar Nagar,
Dinnedavarapadu Village,
Kurnool Mandal.

....APPELLANTS

Versus

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad.

....RESPONDENT

DATE OF JUDGMENT PRONOUNCED : 07.03.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SURESH REDDY

AND

THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No

2. Whether the copy of Judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURESH REDDY, J.

B.V.L.N.CHAKRAVARTHI, J.

*** HON'BLE SRI JUSTICE K.SURESH REDDY**

AND

*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

+ CRL.A.No.386 OF 2016

% 07.03.2024

Between:

1. Shaik Khasim Basha,
S/o.Shaik Mahaboob,
Aged 27 years, Muslim,
R/o.Ambedkar Nagar,
Dinnedevaram Village,
Kurnool Mandal.

2. Deva @ Jani, Aged 25 yeas,
R/o.Ambedkar Nagar,
Dinnedevaram Village,
Kurnool Mandal.

....APPELLANTS

Versus

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad.

....RESPONDENT.

! Counsel for the Appellants : Sri D.Purnachandra Reddy

^ Counsel for the Respondent : Sri S.Dushyanth Reddy,
Addl.Public Prosecutor.

< Gist:

> Head Note:

? Cases referred:

- 1. 2022 (7) SCC 581**
- 2. 2014 (10) SCC 473**
- 3. 2020 (7) SCC 1**
- 4. 2020 (9) SCC 627**
- 5. 2007 (9) SCC 315**
- 6. 2019 (8) SCC 359**

This Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

(Special Original Jurisdiction)

**THURSDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

SPECIAL DIVISION BENCH

PRESENT

THE HON'BLE SRI JUSTICE K.SURESH REDDY

AND

THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

CRIMINAL APPEAL No.386 OF 2016

Between:

1. Shaik Khasim Basha,
S/o.Shaik Mahaboob,
Aged 27 years, Muslim,
R/o.Ambedkar Nagar,
Dinnedevarapadu Village,
Kurnool Mandal.
2. Deva @ Jani, Aged 25 yeas,
R/o.Ambedkar Nagar,
Dinnedevarapadu Village,
Kurnool Mandal.

..... Appellants/Accused

A N D

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad.

..... Respondent/Complainant

Counsel for the Appellant(s) : Sri D.Purnachandra Reddy

Counsel for the Respondent(s) : Public Prosecutor

JUDGMENT:

(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

1. Heard Sri D.Purnachandra Reddy, learned counsel for the appellants/accused No.1 and 2, and Sri S.Dushyanth Reddy, learned Addl.Public Prosecutor for respondent/State.
2. The appeal is filed by the accused No.1 and 2 in Sessions Case No.323 of 2014 on the file of IV Additional District and Sessions Judge, Kurnool (hereinafter referred to as 'trial Court'). The accused No.1 and 2 were tried and convicted by the trial Court for the offence under sections 302, 397 and 201 r/w.34 of Indian Penal Code, 1860 (for brevity 'I.P.C.'), and sentenced to suffer 1) rigorous imprisonment for life, and also to pay fine of Rs.1,000/- (Rupees One Thousand only) each, in default, to suffer simple imprisonment for a period of two months each, for the offence U/s.302 I.P.C., 2) rigorous imprisonment for a period of seven years, and to pay a fine of Rs.500/- (Rupees Five Hundred only) each, in default, to suffer simple imprisonment for a period of one month each, for the offence U/s.397 I.P.C., and 3) rigorous imprisonment for a period of five years, and also to pay a fine of Rs.500/- (Rupees Five Hundred only) each, in default, to suffer simple imprisonment for a period of one month each, for the offence U/s.201 r/w.34 I.P.C.

3. The substance of the charge is that the accused No.1 and 2 on 12.01.2013 at about 10.57 PM committed murder of Sri M.V.Prabhu (hereinafter referred to as 'deceased'), and robbed a Car, Samsung cell phone, Spice cell phone, wallet containing Rs.1,400/-, six ATM cards and a Lenovo Lap Top from the deceased, and caused disappearance of the evidence by setting fire to the body of the deceased.

4. The case of the prosecution in a nutshell is that:

(i) The deceased is brother of Sri M.V.Guru Prasad (P.W-1); Smt.M.Sumathi Vijayan (P.W-2) is the mother of the deceased;the deceased was working as I.TDirector in a Software Company at Bangalore; the deceased owned a car bearing No.KA 51 MC 6862; the deceased went to Hyderabad in his car on 11.01.2013 to attend an official meeting; On 12.01.2013 evening he spoke to his mother over phone and informed her that he is returning to Bangalore; 14.01.2013 P.W-1 intimated P.W-2 that the deceased did not attend the office at Bangalore, and he was not taking call made to the mobile phone; Immediately he started searching for the deceased but in vain; He made enquiry at various tollgates located between Hyderabad and Bangalore; He was informed

at Panchalingala tollgate that the car of the deceased crossed the tollgate on 12.01.2013 at 10.57 p.m.; P.W-1 went to next tollgate at Veldurthi; he was informed that the car of the deceased did not pass Veldurthi tollgate on that day; Immediately, P.W-1 went to Taluk Police Station, Kurnool and presented Ex.P-1 report.

(ii) Head Constable of Taluk Police Station, Kurnool (P.W-15), registered a case in Cr.No.38/2013 for man missing under Ex.P-6 FIR, and submitted copies to all the concerned;

(iii) Inspector of Police, Taluk Police Station, Kurnool (P.W-16), conducted investigation; He examined P.W-1, K.Abdul Khaleed (P.W-3), who is doing hotel business near tollgate, P.W-4 tollgate contractor of Kurnool Tollgate, and collected Ex.P-2 data entry slip; On 09.02.2013 on receipt of information about missing car, visited 'Y' junction of Ulchala village road, along with P.W-10 (R.Subhakar) and another mediator; He noticed a Black colour Chevrolet Beat Car bearing No.AP 21 AK 1202 coming from Ulchala side; On suspicion stopped the car, noticed A-1 in the driving seat, A-2 in the left side of front seat; A-1 tried to run away; Inspector

of Police verified the engine number and chassis number of the car; they matched with the car of the deceased; Then Inspector of Police arrested A-1 and A-2, as they did not give proper information about possession of car belonging the car and change of number.

(iv) On interrogation, accused No.1 and 2 revealed about the offence; Inspector of Police seized the car (M.O-9), and recorded the confession statements of accused No.1 and 2 under Ex.P-7 panchanama.

(v) In pursuance of the facts revealed by A-1 and A-2, they lead police to an isolated place covered by bushes located in survey No.75 and 76 of Dinnedavarapadu village; Inspector of Police found one jeans pant, underwear, one black colour leather belt, partly burnt half sleeves shirt, a skull with upper jaw, pelvic bone, two femur and three small bones;He issued a requisition under Ex.P-20 to the Mandal Executive Magistrate (P.W-14) to conduct panchanama for seizure of bones found at the scene of offence; P.W-14 visited the scene of offence at about 04.40 p.m. and panchanama was conducted for seizure of two pelvic bones, 3 separated bones,

upper jaw found in the skull in the presence of mediators and medical officer vide Ex.P-11 seizure panchanama; Scene of offence was photographed vide Ex.P-7 photos; He collected samples of controlled earth vide M.Os-5 and 6; Prepared rough sketch for the scene of offence vide Ex.P-18.

(vi) Later, the accused No.1 and 2 led the police to the house of accused No.1, situated in Ambedkar Nagar, hamlet of Dinnedavarapadu village.A-1 produced a Lenovo Laptop (M.O-7) kept in a bag belonging to the accused; two pieces of gold chain, two ear studs with hangings relates to another case from his house; One motor cycle found in the house of A-1 without registration number was also seized; A-2 produced a Samsung Mobile Phone (M.O-10) and a Spice Mobile Phone (M.O-11) from the house of A-1 belonging to the accused; Inspector of Police seized the above articles in the presence of mediators under Ex.P-9.

(vii) Inspector of Police issued Ex.P-19 FIR for the offence punishable under sections 302, 392, 201 r/w.34 I.P.C. and submitted copies to all concerned;

(viii) Inspector of Police and accused along with mediators went to a house bearing No.7359 under construction; The accused had shown a place where sim cards, inhaler papers and bag were burnt; Inspector of Police found two file rods, burnt inhaler, partly burnt iron tape, and seized them under Ex.P-10 panchanama; The place of seizure was also photographed vide Ex.P-21 photographs; The accused were produced before the Judicial Magistrate of First Class, Kurnool for remand to judicial custody.

(ix) Inspector of Police examined S.Vijaya Kumar (P.W-5), who is running automobile workshop opposite to Special Police Battalion Camp, Kurnool, on 10.02.2013 and recorded his statement. Inspector of Police addressed a letter to the Chief Bank Manager, State Bank of India, Kurnool Branch to provide soft copy of CC TV Camera Footage of ATM centre situated at Tagore Nagar, Opposite to Maddur Nagar for the period at 12.01.2013 night at 11.00 PM; Inspector of Police visited State Bank of India Chief Office and examined P.W-7 Naik Abdul Salam, Assistant Manager, ATM Cell In charge, State Bank of India, Kurnool, and collected CC TV Camera Footage.

(x) Inspector of Police collected the call data records for the mobile service provider to the cell phone number 8520017706 used by the accused on the night of 12.01.2013 in between 1.07 hours and 1.28 hours under the cell tower situated at Abbas Nagar, Kurnool, which would disclose the presence of A-1 at ATM centre at that time; Inspector of Police also verified the call data records of A-1 and found that A-1 made a call to cell phone 7799011524 of A2 and therefore, he also collected call data record relating to 7799011524 and found that the cell phone was used on 12.01.2013 in between 1.07 hours to 1.28 hours under the cell tower situated at Indus School, located near the scene of offence, confirming that accused were present near the scene of offence in between 11 PM and 2 PM and also visited the ATM centre located nearby to use the ATM cards of the deceased.

(xi) Inspector of Police examined Sri M.Rajeswara Reddy, the police constable (P.W-6), who collected call data records relating to cell numbers 9052009836, 8520017706, 7799011524 and recorded his statement; Forwarded the material objects i.e., clothes of deceased and M.Os-5 and 6 to the Director, FSL, Hyderabad; On 12.03.2013 he examined

P.Ws-2 and 3 and recorded their statements; The teeth preserved by the FSL along with P.W-2 i.e., mother of the deceased were sent to Director, FSL, Hyderabad for DNA test through the Court, vide Ex.P-22 letter of advice.

(xii) On 23.10.2013 Inspector of Police visited Bangalore and examined Diwakar S.Naik (P.W-8), Manager, State Bank of India, Badami Branch to confirm that the car belongs to the deceased and loan was sanctioned by the State Bank of India, Badami Branch, Karnataka State to purchase the car vide Ex.P-6 hypothecation letter, and also collected Ex.P-5 statement of loan account for the car; He also examined P.W-9 to establish that the deceased was working in the said I.T. Company, and that he visited Hyderabad on office work on 12.01.2013, and did not return to Bangalore.

(xiii) Inspector of Police received DNA report on 24.10.2013 opining that the suspect teeth DNA is matched with the DNA of P.W-2 i.e., mother of the deceased, confirmed that he is biological son of P.W-2 i.e., the deceased.

(xiv) On completion of investigation, Inspector of Police laid police report (charge sheet) before Judicial Magistrate of First Class, Kurnool.

5. During trial, 16 witnesses were examined for the prosecution as P.Ws-1 to 16 respectively, 22 documents were marked as Exs.P-1 to P-22 respectively, apart from M.Os-1 to 11. Six documents were marked as Exs.D-1 to D-6 for the accused, during the cross-examination of the prosecution witnesses.

6. The accused were examined U/s.313 Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C. 1973').The accused No.1 and 2 denied the circumstances found against them from the evidence of prosecution witnesses. The accused did not choose to examine any witnesses.

7. The learned trial Court on consideration of the evidence available on record, found the accused A-1 and A-2 guilty for the offence U/s.302, 397 and 201 r/w.34 I.P.C. Challenging the judgment, the appellants/accused No.1and 2 preferred the present appeal.

8. Sri D.Purnachandra Reddy, learned counsel for the appellants/accused No.1 and 2 would submit that there is no direct evidence to prove the guilt of the accused, and the prosecution case rested on certain circumstances only. appearing against the accused; they are 1) arrest of the accused; 2) recovery of car from the possession of the accused; 3) recovery of certain articles belonging to the deceased from the possession of accused; and 4) recovery of partly burnt dead body of the deceased at the instance of accused.

9. He would argue that the prosecution to prove above circumstances, mainly relied upon on the evidence of P.W-5 (automobile workshop owner), P.W-10 (seizure witness and P.W-16 Inspector of Police, Taluk Police Station, Kurnool.

10. He would further submit that the prosecution also relied on the evidence of P.W-7 (Assistant Manager, ATM Cell In charge, State Bank of India, Kurnool Branch) reference to Ex.P-4 compact disc containing C.C. T.V. footage of ATM Centre, and P.W-6 Police Constable regarding call data records relating to mobile phone numbers 9052009836, 8520017706 and 7799011524; But the electronic evidence

relied upon were not certified U/s.65-b of Indian Evidence Act, and therefore, in view of the judgments of the Hon'ble Apex Court in the following cases of

- 1) **Ravindra Singh @ Kaku Vs. State of Punjab**¹.
- 2) **Anvar P.V. Vs. P.K.Basheer**.²
- 3) **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal**³.

electronic evidence relied upon by the prosecution will not help the case of the prosecution to prove that accused went to ATM centre to use the ATM cards belonging to the deceased, and that they were present at the scene of offence, at the time of offence.

11. He would further submit that the evidence of P.W-5 that he was running an automobile workshop opposite Police Battalion Camp, is not supported by any other material; In the cross-examination, he deposed that he is not a mechanic and he is owner of the workshop; Whereas, the case of the prosecution is that he repaired the car; these circumstances would establish that he is a planted witness.

¹2022 (7) SCC 581

²2014 (10) SCC 473

³2020 (7) SCC 1

12. He would further submit that as per the case of the prosecution P.W-10 is the mediator for the arrest of the accused on 09.02.2013 and later for recoveries base on confessional statements of the accused But it will not help the case of the prosecution, as he admitted Ex.D-4 i.e., his previous deposition made in S.C.401/2013 on the file of learned III Addl. Sessions Judge, Kurnool at Nandyal, which was also based on Ex.P-7 panchanama, relating to recovery of gold ornaments pertaining to S.C.401/2013; In his previous evidence, he deposed that he does not know about the arrest of accused No.1 and 2 and that he signed on the panchanama at the police station; therefore, credibility of P.W-10 was impeached, as per section 155 (3) of Indian Evidence Act making him un-reliable witness.

13. He would further submit that therefore, there is no other legal evidence available on record, connecting the accused with the offence, except the evidence of P.W-16/Investigation Officer; The evidence of P.W-16 would show that he did not conduct investigation fairly as he relied upon stock witnesses, and therefore, the accused cannot be convicted basing on testimony of P.W-16; Therefore, the

prosecution failed to prove the case against the accused No.1 and 2, and hence, the judgment of the trial Court is liable to be set aside.

14. Sri S.Dhushyanth Reddy, learned Additional Public Prosecutor, would submit that the prosecution by examining P.W-1, P.W-2 and P.W-8 Manager, State Bank of India, Badami Branch, Karnataka and V.L.V.Prasad (P.W-9) Accounts Manager, Camellia Clothing Limited, Bangalore, and ASI Police, convincingly established that the deceased working in a software company at Bangalore, he went to Hyderabad on 12.01.2013 in his car bearing No.KA 51 MC 6862, purchased under a car loan from State Bank of India, Badami Branch, Karnataka and that he did not return to Bangalore; Therefore, it was informed to P.W-2 (mother of deceased), she informed P.W-1 (brother of deceased); thereupon; P.W-1 enquired with various tollgates located between Hyderabad and Bangalore; came to know that the car passed through the Panchalingala Tollgate at 10.57 p.m. on 12.01.2013; but did not pass through next tollgate i.e., Veldurthi Tollgate; immediately, presented Ex.P-1 report to Taluk Police Station, Kurnool; and the Head Constable of

Taluk P.S., Kurnool (P.W-15) registered Ex.P-16 FIR, and thereafter, P.W-16 took-up investigation in the case.

15. He further argued that circumstances relied upon by the prosecution regarding recovery of car of the deceased from the possession of accused No.1 and 2 on 09.02.2013, examined P.W-10 and P.W-16; It would establish that the Inspector of Police during investigation recovered car from the accused A1 and A2 at 'Y' junction on Ulchala road; and interrogated them in the presence of P.W-10 and another mediator, thereupon the accused No.1 and 2, revealed certain facts relating to commission of offence and disclosed that the dead body was burnt in a isolated place located in survey No.75 and 76 of Dinndevaram village, then basing upon the facts discovered, the Inspector of Police visited the scene of offence i.e., where the deceased was burned and found bones of human origin including skull and teeth; The evidence of Mandal Executive Magistrate, Medical Officer and Investigation Officer establish that bones of human origin available at the scene of offence; and accordingly, they were seized, forwarded to FSL, Hyderabad for DNA test through Court vide Ex.P-22 letter of advice and later received report from FSL opining that

they were matched establishing that the bones seized at the scene of offence at the instance of the accused belongs to the deceased.

16. He further argued that basing on the disclosure statement made by the accused No.1 and 2, Inspector of Police also visited the house of A-1, seized one Lenovo Laptop, two mobile phones (M.O.No.10 and 11) from the house of A-1, belonging to the deceased; The learned Addl.Public Prosecutor would argue that the accused No.1 and 2 were in possession of the car, lap top, mobile phones belonging to the deceased and discovery of the bones belongs to the deceased at the behest of the accused lead to a conclusion that the deceased was burned to death and property was robbed by the accused No.1 and 2, but the accused did not offer any explanation for their possession of the car, lap top, mobile phones of the deceased, soon after missing of deceased. The learned Additional Public Prosecutor further argued that P.W-5 evidence would corroborate the evidence of the prosecution that the accused were in possession of the car belonging to the deceased.

17. The learned Additional Public Prosecutor would further argue that the evidence of P.W-16/Investigation Officer is convincing and trust-worthy on all aspects and corroborated on material aspects by the above witnesses, and therefore, merely because, he is a police officer, his evidence cannot be brushed aside In support of his arguments, he relied upon the judgments of the Hon'ble Apex Court as under:

1. **Rizwan Khan Vs. State of Chattisgarh**⁴
2. **Geejaganda Somaiah Vs. State of Karnataka**⁵
3. **Mallikarjun and others Vs. State of Karnataka**⁶.

18. In the light of above rival contentions, the point that would arise for determination in this appeal is as under:-

“Whether the prosecution proved the guilt of the accused No.1 and 2for the offence U/s.302, 397 and 201 I.P.C. beyond all reasonable doubt?”

⁴2020 (9) SCC 627

⁵2007 (9) SCC 315

⁶2019 (8) SCC 359

19. **POINT:**

The prosecution relied upon the evidence of PW1, PW2, PW8, and PW9 to prove certain introductory facts / circumstances that the deceased was working in a Software Company at Bangalore. He owned a Chevrolet Beat Car bearing No.KA 51 MC 6862. On official work, the deceased went to Hyderabad in his car on 12.01.2013. After completion of the work, on same day returned to Bangalore, but he did not report duty on 16.01.2013 after intervening holidays. The official of the Company informed P.W-2 mother of deceased, she informed P.W-1, brother of deceased. P.W-1 started searching for the deceased. He made enquiries at various tollgates located between Hyderabad and Bangalore for the car belonging to the deceased. On enquiry with the Panchalingala Tollgate people, he came to know that the car passed the Tollgate on 12.01.2013 at 10.57 p.m. Therefore, he went to next tollgate i.e., Veldurthi tollgate in Kurnool District, and came to know that the car did not cross through the said tollgate. Immediately he reported Taluk Police, Kurnool. P.W-15 Head Constable registered Ex.P-16 FIR for man missing.

20. The evidence of P.W-16/Inspector of Police is that during investigation, on 09.02.2013 on information about the car belonging to the deceased, went to 'Y' junction of Dinnedavarapadu village, noticed a Black Colour Chevrolet Beat Car with number plate AP 21 AK 1202 (fake number).He intercepted the car on suspicion; He found A-1 in the driving seat and A-2 in the front seat of the car on the left side. Therefore, verified the engine number and chassis number of the car; They matched with the engine number and chassis number of the car belonging to the deceased; Hence, arrested the accused No.1 and 2in the presence of P.W-10 and another mediator, and interrogated them; The accused No.1 and 2 revealed information about commission of offence and that the dead body of the deceased was burnt in an isolation place located at plot No.96 of Dinnedavarapadu village and some bones are available in the said place; and that Lenovo lap top, two mobile phones were kept in the house of A-1 located in Ambedkar Nagar, Dinnedavarapadu village; Then, basing on the information received from accused No.1 and 2, Inspector of Police, visited plot No.96 of Dinnedavarapadu village, and observed the same in the presence of P.W-10 mediator and

accused No.1 and 2; He found ash, some bones of human origin; Immediately, he issued a requisition to Tahsildar, Kurnool to conduct panchanama at the scene of offence to seize the incriminating material available at the scene of offence.

21. Sri D.Thippe Naik (P.W-14) the then Tahsildar of Kurnool Mandal, deposed that he visited the scene of offence at about 04.40 p.m. on 09.02.2013 along with Dr.N.Prabhakara Rao (P.W-12), Professor and Head of Forensic Medicine, Kurnool Medical College, Kurnool; found two pelvic bones in joint position about 17 inches length, three separated bones (two are about 12 inches and one about 11 inches), one upper jaw of the skull containing 16 teeth; All the bones were seized under Ex.P-11 panchanama;

22. The evidence of Forensic Expert (P.W-12), would show that all the skeletal remains are of human origin and they belong to a single individual; approximate age of the individual would be 35+5 years, sex of the bones is male; and he handed over the molar tooth to the escorting police constable for DNA test with Ex.P-12 requisition letter and Ex.P-13 is the report.

23. We considered the evidence of P.W-1, P.W-2, P.W-4, P.W-8, P.W-9, P.W-12, and P.W-14 with reference to the above circumstances relied upon the prosecution. We don't find any reason to disbelieve their evidence to hold that the deceased was working in a Software Company at Bangalore, and he came to Hyderabad in his car bearing No.KA 51 MC 6862 and he returned to Bangalore on 12.01.2013 evening after the work, he passed Panchalingala tollgate on the way to Bangalore and later he was found missing.

24. Therefore, company officials intimated the family members of the deceased about his absent to duty on 16.01.2013, and then family members started search for the deceased and presented a report to Taluk Police, Kurnool. During investigation, police could reach the scene of offence i.e., place where bones of human origin found in an isolated place in the bushes located at plot No.96 of Dinnedavarapadu village on 09.02.2013. We would consider the issue of reliability of evidence of P.W-10 i.e., mediator and the Investigation Officer/P. W16, later.

25. Now the question is whether bones and teeth seized at the scene of offence are of the deceased? The prosecution in order to prove it, examined Dr.S.P.R.Prasad (PW13) Senior Technical Examiner, DNA Finger Printing Services, Centre for DNA Finger Printing and Diagnostics, Hyderabad. The Scientific Expert evidence would establish that he received teeth samples through Police Constable of Taluk Police Station, Kurnool, and the mother of the suspect-deceased (P.W-2) appeared before them, blood samples of P.W-2 were collected for the purpose of DNA examination; Thereafter analysis was made and DNA profile established that the deceased is of male origin, and DNA profile matching with the DNA profile of mother of suspect-deceased. Therefore, the prosecution beyond reasonable doubt established that the bones found at the scene of offence i.e., belongs to the deceased. The prosecution on record also placed M.Os-1 to 6 items found at the scene of offence, pertaining to the wearing apparel of the deceased. The above facts would establish that after committing murder for gain, dead body of the deceased was burned to ashes, to erase the evidence.

26. Next question is crucial. It is whether the prosecution connected the accused with the homicide of the deceased?

27. Admittedly the case of the prosecution rested on the information revealed by the accused No.1 and 2 during their interrogation when they were in the custody of police. It is pertinent to note down that the prosecution also relied upon the evidence of P.W-5 to connect the accused with the offence, contending his evidence prove that accused were in possession of the car soon after missing of deceased.

28. The contention of the prosecution is that P.W-5 was having an automobile workshop, near Police Battalion Camp on Kurnool high way at material point in time, and the accused visited the workshop on 13.01.2013 for repair of the car bearing number KA 51 MC 6862, A-1 paid Rs.10,000/- as advance, and left the vehicle at the workshop, It is pertinent to remember that missing of car was from the night of 12.01.2013. The prosecution contention is that soon after the missing of deceased while travelling in the car, it was found in the possession of the accused No.1 and 2 on 13.01.2013.

29. The learned counsel for the accused vehemently argued that P.W-5 is a planted witness, he spoke different versions about his status, and therefore, his evidence is not reliable.

30. The learned Additional Public Prosecutor contended P.W-5 is a rustic witness hailing from rural area and therefore, minor discrepancies are very natural. In support his argument, he relied upon the judgment of the Hon'ble Apex Court in the case of **Mallikarjun and others Vs. State of Karnataka**.

31. We perused the evidence of P.W-5, it would disclose that he was running a motor vehicle repair shop, located opposite to Police Battalion Camp, on Kurnool high way, and on 13.01.2013 A-1 came to the workshop with vehicle bearing No.KA 51 MC 6862, for repairs and paid Rs.10,000/- and left the car agreeing to collect the vehicle after repairs; and thereafter after 15 days, A-2 came to the shop, paid the balance amount of Rs.34,500/- for repairs and collected the vehicle. He identified both the accused before the Court.

32. The plea of the defence is that before police, he stated that he was a mechanic. Whereas in the Court, he deposed

that he is owner of workshop and not a mechanic. We are of the opinion that the evidence of P.W-5 is consistent regarding identification of accused No.1 and 2 that A-1 along with Car of the deceased, on 13.01.2013 visited the workshop and later by A-2 after 15 days for return of the car. He also deposed the vehicle number. In the cross-examination, nothing was elicited as to why would P.W-5 speak falsehood against the accused, or in favour of the police. P.W-5 is living in a rural area, maintaining a small automobile workshop, for repair of the motor vehicles. We are of the opinion that variations in the statement of P.W-5 are natural. They do not affect his credibility to doubt his testimony. Therefore, we hold that the prosecution successfully established that the Accused were found in possession of the car of the deceased, soon after his missing. The accused did not offer any explanation except a formal denial. Therefore, PW5 evidence lends credibility to the testimony of Inspector of Police deposed about the recovery of car from the possession of A-1 and A-2 on 09.02.2013.

33. The evidence of P.W-16 on the recovery of human bones as well as certain burnt parts of apparel of deceased at the

scene of offence was corroborated by the evidence of the Tahsildar and Medical Officer, who were government Officials.

34. The next contention of the defence is that the evidence of P.W-10 i.e., the seizure witness, is not reliable in view of Ex.D-4. The prosecution's case is that P.W-16 on 09.02.2013 arrested A-1 and A-2 in the presence of P.W-4 and another mediator. They seized the car (M.O-9) while accused were in possession of the car. Later, at the behest of the accused, they visited the scene of the offence and seized M.Os-1 to 6 and human bones, under the cover of panchanama conducted by the Tahsildar in the presence of P.W-12. Later at the behest of accused No.1 and 2, seized M.O-7 Lenovo Laptop and M.O-10 and M.O-11 mobile phones belonging to deceased from the house of A-1 under cover of panchanama (Ex.P-9).

35. P.W-10 deposed supporting the case of the prosecution regarding arrest of accused, seizure of car, visiting scene of offence, recovery of M.Os-1 to 11 under Ex.P-9 panchanama. It is pertinent to note down that P.W-16 seized some gold ornaments also at the behest of accused from the house of A-1 during Ex.P-9 proceedings. It appears that gold ornaments are stolen property pertaining to S.C.401/2013 on

the file of learned III Additional Sessions Court, Kurnool at Nandyal. P.W-10 was examined as a witness during trial of S.C.401/2013 and his deposition in the said case was confronted to him in the cross-examination of this case, and it was marked as Ex.D-4 to impeach his credibility as per Section 155(3) of the Indian Evidence Act.

36. P.W-10 in the cross-examination admitted that in S.C.401/2013, he deposed that he did not accompany with police of Kurnool Taluk in Cr.No.38/2013. Therefore, he made contradictory statements. His earlier statement was, he signed on Ex.P-9 at police station. In the present statement, he deposed that he accompanied P.W-16 and M.Os-1 to 11 were recovered at the behest of the accused in his presence. In those circumstances, we are of the considered opinion that it is not safe to rely on the evidence of P.W-10.

37. The learned Additional Public Prosecutor strenuously argued that even if P.W-10 evidence is not relied upon, the evidence of other witnesses referred supra, would establish that the Investigation Officer (P.W-16) conducted investigation fairly, P.W-10 for the reasons best known to him, became hostile in other case earlier, and therefore, the entire case of

the prosecution will not become false, when all other facts convincingly establish the case of the prosecution; the evidence of Investigation Officer is sufficient to believe the case of prosecution if it is convincing and corroborated by other evidence and he relied upon the judgment of the Hon'ble Apex Court in the case of **Mallikarjun and others Vs. State of Karnataka.**

38. We in above paras, already in detail considered the evidence of P.W-1, P.W-2, P.W-5, P.W-8, P.W-9, P.W-12, P.W-13, P.W-14, P.W-15 and P.W-16 as well as the evidence of P.W-10. The evidence of all witnesses would establish the prosecution case all material happenings in the case from day one i.e., from 12.01.2013 till recovery of material objects produced in the case. The prosecution also established that soon after missing of the deceased from his car, the accused were found in possession of the car on 13.01.2013. In those circumstances, we are of the opinion that the evidence of Investigation Officer regarding recovery of material objects is convincing. His evidence cannot be brushed aside on the ground that P.W-10 did not support the prosecution version

in SC 401/2013 on the file of learned III Additional Sessions Court, Kurnool at Nandyal.

39. We are of the opinion that merely because seizure witness turned hostile in other case, it is not a ground to reject the evidence of Investigation Officer, when it is corroborated by the evidence of other witnesses and convincing, on material aspects.

40. The prosecution apart from the above evidence, placed some technical evidence also collecting C.C. T.V. Footage of ATM centre, visited by the accused on the night of 12.01.2013 to withdraw money by using ATM cards of the deceased, and Call Data Records of mobile phone numbers 9052009836, 8520017706, 7799011524 used by the accused to establish that the accused were present in that location. The prosecution examined P.W-7 Assistant Manager, ATM Cell In charge, State Bank of India, Kurnool and P.W-6 M.Rajeswara Reddy, Police Constable of Kurnool Taluk P.S to prove them.

41. In view of the judgement of the Hon'ble Apex Court in **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal**, where it is held "*We may reiterate, therefore, that*

*the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in **Anvar P.V.** (supra), and incorrectly "clarified" in **Shafhi Mohammed** (supra). Oral evidence in the place of such certificate cannot possibly suffice as Section 65B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in **Taylor v. Taylor**, 1876 1 ChD 426, which has been followed in a number of the judgments of this Court, can also be applied. Section 65B(4) of the Evidence Act clearly states that secondary evidence is admissible only if lead in the manner stated and not otherwise. To hold otherwise would render Section 65B(4) otiose', Therefore, the electronic evidence produced and discussed above are in-admissible in evidence.*

42. It appears that investigation Officer was ignorant of the legal parameters required for admissibility and proving electronic evidence in the Court. If the Investigation officers are sensitized on the importance of legal parameters to be complied with as a condition precedent for admission and proving of electronic records produced before the Court, it may strengthen the Criminal Justice System. Therefore, we

hope and trust that the Head of Police Department in the State of Andhra Pradesh will take steps in that direction.

43. The learned counsel for accused would submit that basing on the recovery of M.Os-1 to 11 at the behest of accused, as a fact discovered under Section 27 of the Indian Evidence Act, alone, the accused cannot be convicted for the offence U/s.302 IPC.

44. The learned Additional Public Prosecutor submitted that the evidence on record establish that bones of the burnt body of the deceased was recovered at the behest of the accused, apart from the recovery of the car and other properties of the deceased from the possession of the accused, and there is no explanation, from the accused in their statements made U/s.313 Cr.P.C., except a formal and bare denial as 'false'; an inference can safely be drawn that they also committed murder of the deceased apart from robbery, such a presumption U/s.114 of Evidence Act is sustainable. In support of the arguments, he relied upon the judgment of Hon'ble Apex Court in **Geejaganda Somaiah Vs. State of Karnataka**, it was held that "*absence of explanation as to*

legitimate or origin of their possession of articles belonging to the deceased, keeping in view of the time within which the murder was supposed to have been committed and the body found and the articles recovered from the possession of the accused, an inference can be safely drawn that not only the accused was in possession of those articles belonging to the accused, but also committed murder of the deceased.”

45. Upon consideration of the evidence in the case discussed supra, we are of the considered opinion that the accused No.1 and 2 did not offer any explanation, much less reasonable explanation, as to the legitimate origin of their possession of articles belonging to the deceased soon after the murder was supposed to have been committed. They also did not give any explanation as to their exclusive knowledge about the place, where the bones of the deceased was found. Therefore, we are of the opinion that an inference can be safely drawn that not only the accused were in possession of the articles belonging to the deceased but also committed murder of the deceased. Accordingly, the point is answered.

46. In the light of foregoing discussion, the appeal is liable to be dismissed.

47. In the result, the Criminal Appeal is dismissed, confirming the judgment dated 16.06.2015 passed in S.C.No.323/2014 on the file of learned IV Additional District and Sessions Judge, Kurnool.

Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE B.V.L.N.CHAKRAVARTHI

Date: 07.03.2024

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L.R. Copy is to be marked.

B/o. psk.

THE HON'BLE SRI JUSTICE K.SURESH REDDY

AND

THE HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CRIMINAL APPEAL No.368 OF 2016

(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

Note: Mark L.R. Copy

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Date: 07.03.2024

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