

(1999) 04 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal A. No"s. 1248 and 1732 of 1997

Gade Lakshmi Mangaraju @ Rajesh

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 12-04-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 404

Citation : (1999) 3 ALD 452 : (1999) 1 ALD(Cri) 788 : (1999) 2 ALT(Cri) 25 : (1999) CriLJ 4849

Hon'ble Judges : Vamana Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Vaman Rao, J.—The Criminal Appeal No.1248 of 1997 has been filed by A1 in SC No.163 of 1994 and Criminal Appeal No. 1732 of 1997 has been filed by A2 in SC No.24 of 1997 which arose out of the same crime but was given separate Sessions Case number as it was split up. Under a common judgment in both the Sessions Cases dated 14-8-1997, the learned Sessions Judge found A1 and A2 guilty for the offence u/s 302 of 1PC read with Section 34 of IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.500/- and in default to undergo rigorous imprisonment for two months. They have also been convicted for the offence u/s 404 of IPC and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 100/- each and in default to undergo simple imprisonment for one month.

2. The facts as disclosed in the evidence of the prosecution may be stated briefly as follows:

3. The accused and PWs.1 to 11 and other material prosecution witnesses are the residents of Palkol. PWs.1 and 2 are the sons and PW3 is the grandson of the deceased. Accused No.1"s elder brother is PW.2"s classmate. PW2 is acquainted with the accused from his childhood. Accused No. 1 and 2 are friends. The house

of the deceased consists of two portions. In the portion of the first floor, PWs.1, 2 and the deceased were residing, and in the ground floor PW.3 was residing.

On 10-4-1993, PW1, Karumuri Gopalakrishna, went to Rajahmundry. At that time, PW2 and the deceased was residing in the house. On 11-4-1993, PW2, K.V.R.S. Ramesh went to Sabarimalai. A1 saw P.W.2 off at the railway station. At that time, PW2 requested A1 to sleep in his house as the deceased an elderly lady was alone. PW7, R.V.K. Ramalingeswara, and another also-accompanied PW2 to Sabarimalai. On 16-4-1993, PW2 returned to Vijayawada and from there he telephoned to the house. He was informed by PW3, K.V.R. Narasimha-rao, that the deceased was in a serious condition. PW2 then returned to Palakol by a car. On arrival, PW2 was informed that the deceased was killed by somebody. PW2 also came to know that five pairs of gold bangles, one gold chain worn by the deceased and other gold articles kept in almyrah were missing. Immediately, PW2 went to the house of A1 to ascertain whether he slept in PW2's house on the previous night or not but he did not find him as A1 was not available. On 15-4-1993, PW1, Karumuri Gopalakrishna, was informed by his uncle about the condition of the deceased and asked him to go over there. PW3 informed him that the deceased was killed on the previous night. On the same day i.e., 15-4-1993 at about 11.30 a.m., PW1 went to the police station and presented a report, Ex.P1 P.W.19, the then Sub-Inspector of Police, Palakol town registered a case in Crime No.27 of 1993 under Sections 302 and 380 of IPC, and issued first information report, Ex.P38. PW20, the Inspector of Police, Palakol, proceeded to the scene of offence and got prepared observation report of the scene of offence and seized MOs.33. 3, 32 and 37 red small cloth bag from the scene of offence panchnama under Ex.P21. He also seized blood stained scrapings (MO34) and also controlled scrapings (MO35) under panachanama, Ex.P2 in the presence of P.W.13, Goteti Muralikriska and PW2 who also attested it along with another. At the instance of PW20, the Inspector of Police, PW11, P. Brahmaji, took photographs of the scene of offence. PW20 sent message to the Superintendent of Police, East Godavari for services of sniffer dog. He also sent a message by telephone to the finger print expert, PWi7, at Eluru asking him to go over Palkol immediately. He then prepared a rough sketch of the scene of offence under Ex.P30. He secured the presence of the Panchayatdars, PW13 and another and then conducted inquest over the deadbody of the deceased. During the inquest, PW20 examined PWs.1, 3 and others and recorded their statements. The deadbody was sent to the Government Hospital, Palkot for post-mortem examination through PW15. The Inspector of Police examined PW5, R. Ramamohanrao, PW7, R. V. Ramalingeswararao, PW8, Vutchula Joseph and others. In the meanwhile, PW17, the finger print expert came to the scene of offence and developed the chance prints at the scene of offence. PW8 brought the sinffer dog Radha. The Dog after smelling the surroundings reached the house of Veera Venkata Satyanarayana, father of A1 and stopped at the steps of house and returned back to the scene of offence. According to PW17, the chance prints found at the scene of offence were identical with the left index finger of

A2. Ex.P28 is the comparison chart prepared by him. PW2 and PW7 were examined after they returned from Sabarimalai by PW20 on 16-4-1993. On 17-4-1993, PW.18, the Dy. Superintendent of Police, Narsapur took up further investigation and visited the scene of offence and examined the witnesses. On 18-4-1993, PW20 examined some more witnesses. On 19-4-1993, he received post-mortem certificate. Ex,P20, and examined PW12, the Doctor who conducted post-mortem examination and recorded the statement. The material objects seized were sent to forensic science laboratory for analysis on 23-4-1993 and the report received is" Ex.P37. According to autopsy report, Ex.P20, the death was due to shock and haemorrhage due to injury to neck. On information, PW 18 and 20 i.e., Dy. Superintendent of Police and Inspector of Police along with mediators went to Bheemavaram by 6.00 p.m. and PW18 arrested A1 and A2 who came in Sarcar Express. A1 was interrogated by PW18 in the presence of mediator, PW.14 K. Seshayya and he confessed about the offence and produced three articles from his pant pocket and he seized them under a cover of mediators report, Ex.P26. Ex.P25 is the statement said to have been made by A1. PW18 interrogated A2 also and recorded his confessional statement, Ex.P27 and he produced gold articles from cloth bag which were seized in the presence of PW14.

4. Thus, as per the investigation, the accused caused the death of the deceased, Karumuri Kamalavathi and misappropriated the property belonging to the deceased. This is sought to be proved by the prosecution by examining PWs.1 to 21 and marking Exs.P1 to P39. The accused have not chosen to examine any defence evidence on his behalf.

5. The point for consideration is whether the prosecution has succeeded in bringing home the charge against the accused/ appellants beyond reasonable doubt and whether their conviction can be sustained?

6. The prosecution in this case relies upon the following circumstantial evidence:

1. While PW2, the son of the deceased was leaving for Sabarimalai on 11-4-1993, M. Rajesh, dropped him at Palkol Railway Station. PW2 requested Rajesh (Al) to sleep in his house as his mother (deceased) was all alone.

2. PW5, R. Ramamohana Rao, who is the neighbour of the deceased gave evidence to the effect that on 14-4-1993 at about 8.00 p.m., he went to the house of the deceased to make a local telephone call from her telephone as his own telephone went out of order. He saw the deceased lying in the hall and found Al. Rajesh sitting in the hall and watching TV and with the permission of the deceased he telephoned and left. On the next day morning he learnt that the deceased, Kamalavathi, was killed.

3. It is in the evidence of PW6, Gurrahattula Rambabu, that on 14-4-1993 at about 9 p.m. when he went to the new cloth market at Palkol to a tailor, he saw Al going into Balabalaji Bar and Restaurant while he waited for the tailor after 20 minutes, he saw Al and A2 coming out of the bar and leaving on the motor cycle of Al.

4. The fact as stated by PW8 that the police dog after having been taken to the scene of offence on 15-4-1993 after the blood stained knife, MO3, kerchief, MO31 and belt MO32 were placed before the dog for sniffing and it came down from the upstairs portion of the deceased and went to the main road. It passed through rear side of the house and reached a house and stopped there. On enquiry, it was revealed that the house where the dog stopped belongs to Gade Satyanarayana, who is the father of A1.

5. The circumstances that A1 and A2 took one gold chain to PW9, Sunkara Rakesh, on 17-4-1993 seeking his help to have it sold. PW9 took them to Sankar Raj Jain (PW10), an owner of a jewellery shop where the gold chain was sold by A1 and A2 for a sum of Rs.13,700/-.

6. The circumstance that on being arrested by the Deputy Superintendent of Police at Bheemavaram Town Railway Station on 22-5-1993 after A1 and A2 got down from Circar Express from Madras, A1 took out a paper packet from his pant pocket and produced before the police and it contained three gold ornaments which were seized under Ex.P25. Similarly, A2 produced plastic cover containing 20 gold ornaments which were seized under Ex.P26.

7. The circumstance as found by PW4 that the eastern side door of the house of the deceased leading to the stair case was found open. Even the door of the portion of the deceased where she was living was also found open not having been bolted from inside when he saw the deadbody of the deceased.

8. The circumstance that on return from Sabarimalai, the son of the deceased, PW2, went to the house of A1 to ascertain whether he (A1) slept in his house on the previous night or not but he did not find A1 at his house.

9. That Accused No.1 attended all the examinations of final B.Com. which were scheduled from 8-4-1993 to 16-4-1993 except the examination held on 16-4-1993 as stated by the Principal of the College, PW21.

10. The circumstance that chance finger prints found at the scene of offence when compared with the finger prints of A2 were found to tally.

7. It is in the evidence of PW2 that the elder brother of A1 was his classmate and that A1 was well known to him from his childhood. PW2 states that on 11-4-1993, A1, Rajesh, dropped him at the railway station, Palkol and he requested him (A1) to sleep in his house as his (PW2) mother was all alone. Presumably A1 seems to have agreed for this though PW2 did not state so in so many words. At any rate, the other circumstances go to show that A1 did agree for this and slept in the house of PW2 i.e., the house of the deceased during the absence of PW2. The fact that PW2 is known to A1 is not challenged in his cross-examination. Except a bald suggestion that PW2 did not ask A1 to sleep in his house during his visit to Sabarimalai, nothing has been elicited in the cross-examination of PW2 to falsify PW.2's evidence on this aspect. There is no reason why PW2 would invent something which has a tendency to incriminate A1

considering their old friendship and considering the fact that A1 gave a lift to PW2 to the railway station for his visit to Sabaramalai. The fact that A3 conceded the request of PW2 to sleep in his house with his old mother during his absence finds corroboration from other circumstances on record. It is in the evidence of PW5 that on 14-4-1993 at about 8.00 p.m. he went to the house of the deceased to make a local phone call as his own telephone was out of order. There is nothing intrinsically improbable in his version. Admittedly, there is a telephone in the house of PW2 and the deceased. It is in the evidence of PW5 that he saw A1 sitting in the hall in the house of the deceased watching T.V. A1 is not a stranger to PW5 in as much as, stated by PW5 A1 has been residing in the neighbouring street. There is another circumstance brought out in the evidence of PW3, son of the step son of the deceased who lives in the ground floor of the same house while PW2 and the deceased lived in the first floor, it is in his evidence that on 14-4-1993, the deceased, Kamalavathi had asked him not to bolt the rear side door of the house on the ground floor. According to him that door way would be closed either by PW2, when he was there, or by them. There is no reason why PW3 would make a false statement to this effect. In his cross-examination, PW3 stated (that on 11th, 12th and 13th April, 1993 it was he who closed the ground floor rear side door of the house after asking the deceased. Nothing has been brought out in the cross-examination of this witness to affect the veracity of his statement that on 14-4-1993 the deceased had asked him not to close the ground floor rear side door. This aspect assumes significance when it is read in juxtaposition with the evidence of PW6, Rambabu, who stated that on 14-4-1993 at about 9.00 p.m. when he went to the new cloth market to a tailor and was waiting for the tailor, he saw A1 going into bar and restaurant and after some time A1 and A2 coming out of that bar and leaving on a motor cycle. Apparently as seen from the evidence of PW6, A1 was known to this witness, as both of them were students of the same college. Though PW6 admitted that in his statement to the police that he stated that himself and one Srinivas were waiting at the Bar, it does not detract from his version that he saw A1 and A2 coming out of that Bar. Nothing has been elicited in the cross-examination of PW6 except that he did not mention this fact of seeing A1 and A2 at the Bar to any one else before he told the same to the police. PW6 seeing A1 and A2 at or near the bar and restaurant at that time had no particular significance and no adverse inference can be drawn from the failure of PW6 to state this particular fact to anyone else before he was examined by the police. The evidence of PW6 on this aspect has to be accepted.

8. Thus, when these three circumstances are looked together, namely, that PW2 requested A1 to sleep in his house with his old mother, that A1 was intact found in the house of the deceased at 8.00 p.m. on 14-4-1993 and that on the same night at about 9.00 p.m. A1 and A2 were seen near the bar and restaurant at Palkol by PW6 and that as stated by PW3 on that particular night, the deceased had asked PW3 not to close the ground floor eastern side door, their cumulative significance can be appreciated. It is pertinent to mention here that the ground

floor eastern side door provides access to the first floor in which PW2 was living. Thus, the request of the deceased not to close the door would only mean that A1 was living with her on that day and as he had gone out. she desired that the door may not be closed. These circumstances together would amply prove the fact that as requested by PW2, A1 did live in the house of the deceased in the absence of PW2 during his visit to Sabarmalai at any rate on 14-4-1993.

9. The second circumstance referred to in the list of pieces of circumstantial evidence, namely, that PW5 saw A1 with the deceased in her house on 14-4-1993 i.e., the night on which the murder took place has already been referred to above. As slated above, the circumstance has been proved conclusively by the evidence of PW5 which does not suffer from infirmity. This circumstance goes to show that on the night of murder of the deceased, A1 was in the house of the deceased.

10. The third circumstance has been proved satisfactorily by the evidence of PW6 as already noticed while discussing the first piece of circumstantial evidence as it is connected with it. The evidence of P. W.6 would show that A1 and A2 were seen by him at about 9.00 p.m. coming out of the bar and restaurant at Palkol. As seen above, this circumstance has been proved quite satisfactorily by PW6 whose evidence does not suffer from any serious malady. This circumstance would go to show that on the date of offence, A1 and A2 were in contact and were seen together at about 9.00 p.m.

11. With regard to the fourth circumstance, it is true that considering the present level of scientific development and in view of the judgment of the Supreme Court in Abdul Rajak Murtaja Dafedar Vs. State of Maharashtra, , the evidence of dog tracking may not be given much value for incriminating the accused. But, in this case, the circumstance that the sniffer dog went to the house of A1 assumes some significance in conjunction with another piece of evidence. PW21, the Principal of ASNM Govt. Degree College, Palkol where the accused was studying in B.Com., final year at the relevant time has stated that A1 attended all the examinations scheduled between 8-4-1993 and 16-4-1993 except the examination on 16-4-1993. It is significant to note that it was on 15-4-1993 that the sniffer dog was made to sniff MOs.3, 31 and 32 and thereafter it went to the road, walked ahead and stopped in front of the house of A1. Whatever may be the value of such evidence, the fact remains that A1 might have certainly come to know that because of the stopping of the dog in front of his house, he was under suspicion and his failure to appear for examination scheduled for the next day while he attended all other examinations on the previous days, is a circumstance which could be considered as incriminating against A1. This is particular so in view of the evidence of PW2 that on 16-4-1993 when he went to the house of A1 to ask him whether he slept in his house in his absence, he found the accused absent from the house. The absence of accused from his house and his failure to attend such an important activity in his life as he is appearing for final B.Com., examinations would lead to an inescapable inference that the accused had made

himself scarce with effect from that day or from the previous day after the dog stopped in front of his house.

12. The evidence of PW9 is very categorical that on 16-4-1993 A1 and A2 went to Yellamuri Bar at Tirupathi where he was working as an accountant. On 16-4-1993, A1 and A2 went to him with his friend Prabhakar Reddy who introduced A1 and A2 to him. They went to him "again on 17-4-1993. On that day, A1 and A2 brought one gold chain and requested him to help them in selling the same. As he had acquaintance with the proprietor of Ramka Jewellery shop, by name, Sankar Raj Jain, PW10 purchased the said gold chain for Rs.13,700/- which weighed 37 grams according to him. PW10 entirely corroborates the version of PW9 and states that A1 and A2 were introduced to him by PW9 and he purchased a gold chain from them for Rs.13,700/- and odd. He states that he obtained signature of PW9 as well as those of A1 and A2 on the register concerned. There is a slight variance in PW10's evidence when he states though A1 and A2 accompanied PW9, he purchased the gold chain from PW9 as he was acquainted with him. This does not make any difference, in as much this statement apparently is made by him to protect himself. The evidence of PW9 makes it very clear that it was A1 and A2 who sold the article.

13. The evidence of PW10 was criticised on the ground that the papers on which he is said to have obtained signatures of PW9 and A1 and A2 have not been produced in the Court. It is in the evidence of investigating officer, PW20, that he asked PW10 to handover the register when he examined him and he (PW10) stated that he required the same for tax purpose and that he obtained xerox copies of the said entries and he did not seize the register. But, it appears that even those xerox copies of entries have not been filed in the Court. Nothing has been brought on record during cross-examination of PWs.9 and 10 to show -that even remotely they have any scores to settle against A1 and A2. There is no reason to discard the evidence of PWs.9 and 10 which appears quite natural and probable. This evidence goes to show that A1 and A2 either together sold a gold chain of substantial value to PW10 on the basis of being introduced by PW9.

14. The other incriminating circumstance is that on their arrival from Madras by Circar Express, when A1 and A2 got down at Bheemavaram Town Station, PW18, the Dy. Superintendent of Police arrested them and in the presence of panchas recorded their statements (which are not admissible) and thereafter, according to the evidence of these witnesses, A1 produced two bangles with red stones about 5-1/2 sovereigns, gold chain with button presser tied with thread about 22-1/2 grams and a gold ring with enamel paint with G.S.N. identity, which were seized under Ex.P26. Similarly, A2 is said to have produced gold ornaments from his pocket, namely, gold bangles (eight numbers-98 grams), four gold bangles with white stones, gold watch chain, pearl gold chain, pearl gold necklace with 12 white stones, red bead chain, three gold buttons with chain, chain with Laxmidevi locket, button chain, two chain pieces, one tiger nail with white stones and locket, two tiger nails with gold locket, mercure type gold locket, gold locket

with Anjaneyaswamy picture, gold locket, gold ring with nine stones, one gold kalyana ring, one gold ring with nine stones, gold batuvu and one titan watch. These items are said to have been seized by Dy. Superintendent of Police (PW18) in the presence of PW14 and another who attested the relevant mediators report.

15. The learned senior Counsel, Sri C. Padmanabha Reddy, seeks to assail this evidence by contending that it is quite improbable that while the murder took place on 14-4-1993, these recoveries would have been made about five weeks after the murder on 22-5-1993. It is strenuously contended that it is improbable that after such lapse of time, the accused would be roaming around with this stolen articles on their person. It is true that generally the culprits who came into possession of valuables during the crime would plan to dispose of the same as quickly as possible and alleged recovery after lapse of considerable time would have to be subjected to proper scrutiny.

16. This statement would appropriately apply to habitual offenders and hardened criminals who know the tricks of the trade and would find ways either to dispose of the valuables obtained during the offence or change their form or shape. In this case, A1 is a student and A2 is a young man, an electrician and are not hardened criminals. It is not possible to expect the same kind of finesse and caution which is exercised by the habitual offenders. Nothing has been suggested as to why PW18 and PW14, the mediator, would go to the extent of planting recoveries on the accused. It would appear that after the seizure of the articles by PW18 from A1 and A2, PW16, a goldsmith was called who weighed the articles and the weights as found by him was recorded in the seizure memos.

17. It is pointed by the learned Counsel for the accused that in the evidence of P.W.18, Dy. Superintendent of police, he admits that he recorded the statement of PW16 on 25-3-1994 in which the names of panch witnesses in whose presence P.W.16 weighed ornaments were mentioned as PW13, and another, by name, T.S. Venkateswara Rao. However, he states that the names of the mediators were mistakenly typed. From this, it is contended that the whole recovery itself is a drama enacted by PW18.

18. We are unable to agree with this contention. It is pertinent to mention here that PW16 himself was not confronted with this discrepancy. However, in regard to PW16, it is pointed out by the learned Counsel for the appellants that while according to PW16 he weighed the ornaments at T.T.D. Devasthanams, near Town Railway Station, Bheemavaram but in his statement to the police marked as Ex.D1 he stated that the Dy. Superintendent of Police asked him to weigh at Bheemavaram Railway Station and he went there and he weighed in the presence of mediators Muralikrishna Rao (PW13) and B. Venkateswara Rao. Even this discrepancy does not affect the over all transaction as to recovery of ornaments from the possession" of A1 and A2. The discrepancy is in respect of place of weighing. Firstly, as noted above, nothing has been elicited in the cross-examination of PW14 to show that he has any axe to grind against the accused. PW14 was the then Revenue Inspector, Bheemavaram. There is one circumstance

which lends assurance to the genuineness of the recovery. It is necessary to underscore the fact that the recovery said to have been effected by A1 and A2 by PW18 do not consist of a few pieces of few grams of gold. They constitute a large number of gold Ornaments with substantial weight and value. Generally none can be expected to take a risk by planting such valuable ornaments of such huge quantity for the purpose of bringing into existence some evidence against the accused. Planting of articles for the purpose of recovery generally would be done with small pieces of ornaments of comparatively modest value.

19. The learned Counsel for the accused, however, contends that PW18 during his evidence has not identified the articles seized from A1 and A2 with reference to the MOs. marked. Even PW14, the attesting witness, has identified MOs.8 to 30 as the articles seized from A1 and A2 and even he did not separately identify the articles seized from A1 and A2. It is true that this omission is there.

20. The learned Counsel further contends that apart from this omission, there is no satisfactory evidence that these are the articles found missing after the robbery at the house of the deceased and her murder. The contention is that the daughter of the deceased who could have been in a position to identify the articles has not been examined and it was only PW2 who identified those articles. It is contended that the identification of the articles said to have seized from A1 and A2 on their arrest, by PW2 is of no value. In support of this contention, it is pointed out that firstly it is the sister of PW2 who gave a list of articles missing to the police and she has not been examined. PW2 admits that police informed him about recovery of MOs.8 to 30 but they were not shown to him and he identified MOs.8 to 30 (which are the articles recovered from A1 and A2) on their arrest. He admits that he did not inform the police that he can identify the missing articles. He also admits in his cross-examination that there are no special identification marks of MOs.8 to 30.

21. The contention of the learned Counsel for the accused is that MOs.8 to 30 are ordinary ornaments available in most of the families as admitted by PW2. In regard to identification parade in respect of these articles conducted by PW13, the learned Counsel points out that as admitted by PW13 that the articles to be mixed were supplied to him by the Dy. Superintendent of Police. He admits that he did not mention in Ex.P24, the proceedings of the identification parade of the articles, that the articles supplied for mixing were made of gold. He further admitted that the articles to be mixed supplied to him were new ones. In view of these circumstances, it is contended that the evidence of identification of MOs.8 to 30 as the ornaments stolen from the house of the deceased is totally unreliable and cannot be used as an incriminating circumstances against the accused.

22. Firstly, it may be pointed out that PW2 has been living with the deceased. Quite a few of the articles included in MOs.8 to 30 were apparently those worn by the deceased every day like a number of bangles and some other articles. Considering this circumstance, there is nothing improbable and unbelievable if

PW2 has identified MOs.8 to 30 as those taken away from his house or from the deceased. The evidence of PW2 in the Court as to identification of these articles is to some extent corroborated by his identification of those articles in the identification parade conducted by PW13 though the parade may not be perfect.

23. The other circumstance pointed out by the learned Counsel for the appellant that PW14 has not separately identified the articles seized from A1 and A2 with reference to MO numbers mentioned by him does not really seem to affect the core of the matter. PW14 has clearly mentioned that three gold ornaments were seized from the possession of Accused No.1 under the admissible port mediators report, Ex.P25. He then stated that the detailed particulars of the articles were mentioned in the mediators report Ex.P26. Similarly, with reference to Accused No.2 he stated that gold ornaments were seized from the possession of A2 which was recorded in the mediators report Ex.P27 (it may be mentioned that the seizure parts of the reports are part and parcel of the entire proceedings including the alleged confessional statements of A1 and A2). Though the mediators report, Ex.P26, did not constitute substantive evidence but when a witness deposing in the Court slates that he can identify the articles seized from certain accused as enumerated in the mediators report, it must be presumed that the articles which he referred to were those mentioned in the mediators report. Thus, in as much as the relative mediators report separately mentions the articles seized from A1 and A2 to which PW14 has made a reference during his deposition, this omission to specifically mention on the part of PW14 that MOs.5, 9 and 10 were recovered from the possession of A1, MOs.11 to 30 were seized from the possession of A2 does not really a matter and does not affect the recovery of the articles from the accused as slated by PW14. Thus, considering the circumstances, it has to be held that in view of the evidence of PW14 and in view of the identification of articles by PW2 it has to be held that MOs.8 to 30 were the articles taken away from the house of the deceased during the offence which were recovered from A1 and A2. PW14, at any rate, stated that MOs.8 to 30 are the articles recovered from A1 and A2.

24. Even assuming for argument sake that the evidence as to identity of MOs.8 to 30 as the articles taken away from the deceased is not adequately established, the fact remains that valuable gold ornaments have been recovered from the possession of A1 and A2 which itself appears to be significant. It may be mentioned that A1 is a young man of 22 years and has been a student. A2 is also a young man of 25 years and he was said to be unemployed at the time of filing of the charge-sheet. Their being in possession of such valuable articles, for which no explanation has been available, is in itself an incriminating circumstance when looked in the background of other circumstances in the case. But, this question does not arise in this case in as much as we are satisfied that the evidence of PW2 and 14 does not suffer from any serious infirmity can be accepted as the basis to hold that MOs.8 to 30 are the articles belonging to the deceased and his family which were recovered from A1 and A2.

25. The prosecution relies on another important circumstance that chance finger prints found at the scene of offence when compared with those of A2 were found to tally. The evidence of PW17, the finger print expert, goes to show that he found three chance finger prints at the scene of offence which he developed and marked., as A, B, and C by means of powder and brush. According to him, these finger prints were photographed by M.F.S.L. Photographer at Kakinada. According to him, on 26-4-1993 he received the photographs of the chance prints marked by him as A, B and C and on examining them, he found two of those prints marked as A and B were fit for comparison and he compared them with the finger prints of the deceased which he had taken at the hospital but they did not tally. According to him, on 10-6-1993 he received the finger prints of A1 and A2 from the Inspector of Police. When he compared with the chance prints with the prints of A1 and A2, he found chance prints A and B were identical with the left index finger prints of A2. He prepared comparison chart showing the identification marks. The negatives of chance prints are Exs.P29 to P.31 and Exs.P32 to P34 are the photo prints. Ex.P35 is the opinion covering letter sent to the Inspector of Police, Palkol. Ex.P36 is the covering letter sent to the Inspector of Police enclosing comparison chart.

26. This evidence is criticised on two grounds by the learned Counsel for the appellants, It is firstly contended that the photographer who took the photographs of the chance finger prints has not been examined. Non-examination of the photograph cannot be considered as fatal to the prosecution case. There is a presumption that the official acts would be done regularly. Nothing has been elicited from PW17 to generate any suspicion about the photographs of chance finger prints developed at the scene of offence. The other contention is that there is no material to show that the finger prints of the accused have been taken in the presence of a Magistrate. In fact, the evidence adduced by the prosecution does not disclose as to whether and if so by whom the thumb impressions of A1 and A2 were taken. In the absence of any evidence in this regard the evidence as to the finger prints though otherwise available cannot be pressed into service in this case.

27. The above discussion would show that the prosecution in this case has proved series of circumstances discussed above which goes to prove that on 11-4-1993, A1 who is a friend of PW2 went to Railway Station to see off PW2 for Sabarimalai and there PW2 requested A1 to sleep in his house as the deceased an elderly lady would be alone. The evidence on record also conclusively proves that on the night of 14-4-1993 A1 was in the house of the deceased and that the next day morning he was not available at his house when PW2 went there and A1 himself did not contact PW2. The evidence also conclusively proves that on the night of 14-4-1993 on which night the murder took place. A1 was in contact with A2 at the bar. The evidence also conclusively proves that on return of PW2 from Sabarimalai, A1 far from contacting him made himself scarce when PW2 tried to contact him. It also shows that when the dog stopped near the nouse of A1 on 15-4-1993 from the next day the accused has gone to the extent of

skipping his final B.Com examination and leaving the place. The evidence also proves the circumstance that on the night of 14-4-1993 the deceased asked PW3 not to close the outer door on the ground floor presumably as she was expecting A1 to return to her house. The evidence also indicates that the culprits did not gain entrance into the house of the deceased by breaking open the door or by any other forcible means. By all indications, they entered the house of the deceased through the door which was opened by the deceased herself. The evidence also proves the circumstance that valuable gold ornaments lost during the offence on the night of 14-4-1993 were recovered from the possession of A1 and A2 about five weeks after the offence. Recovery of articles lost by theft or robbery during the commission of offence leads to an inference that it was the accused who might have committed the offence of murder also. The contention that in view of the long lapse of time of five weeks, such presumption cannot be drawn in this case would have been acceptable if this was the only circumstance relied upon by the prosecution for drawing the inference of offence of murder from the recovery of stolen articles from A1 and A2. But, in this case, there are other circumstances which strengthen such presumption inspite of lapse of five weeks between the date of recovery and the offence. As discussed above, each of the circumstances stated above has been conclusively proved. The cumulative effect of these circumstances is that they lead to the only irresistible inference that A1 and A2 are the culprits and that they have committed the murder of the deceased and took away valuable gold ornaments from the person of the deceased and from her house. Thus, the conviction recorded by the learned trial Judge deserves to be upheld in as much as there is sufficient material to hold that the prosecution succeeded in bringing home the charge against the accused beyond reasonable doubt,

28. In the result, the appeals are dismissed confirming the conviction and sentence imposed by the trial Court.