
(2008) 10 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 624 of 2006

Giriraj Singh Vaghela and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 21-10-2008

Acts Referred:

Evidence Act, 1872 — Section 114, 114A, 27

Identification of Prisoners Act, 1920 — Section 4, 5

Penal Code, 1860 (IPC) — Section 120B, 302, 320, 397, 404

Citation : (2009) 1 ALD(Cri) 131 : (2009) 1 ALT(Cri) 48 : (2009) CriLJ 1257

Hon'ble Judges : K.C. Bhanu, J;D.S.R. Varma, J

Bench : Division Bench

Advocate : C.Padmanabha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—This Criminal Appeal by the appellants-A1 to A3 is directed against the judgment, dated 17-04-2006, in Sessions Case No. 429 of 2004, on the file of the I Additional Metropolitan Sessions Judge, Hyderabad, wherein the appellants-A1 to A3 were sentenced to undergo Life Imprisonment each for causing death of D1 and to pay a fine of Rs. 5,000/- each, in default to suffer Rigorous Imprisonment for two years each for the offence punishable u/s 302 of the Indian Penal Code, 1860 (for brevity "IPC"), further sentenced to undergo Life Imprisonment each for causing death of D2 and also to pay a fine of Rs. 5,000/- each, in default to suffer Rigorous Imprisonment for two years each for the offence u/s 302 IPC, further sentenced to undergo Life Imprisonment each and also to pay a fine of Rs. 5,000/- each, in default, to suffer Rigorous Imprisonment for two years each for the offence u/s 302 r/w 120-B IPC, further sentenced to undergo Rigorous Imprisonment for seven years each and to pay a fine of Rs. 2,500/- each, in default to suffer Rigorous Imprisonment for one year each for the offence u/s 397 IPC and further directed all the sentences to run concurrently.

2. Brief facts, that are necessary for disposal of the present Criminal Appeal, may be stated as follows:

PW.27 is the wife, P.Ws. 3 and 24 are the friends of Ravikanth Maheswari (hereinafter referred to as "deceased No. 1"). PW.1, PW.25, PW.30, 41 and A1 are all working under him in his Patencheru Steel Limited. The deceased No. 1 was the Managing Director of the said factory and was residing alone in Flat No. 301, Mount Nasir Apartments. Flat No. 302 was his office and his family was residing at Delhi. He used to visit Delhi twice in a month. In the first week of December, 2003, he called A.1 at his residence for the purpose of cooking food. Subsequently, Sampath Rao (hereinafter referred to as "deceased No. 2") joined in the place of A.1 and A.1 was sent back to the factory and was appointed as driver to the General Manager of the factory i.e. PW.47. About two months prior to the incident, it is alleged that A.1 informed his friend PW.5 that there was lot of money in the factory and in the house of deceased No. 1 and sought his help to commit theft. On that PW.5 admonished him not to indulge in such bad ideas. The guests of factory were accommodated in the hotel of PW.6 i.e. Grand Dish Hotel. A.1 used to regularly drop the guest in the said hotel and Room No. 206 was allotted to them. On 21.12.2003 A.1 brought A.2 and A.3, that they were allotted that room and on 23.12.2003 they vacated the room. Deceased No. 1 had a farm house consisting of about 72.00 acres at Gollur Village. He sold the part of the land to PW.3 through mediation of PW.4. On 19.12.2003 at about 1.30 PM at the residence of deceased No. 1, PW3 had paid an amount of Rs. 25 lakhs towards sale consideration. At that time PW.4, PW.25, deceased No. 2 and A.1 were present. Then deceased No. 1 handed over Rs. 20 lakhs to PW.25 with a direction to keep the cash in the chest. Accordingly, PW25 kept it inside and handed over the keys to deceased No. 1. Then at about 3 P.M. they all went to Sub Registrar Office. After completion of Registration and other works deceased No. 1 returned back home at 10 P.M. and PW.1 parked the car and left home. At about 11 P.M. PW.30 after meeting deceased No. 1 at his residence, while he was going he saw A.1 along with his two friends at the main gate of the apartments. Then A.1 informed him that those two persons were from his native village and were going to meet deceased No. 1 to seek for employment.

3. On 23.12.2003 in the morning as usually PW1 went to house of deceased No. 1 to take car keys and notice the door bolted from outside. He then opened and found the dead body of deceased No. 2 lying in the hall and deceased No. 1 lying in the bedroom in a pool of blood. He then immediately called PWs.24 and 25 and informed the same. He further informed PW.7-Manager of the apartment and then telephoned to Saifabad Police Station. At about 10.30 A.M. on receiving telephonic information from PW.1, PW.21-Sub Inspector of Police, Saifabad Police Station, made a General Diary entry and then he along with P.W.20-Assistant Sub Inspector of police and three other police constables rushed to the scene and disbursed the mob. PW.21 after noticing the dead bodies preserved the scene and informed his superiors. He then examined PWs.7 and 24 who came forward from mob, and on his instructions PW.24 gave a report, which is marked

as Ex.P.51. He then forwarded the said report through PW.20 for registration. On the basis of Ex.P.51, PW.22-Sub Inspector of Police registered the same as case in Cr.No.1176 of 2003 and issued First Information Report, which is marked as Ex.P.52. He then on the instructions of PW.21 summoned the clues team and fingerprint experts. In the meanwhile, at about 11.30 A.M. on receiving information, PW.42- Deputy Commissioner of Police, D.D.11 C.C.S., Hyderabad, P.Ws. 40, 41, Inspectors of Police, P.W.44 Sub Inspector, all rushed to the scene. On requisition, the clue team unit i.e. P.Ws.14 and 33 finger print experts, P.W.15-Scientific Associate (Head of unit), P.W.19- photographer and P.W.4- Videographer, (Home guard), all reached the scene of offence. On the oral instructions P.W.42, P.W.41 took over the investigation from P.Ws.21. P.Ws.40 and 44 assisted him. Then on the instructions of P.W.41, P.W.40 observed the scene of occurrence and drew the rough sketch, which are marked as Ex.P.63 and 85 respectively. Then on the instructions of P.W.41, PW.16 collected physical evidence that is blood stained carpet (M.O.19), cushion (M.O.21) mat (M.O.20) blood stained swabs in the bath room and he further collected six standards of hair from the right hand palm of deceased No. 1. Thereafter he handed over the same to P.W.40. Then PW.14-finger print expert examined all the articles and lifted chance fingerprints available on whisky bottle, (marked A and B) Almaraiiah (L1 and L2), Cupboard (D), Bathroom doorframe (E&F). He then got them photographed through P.W.19 and P.W.34 videographed the scene. He further photographed the dead bodies of deceased Nos. 1 and 2. Thereafter P.Ws.41 and 44 held inquest over the dead bodies of deceased Nos. 1 and 2 in the presence of P.Ws.7 and 29. Exs.P.10 and 11 are the inquest reports and thereafter, the dead bodies were forwarded for postmortem examination. Then at about 7 P.M. P.W.27 wife of deceased No. 1 arrived at the scene of offence and on instructions, she verified the articles in the flat. During the course of investigation, he further examined and recorded the statements of P.Ws.1, 24, 25 and other relevant witnesses.

4. On 24.12.2003 on requisition P.Ws.15 and 32 Associate Professor, Forensic Medicine Department, Osmania Medical College, held autopsy on deceased Nos. 1 and 2 and opined that their cause of death was due to cut throat injury. Exs.P.43 and 65 are the postmortem reports respectively. During the course of investigation P.Ws.41 and 44 made efforts to trace missing Skoda Car of deceased No. 1 by contacting Superintendents of Police of neighbouring Districts over telephone sent radio messages. On 24.12.2003 he examined and recorded the statements of P.Ws.3 and 4 and collected Exs.P.2 and 3 (Sale Deeds) executed by deceased No. 1 from PW.3. Then collected the ownership particulars of missing car from R.T.A. and that is in the name of Patancheru Steels Private Limited.

5. On 23.12.2003 on receiving telephonic information about the presence of abandoned car on roadside of Jawra village, P.W.36- S.I of Nandigam, Khandeswar rushed to the spot and seized the car in the presence of P.W.31 and seized Mos1, 3 to 5 and 29 under Ex.P.64. He further seized Rs. 77 loose

currency notes of different denominations. He then shifted the car to police station with the help of crane. Basing on Telugu Newspaper, he informed about the seizure of car to Adilabad S.P. Camp Office. Basing on said information P.W.42 instructed P.W.44 and another to proceed to Nandigam Khandeshwar P.S. of Amaravathi Maharastra State. Accordingly P.W.44 along with P.W.19 and P.W.33 visited the said place and there, PW.36 handed over the car to them. Then P.W.33 entered the car and developed the chance prints from car rear view mirror (marked as G), left front door glass (Marked as H) back seat left door glass (marked as J), front right door glass (marked as K). Thereafter P.W.19 took the photographs of chance fingerprints on the car.

6. On 17-01-2004 P.W.45 examined P.W.5, basing on his statement and on receipt of information through his informant, he deputed S.I. Amjad to make enquiry and produce A1 before him. Accordingly, on 18-01-2004, A1 was produced before him. During the course of interrogation, A1 made a statement that he along with A2 and A3 committed the offence and then he voluntarily produced from his pant pocket cash of Rs. 2,400/- (M.O.16), gold chain (M.O.17) and visiting card of Grad Dish Hotel under Ex.P15-panchanama. Thereafter, P.W.44 obtained the fingerprints of A1 and forwarded the same to P.W.14 for comparison.

7. On 18-01-2004 on his instructions P.W.43-A.C.P. Dacoity Team at C.C.S. Hyderabad, visited Deeg village of Ballabgadh Taluk of Faridabad District and with the assistance of local police, he raided the houses of A2 and A3 and arrested them. Later P.Ws.44 and 45 also proceeded to Ballabgadh P.S. and there A2 and A3 were produced before him. Then during the course of their interrogation, on 19-01-2004, in pursuance of their statement at the instance of A2, a black colour zip bag containing cash of Rs. 13 lakhs and 4 Nokia cell phones were recovered in the presence of P.Ws. 13 and 23. Ex.P61 is the panchanama. Further he made a statement to show the house of A4 to whom he sold gold chain and the same was produced by A4 on 20-01-2004 under Ex.P62 panchanama. Then at the instance of A3 from his house, a polythene carry bag containing cash of Rs. 6,50,000/- under different denominations of Rs. 1,000/-, Rs. 500/-, Rs. 100/- and Rs. 50/- were recovered under Ex.P60 panchanama.

8. Then on 20-01-2004 P.W.45 visited Reliance India Mobile, New Delhi and secured the presence of P.W.8 and obtained call details of cell phone No. 33420654 under Ex.P12. Then they along with A2 and A3 returned back to Hyderabad and his (P.W.45) instructions on 23-01-2004, P.W.44 obtained the fingerprints of A2 and A3 under Exs.P54 and 55. On 23-01-2004 P.W.5 secured the presence of P.Ws. 6 and 28 i.e., Grand Dish Hotel Manager and Receptionist and collected the bills (Exs.P4 to P9). On 29-01-2004 he obtained the police custody of A1 to A3 for further investigation and on 29-01-2004. A1 to A3 were produced before P.W.17 for collecting of sample scalp hairs and accordingly, P.W.17 collected the same. Thereafter, they were produced before FSL authorities. P.W.39 collected the blood samples of accused.

9. On 30-01-2004 in pursuance of the additional statement made by A2 at his instance on 31-01-2004 in the presence of P.Ws.35,37 and 38, two blood stained knives were recovered from Chandra Vaagu Bridge. Ex.P92 is the seizure panchanama. He further lead them to Nandigam Khandeswar main road of Amaravathi and seized number plates by the side of road from bushes. Ex.P93 is the panchanama.

10. On 18-01-2004 and on 23-01-2004 on receiving he fingerprints of A1 to A3, P.W.14 found H (left front door glass inside car) identical to left index finger of A2 (Ex.P35), J (left back door glass in car) identical with left thumb of A1 (Ex.P36), B (chance print on whisky bottle in the flat) and K (right front door glass in car) identical with right index finger of A3 (Ex.P37), A (whisky bottle) identical with finger print of deceased No. 1. D,E & F not identical with any of fingerprints of three persons. C1 and C2 not clear and were unfit for comparison.

11. On 28-01-2004 P.W.8-Scientific Assistant, APFSL, Hyderabad, received one sealed cloth parcel containing six strands of hair marked as item No. 7, sealed cover item No. 2.

12. On 29-01-2004, he received a sealed cover (item No. 2) containing sample hairs of A1 to A3 marked as item Nos. 1,3, and 4 respectively. He also received their three blood samples marked as item Nos. 4 to 6 respectively. On 04-02-2004, P.W.18 conducted D.N.A. finger print examination and opined that as per STR analysis item No. 7 matches with the blood sample of A3 (item No. 6). Ex.P45 is the report. On 28-02-2004 P.W.12 Metropolitan Magistrate, Hyderabad, conducted test identification wherein P.Ws.6 and 2 identified A2 and A3. Ex.P18 is the test identification parade proceedings. During the course of investigation, P.W.45 collected the bill of mobile No. 949700021 of the month of 2003 from the Manager of Patancheru Steels. Ex.P96 is the bill and Ex.P92 is the bill pertaining to Airtel No. 9810002776. Further seized a sim card 9849700021 from P.W.26- a lorry driver who picked up the same from the side of road and was using the same. P.W.45 deposited the seized amount of Rs. 19,50,000/- before XXI Metropolitan magistrate, Hyderabad. P.W.46 who in turn deposited the same in the form of FDR in SBH Extension Counter, Nampally Court's premises. Exs.P101 and 102 are the F.D.Rs. After receiving the relevant documents and on completion of investigation, P.W.45 filed the charge sheet.

3. The learned Sessions Judge, framed the following charges against the accused:

FIRSTLY: That A1 to A3 of you on 22-12-2003 at about 11 p.m. at Flat No. 301 of Mount Nasir Apartments, beside Ravindra Bharathi, Hyderabad; committed murder of the deceased No. 1, Ravikanth Maheswari by stabbing and slaughtering with two knives and that you thereby committed an offence punishable Us.302 IPC. SECONDLY: That A1 to A3 of you on the same day, time and place mentioned above in charge No. 1 supra committed murder of the deceased No. 2, Sampath Rao by stabbing and by cutting his throat by slaughtering with knives and that you thereby committed an offence punishable

U/s.302 IPC

THIRDLY: That A4 of you during the same course of transaction supplied two knives to A1 to A3 with which A1 to A3 committed murder of deceased No. 1 Ravikanth Maheswari and deceased No. 2 Sampath Rao and thus you abetted the commission of said offence of abetment and thereby A4 of you committed an offence punishable U/s.109 and 302 IPC.

FOURTHLY: That A1 to A3 of you during the same course of transaction, committed robbery of Rs. 20,00,000/- from the cash chest kept in the office room in the adjacent Flat No. 3, that A1 of you robbed gold chain, A2 of you robbed another gold chain from the neck of deceased Ravikanth Maheshwari and 3 Nokia Cell phones from Flat No. 301, Mount Nasir Apartment, Saifabad, Hyderabad belongs to deceased and at the time you used deadly weapons i.e., two knives and committed murder of deceased namely Ravikanth Maheshwari and Sampath Rao and that you thereby committed an offence punishable U/s.397.

FIFTHLY: That A1 to A3 of you during the same course of transaction, committed theft of cash of Rs. 20,00,000/-, two gold chains and 3 Nokia Phones from Flat No. 301 and 302, Mount Nasir Apartment, Saifabad, Hyderabad belongs to deceased Ravi Kanth Maheshwari and fled away in Scoda Actavia Car bearing No. AP- 23F-2520 of deceased No. 1 Ravikanth Maheshwari with the stolen booty and that A1 to A3 of you thereby committed an offence punishable U/s.380 IPC.

SIXTHLY: That A1 of you during the same course of transaction dishonestly misappropriated or converted to your own use certain property i.e., Rs. 20,000,00/- cash, two gold chains and Nokia Cell phones being a car driver knowing that such property was in the possession of Ravikanth Maheswari a deceased person at the time of his death and had not since been in the possession of any person legally entitled to such possession and that you thereby committed an offence punishable u/s 404 IPC.

SEVENTHLY: That A1 to A4 of you during the same course of transaction, committed robbery in the house of deceased Ravikanth Maheswari and dishonestly retained the stolen property i.e., A1 of you retained a gold chain and cash of Rs. 2,400/- , that A2 of you retained Rs. 13,000,00/- and three Nokia cell phones, that A3 of you retained Rs. 6,50,000/- and that A4 of you retained a gold chain belonging to deceased Ravikanth Maheswari knowing or having reason to believe the same to be stolen property and thereby you committed an offence punishable u/s 411 IPC.

EIGHTHLY: That A1 to A4 of you on 22-12-2003 at about 11 P.M. in furtherance of common agreement of criminal conspiracy to commit murder of the deceased No. 1, Ravikanth Maheswari and rob the cash and valuable like goods etc., from his possession and also those whoever comes in your way to murder in order to eliminate evidence of offences of murder of Ravikanth Maheswari, A1 to A3 of you effected entrance into Flat No. 301, deceased No. 2 Sampath Rao allowed entry of A1, then A1 of you met the deceased No. 1 and received Rs. 100/- to

get chicken curry for the deceased No. 1 then A1 of you handed over Rs. 100/- and requested the deceased No. 2 to bring chicken curry and sent him out and in the absence of deceased No. 2, A2 and A3 of you entered into the said flat and committed murder of deceased No. 1 Ravikanth Maheswari by stabbing and slaughtering with two knives supplied by A4 of you and robbed two gold chains from the neck of Ravikanth Maheswari and committed theft of cash of Rs. 20,000,00/- 3 Nokia cell phones and keys of Scoda car, while the deceased No. 2 Sampath Rao entering into the main hall after putting the chicken curry in the kitchen room, A1 to A3 of you pounced upon him and committed his murder by stabbing and by cutting his throat by slaughtering and sped away in Scoda car bearing No. AP 23F 2520 belonging to deceased No1, Ravikanth Maheswari and that you thereby committed an offence punishable u/s 320 r/w 120B IPC. When the above charges were read over and explained to the accused, they pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 47 and got marked Exs.P-1 to P-109 besides case property, M.Os.1 to 36. No oral evidence was adduced, except marking Exs.D1 to D3, which are portion in 161 Cr.P.C. statements of P.Ws.4, 27 and 28 respectively.

5. The trial Court accepting the circumstantial evidence, while acquitting A4, found the appellants guilty and accordingly, convicted and sentenced them as above. Aggrieved thereby, the appellants preferred the present appeal.

6. Mr.C.Padmanabha Reddy, learned senior counsel appearing for the appellants contended that the circumstances relied upon by the prosecution are only insufficient to base a conviction, that there is absolutely, no evidence to show that the accused entered into criminal conspiracy to commit the murder of deceased No. 1, that similarly there is no evidence to show that the accused entered into flat or leaving the flat prior to or after the occurrence, that the watchman and the residents of other flat owners were not examined, that the trial Court erred in relying upon the evidence of P.W.14 for holding that the chance prints lifted from the scene of occurrence tallied with the specimen prints of the accused, that the finger prints were not taken in the presence of the Magistrate or mediator, that similarly chance fingerprints were not taken in the presence of the Magistrate, that the persons who entered into the scene of occurrence did not say that they saw the heir in the right hand palm of the deceased No. 1 and therefore, the evidence of P.W.16 is doubtful, that the evidence of mediators who allegedly present at the time of the arrest of the accused and in pursuance of their confessional statement, certain properties have been recovered is to be doubted, that similarly, prosecution failed to prove seizure of M.Os. 16 to 18 from the possession of A1, that absolutely, there is no evidence to show that cash alleged to have been recovered from the possession of the accused belonged to the deceased No. 1, that all the circumstances relied upon by the prosecution even if taken as true and correct, they do not establish the guilt of the accused beyond all reasonable doubt, that at best, they may

create a suspicion against the accused that this crime might have been committed by the accused, that suspicion however, strong cannot take the place of legal proof and hence, he prays to set aside the convictions and sentences recorded against the appellants.

7. On the other hand, learned Public Prosecutor appearing for the State contended that the fingerprints of A3 was found on a whisky bottle, which was seized from the house of the deceased No. 1, that similarly the heir seized from the right hand palm of the deceased No. 1 was tallying with the heir of A3, that there is a clear motive for A1 to commit the murder, which is for gain and therefore, he entered into criminal conspiracy with A2 and A3 who are residents of his native village in Haryana State, that on the previous date of the incident, all the accused stayed in a hotel and they were identified by the room boy, that the chance prints which were lifted from the inside car of deceased No. 1 were tallying with A1 to A3, that the death of both the deceased are homicidal, that all the circumstances relied upon by the prosecution unerringly pointing out the guilt of the accused beyond all reasonable doubt, that the trial Court after elaborate consideration of evidence on record, rightly convicted and sentenced the accused and hence, there are no grounds to interfere with the same.

8. Now, the point that arises for consideration, in this Criminal Appeal, is whether the prosecution has proved its case, against the appellants-accused, for the offences with which they were charged, beyond all reasonable doubt?

9. The entire case rests upon the circumstantial evidence. When a case rests upon circumstantial evidence, the prosecution has to prove certain circumstances in order to bring home the guilt of the accused. With regard to circumstantial evidence, it is very apt to refer to leading decision of Hanumant Vs. The State of Madhya Pradesh, , wherein it was held thus:

...It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent 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.

10. It is also pertinent to refer to a decision reported in Sharad Birdhichand Sarda Vs. State of Maharashtra, , wherein it was held thus:

153. ...(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

...the circumstances concerned "must or should" and not "may be" established.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved and

(5) there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent 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.

Bearing the above principles in mind, it has to be seen whether the prosecution has proved its case against the accused, beyond all reasonable doubt?

11. P.Ws. 7 and 29 are the mediators for the inquests of deceased Nos. 1 and 2. Similarly, P.W.29 was also present at the time of the inquest. Exs.P10 and P11 are the inquest reports of deceased Nos. 1 and 2 respectively. The inquest mediators opined that the both the deceased died due to cut injuries on throat.

12. P.W.15 is the Doctor, who on receipt of requisition from the Investigating Officer, conducted autopsy over the dead body of the deceased No. 1, Ravikanth Maheswari at 9 A.M. on 24-12-2003 and found the following ante-mortem injuries:

1. Cut injury horizontally under the chin for 6 cm x 1.5 cm x 1 cm ends are pointed. Margins clean cut injury is 5 cm below the chin and going into right side.

2. Cut injury in front of neck below injury No. 1 and measuring 4 cm x 1 cm x 2 cm extending from midline to right side with clean margins and pointed ends.

3. Cut injury in front of neck just above the thyroid cartilage level measuring 12 cm x 1 cm on flouting the head and it is 6 cms width on extending the head. Depth is extending up to the vertebral column. The cut injury is 5 cm below left angle of mandible 8 cms below the chin and 5 cms below right angle of mandible. Upper margin is clean cut and lower margin is serrated. The cut injury has passed between Hyoid and Thyroid bones extending up to cervical fourth vertebra cutting across all the intervening vessels, muscles and nerves. Ends are pointed.

4. Stab injury obliquely just below inner aspect of left clavicle 3 cm x 1cm x bone deep. Upper and outer end is pointed. Lower and inner end is rounded. Margins are clean cut.

5. Stab injury 1 cm below injury No. 4 i.e., in front of left chest measuring 3 cm x 1cm cavity deep, obliquely placed. Margins are clean cut. Upper and outer end is pointed and lower and inner end is rounded.

6. Vertically placed abrasion left mid leg 5 cm x 1 cm red in colour.

7. Abrasion in front of right knee 1 cm x 1 cm red in colour.

The cause of the death, according to him, was due to cut injury on the throat associated with other sharp weapon injuries. Ex.P43 is the postmortem report relating to deceased No. 1.

13. Similarly, P.W.32, another Doctor, on requisition from the police, conducted autopsy over the dead body of the deceased No. 2, Sampath Rao, on 24-12-2003 and found the following ante-mortem injuries:

1. Transverse cut injury of 10 x 3 cm x bone deep, front of neck above thyroid cartilage 7 cms below chin. The upper margins are clean cut. Lower border is irregular. The angles are round. The deeper structures and blood vessels are injured. Trachea, cesophagus are cut open. There is a cut in C4 vertebra Thyroid cartilage and hyoid bone and in tact.

2. Cut injury of 3 x 5 cm x muscle deep, front and left side of neck Horizontal 5 cms below mandible and 2 cms front midline.

3. Abrasion of 2 x 1/2 cm right side of chin horizontal.

4. Abrasion of 3 x 1 cm under chin horizontal.

13. According to her, the cause of the death of the deceased No. 2 was due to cut throat injury and she issued Ex.P65 postmortem report. Practically, the medical evidence remained unchallenged. Medical evidence leaves no room to doubt that the deaths of both the deceased are homicidal in nature.

14. The prosecution relied upon the following circumstances:

1.Motive for the accused to commit the offence.

2. Physical evidence collected at the scene of offence, such as chance prints and strands of hair found in the right palm of deceased No. 1 collected at the scene of occurrence and expert evidence with regard to fingerprints and DAN analysis and morphological analysis of the hair.

3. Test identification parade conducted by the Magistrate for identifying the assailants.

4. Recovery of articles and cash in pursuance of statement given by A1 to A3.

5.Staying in the hotel one day prior to the incident and leaving after the incident.

6. Chance prints lifted from the car of the deceased No. 1 were tallying with the accused.

15. Motive, in a criminal trial especially in a case, which rests upon circumstantial evidence, is relevant. Proof of motive did not lend corroboration to the prosecution case. However, absence of motive or non-proof of motive does not always create a doubt on the prosecution case, if the circumstantial evidence adduced by the prosecution is otherwise considered reliable and trustworthy. No

doubt, motive is not an integral part of the crime, but it is only an aid for the assessment of criminality.

16. Deceased No. 1 was the owner of Patancheru Steel Limited. Admittedly, he was residing in Flat No. 301 of Mount Nasir Apartment, Lakdikapool, Hyderabad. Office of the deceased No. 1 is situated in Flat No. 302 of the same apartment, which is situated adjacent to Flat No. 301. As the wife of the deceased No. 1 was residing at Delhi, the deceased No. 1 alone was residing at Hyderabad. Admittedly, A1 was working in the factory of deceased No. 1. He was the driver of the car, which was being used by the General Manager-B.K.Varma (P.W.47), of the steel factory. It is not in dispute that the deceased No. 1 was residing for the last four years prior to the incident in the residential Flat No. 301. It is also not in dispute that the deceased No. 1 called A1 to his residence for the purpose of cooking food. A1 stayed in the residential Flat of deceased No. 1 for about 10 or 15 days. Thereafter, the deceased No. 1 called deceased No. 2 in place of A1 for cooking food. At that time, A1 was sent back to the factory. It is in the evidence that deceased No. 1 had a farmhouse at Gollur village of Maheswar Mandal. In the month of October, 2003, deceased No. 1 sold a part of the land situated at Gollur village to one Vinayak Rao (P.W.3). On receipt of consideration amount from P.W.3, P.W.1 took deceased No. 1 to the Registrar office for the purpose of registration of the land in the month of October, 2003. P.W.3 entered into an agreement with deceased No. 1 for sale of Ac.47.00 of land at the rate of Rs. 1,00,000/- per acre. On 02-10-2003, he sent three cheques in favour of Patancheru Steels Limited to the deceased No. 1 through Man Mohan Goud. On 06-10-2003 on behalf of Patancheru Steels Limited, deceased No. 1 executed a registered sale deed in favour of J.S.Gardens and developers, to which P.W.3 is one of the partners.

17. The evidence of P.W.3 further would go to show that at about 1.30 P.M. on 19-12-2003, he along with his father went to the flat of deceased No. 1 and paid an amount of Rs. 25,00,000/- towards sale consideration of remaining land out of Ac.47.00. At that time, one Mallikarjuna, office assistant and one servant were present. He handed over the suitcase to deceased No. 1. After verifying the cash, deceased No. 1 took the cash inside the bedroom. Sarpanch of the village, by name, Man Mohan Goud was already present in the Flat. Though the evidence of P.W.3 that he sent three cheques in favour of Patancheru Steels Limited on 02-10-2003 and the same has not been stated when he was examined by the police, however, the fact remains he handed over the cash of Rs. 25,00,000/- to deceased No. 1. Except giving a suggestion that he did not go to the house of deceased No. 1 on 19-12-2003 and paid the cash of Rs. 25,00,000/-, nothing has been elicited to discredit his testimony.

18. P.W.4 is the Sarpanch of Gollur village. He stated that father of deceased No. 1 purchased Ac.72.00 of land in his village. He is the mediator for sale of the land of the deceased No. 1 to P.W.3 and in his presence, negotiations were settled with regard to mode of payment, rate and time of registration. His

evidence would also go to show that on 19-12-2003 on telephone call of P.W.3, he went to the Flat of deceased No. 1 at about 11.30 A.M. and at about 1.00 P.M., P.W.3 and his father came to the Flat and paid an amount of Rs. 25,00,000/- and after counting the same, deceased No. 1 took the cash into his bedroom. No doubt, he has not stated before the police with regard to mode of payment, rate and duration for payment, but these improvements would not go to the root of the case because even the earliest version would go to show that an extent of Ac.47.00 of land was agreed to be sold to P.W.3 by deceased No. 1 in two phases. Except giving a suggestion that he did not go to the Flat of deceased No. 1 when P.W.3 paid an amount of Rs. 25,00,000/- in cash, nothing has been elicited to discredit his testimony. So, from the above evidence, it is clear that deceased No. 1 had received cash of Rs. 25,00,000/- from P.W.3 on 19-12-2003 i.e., three days prior to the murder.

19. P.W.5 is a resident of Ramachandrapuram. He knows one Shyamala, who is running a pan shop-cum-telephone booth, which is situated by the side of Patancheru Steel factory. He knows her as he used to go to her telephone booth to make telephone calls. He also stated that A1 was working as driver in Patancheru Steel factory and he knows him for about six months prior to the date of the incident. Four months prior to the date of incident, A1 informed him that there is lot of money in the factory and in the house of deceased No. 1 and sought his help in order to commit theft. He admonished A1 not to entertain such bad ideas. Two months thereafter, A1 again sought his help in order to commit theft from the factory and from the house of deceased No. 1. Again he admonished him. His house is located opposite to Patancheru Steel factory. It is suggested to him that he had no acquaintance with A1, but the same was denied. It is further suggested to him that he is a police informer of Ramachandrapuram and at the instance of police, he was deposing falsely, but the same was denied. He has no grouse or enmity against A1. It is quite possible for P.W.5 to come into contact with A1 as his house is located opposite to factory where A1 was working. Therefore, from his evidence, it can be said that A1 knows about availability of huge cash in the factory premises as well as in the Flat of deceased No. 1.

20. It is not in dispute that A2 is a native of Deegh Village, Ballabgadh Taluk, Faridabad District, Haryana State and A3 is residing in the same village. From the evidence of P.W.9, it is clear that a call was made to telephone No. 01133420654 to Delhi on 20-12-2003 at about 12.30 PM. Ex.P13 is the xerox copy of the bill furnished by him. No doubt, his evidence would not disclose that A1 made a call, but there is evidence on record, which would go to show that Delhi number 33420654 belonged to the father of A2. It is alleged that on receipt of said information, A2 and A3 came to Hyderabad from their native place on 21-12-2003 and occupied a room in Grand Dish Hotel. There is evidence on record, which would go to show that on the intervening night of 21/22-12-20003, both the deceased were murdered.

21. P.W.6 is running a hotel at Chandanagar. According to him, B.K.Varma, General Manager of Patancheru Steel factory used to stay in his lodge whenever he used to visit the factory. He knows A1 to A3. A1 was the driver of the car of B.K.Varma. He further stated that on 21-12-2003, A1 brought A2 and A3 to his lodge and they took a room No. 206. His evidence also would go to show that they vacated the room on 23-12-2003. He also identified A2 and A3 in the identification parade conducted by P.W.12- Magistrate. Simply because he was declared hostile by the prosecution, his evidence cannot be erased from the record on that ground, but such part of testimony, which inspires confidence can be taken into consideration for corroborating the other evidence. It is not in dispute that Exs.P5 to P9-records of the hotel contain the name of A1. There is no other reason for this witness to speak false against A1 to A3.

22. P.W.28 is a Receptionist-cum-Supervisor in Grand Dish hotel. His evidence would go to show that he knows A1. According to him, on 21-12-2003 afternoon A1 informed him through telephone to reserve a room as his friends were coming. He reserved Room No. 206 in the name of the driver of B.K.Varma. On the same day at about 9.00 PM, A1 came along with his two friends and occupied Room No. 206. He identified A2 and A3 as the persons who occupied those room. On 22-12-2003 at about 8.30 AM, he received a call from Room No. 206 where A2 and A3 occupied that they wanted him to make a STD call. They made five calls to New Delhi to the telephone No. 33420654. On the same day at about 10 PM, all the three persons went outside and they did not turn up till midnight. On the next day morning at 4 "o" clock, A1 came to the hotel and handed over the key of Room No. 206. He also identified A2 and A3 in the test identification parade conducted by P.W.12. The contents in Exs.P5 to P9 were written by P.W.28. Nothing has been elicited to discredit his testimony. Though A2 and A3 are strangers to him, he had an occasion to observe them sufficiently for a long time. Therefore, the physical features of A2 and A3 must have been imprinted in the mind of this witness so as to recollect the same and identify them at a later point of time.

23. P.W.12 is the XVII Metropolitan Magistrate, Hyderabad, at the relevant point of time, who conducted test identification parade, in the jail premises on 21-02-2004 at 4 P.M. On enquiry P.Ws. 6 and 28 identified A2 and A3.Ex.P8 is the test identification proceedings. According to him, there is a scar mark as "X" on the forehead of A2. Though he has not secured the persons having scar marks on the forehead, but it was not elicited from him that the scar mark is apparent on the forehead of A2. Therefore, the identification proceedings can be used to corroborate the evidence of P.Ws. 6 and 28 with regard to identification of A2 and A3.

24. The evidence of P.Ws. 6 and 28 would establish that A2 and A3 along with A1 occupied Room No. 206 at 9 P.M. on 21-12-2003 and they left the room at 9 P.M. on 22-12-2003. Ex.P4 is the telephone bill, which shows about making telephone calls. Ex.P5 is the occupancy chart. Ex.P7 is the bill for payment of food and

Ex.P8 is the occupancy chart. The room boy though is a competent witness to speak about the presence of A2 and A3 along with A1 during the relevant point of time of the incident, but the prosecution was not in a position to examine him because his whereabouts are not known. These witnesses have no grouse or enmity against the accused and they are totally independent witnesses. The physical features of A2 and A3 must have been imprinted in the minds of these two witnesses because the time gap between the date of occupying the room in a hotel and holding of test identification parade, is only 35 days. Therefore, the evidence would clearly go to show that A2 and A3 were present at Hyderabad from 9 PM on 21-12-2003 till 10 PM on 22-12-2003. The incident had taken place on the intervening night of 21/22-12-2003.

25. There is no dispute about the scene of occurrence. P.W.40 is the Inspector of Police, who examined the scene of occurrence in the presence of P.W.16 and seized incriminating material. He also seized six strands of black hair from the right palm of the deceased No. 1 and preserved the same in a small polythene cover and also collected blood samples from the bloodstains available in the bathroom. Ex.P63 is the scene of offence-cum-seizure panchanama.

26. The prosecution mainly relying upon collection of physical evidence at the scene of offence. P.W.14 is the Finger Print Expert, who went to the scene of offence at about 11 AM on 23-12-2003 along with Clues Team. He examined the articles at the scene of offence and found the chance prints available on the Teachers High Land Whisky bottle, steel almirah, cupboard door and also bathroom doorframes. After locating the chance prints on the whisky bottle, he applied black powder and two chance prints were on the bottle and he marked them as A and B. On the almirah, he applied white powder and two chance prints were located. He marked them as C1 and C2. He also applied black powder on cupboard and found one chance print, which is marked as "D". On the bathroom doorframe, he applied black powder and two chance prints were disclosed and he marked them as E and F. He got photographs taken by the photographer-Krishna Rao. On 24-12-2003, he received photographs of the chance prints. He examined and compared with the fingerprints of deceased No. 1, which were taken on 23-12-2003. The chance prints marked as C1 and C2 are not clear and therefore, they were unfit for comparison. He also compared the clear chance prints marked as A, B, D, E and F with the fingerprints of the deceased No. 1. He found that the photo chance prints A is identical with the fingerprint of deceased No. 1. On 18-01-2004 and on 23-01-2004, he received finger print slips of A1 to A3 for comparison with the chance prints. He compared the clear photo chance prints marked as B,D,E,F,H,J and K with the fingerprints of A1 to A3. The photo chance print marked as "H" is identical with the specimen left index finger impression marked as S2a on the slip marked S2 of A2. Similarly, the photo chance print marked as "J" is identical with the specimen left thumb impression marked S1a on the slip marked S1 of A1. The photo chance print marked as "B" is identical with specimen right index finger impression marked as S3a of the slip marked S3 of A3. The photo chance print marked as "K" is found identical with

the specimen right little finger impression marked S3b on the finger print slip marked S3 of A3. The remaining photo chance prints marked as D,E and F are not identical with any of the finger prints. His report is Ex.P33. He was cross-examined at length, but nothing has been elicited to discredit his testimony. Except suggesting that he did not develop the chance prints, nothing has been elicited. He also stated that no mediators were present at the time of developing chance prints at the scene of offence.

27. Similarly, on 26-12-2003, P.W.33, another finger print expert proceeded to Kandeshwar Rural P.S. and developed chance prints of Scoda Octavia car. The evidence of P.W.33 would go to show that he could not develop chance prints on the external portion of the car as it was disturbed due to rain. He developed chance prints available inside the car marked as "G" at the car rear view mirror and also chance print marked as "H" on the left front door glass inside the car. He also developed chance print marked as "J" at back seat left door glass inside and another chance print marked as "K" on front right door glass inside the car. He developed fingerprints on the above articles by applying black colour powder. He instructed P.W.19 to take photographs of the chance prints developed by him. He found that chance print marked as "G" is unfit for comparison, whereas H.J.K are fit for comparison. MO1 is the car from which he developed chance prints. Except suggesting that, he has not collected chance prints inside the car and he has not developed the chance prints, nothing has been elicited.

28. After arrest of the accused, P.W.44 obtained the fingerprints of A1 on 18-01-2004 and forwarded the same to P.W.14 for comparison. Similarly, P.W.44 obtained fingerprints of A2 and A3 on 23-01-2004 and forwarded the same to P.W.14 for comparison and report. Therefore, from the above evidence, it is clear that the fingerprints of A3 were found on the whisky bottle, which was seized from the house of the deceased No. 1. Similarly, the fingerprints of A1 and A2 were found inside the car of deceased No. 1.

29. It is vehemently contended by the learned senior counsel appearing for the appellants that no mediator was present at the time of developing chance fingerprints on the material objects and no mediator was present when P.Ws.43 and 44 obtained fingerprints of A1 to A3 and the police have not obtained any permission from the Court for obtaining thumb impressions of A1 to A3. Therefore, the evidence on this aspect has to be viewed with suspicion. He placed reliance on the decision reported in Mohd. Aman and Anr. v. State of Rajasthan 1997 SCC 777, wherein it was held thus:

Even though the specimen fingerprints of Mohd. Aman had to be taken on a number of occasions at the behest of the bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that u/s 4 thereof police is competent to take fingerprints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate.

Admittedly, police have not taken any permission from the Magistrate to take fingerprints of the accused. At this juncture, it is necessary to refer to Sections 4 and 5 of the Identification of Prisoners Act, 1920. Section 4 of the Identification of Prisoners Act, 1920, reads thus:

4. TAKING OF MEASUREMENTS, ETC. OF NON CONVICTED PERSONS-

Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner.

Section 5 of the Identification of Prisoners Act, 1920, reads thus:

5. POWER OF MAGISTRATE TO ORDER A PERSON TO BE MEASURED OR PHOTOGRAPHED: If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer.

Therefore, from the above provisions, it is clear that Investigating Officer or concerned Magistrate can take impression of the fingers of the accused. Measurements would mean include finger impressions and foot print impressions.

30. It is pertinent to refer to a decision reported in Himachal Pradesh Administration Vs. Om Prakash, , wherein it was held thus: "The reason why the reports of the Director of the Finger Print Bureau is treated as evidence without examining the persons giving the report is that the comparison and identification of Finger Prints has now developed into a science and the results derived there from have reached a stage of exactitude." P.W.14 in order to compare chance print available on the left front door glass inside the car is identical with the left index finger of Ex.A2. The expert has given ten ridge characteristics, which are collectively occurring in their relative position in the photo chance print marked as "H". Similarly, the chance prints available on the left side back door inside the glass when compared with thumb impression of A1 are similar because of ten ridge characteristics are collectively occurring in their relative position. There appears to be no difficulty in coming to the conclusion from the report that the points of similarity are those which can be acceptable for a positive finding.

31. It is also pertinent to refer to a decision reported in State of Haryana Vs. Jagbir Singh and Another, , wherein it was held thus: The second paragraph of Section 73 enables the court to direct any person present in the court to give specimen writings "for the purpose of enabling the court to compare" such writings with writings alleged to have been written by such person. The clear implication of the words "for the purpose of enabling the court to compare" is that there is some proceeding before the court in which or as a consequence of

which it might be necessary for the court to compare such writings. The direction is to be given for the purpose of enabling the court to compare and not for the purpose of enabling the investigating or other agency. "to compare". If the case is still under investigation there is no present proceeding before the court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding, which may later be instituted in the court. From the above decision, it is clear that either the police officer can obtain fingerprints during the course of investigation or by the orders of the Judicial Magistrate of I Class, when the proceedings are pending before the Court. Therefore, the contention of the learned senior counsel appearing for the appellants that the fingerprints of the accused were not taken with the prior permission of the Magistrate is wholly untenable in view of the fact that the fingerprints were taken by the police during the course of investigation. Hence, a distinction can be drawn at what point of time, police can take fingerprints of the accused. If the proceedings are pending before the Court, then only permission is needed to take the fingerprints of accused.

32. The other contention of the learned senior counsel appearing for the appellants is that the fingerprints were not taken in the presence of mediator. P.W.44 stated that on the instructions on 18-01-2004, he obtained fingerprints of A1 on Ex.P53. Similarly, on 23-01-2004, he obtained fingerprints of A2 and A3 on Exs.P54 and P55 respectively. He admitted that he has not tried to obtain the fingerprints of the accused in the presence of the Magistrate. The fingerprints slips of A1 to A3, which were marked as Exs.P53 to P55 do not bear the signatures of this witness, but his Head Constable signed. It is suggested to him that he has not obtained the fingerprints of A1 to A3 at any point of time, but the same was denied. The science of identifying fingerprints, thumb impression is an exact science and does not admit of any doubt or mistake. The expert, P.W.14 has given cogent and adequate reasons in Exs.P26 and 33 reports. Fingerprints of A3 were tallying with the chance print on the whisky bottle lifted from the scene of offence. Similarly, fingerprints of A1 and A2 are tallying with the chance prints lifted from inside the car of deceased No. 1.

33. During the course of investigation, P.W.16 who is the Scientific Associate, Hyderabad City Clues Team, rushed to the scene of offence at about 11.30 AM on 23-12-2003. By the time he reached the scene of offence, it was bolted from outside. Police on their arrival, opened the door. Therefore, scene of offence was totally preserved. As per the request of the Inspector, he collected physical evidence namely, blood stained carpet, blood stained cushion and also collected six strands of black hair available in the right hand palm of deceased No. 1. He handed over the above items to Inspector of Police.

34. P.W.40 is the person who observed the scene of offence. According to him, P.W.16 who collected six strands of black hair from the right hand palm of

deceased No. 1 preserved the same in a small polythene cover and the same was seized by him in the presence of mediators. No doubt, the evidence of P.Ws. 21, 24 and 25 who are the persons seen the dead bodies of deceased Nos. 1 and 2 at the first instance, does not indicate about finding of some hair in the right hand palm of deceased No. 1. Similarly, P.W.40 did not observe hair in the right hand palm of deceased No. 1. Seizure of six strands of black hair available in the right hand palm of deceased No. 1 was not specifically denied or disputed by the accused. Of course as seen from the evidence, there is no document to show that he collected black hair at the scene of offence and handed over the same to the Inspector, but at the same time the seizure of six strands of hair which was handed over to the Inspector, P.W.10 is not in dispute. His evidence coupled with Ex.P63 would go to show that P.W.16 has collected among other incriminating materials, six strands of black hair from the right hand palm of deceased No. 1 and preserved the same in a small polythene cover. Therefore, from the above evidence, it is clear that six strands of hair was seized. Six strands of hair were compared with the strands of hair of the accused. On receipt of requisition from the Assistant Commissioner of Police, P.W.17 collected 20 strands of hair from each of the accused from different areas of the skull and sealed and handed over the same to the Sub-Inspector of Police. It is not specifically denied that he has not collected sample strands of hair from A1 to A3. Practically, his evidence remained unchallenged.

35. Similarly, P.W.18 collected blood samples of A1 to A3 on 29-01-2004. P.W.18 is the Scientific Assistant, who conducted DNA fingerprint examination on 04-02-2004. He categorically stated that he received hairs of the three individuals in a sealed cover and also the blood samples of three persons. He conducted analysis and found that six strands of hair found in the right hand palm of deceased No. 1 was matching with allelic pattern of item No. 6, which is the blood sample of Naresh Kumar Paghat, who is no other than A3. Therefore, he opined that on his examination, the STR analysis conclusively prove that source of item No. 7 hair matches blood sample of Naresh Kumar Paghat, indicating that they belong to the same biological origin. Ex.P45 is the report given by him. Except suggesting that testing of hair is not completely developed science and the biological origin depends upon blood group and so many other factors, nothing has been elicited. As a matter of fact, P.W.39 received a polythene cover containing six strands of black hair along with letter of advice and covering letter, dated 19-01-2004, wherein it is specifically stated that hair, which was deposited by them has to be compared with the hair of the suspect after their arrest. Though A3 was arrested on 19-01-2004 at Deegh village, he was brought to Hyderabad on 22-01-2004. Therefore, it is impossible to plant the hair of A3 in the hand of deceased No. 1. If really, the investigating agency implicated A1 and A2 also, they would have placed the hairs of these two accused persons in the hand of the deceased No. 1 and if really P.W.18 wanted to perjure himself, nothing prevented him to opine that the hairs of A1 to A3 are similar to that of hair strands available on the right hand palm of deceased No. 1. This in our opinion, P.W.18 is a witness of truth

and he has deposed to the facts which are scientifically analysed by him. Therefore, the evidence of P.W.18 and his report-Ex.P45 can be accepted. Hence, the prosecution established that six strands of hair collected from the right hand palm of deceased No. 1 on 23-12- 2003 is proved to be that of hair of A3. This circumstance clinchingly shows about the presence of A3 on the intervening night of 21/22-12-2003. He is totally a stranger to deceased No. 1. He is not supposed to be present in the residential flat of deceased No. 1. Men may lie, but not the circumstances. There was no explanation as to why A3 has to present in the residential flat of deceased No. 1 who is not at all known to him.

36. With regard to arrest of the accused and seizure of cash and ornaments on the disclosure statement made by A1 to A3, the prosecution relied upon the evidence of panch witnesses who were present at that time. By 19-12-2004, P.W.3 handed over cash of Rs. 25,00,000/- and also gave some cheques in the presence of P.W.4 and others. Deceased No. 1 in turn handed over the cash of Rs. 25,00,000/- to P.W.25, who is working as Marketing Executive in the factory of deceased No. 1. As per the instructions of deceased No. 1, he kept the cash in the chest and locked. Deceased No. 1 checked the lock of the chest and had taken the keys of the chest and kept the keys in the black colour Samsonite briefcase. On the same day at about 3.00 P.M., he along with deceased No. 1, P.Ws.1 and 3 went to Maheshwar Sub Registrar's office in the car of deceased No. 1 for the purpose of registration. His evidence would further go to show that on 20-12-2003, deceased No. 1 instructed A1 to work at the factory. At about 12 noon, A1 left the house in order to go to the factory. Deceased No. 1 relieved A1 since deceased No. 2 was working under him as cook. On 23-12-2003, at about 10 A.M. while he was proceeding to the office, he received a phone call from P.W.1 to the effect that both deceased Nos.1 and 2 were murdered. Immediately, he contacted P.W.24, who is the friend of deceased No. 1 and went to the scene of occurrence. When he entered into the office room, he found the cash chest was opened and the cash of Rs. 25,00,000/- was found missing from the chest on 19-12-2003. Since he is the Marketing Executive of Patancheru Steel Factory owned by deceased No.1, it is quite possible for him to be present in the office. Therefore, there is every possibility for deceased No. 1 to ask this witness to keep Rs. 25,00,000/- in the cash chest. Nothing has been elicited to discredit his testimony.

37. P.W.27 is the wife of deceased No. 1. At the time of the incident, she along with her children was residing at Delhi. She stated that her husband had three mobile connections bearing Nos.9810002776, 9849700021 and 9849068778. Apart from that, he had BSNL telephone connection bearing No. 233234214. On 23-12-2003, when she tried to contact her husband, there was no response. Then she contacted P.W.24 on telephone and asked him to go to the office. Then P.W.24 informed her that her husband and deceased No. 2 were murdered. She found that three Nokia cell phones and one briefcase, zip bag, in which her husband used to carry cash were found missing. Similarly, two gold chains were found missing. She identified Mos.25 to 27, which are the Nokia cell phone

instruments belonging to deceased No. 1. M.O.6 is the briefcase and M.O.4 is the cash bag and M.Os.17 to 23 are the gold chains. It is suggested to her that P.W.24 did not speak to her and informed her about missing of huge cash and car, but the same were denied. It is specifically suggested to her that the cell phones, briefcase and gold chains do not belong to the deceased No. 1, but the same was denied. Similarly, P.W.3 who purchased the land from deceased No. 1, has specifically stated that he paid cash of Rs. 25,00,000/- to deceased No. 1 on 19-12-2003. Therefore, there is unimpeachable evidence, which would go to show that by the date of the incident, deceased No. 1 kept cash of Rs. 25,00,000/- in the chest. P.Ws.3, 25, A1 and P.W.1 were alone present at that time.

38. With regard to arrest of A1 and seizure of M.O.16-cash of Rs. 2,400/-, M.O.17-gold chain and M.O.18-visiting card of Grand Dish hotel, the evidence of P.W.11 would go to show that he is one of the mediators for arrest of A1 and seizure of certain articles under Ex.P5-observation-cum-seizure panchanama. After A1 was produced by Sub Inspector of Police, P.W.45 arrested A1 on 18-01-2004. Then he secured the presence of P.W.11 and another. Ex.P15 does not disclose about seizure of M.Os.16 to 18 on a disclosure statement made by A1. The fact was discovered by the police pursuant to the information given by the accused and if such disclosure statement was followed by recovery of any object, then such a recovery amounts to confession or not is relevant u/s 27 of the Indian Evidence Act, 1872. Admittedly, P.W.45 did not conduct any personal search of A1. Therefore, the recovery of M.Os.16 to 18 does not fall within the ambit and scope of Section 27 of the Indian Evidence Act, 1872.

39. With regard to arrest of A2 and A3, P.W.13 is one of the mediators who was present when the police seized cash of Rs. 13,00,000/-, M.O.24 and three Nokia cell phones under Ex.P61. In pursuance of the disclosure statement made by A3, cash of Rs. 6,500/- was seized under Ex.P64. No doubt, P.W.13 did not support the case of the prosecution. P.W.43 is the person who went to Ballabgadh Police and took assistance of local police and raided the houses of A2 and A3 and apprehended them at 4PM on 18-01-2004 and produced before P.W.45 at 11 PM. P.W.45 is the Investigating Officer who interrogated A2 and A3 and seized M.O.24 from A2 and M.O.28 from A3. P.W.43 who effected arrest of A2 and A3 did not prepare any special report. Except the oral testimony, there is no other evidence to show that he apprehended A2 and A3. The evidence of P.W.45 is that P.W.43 produced A2 and A3 before him in the presence of P.W.35 and another. In pursuance of confessional statement, A3 led the police and mediators to the house and voluntarily produced M.O.28 which contain cash of Rs. 6,50,000/- under different denominations and the same was seized under Ex.P60. Similarly, A2 led the police and mediators to the house and produced one black colour zip bag containing Rs. 3,00,000/- and three Nokia cell phones and the same were seized under Ex.P61.

40. P.W.23 is the mediator, who was present at the time of giving confessional

statement. His evidence would go to show that in pursuance of the confessional statement of A3, Rs. 6,50,000/- of cash was recovered at the instance of A3 at his house. Thereafter, A2 led police and mediators to his house and produced currency of Rs. 6,00,000/- in various denomination and also cell phones. He is totally an independent witness. He is a resident of Padmini Kheda of Faridabad District. He is not residing within the police station limits of Ballabgadh. Therefore, arrest of A2 and A3 and in pursuance of their confessional statement, recovery of cash is clinchingly proved beyond all reasonable doubt. No explanation is forthcoming from A2 and A3 for possession of huge cash. It is not the case of A2 and A3 that money seized from them belong to them. Therefore, seizure of money squarely falls under illustration 2 of Section 114 of Indian Evidence Act, 1872.

41. The prosecution further relied upon the evidence of P.Ws.35 and 37 for recovery of M.O.1-white plastic number plate of the car written as AP 23-2520 and M.Os.35 and 36- two knives, but they did not support the case of the prosecution. The evidence of P.W.44 would go to show that on 30-01-2004 as per the instructions of Investigating Officer, he proceeded to Adilabad along with A2 and A2 led the police and mediators to the old check post and as pointed out by A2, he seized two blood stained knives in the presence of mediators under Ex.P92-seizure panchanama. Thereafter, A2 further led them towards Amaravathi and at his instance, he seized two number plates by the side of the road from the bushes under ExP93. The evidence of P.W.45 would go to show that he deputed P.W.42 along with A2 to Adilabad, but the said fact was disbelieved by the trial Court by giving cogent reasons because M.Os.2, 35 and 36 were recovered on 31- 01-2004 though A2 and A3 were arrested on 19-01-2004.

42. Another circumstance relied upon by the prosecution is recovery of M.Os. 25 to 27 at the instance of A2. A2 led the police to the house and took out three cell phones from the bag and produced before P.Ws.44 and 45 and the same were seized under Ex.P61-panchanama. The descriptive particulars of the cell phones have been specifically mentioned in Ex.P61. P.W.27, who is no other than the wife of deceased No. 1 identified M.Os. 25 to 27 as belong to her husband. The evidence of P.Ws.27, 44 and 45 is very clear about seizure of M.Os.25 to 27. There is no explanation as to why the cell phones belong to deceased No. 1 were concealed in the house of A2. M.O.15 is the subscriber information model card belonging to deceased No. 1. The cell phones were supposed to be in possession of deceased No1. Unless they were stolen on the date of incident from flat Nos. 301 and 302 after the incident by the assailants of deceased No1, they would not be in the custody of A2. When the prosecution established beyond all reasonable doubt that M.Os. 25 to 27 belong to deceased No. 1 were found in the possession of A2, the burden shifts to the accused to explain the same u/s 114-A of the Evidence Act. If he has not explained the possession of stolen articles, the presumption is that he is receiver of stolen property or a thief.

43. The case of the prosecution is that A1 hatched up criminal conspiracy with A2

and A3 at Deegh village to commit murder and also to commit theft of huge cash and valuables. The essential ingredient of criminal conspiracy is an agreement to commit an offence. It is very difficult to adduce direct evidence to prove the conspiracy, which is held in secrecy. Therefore, it is a matter of an inference to be drawn from the proved circumstances. There is evidence on record, which would go to show that A1 made a telephone call to A2 from Hyderabad. Thereafter, A2 and A3 came to Hyderabad, from their native place on 21-12-2003 and occupied a room in Grand Dish hotel. Next day after the murder, they left Hyderabad. Therefore, these circumstances would clearly go to show that there was conspiracy entered in between A1 to A3 to do an offence. Further, the last seen circumstance as adduced by the prosecution was disbelieved by the trial Court. The evidence of P.W.30 is found to be unreliable and un-trustworthy. Therefore, the trial Court has not placed any implicit reliance on his evidence by giving cogent reasons.

44. No doubt, the chance fingerprints of A1 and A2 were not found at the scene of offence, but the trial Court gave a finding that the chance prints collected at the scene of offence compared with the fingerprints of A1 to A3 are similar and it is a vital clinching circumstance to prove the presence of A1 to A3 on the intervening night of 21/22-12-2003 in the flat of deceased No. 1. But that finding is not correct. Only the chance prints lifted from the scene of offence is similar to that of the fingerprints of A3 alone. Similarly six strands of hair found on the right hand palm of deceased No. 1 was found similar when it was analysed and tested with the strands of A3. Therefore, the presence of A3 at the scene of offence is established beyond all reasonable doubt. Similarly, though there is no evidence to show that A1 and A2 were also present, but at the same time their presence can be inferred from the proved circumstances of the prosecution case. A1 to A3 stayed in Grand Dish hotel before the incident and left the hotel on the next day of the incident. The cash seized from the possession of A2 and A3 would suggest the presence of A2 and A3 at the scene of offence. There is every possibility for A1 to present at the scene of offence because he is the man behind the conspiracy who knows about paying of huge amount of Rs. 25,00,000/- by P.W.3 and availability of cash in the office chest of deceased No1. There is evidence on record, which would go to show that A1 made a telephone call to A2 on 20-12-2003. The scoda car belonging to the deceased No. 1 was abandoned at a place within the police station limits of Khandeswar Rural P.S. So all the circumstances relied upon by the prosecution are cogently and firmly established so as to infer that the murders were committed by A1 to A3 alone and none else. All circumstances unerringly pointing the guilt towards the accused and within all human probability murders must have been committed by A1 to A3 and none else.

45. No doubt, there is no evidence to show that the accused entered into flat of the deceased No. 1 prior to the incident or on the date of the incident or leaving the flat after the incident. The watchman and other flat owners were not examined. If the watchman and other residents of flats had seen the accused

going or coming from the flat of the deceased No. 1, then certainly they have to be examined. The watchman and other residents of flats have not seen the accused entering or coming out of the flat at the relevant point of time. Their non-examination would not in any manner affect the prosecution case. Similarly, huge cash nearly Rs. 20,00,000/- seized from the possession of A2 and A3, was not shown to be cash that was given by P.W.3 to deceased No. 1, but at the same time, the circumstances do indicate that in all probability the cash seized from the possession of A2 and A3 is the cash that was given by P.W.3 to deceased No. 1. There is no scope or possibility for any third person to commit theft of cash from the chest in the office of deceased No. 1. In view of the fact that it is a murder for gain, the assailants after committing the murder, must have committed robbery. Therefore, for the aforesaid reasons, we have no hesitation to hold that the prosecution proved its case beyond all reasonable doubt for the charges levelled against the appellants. The trial Court after an elaborate consideration of evidence on record, rightly found the appellants guilty. None of the findings is shown to be perverse or contrary to law. Therefore, we do not find any merits in this appeal and the same is liable to be dismissed.

46. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 17-04-2006, in Sessions Case No. 429 of 2004, on the file of the I Additional Metropolitan Sessions Judge, Hyderabad.