

**(1987) 12 KAR CK 0006**

**In the Karnataka High Court**

**Case No :** Criminal Application No's. 315 and 365 and 70 of 1986

K.T. Mohammed

APPELLANT

Vs

State of Karnataka

RESPONDENT

**Date of Decision :** 09-12-1987

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 120 B, 302, 34, 392

**Citation :** (1988) ILR (Kar) 1129 : (1987) 3 KarLJ 407

**Hon'ble Judges :** Ramakrishna, J;Desai, J

**Bench :** Division Bench

**Advocate :** H.G. Ramesh, B.V. Acharya and Basavalingappa, for the Appellant;  
B.R. Nanjundaiah, Addl. S.P.P., for the Respondent

## Judgement

Desai, J.—These three appeals arise out of the Judgment dated 21-6-1985 of the Sessions Judge, Shimoga, in Sessions Case No. 37/83 on his file. They arise in this way:

K.T. Mohammed, aged about 25 years, and T.S. Chandrashekhar, aged about 24 years, both residents of Sagar Town, were accused Nos.1 and 2 respectively in the said case. They were tried for offences punishable under Sections 120B IPC, 302 read with 34 IPC (on four counts) and Section 392 IPC. The first charge against them was that on 27-8-83 at Mangalore they agreed to do an illegal Act, to wit, to rob and murder deceased A.S. Lokesh who was working as Salesman of Rythabandhu Gramodyoga, Anandapura and in pursuance of the said conspiracy the said offences of robbery and murder of A.S. Lokesh were committed on the road between Thirthahalli and Arga Village and thereby committed an offence punishable u/s 120B IPC. They were also charged for committing the murders of Lokesh, Manjunath, Vishwanatha Rai and Shivappa on 28-8-83 between 2 a.m. and 6 a.m. at a place near Sunkadahole on the highway between Thirthahalli and Arga in furtherance of their common intention and the said conspiracy u/s 302 read with Section 34 IPC on four counts. The charge of robbery against them was that they on 28-8-1983 between 2 a.m. and 6 a.m at a place near Sunkadahole

on the highway between Thirthahalli and Agra, robbed Lokesh of Rs. 1,15,000/- and thereby committed an offence punishable u/s 392 IPC in furtherance of their common intention and the said conspiracy.

2. Both the accused pleaded not guilty to the said charges and claimed to be tried. P.Ws.1 to 63 were examined and Exs.P.1 to P.112 and M.Os.1 to 98 were produced on behalf of the prosecution. Exs.D.1 to D.30 were got marked on behalf of the accused.

3. The defence of both the accused was one of total denial.

4. Accepting the prosecution evidence, the learned Sessions Judge convicted both of them under Sections 120B IPC, 302 read with Section 34 IPC (on four counts) and Section 392 IPC and sentenced each of them to undergo imprisonment for life for offences punishable under Sections 120B IPC and 302 read with 34 IPC (on four counts) and to undergo rigorous imprisonment for 10 years for the offence of robbery punishable u/s 392 IPC. accused No. 1 has prepared Cr.A.No. 70/86 and accused No. 2 has preferred Cr.A.No. 315/85 against the said conviction and sentences. The State has preferred Cr.A.No. 365/85 for enhancement of the sentence of imprisonment for life imposed on the accused for the murders of the aforesaid four persons and for imposing the sentence of death.

5. As all the three appeals arise out of the same Judgment, they were heard together and this Judgment will dispose of all the three of them.

6. The appellants in Cr.A.Nos.70/86 and 315/85 will be hereinafter referred to by their rank as accused in the trial Court.

7. The prosecution case may be briefly stated as follows:

Rythabandhu Gramodyoga and A.R.S. Gramodyoga are rice-milling industries situated at Anandapura of Sagar Taluk of Shimoga District. Both of them are partnership firms and Sri. Subbanna Naik and his son Sri. Jagadisha Naik are the partners. The said firms procure paddy in the open market and manufacture boiled rice and beaten rice and they sell their products at Mangalore and Kasargod. Deceased Lokesh was employed as writer in Rythabandhu Gramodyoga and deceased Manjunath was employed as driver in the said concern. Deceased Vishwanatha Rai was employed as driver and deceased Shivappa was employed as writer in Rythabandhu Gramodyoga. accused Nos. 1 and 2 were also working in Rythabandhu Gramodyoga as drivers for about 1 1/2 years and they had left that job about 3 months prior to the incident. Thereafter, accused No. 1 had purchased a lorry bearing Reg.No. MEG 7583 from Umar Saheb of Coondapur after taking loan from Aruna Auto Finance, Bangalore after executing hire purchase agreement (Ex.P.39) on 10-8-1983. accused No. 2 had taken a loan of Rs. 5,000/- from Leena D'Souza (P.W.23) in July 1983 for the same purpose. They were transporting the goods of others for hire in the said lorry.

8. Deceased Lokesh had left for Kasargod in a hired lorry on 24-8-83 with a load of beaten rice belonging to Rythabandhu Gramodyoga for sale in Kasargod. Although he sold the beaten rice he could not recover the amount and so he was held up at Kasargod. In the meanwhile, lorry Nos. CNS 4477 and CAA 2177 and MEG 6999 belonging to Rythabandhu Gramodyoga arrived at Kasargod on 26-8-83 with loads of boiled rice. Rambhat (P.W.44), deceased Manjunath, Vishwanatha Rai and Shivappa, driver Gangadhara (P.W.42) and conductor Prashantha went to Kasargod in the said lorries. Rambhat (P.W.44) sold on 27-8-83 two lorry loads of boiled rice to Abdul Khader (P.W.45) at Kasargod and the other load was sold to Nasib Traders and N. Abubakar. Rambhat (P.W.44) realised a sum of Rs. 65,000/- on 27-8-83 in the morning itself from Abdul Khader (P.W.45). He recovered Rs. 8,000/- from Abdulla (P.W.46) and Rs. 6,000/- from Abdul Rahiman (P.W.47). Deceased Lokesh realised the amount of Rs. 33,000/- from Devendra (P.W.48) on 27-8-83 towards sale price of beaten rice and another sum of Rs. 12,000/- from him by way of advance for another load of beaten rice. Thereafter, on 27-8-83 at about 1-30 p.m. Rambhat (P.W.44), four deceased persons, Lokesh, Manjunath, Vishwanatha Rai and Shivappa, Gangadhar (P.W.42) and conductor Prashanth left Kasargod for Anandapur via Mangalore in three lorries bearing Reg. Nos. CNS 4477, CAA 2177 and MEG 6999 and went to their branch office at Mangalore and reached Mangalore at 3 p.m. Rambhat (P.W.44) and deceased Lokesh were sorting out the currency notes of different denominations in their respective possession and were preparing separate note bundles. They put the figure noting the amount in each bundle with their respective initials on the first note in almost all the bundles of currency notes. The bundles prepared by Lokesh were bearing his initials as "ASL" and the bundles prepared by Rambhat were bearing his initials as "PNR". Others excepting Manjunath were resting and Manjunath had gone out for some time. On that day, both the accused were at Mangalore. accused No. 2's brother had sustained injuries in an accident and he was being treated in a hospital at Mangalore.

9. T.S. Chandrashekhar (accused No. 2) had made enquiries with Jayavantha Sait (P.W.49) about the deceased. Thereafter, at about 4-30 p.m. accused No. 2 had gone to the branch office of Rythabandhu Gramodyoga at Mangalore and had seen deceased Lokesh and Rambhat (P.W.44) counting and bundling the currency notes. He had talked to deceased Manjunath also. On 27-8-83 at about 11 a.m. accused Nos. 1 and 2 had approached Mangesh Pai (P.W.50) and made enquiries with him as to whether there was any load to Shimoga for their lorry bearing Reg No. MEG 7583. P.W. 50, in turn, made enquiries with Sainath Traders and secured a load of 240 bags of potash to be transported in the said lorry of the accused to Shimoga. The accused left Mangalore on that day in lorry No. MEG 7583 and called as "Zubeda Express" with the load of Potash at about 6 p.m. and an entry to that effect was made as per Ex.P.77(a) by Bhaskar (P.W.52) who was working as clerk in the Commercial Tax Check Post at Baikampady then at about 6-40 p.m. on that day on their way to Shimoga when the said lorry passed near

that Check Post.

10. At about 8 p.m. on 27-8-83 four deceased persons, Gangadhar (P.W.42) and Rambhat (P.W.44) left Mangalore in three lorries of Rythabandhu Gramodyog bearing Reg.Nos. CNS 4477, CAA 2177 and MEG 6999. Rambhat and Manjunath were inmates of the first lorry which went ahead of two other lorries. accused Nos. 1 and 2 stopped the lorry in which Rambhat and Manjunath were travelling at Udupi bypass and told them that their lorry "Zubeda Express" was having trouble and that they would come after getting it repaired. Driver Gangadhar and conductor Prashanth left for Anandapur via Coondapur since their lorry was bigger in size and it would be inconvenient to take it via Agumbe. Both the accused stopped their lorry also near Bhadrageiri approach little beyond Udupi bypass and told them also the something as they had told to Rambhat and Manjunath. Lorry bearing Reg.No. CAA 2177 which left Mangalore with Lokesh, Shivappa and Vishwanatha Rai reached Shivapura at midnight time. Earlier at 11 p.m. the lorry in which Rambhat and Manjunath were travelling had reached Shivapura. Rambhat who was to go to Anandapura, received a message at Shivapura that he was required to go to Kasargod along with the loaded lorry bearing Reg. No. CNG 4477. Therefore, he handed over the amount of Rs. 71,000/- and the chit containing the accounts (M.O.85) to Lokesh and Lokesh kept the same in his leather bag (M.O.84) along with the amount of Rs. 44,000/- which he had. Since Ramabhat was required to go to Kasargod, Lokesh came to the lorry bearing Reg. No. CNS 4477 which was being driven by deceased Manjunath to Anandapura. Deceased Vishwanatha Rai and Shivappa occupied lorry bearing Reg.No. CAA 2177. They left Shivapura after midnight to go to Anandapura via Hebri, Agumbe and Thirthahalli. The accused persons who were waiting for an opportunity, abandoned their lorry bearing Reg.No. MEG 7583 at Hebri and joined Lokesh and Manjunath in lorry bearing Reg.No. CNS 4477. The said lorry and another lorry bearing Reg. No. CAA 2177 were going to Anandapura via Thirthahalli. The said lorries were stopped near the hotel of Lakshmikantha Padiyar (P.W. 11) at Thirthahalli and all the six persons had tea there. Thereafter, the said lorries proceeded towards Anandapura. When lorry bearing Reg. No. CNS 4477 reached a place near Nerale, it was stopped and the accused persons did away with the lives of Lokesh and Manjunath by assaulting them with the wooden piece called "Katte" (M.O.1) and knife (M.O.81) "and robbed Lokesh of the amount of Rs. 1,15,000/- which he had kept in the leather bag (M.O.84). The accused took the lorry and parked it by the side of the road. At that time, the other lorry bearing Reg.No. CAA 2177 was perhaps coming from behind or had been halted a little distance behind lorry No. CNS 4477. Thinking that they would be apprehended if they left Shivappa and Vishwanatha Rai alive, the accused got into the cabin of the said lorry and did away with the lives of Vishwanatha Rai and Shivappa with the wooden pieces (M.Os.33 to 35) which were being used for keeping behind the wheels for stopping the lorry. Thereafter, the accused drove the lorry No. CAA 2177 upto Southahalla near Waramballi where it was got stuck in the mud and there they abandoned the same and they

alighted from the lorry and went away as stated by Motappa Gowda (P.W. 14). Motappa Gowda (P.W. 14) could not identify them and he only saw two persons getting down the lorry and going away. The accused were seen going towards Jayanagar at about 6 a.m. on 28-8-83 by Shankarachari (P.W.15). At Jayanagar, the accused purchased beedies from Nagesh (P.W. 16) and they had tea at 6-30 a.m. in the hotel run by the father of Raghunath (P.W. 17) at Jayanagar. Thereafter, both the accused travelled in lorry No. MYG 4179 of Sheik Peer (P.W. 18) from Jayanagar to Mastikatte.

11. At about 9 a.m. Gnanendra (P.W.1) received information that a lorry was standing near Nerale by the side of the road and that there were two dead bodies in the same. He passed on that information over the phone to B.R.Umesh (P.W.62) PSI of Thirthahalli police station. On receiving that phone message, the PSI went to the spot along with Gnanendra (P.W.1). P.W.1 also informed Shankaranayaka (P.W.43) who was working as Manager of Rythabandhu Gramodyoga over the phone about the incident. Earlier, P.W.42 and conductor Prashant had told P.W.43 that the other two lorries were coming via Agumbe. On receiving the phone message, P.W.43 went to Agra in a van and then to the spot near Nerale where lorry bearing Reg.No. CNS 4477 had been stopped. He saw the dead bodies of Lokesh and Manjunatha lying in a pool of blood with injuries. The PSI and P.W.1 were also there. P.W.43 gave a complaint as per Ex.P.48 to the PSI (P.W.62) who registered a case in Crime No. 112/83 of Thirthahalli Police Station and submitted FIR as per Ex.P.88 to the jurisdictional Magistrate. P.W.62 took up investigation. On 28-8-83 Bangari (P.W. 10) who is the brother of deceased Shivappa heard rumour in the bus-stand at Anandapura that his brother had been murdered. Then, he went to Nerale and saw the dead bodies of Lokesh and Manjunath. There, he was informed that another lorry was standing at Varamballi with two dead bodies in the cabin. He went there and saw the dead bodies of his brother Shivappa and Vishwanatha Rai in lorry bearing Reg.No. CAA 2177. Thereafter, he went to the police station, Hosanagar, as that spot was within its jurisdiction and gave his complaint as per Ex.P.22 to the PSI Nyamegowda (P.W.61) who registered a case in Crime No. 1 10/83 of Hosanagar police station and submitted FIR as per Ex.P.89 and took up investigation. Further investigation was taken up by the CPI Sharif (P.W.63). PSI (P.W.13) and others found both the accused in their respective houses on 30-8-83 and apprehended them and produced them before the CPI at about 3 p.m. on that day. In the meantime the inquests over the dead bodies were held and they were subjected to post-mortem examination. The CPI arrested the accused when they were produced before him. He searched the person of accused No. 1 in the presence of P.W.1 and another. He found a sum of Rs. 740/- (M.O.13) in his pant pocket. Out of the said sum, there was one 100/- rupee note and on it the figure Rs. 10,000/- had been written and the initials "PNR" were found below it. There were also two keys of tiger lock and they were left with him. A sum of Rs. 915/- (M.O.14) was found in the pant pocket of accused No. 2. There was a switch key of a lorry and another key in his pant pocket and it was left with him. M.Os.13

and 14 were seized under Ex.P.3.

12. During interrogation, accused No. 1 told him that he had kept a sum of Rs. 63,900/- in a trunk in his house and had locked it; that he had kept his bloodstained clothes beneath the tarpaulin over the cabin of the lorry and that he would produce them as per Ex.P.90. He also told him that he had thrown the leather bag in Hulikal-Balebare Ghat and that he would show it as per Ex. P.92. He also told him as per Ex.P.91. accused No. 2 told him during interrogation that he had kept Rs. 49,000/- in a plastic bag and had kept it in a big pot in his house and that he had spread his clothes on a rope for drying as per Ex.P.93. He also told him that he had thrown a knife in the forest as per Ex.P.94. He also told him that he had thrown a satchel containing clothes and the money leather bag in Hulikal Ghat and that he would show all those spots as per Ex.P.95. The PSI (P.W.59) took the finger impressions of both the accused as per Exs.P.63 and P.64 respectively. The Finger Print Expert (P.W.51) went there on 28-8-83 on receiving the radio message and examined the lorry No. CNS 4477 by using grey powder. He found one chance-print (Q-1) on the left door glass plane. He also found one chance-print (Q-2) on the right side door glass. He also found a chance-print (Q-3) on the steering. Another chance-print (Q-4) was found on the left side steel rod. Another chance-print (Q-5) was found on the right side steel rod in the cabin of that lorry. He developed all of them with the help of adhesive transparent lifting tape and fixed them on the plane glasses. A panchanama as per Ex.P.2 was drawn regarding the same in the presence of P.W.1 and another. On comparison of the chance-prints with the admitted finger impressions of accused Nos. 1 and 2 as per Ex.P.63 and P.64 respectively. P.W.51 found that the lofted chance-print marked by him as "Q-1" was identical with the left middle finger marked by him as "A-1" in Ex.P.63 pertaining to accused No. 1. He also found that the chance-print marked by him as "Q-4" was identical with the left ring finger print marked by him as "A-2" in Ex.P.63. He also found that the chance-print marked by him as "Q-2" was identical with Ex.P.64(a) marked by him as "A-3" i.e., of accused No. 2.

13. On 30-8-83 at about 5 p.m. the CPI (P.W.63) went with accused Nos. 1 and 2 in a jeep to Sagar Town Police Station and reached there by about 5-30 p.m. He secured panchas, one of whom was Subhaschandra (P.W.12). Then accused No. 2 took the CPI and the panchas to his house. It was locked. accused No. 2 opened it with the key he had and took them inside his house to a room where there was a big aluminium pot. accused No. 2 removed the pots which had been kept above that aluminium pot and took out a hand bag and produced it. The hand-bag contained 8 bundles of currency notes. On the first note in each of those bundles the figure of the amount had been written and the initials "ASL" or "PNR" had been written. The total amount in the bag was Rs. 49,000/-. The plastic bag produced by the accused is M.O.45. The bundles of currency notes are at M.Os.46 to 53. They were seized under Ex.P.23. The accused also produced a shirt (M.O.55) and a pant (M.O.54) which had been spread on a rope in that room. There were bloodstains on them. They were also sealed and seized under

the same mahazar. During that time accused No. 1 had been kept in the town police station at Sagar. Thereafter, accused No. 1 lead the CPI and the panchas to his house at Sagar. The house was bearing No. 9/50(1). accused No. 1 took them to a room where there was a wooden stand and on it a trunk was kept. On that trunk there were suit-cases. accused No. 1 kept those suit cases on the ground. Thereafter, he opened the lock of the trunk with the key he had. The trunk contained some clothes. After removing those clothes, a plastic bag (M.O.74) was found. It was taken out and produced by accused No. 1. It contained 18 bundles of currency notes (M.Os.56 to 73). The first currency note of some of those bundles contained the figure of the amount and the initials "ASL" or "PNR". The value of those currency notes was Rs. 63,900/-. The lorry "Zubeda Express" bearing Reg.No. MEG 7583 had been parked in front of his house. accused No. 1 after removing the tarpaulin over the cabin of that lorry, took out a pant (M.O.75) and the bush-shirt (M.O.76) and they were produced before the CPI. They were bloodstained. All those articles were seized under Ex.P.24. He marked those bundles in red ink serially as directed by the Magistrate. He prepared the hand-sketch of the house of accused No. 1 as Ex.P.96. He also prepared the hand-sketch of the house of accused No. 2 as per Ex.P.97. He also seized the lorry bearing Reg.No. MEG 7583 under Ex.P.24. Thereafter, he returned to the Sagar Town police station.

14. On 30-8-83 he subjected the seized property under P.F. Nos.87 and 88 and he produced them before the J.M.F.C. and obtained permission to retain them. On 31-8-83 he secured panchas, one of whom was P.W.57. Then both the accused took them to a cross road near Horana village. There were "goni" trees. accused No. 2 led the CPI and the panchas to a spot in that forest. P.W.62 was also with him then. All of them searched that area. Then P.W.62 found a knife (M.O.81) there. It was bloodstained. It was sealed and seized under Ex.P.41.

15. accused No. 1 had sustained an injury on his 3rd finger and he sent accused No. 1 to the Jayachamarajendra Hospital at Thirthahalli on 1-9-83. Then, the accused led the CPI to a shop of P.W.25 at Mastikatte from whom they had purchased plastic bag (M.O.74) on 28-8-83 at about 7-45 a.m. The CPI recorded the statement of P.W.25. Then, both the accused led the CPI to the beedi shop of P.W.26 from whom the accused had purchased a pack of cigarettes on 28-8-83 at about 7-45 a.m. The C.P.I. recorded his statement. Then, both the accused led the CPI to the hotel of Madhavarao (P.W.27) where, the accused had taken tea on 28-8-83. The CPI recorded his statement. Thereafter, both the accused led the CPI to Dharmaraya Prabhu (P.W.28) from whom the accused had purchased tickets for travelling from Mastikatte to Siddapur in Gajanana bus. The CPI recorded his statement. Then the CPI went with the accused to Hosanagar police station. There, he secured Shankarachari (P.W.15) and recorded his statement.

16. On 2-9-83 the CPI went with the accused and his staff to Hulikal check-post by about 8-30 a.m. and secured panchas, one of whom was Parameshwara (P.W.35). Then, accused No. 1 led him and the panchas along Hulikal Siddapur

Ghat road to a distance of 5 Kms. and pointed out a spot. That spot was searched by the panchas and the subordinates of the CPI as the CPI thought that it was not proper to ask the accused to get down the steep ghat of about 300 ft. There, the leather bag (M.O.84) and the cloth bag (M.O.82) were found. M.O.84 contained the accounts chit (M.O.85). The cloth bag (M.O.82) contained two khaki pants (M.Os.77 and 78), one white terrycot shirt (M.O.79) and one rose design shirt (M.O.80) and one lungi (M.O.83). They were seized under Ex.P.38. Thereafter, the C.P.I. went with accused Nos.1 and 2 to Mangalore where they led him to the shop of P. W.50 and the CPI recorded his statement.

17. On 3-9-83, the accused lead the CPI to the shop of Jayavantha Sait (P.W.49) and the CPI recorded his statement. Thereafter, both the accused lead the CPI to the By kampady check-post where K. Bhaskar (P.W.52) was working and he recorded the statement of P.W.52. He also verified the entry at Ex.P.77(a) in Ex.P.77. Then, he went with the accused to Udupi bypass. There, the accused led the CPI to the shop of Chandra (P.W. 19) who was selling "omelet" near Kinmulki circle near Udupi and the CPI recorded his statement. Thereafter, the C.P.I. went with the accused to Hebri. There, he recorded the statements of P.Ws.20 and 21. Then he went with the accused to Agumbe and camped there.

18. On 4-9-83, the CPI went with the accused to Koteswar and reached there at about 2 p.m. Then, both the accused led him to the wine shop of Ramachandra Shetty (P.W.29) and the CPI recorded his statement. Thereafter the accused led him to the hotel of Vijaya (P.W.32) where he was working as supplier and the CPI recorded his statement. Then, the CPI went with the accused to Thirthahalli. On 5-9-83 the CPI recorded the statement of Srinivasa Murthy (P.W.40) and obtained Ex.P.44. On 8-9-83, the CPI visited Shimoga and recorded the statement of Chikkanna Gowda (P.W.22). On that day, he received the report of Finger Print Expert as per Ex.P.68. On 12-9-83 he forwarded the seized articles to the Chemical Examiner along with the invoice (Ex.P. 100) and received the report of the Chemical Examiner as per Ex.P. 103 and the report of the Serologist as per Ex.P. 105. On 14-9-83, he recorded the statement of K.Narasimha (P.W.56) and another. On 15-9-83, he recorded the statement of M. Shanmukhappa (P.W.55) and another. On 17-9-83 he recorded the statement of Devendra (P.W.48) and verified the entry Ex.P.62(a) in the day-book (Ex.P.62). He received the post-mortem reports. On 24-8-83 he recorded the statement of Sheik Peer (P.W.18) as he could not secure him earlier. On 26-9-83, he requested the Taluka Executive Magistrate, Shimoga (P.W.41) to hold the identification parade of the accused for P.Ws. 16, 17 and 18 by Ex.P.47. On 28-9-83, he recorded the statement of P.Ws.23 and 24 and obtained Exs.P.20 and P.28 from P.W.24. He sent M.Os.1 and 81 to the Medical Officer, Thirthahalli and obtained his opinion as to whether they could cause injuries noticed by him on the dead bodies of Lokesh and Manjunath. On 23-11-83 he recorded the statements of P.Ws.45 and 46 and verified the entries at Ex.P.56 (a) and Ex.P.59. He also recorded the Statement of P.W.47 and verified the entries in Ex.P.60. The I.O. found that both the offences had been committed at about the same place and

as the accused and witnesses were common, he investigated both the cases together. After completing the investigation, the CPI(P.W.63) filed two charge-sheets against the accused persons- one in the Court of J.M.F.C. Thirthahalli relating to Crime No. 112/83 of Thirthahalli police station and another in the Court of Additional J.M.F.C., Sagar relating to Crime No. 110/83 of Hosanagar police station.

19. In both the cases, the accused were committed to the Court of Session, Shimoga, for taking their trial. The case against the accused committed by the Additional J.M.F.C. Sagar was numbered as Sessions Case No. 11/84 and the case of the accused arising out of the committal order passed by the J.M.F.C. Thirthahalli was numbered as Sessions Case No. 37/83. On an application filed by the Public Prosecutor in Sessions Case No. 11/84 praying for clubbing Sessions Case No: 11/84 with Sessions Case No. 37/83 and for recording common evidence in Sessions Case No. 37/83, the learned Sessions Judge, after hearing both sides, took the view that from the totality of circumstances reflected from the records of the case and the documents produced therewith in the respective cases, there were grounds for presuming that there was proximity of time, unity of place, community of purpose and continuity of action with reference to the acts alleged in each of the charge-sheets against the accused persons and relying upon Section 220(1) of Cr.P.C. and the decision in L.N. Mukherjee Vs. The State of Madras, ; Banwari Vs. State of Uttar Pradesh, and KRISHNA MURTHY v. ABDUL SUBHAN AIR 1961 Mys 128 directed that the accused in Sessions Case No. 11/84 and Sessions Case No. 37/83 shall be charged with and tried at one trial for all the offences alleged against them in both the cases, in Sessions Case No. 37/83. The correctness of that order was not challenged before us by the learned Counsel for the accused.

20. That deceased Manjunath, Lokesh, Vishwanatha Rai and Shivappa died a homicidal death cannot be disputed in view of the evidence on record and indeed it was not disputed before us by the learned Counsel for the appellants-accused. But, as it would be useful to bear in mind the nature and number of injuries sustained by each of the deceased we would like to make a mention of the medical evidence on the point.

21. The evidence of Dr. Chandrashekhar (P.W.31) and his post-mortem report (Ex.P.32) reveal that deceased Manjunath had sustained the following external injuries:

- 1) Incised wound 1 1/2" x 1/4" on the scalp, bone deep over the occipital bone on the right side, 3" from the right ear;
- 2) Incised wound oblique 2" x 1/4" bone deep on scalp over the occipital bone at its centre;
- 3) Contusion 2" x 2" on the right side of the forehead. Abnormal contour of the frontal bone present. The frontal bone on the right side was depressed. The injury was bluish red in colour;

- 4) Incised wound 1/2" x 1/8" on the left eyebrow;
- 5) Punctured incised wound, bone deep was present vertically on the lateral aspect of the left eye, 3/4" x 1/2" x 1". It was one inch depth;
- 5) Punctured lacerated wound 3/4" x 1/4" x 1/4" just below the angle of the left mandible.
- 7) Contusion 3/4" x 1/2" on the lower border of the mandible 2" from the centre on the left side.
- 8) Horizontal incised wound 1/3" x 1/8" on the right eyebrow at its medial end;
- 9) Incised wound on the medial border of the left index finger at its centre 1/2" x 1/4". Direction is above downwards;
- 10) Vertical incised wound 1/2" x 1/8" present on the Pale aspect of the left index finger;
- 11) Contusion 1 1/2" x 1" on the posterior aspect of the left forearm 5 1/2" from the left elbow joint;
- 12) Irregular abrasion of 4" x 3" on the anterior aspect of the left thigh 4" below the left groin;
- 13) Contusion 2" x 1/2" on the ulnar border of the right forearm 3" from the right elbow joint.

The said evidence also discloses that deceased Manjunath had sustained the following internal injuries:

HEAD 1) Multiple fractures of the frontal bone was present from the centre 4" to the left side. From the centre 4" obliquely upward and also to the right side. In the centre an island shaped circular fracture was present;

2) Fracture of the right temporal bone was present. There was Contusion of blood beneath the dural matter. There was laceration of right and left frontal hemisphere. The brain was congested.

THORAX: Right lung was pale. Left lung was pale. Both the chambers of the heart were empty.

STOMACH: Contained 20ml. of blackish liquid (Coffee ground which word would mean the swallowed blood in the stomach which gets mixed up with the gastric juice and which forms blackish liquid).

The small intestine was empty. The large intestine contained gas and faecal matters. The liver was pale.

Pancreas and suprarenals were pale. The spleen was pale. Kidneys were pale. The bladder contained urine.

The organs of generation were normal.

P.W.31 has stated that all the said injuries were ante-mortem; that internal injuries Nos. 1 and 2 corresponding to external injury No. 3 can jointly and severally cause the death of any person in the ordinary course of nature; that external injury No. 3 can be caused by an assault with a wooden log like M.O.1; that injuries 11 and 13 would also be caused by assaulting with M.O.1; that external injuries 1 and 2 can be caused by assaulting with wooden lobe like M.O.1 or knife (M.O.81); & that external injury Nos. 1,2, 4, 5, 6, 9 and 10 can be caused by M.O.81 and that deceased Manjunath had died due to shock and hemorrhage as a result of intracranial injuries, skull fracture, laceration of the brain and multiple injuries sustained.

22. The evidence of Dr.P.S. Upadhyaya (P.W.34) and his post-mortem report (Ex.P.36) reveal that deceased Lokesh had sustained the following external injuries:

- 1) Oblique incised wound of 2" x 1/4" into bone deep, on the scalp over the occipital bone 4" from the right ear;
- 2) Vertical lacerated wound of 2" x 1/4" bone deep on the scalp over the left parietal bone, 3" above the left ear;
- 3) Incised wound of 1 1/2" x 1/4" x bone deep on the scalp over the right parietal region;
- 4) Punctured lacerated wound, of 1" x 1/4" x bone deep present obliquely above the lateral and of left eye-brow;
- 5) Abrasion of 2" x 1/2" present below and lateral to the left eye;
- 6) Abrasion of 1" x 1" present on the right cheek;
- 7) Lacerated wound of 3/4" x 1/2" x 1/4" on the inner side of the upper lip on the right side;
- 8) Lacerated wound of 1/2" x 1/4" x 1/4" present on the inner side of the upper lip on the left side;
- 9) Incised wound of 3" x 1/4" x bone deep present below the chin;
- 10) Contusion blackish in colour 3" x 2" on the back below the right scapula.

It is also clear from the said evidence that deceased Lokesh had sustained the following internal injuries:

- 1) Fracture of the left parietal bone, horizontal 5" in length present 2" above the left ear;
- 2) Fracture of the base of the left anterior cranial fossa present;
- 3) Blood clots and blood present below the durometer. It is more on the left side; brain congested sub arachnoids hemorrhage present over the right parietal and temporal lobe of the brain;

- 4) There was contusion of the right parietal and temporal lobe of the brain;
- 5) Stomach was empty; small intestine was empty; bladder contained about 70 cc of urine;

The Doctor (P.W.34) has stated that all the said injuries were ante-mortem; that external injury No. 2 together with the resultant internal injuries was sufficient in the ordinary course of nature to cause death; that external injury No. 2 might have been caused by M.O.1; that external injury Nos.1, 3, 4 and 9 might have been caused by knife (M.O.81) and that deceased Lokesh had died due to the intra-cranial hemorrhage and shock as a result of head injury.

23. The evidence of Dr.K. Gopal (P.W.33) and his postmortem report (Ex.P.34) reveal that deceased Shivappa had sustained the following external injuries:

- 1) There was an incised wound on the centre of the valve of the skull, starting from the hair-line in front extending on the back of the head, measuring 3" length and scalp depth along with clot of blood;
- 2) There was one more incised wound on the right side of the skull 2" right to injury No. 1 measuring 2" in length and scalp depth with blood clots;
- 3) There was one more incised wound on the left side of the skull just 1 1/2" left to injury No. 1 measuring 2 1/4" in length and scalp depth with blood clots;
- 4) There was an incised wound on the occipital area measuring 1" in length and scalp depth associated with blood clots;
- 5) The pinna of the left ear is cut into two at the centre;
- 6) The eye-lids of both the eyes were swollen and discoloured.

It is also clear from the said evidence that deceased Shivappa had sustained the following internal injuries:

- 1) There are multiple fractures of the temporal frontal and occipital bones on the right side causing depressed fracture with rupture of the brain membrane and pierced into brain substance. The skull bones were stoned with arterial blood.
- 2) The membrane are pierced with bony fragments and the presence of blood clots were evident, and also the brain substance was pierced with bony fragments and multiple blood clots were associated with the injury.

The Doctor (P.W.33) has stated that all the said injuries were ante-mortem; that external injuries 1 to 4 might have been caused by M.Os.33 to 35; that injury Nos.1 to 4 were cumulatively sufficient in the ordinary course of nature to cause the death and that deceased Shivappa had died due to shock and hemorrhage as a result of internal injuries corresponding to external injury Nos.1 to 4.

24. The evidence of Dr.K. Gopal (P.W.33) and his postmortem report (Ex.P.35) disclose that deceased Vishwanatha Rai had sustained the following external

injuries:

- 1) There was an incised wound on the right side of the skull, measuring 1 1/2" in length and scalp depth;
- 2) There was one more incised wound measuring 1 3/4" in length on the right side of the skull just lateral to the injury No. 1 and scalp depth;
- 3) There was an incised wound on the centre of the vault of the skull measuring 1/2" x 1/4".
- 4) There was an incised wound on the right auxiliary area of the face measuring 1/2" and muscle depth.

All the above mentioned injuries are associated with blood clots.

- 5) Both the eye-lids were swollen and blackened (discolouration) due to acchymosis;
- 6) There were abrasions on the skin;
- 7) There were multiple bruises on the lateral aspect of the right hand (postmortem).

The said evidence also discloses that Vishwanatha Rai had sustained the following internal injuries:

- 1) The frontal bone was fractured yielding from the centre ie., from the base of the nose extending on to the centre of the skull;
- 2) One more linear fracture starting from the nasal bridge extending on to the right mastoid bone passing through the frontal bone;
- 3) The mastoid bone was also fractured into fragments;
- 4) The Sphenoid and the Sphenoid bones were also fractured into fragments and pierced into the membranes and brain substance;
- 5) The occipital bone was also fractured into fragments and had pierced into the membrane and brain substances (depressed fracture);
- 6) The right mandible was fractured into a number of pieces (multiple fracture of the right mandible);

All the skull bones were stringed with arterial blood (ante-mortem);

The membranes of the brain were pierced with the fragments of the bones along with the brain substance; there were multiple clots in the brain substance and also membranes.

P.W.33 has stated that all the said injuries except external injury Nos.6 and 7 were ante-mortem; that internal injuries Nos.1 and 2 corresponding to their respective external injuries are in the ordinary course of nature were sufficient to

cause the death of the deceased; that external injury Nos. 1 to 4 might have been caused by M.Os.33 to 35 and that deceased Vishwanatha Rai had died due to shock and hemorrhage as a result of the above mentioned injuries.

25. Regard being had to the nature and number of injuries sustained by four deceased persons, the vital parts chosen and nature of the weapons used, the intention of their assailants must have been to cause their death and therefore whoever caused their death would be guilty of an offence punishable u/s 302 IPC.

26. As regards the connection of the accused with the commission of the said murders and robbery, in the absence of direct evidence, the prosecution have adduced evidence regarding the following circumstances:

1) That both the accused persons were employed as drivers in Rythabandhu Gramodyoga, Anandapura, for about 11/2 years till about 3 months prior to the incident;

2) That the accused persons were at the relevant point of time reeling under heavy debts;

3) That the accused persons knew that deceased Lokesh was carrying money to Anandapura on the night of 27-8-83 and that he would travel in one of the lorries bearing Reg.Nos.CNS 4477, CAA 2177 and MEG 6999;

4) That the accused persons left Mangalore in the lorry called "Zubeda Express" bearing Reg.No. MEG 7583 at about 6-40 p.m. on 27-8-83 and were waiting for the deceased at Udupi bypass from 8 p.m. to 11 p.m.;

5) That accused No. 1 collected his Lorry "Zubeda Express" on 28-8-83 at about 11 a.m. at Hebri village though the said lorry ordinarily ought to have reached Shimoga much earlier with the load of Potash and that it actually reached Shimoga on the morning of 29-8-83";

6) That deceased Lokesh was entrusted with the cash of Rs. 71,000/- along with the chit (M.O.85) at Shivapura village by Rambhat (P.W.44) and that in addition deceased Lokesh himself was carrying the amount of Rs. 44,000/-collected by him by sale of goods at Kasargod for handing over the same to his employer at Anandapura;

7) That all the four deceased were last seen alive in the company of both the accused at about 2 a.m. on 28-8-83 in the restaurant of P.W. 11 situate in Thirthahalli market and thereafter they were seen travelling together in Rythabandhu lorries;

8) That two persons got down from the lorry of Rythabandhu Gramodyoga, bearing Reg.No. CAA 2177 after it came to a halt at a distance of about 85" from Southehalla bridge near Varamballi village and were seen going towards Southehalla bridge and Jayanagar and that in the cabin of the said lorry there were dead bodies of Vishwanatha Rai and Shivappa;

9) That both the accused were found moving at Jayanagar, Mastikatte, Hebri and Koteswar from 6 a.m. to 2 p.m. on 28-8-83;

10) That M.Os. 13 and 14 were recovered from the person of accused Nos. 1 and 2 respectively under Ex.P.3;

11) That a sum of Rs.49,000/- was recovered in furtherance of the voluntary statement of accused No. 2 from his house and that a sum of Rs.63,900/- was recovered in furtherance of the voluntary statement of accused No. 1 from his house;

12) That some of the bundles of currency notes recovered from the houses of accused Nos. 1 and 2 contained the initials "ASL" and "PNR" of deceased Lokesh and P.N.Rambhat (P.W.44);

13) That the leather bag (M.O.84) belonging to deceased Lokesh was recovered in furtherance of voluntary statement of accused No. 1 at Hulikal-Balebare ghat;

14) That the shoulder bag (M.O.82) belonging to deceased Manjunath was recovered in furtherance of voluntary statement of accused No. 2."

15) That M.O.82 contained the khaki pant (M.O.77) belonging to Manjunath, khaki pant (M.O.78) belonging to Vishwanath Rai, white shirt (M.O.79) belonging to Manjunath; shirt with design (M.O.80) and Lungi (M.O.83) belonging to Manjunath;

16) That the pant (M.O.75) and one bush shirt (M.O.76) belonging to accused No. 1 were recovered in furtherance of his voluntary statement and both of them are reported to be stained with "B" group human blood;

17) That the pant (M.O.54) and the shirt (M.O.55) of accused No. 2 are reported to be stained with "B" group human blood which was also the blood found on a "Panche" (M.O.30) of deceased Shivappa;

18) That the knife (M.O.81) was recovered in furtherance of the voluntary statement of accused No. 2 and that it is reported to be stained with human blood.

19) That the chance finger-print found on the door glass pane and on the steel rod in the cabin of lorry bearing Reg.No. CNS 4477 which contained the dead bodies of Lokesh and Manjunath, were found to be the finger prints of left middle and ring fingers of accused No. 1 and of left index finger of accused No. 2 by the Finger Print Expert (P.W.51).

27. In dealing with the question of appreciation of circumstantial evidence in State of U.P. Vs. Sukhvasi and Others, , the Supreme Court was pleased to observe thus:

"In a case in which the evidence is of a circumstantial nature, the facts and circumstances from which conclusion of guilty is sought to be drawn by the prosecution must be fully established beyond all reasonable doubt and the facts

and circumstances so established should not only be consistent with the guilt of the accused, but they must be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence."

Bearing in mind the said principle, let us see whether the said circumstances relied upon by the prosecution have been satisfactorily established beyond all reasonable doubt and whether they are consistent and consistent only with the guilt of the accused and wholly inconsistent with their innocence.

28. The learned Advocates for the appellants accused urged that the said circumstances have not been established beyond all reasonable doubt as the witnesses who have spoken to the circumstances are not reliable and their evidence is unnatural and improbable.

29. On the other hand, the learned Additional State Public Prosecutor, urged that the said circumstances have been fully established by the prosecution evidence, which is natural probable and believable and it is also supported by the conduct of the accused in leading the I.O. to the said witnesses.

#### 30. CIRCUMSTANCE NO. 1:

To prove this circumstance, the prosecution has relied upon the evidence of Shankaranayaka (P.W.43) and Ramabhat (P.W.44). Both of them have stated that both the accused had been employed in Rythabandhu Gramodyoga, Anandapura, as drivers and they worked there for about 11/2 years till about three months prior to the date of the incident. Both the accused in their statements u/s 313 Cr.P.C. have admitted that they were employed in Rythabandhu Gramodyoga as drivers although they have disputed the time at which they left the services of Rythabandhu Gramodyoga. According to accused No. 1, he had left the services of Rythabandhu Gramodyoga about six months prior to the incident and according to accused No. 2 he had left the services about nine months prior to the incident. The records of Rythabandhu Gramodyoga would have provided the clinching evidence regarding the time at which they left its services. So, the exact date on which they left the services of Rythabandhu Gramodyoga cannot be made out from the evidence on record and it is also unnecessary for the purposes of the case. On the material on record and from the admission of the accused, it can safely be concluded that both the accused were working as drivers in Rythabandhu Gramodyoga for about 11/2 years prior to the incident.

#### 31. CIRCUMSTANCE NO. 2:

To prove this circumstance, the prosecution has relied on the evidence of Shivananda Gupta (P.W.36), K. Narasimha (P.W.56), Smt. Leena D'Souza (P.W.23) and the Hire Purchase Agreement (Ex.P.39) and the receipt (Ex.P.40) issued by Umar Saheb. From the evidence of P.W.36 who is the Managing Partner of Aruna Auto Finance, Bangalore and the Hire Purchase Agreement (Ex.P.39) and the receipt (Ex.P.40), it is clear that accused No. 1 had purchased the lorry

bearing Reg.No. MEG 7583 from Umar Saheb of Coondapur after obtaining financial aid from Aruna Auto Finance, Bangalore, on executing the Hire Purchase Agreement (Ex.P.39). accused No. 1 has admitted the said fact in his statement u/s 313 Cr.P.C. accused No. 1 was to pay the first instalment of Rs. 5,000/- on 10-5-83 out of the total loan amount of Rs. 1,48,000/-. Smt. Leena D'Souza (P.W.23) has stated that in the month of July, 1983, accused No. 2 had taken an amount of Rs. 3,500/- as loan from her for purchasing a lorry and 15 days thereafter he had also taken a sum of Rs. 1,500/-, from her for the same purpose. It is true that there is no document to evidence the said loan. The person from whom P.W.23 is alleged to have borrowed money for giving it to accused No. 2 also has not been examined. According to P.W.23, her son and the son of the sister of accused No. 2 were fast friends and on account of that, she helped accused No. 2. P.W.23 has absolutely no reason to give false evidence against accused No.s. P.W.23 and accused No. 2 were residents of Sagar. Under the circumstances, it is possible that P.W.23 might have helped accused No. 2. The learned Sessions Judge, who had the opportunity of seeing P.W.23 and marking her demeanour, has chosen to believe her and we see no reason to disagree with him. Hence, accepting the said evidence, we hold that the accused persons were under heavy financial stress and strain at the time of the incident.

### 32. CIRCUMSTANCE NO. 3:

To prove this circumstance, the prosecution has adduced the evidence of Gangadhara (P.W.42), Rambhat (P.W.44), Jayavant Sait (P.W.49), Mangesh Pat (P.W.50) and K. Bhaskar (P.W.52). P.W.42 who was also working as driver of Rythabandhu Gramodyoga, has stated that on 26-8-83, himself and Prashanth went in lorry No. CAA 2177 loaded with boiled rice to Kasargod; that deceased Manjunath, Rambhat (P.W.44) went in lorry No. CNS 4477 loaded with boiled rice to Kasargod; that deceased Shivappa and Vishwanath Rai went in lorry No. MEG 6999 loaded with boiled rice to Kasargod and that they reached Kasargod at about 6 p.m. He has also stated that on 27-8-83, Manager Rambhat (P.W.44) sold the rice in the said three lorries; that deceased Lokesh had earlier gone to Kasargod with a load of beaten rice and he was also at Kasargod then. Rambhat (P.W.44) has corroborated him in this behalf. P.W.44 has also stated that he realised a sum of Rs. 65,205/- on 27-8-83 and that deceased Lokesh had realised towards sale of beaten rice and recovered previous dues in all a sum of Rs. 45,000/- and he had kept it in the leather bag (M.O.84). P.W.44 has also stated that he gave Rs.205/- to the coolies and that he realised Rs.6,000/- from Kerala Traders and Rs.8,000/- from Hassan Kutty & Sons. Both P.Ws.42 and 44 have stated that all of them including Lokesh came in three lorries to Mangalore on 27-8-83 at about 3 p.m. and went to their branch office situated in Panchamahar building at B.B.Alabi Road, Mangalore. The evidence of P.W.44 that he had received the amount of Rs.65,000/- from P.W.45; that he had received a sum of Rs.8,000/- from P.W.46 and that he had received a sum of Rs.6,000/- from P.W.47 finds support from the evidence of P.Ws.45, 46 and 47 who have given evidence with reference to their relevant bills and other documents,

Devendra (P.W.48) has stated that he gave deceased Lokesh a sum of Rs.45,000/- on 27-8-83 and that amount was made up of Rs. 33,000/-towards purchase of beaten rice on 26-8-83 and Rs. 12,000/- towards advance. The learned trial Judge has, after careful scrutiny of the evidence of P.Ws.45 to 48 chosen to believe them and he has given good reasons for the same and we see no reason to disagree with him. The evidence of P.W.48 also finds support from the entry Ex.P.62(a). Hence, we are satisfied that the evidence of P.Ws.45 to 48 in that behalf is true, P.Ws.42 and 44 have stated that after reaching their branch office at Mangalore, deceased Lokesh and Rambhat (P.W.44) counted the amount with them, sorted out the currency notes of different denominations, bundled them up; that on the top note of the each of the bundles of Lokesh, the total amount in the bundle was noted and deceased Lokesh put his initials as "ASL" on the top note of the bundle and that Rambhat (P.W.44) also did the something and put his initials "PNR" on the top note of each bundle. They have also stated that accused No. 2 had been to their office at Mangalore at 4 or 4-30 p.m. along with driver Manjunath who had gone out of the office for a short while and accused No. 2 had asked them as to at what time they would leave for Anandapura and Rambhat (P.W.44) told him that they would leave for Anandapura immediately after their work was over. P.W.44 has stated that accused-2 told him that accused No. 1 had also come there and that they have got a load of Potash to be lifted in their lorry to Shimoga. Their evidence finds support from the evidence of Jayavantha Sait (P.W.49) who has his automobile shop by the side of the branch office of Rythabandhu Gramodyoga at Mangalore. He has stated that at about 1 p.m. on that day on 27-8-83 accused No. 1 had been to his shop and asked him as to whether anybody from Rythabandhu office had come there; that he asked him to go and see there; that accused No. 2 went to the office of Rythabandhu office and returned and said that none had come as yet and that accused No. 2 went away saying that he would come again; that at about 4 or 4-30 p.m. on that day he saw Manjunath and accused No. 2 going towards the office of Rythabandhu. This shows that accused No. 2 had actually seen deceased Lokesh and Rambhat (P.W.44) counting and bundling up the currency notes in the branch office of Rythabandhu Gramodyoga at Mangalore. Both the accused have admitted that they were at Mangalore on 27-8-83. But, according to them they had been there to look up the brother of accused No. 2 who had met with an accident and who was undergoing treatment at the Hospital there. Mangesh Pai (P.W.50) has stated that on 27-8-83 both the accused had been to him and asked him as to whether there was a load towards Shimoga for their lorry; that he made enquiries with Sainath Traders and ascertained that there was a load of Potash and secured that load of potash for lorry No. MEG 7583 of both the accused and got commission from them. The evidence of P.W.50 has not been seriously challenged in his cross-examination. This also shows that both the accused were at Mangalore on that day and that they had secured a load of potash for their lorry for transporting it to Shimoga. This circumstance also lends support to the evidence of P.Ws.42 and 44 that accused No. 2 had been to their office and had seen the counting of the notes by

deceased Lokesh and Rambhat (P.W.44) and had made enquiries with them as to when they would be leaving. Therefore, it would be reasonable to conclude that the accused persons knew that Lokesh was likely to carry money to Anandapura in one of the lorries, namely, CNS 4477, CAA 2177 and MEG 6999.

### 33. CIRCUMSTANCE NO. 4:

On this circumstance, there is the evidence of P.Ws.19, 42, 44 and 52. K. Bhaskar (P.W.52) is the Second Division Clerk in the Commercial Tax Office, in By kampadi Commercial Tax check-post during the relevant point of time. He has stated that on 27-8-83 at about 6-40 p.m. the lorry bearing Reg.No. MEG 7583 with a load of potash came from the side of Mangalore near his check-post and proceeded towards Shimoga and that it was being driven by accused No. 1 (K.T.Mohammed), then and there was another person sitting in the said lorry then. His evidence finds support from the entry at Ex.P.77(a) in the register (Ex.P.77). If he was unreliable witness, he would have been made to say that the other person who was sitting in the lorry was accused No. 2. That he has not stated so, shows that his evidence is natural and probable. That the said lorry driven by accused No. 1 did pass through the check-post at 6-40 p.m. has not been challenged in his cross-examination. Indeed, the said fact has been admitted by accused No. 1 in his statement u/s 313 Cr.P.C. P.W.44 has stated that on 27-8-83 at about 8-15 p.m. he left Mangalore in lorry No. CNS 4477 driven by deceased Manjunath and that he had instructed Gangadhara (P.W.42) deceased Vishwanatha Rai, Lokesh and others to follow; that when their lorry i.e., CNS 4477 was going from Udupi bypass, accused Nos.1 and 2 signalled to stop their lorry and so Manjunath stopped their lorry; that "Zubeda Express" had been parked nearby; that accused Nos.1 and 2 told him that their lorry had some trouble and that they would come after getting the same repaired. Gangadhar (P.W.42) has stated that on 27-8-83 when lorry No. MEG 6999 driven by him reached Udupi bypass at about 9-45 p.m. "Zubeda Express" came from behind and stopped near his lorry; that driver Mohammed (accused No. 1) got down and told him that his lorry was giving bad sound and that he would come from behind after getting it repaired. Chandra (P.W. 19) has stated that on 27-8-83 at about 8 p.m. accused Nos. 1 and 2 came from Mangalore side in a lorry to his mobile omelet shop at Kinimulki circle at Udupi and took omelet and were sitting talking on a bench for about 1 1/2 hours and thereafter, they were seen waiting near their lorry for about an hour and a half and thereafter they went in their lorry. The I.O. (P.W.63) has stated that the accused led him to the shop of P.W. 19. This conduct of the accused which is relevant and admissible u/s 8 of the Evidence Act as observed in Himachal Pradesh Administration Vs. Om Prakash, , lends assurance to the evidence of P.W. 19. The minor contradictions elicited in the evidence of P.Ws.19, 42 and 44 are of no avail to the accused in urging that their evidence should be disbelieved. The fact that no identification parade was held for affording an opportunity to P.W. 19 to identify accused Nos.1 and 2 is also of no avail to the accused to attack his evidence, especially, in view of their conduct in pointing out the said witness to the I.O. The evidence of P.Ws.42 and

44 also lends assurance to his evidence. Under the circumstances, we see no reason to disbelieve the said evidence of P.Ws.19, 42 and 44. Hence, we hold that this circumstance is also proved beyond all reasonable doubt.

#### 34. CIRCUMSTANCE NO. 5:

On this circumstance, we have the evidence of P.Ws.20, 21 and 22. Gurudatha Rao (P.W.20), Ramanna Hegde (P.W.21) are the shop keepers at Hebri and Chikkanna Gowda (P.W.22) is a peon working in the warehouse Corporation, Shimoga, where the accused unloaded their lorry admittedly on 29-8-83. Gurudatha Rao (P.W.20) has stated that on 28-8-83 when he came to his shop at Hebri at about 7-30 a.m. a lorry bearing the name board "Zubeda Express" was standing in front of his shop facing towards Karkala and at about 11 a.m. a person wearing white shirt, aged about 26 years drove it towards Udupi side. Ramanna Hegde (P.W.21) has supported him in that behalf. Chikkanna Hegde (P.W.22) has stated that on 29-8-83 at about 11 a.m. the lorry bearing Reg.No. MEG 7583 carrying potash was unloaded and that there were two persons in it. The fact that the said lorry was unloaded on 29-8-83 has been admitted by accused No. 1 in his statement u/s 313 Cr.P.C. According to accused No. 1, he got his lorry repaired at about 3 p.m. on 28-8-83 in Bharat Automobiles at Coondapur and reached Shimoga at about 7 p.m. on 28-8-1983. But, as it was night, it could not be unloaded then. The accused has not examined the mechanic who repaired his lorry at Coondapur to support his version. There is also no evidence to show that his lorry reached Shimoga by about 7 p.m. on 28-8-83 apart from his self-serving say. It is not disputed that "Zubeda Express" is the lorry belonging to accused No. 1 bearing Reg.No. 7583. So, the fact that P.W.s.20 and 21 have not given the registration number of the lorry would not affect their testimony. Moreover, when the said lorry was seen at Hebri by P.Ws.20 and 21 it must not have been taken to Coondapur as alleged by the accused. The lorry bearing Reg.No. MEG 7583 of accused No. 1 which left Mangalore at about 6-40 p.m. on 27-8-83 ought to have reached Shimoga on the morning of 28-8-83. But, it has actually reached Shimoga on 29th morning. Hence, believing P.Ws.20, 21 and 22, we have no hesitation in holding that this circumstance is also proved beyond all reasonable doubt.

#### 35. CIRCUMSTANCE NO. 6:

To prove this circumstance, the prosecution has adduced the evidence of Rambhat (P.W.44). P.W.44 in para-49 of his deposition has stated that when he reached Shivapura in lorry No. CNS 4477, lorry bearing Reg.No. CNG 4477 belonging to Rythabandhu Gramodyoga had been parked in front of Jagadeeshwara Rice Mills; that he was told by driver Ganapathy that he had been asked to go to Kasargod in that lorry; that he waited at Shivapura for other lorries; that at 12 midnight lorry bearing Reg.No. CAA 2177 with deceased Vishwanatha Rai, Lokesh and Shivappa arrived; that he asked Lokesh about MEG 6999 and Lokesh told him that it went via Coondapur to Anandapura; that he handed over the amount of Rs. 71,000/- and the chit containing the accounts

(M.O.85) to Lokesh as he was to go to Kasargod in lorry No. CNS 4477; that Lokesh kept the said amount and chit (M.O.85) in his leather bag (M.O.84) and that then CNS 4477 left with Manjunath and Lokesh and CAA 2177 left with deceased Vishwanatha Rai and Shivappa towards Anandapura. P.W.44 has to axe to grind against both the accused and so there is no reason to give false evidence against them. The said evidence of P.W.44 appears to be true regard being had to the other circumstances in the case. We examined Ex.P.9(a) with the help of Micro Cord Reader which was got from the Forensic Science Laboratory, Bangalore, in the presence of the learned Advocates for the Appellants-accused and the Additional State Public Prosecutor and it was found to be "CNS" and not "CNG". Under the circumstances, the fact that the photo (Ex.P.9) shows "CNG" is of no avail to the accused as it is an obvious mistake of the photographer (P.W.4). The learned trial Judge was right in accepting the evidence of P.W.44 and holding that a sum of Rs. 71,000/- was entrusted to deceased Lokesh by Rambhat (P.W.44) and that an amount of Rs. 44,000/- was already with deceased Lokesh. Hence, this circumstance also has been satisfactorily established.

#### 36. CIRCUMSTANCE NO. 7:

On this circumstance, we have the evidence of Lakshmikantha Padiar (P.W. 11). He has stated that he has been running a canteen at Thirthahalli market since about six years; that he runs his canteen from 4 p.m. to 2 a.m.; that he knew accused Nos. 1 and 2 for the last four to five years as they were coming to his restaurant to take tea when they were working in Rythabandhu Gramodyoga in their lorries; that on 28-8-83 at about 2 a.m. two Rythabandhu lorries had been stopped in front of his shop; that two accused and four deceased got down from those lorries and came to his canteen; that he knew the four deceased as they were coming to his canteen often for taking tea; that the accused took "Idli" and tea whereas, four deceased took only tea; that on 28-8-83 he was sent for by the C.P.I. to Jayachamarajendra Hospital at Thirthahalli where he identified the dead bodies of Lokesh and Manjunath and that on the morning of 29-8-83 at about 11 a.m. he identified the dead bodies of Shivappa and Vishwanatha Rai which were in the lorry parked near Varamballi, P.W. 11 is an independent witness as he is not shown to be either interested in the deceased or ill-disposed towards the accused. Minor discrepancies in his evidence might have occurred due to the lapse of time from the date on which the statement was recorded by the I.O. to the date on which he was examined in the trial Court and so much importance cannot be attached to the said discrepancies. As his hotel is at Thirthahalli and as the deceased and the accused were travelling during night time, it is probable that they must have gone to the hotel for taking tiffin and tea as stated by him. The contents of column No. 4 in Exs.P.4 and P.5 are not admissible in evidence. Moreover, P.W.62 was not questioned as to on what basis he wrote that the deceased had been last seen alive by this witness although he had not recorded the statement of P.W. 11 by them. Hence, on that score alone, P.W. 11 cannot be disbelieved. The learned Trial Judge was impressed with the

evidence of this witness as stated by him in the course of his Judgment. It is too much to expect the hotel keeper (P.W. 11) to report to the police immediately on coming to know about the murders. The reason given by him that he did not do so because he thought that it was unnecessary to invite trouble for him. His explanation appears to be natural and it has been accepted by the trial Judge. As P.W. 11 had occasion to see the accused persons and the deceased persons and to know them by their faces, the fact that no identification parade was held would not matter much, especially as his evidence is found to be true and reliable. In view of the said reasons, we accept the evidence of P.W. 11 and hold that this circumstance has also been established by the prosecution.

### 37. CIRCUMSTANCE NOS. 8 & 9:

On circumstance No. 8 there is the evidence of Motappa Gowda (P.W. 14) who has his land near Southehalla bridge within the limits of Varamballi village. He has. stated that about one year and six months prior to his examination-in-chief, when he was in his field at about 5-30 a.m. a lorry from Thirthahalli side came at a high speed and stopped at a distance of about 25 yards from Southehalla bridge and two persons got down from that lorry and proceeded towards Southehalla bridge and from there towards Jayanagar. There is no reason for P.W. 14 to give false evidence against the accused. He is a natural witness as his land is near Southehalla bridge. If he had been made to depose falsely against the accused it would not have been difficult for him to say that he saw these two accused getting down from the lorry and going towards Southehalla bridge. The said lorry was found to be the lorry of Rythabandhu Gramodyoga and it was bearing Reg. No. CAA 2177 and in its cabin two dead bodies of Vishwanatha Rai and Shivappa were found as stated by Bangari (P.W. 10). On circumstance No. 9, there is the evidence of P.Ws. 15, 16, 17, 18, 25, 26, 27, 28, 29 and 32. Shankarachari (P.W. 15) has stated that on 28-8-83 at about 5-30 or 6 a.m. when he was going from Jayanagar after engaging coolies, he saw accused Nos.1 and 2 coming from opposite direction i.e., from the side of Southehalla bridge and at that time, they were wearing kaki pants and accused No. 1 was wearing white shirt and accused No. 2 was wearing a shirt having design. He has also stated that accused No. 1 was having a shoulder bag and accused No. 2 was having a bag of dark colour.

38. Then, we have the evidence of Nagesh (P.W.16) who has his beedi shop in Jayanagar. He has stated that on 28-8-83 at about 6-45 a.m. he saw both the accused near his shop and accused No. 1 asked him whether he had cigarettes and when he (P.W.16) told him that he had no cigarettes, the accused asked him to give him beedies worth 25 paise; that accused No. 2 paid the charges; that both the accused were wearing kaki pants and accused No. 1 was wearing a white shirt and accused No. 2 was wearing a shirt with designs and that one of them was having shoulder bag and another was having a bag for keeping money; that the accused persons asked him whether there was a bus to go to Coondapur; that at that time, a lorry was seen coming from Hosanagar side and

both the accused stopped that lorry and got into it and the lorry proceeded towards Coondapur.

39. Raghunath (P.W.17) is the son of a hotel keeper at Jayanagar. He has stated that on 28-8-83 at about 6-30 a.m. both the accused persons had been to his hotel at Jayanagar and took tea; that accused No. 1 paid Re.1/- for that; that both the accused were wearing kaki pants and accused No. 1 was wearing white shirt and accused No. 2 was wearing a shirt with designs and that one of them was having a shoulder bag and another was having a bag.

40. Sheik Peer (P.W. 18) is the owner of lorry No. MYG 4179. He has stated that on 28-8-83 at about 7 a.m. when he was going from Hosanagar to Yedyur driving his lorry and when his lorry reached Jayanagar, accused Nos. 1 and 2 stopped it and both of them travelled in his lorry upto Mastikatte by paying Rs.6/-

41. No doubt, P.W. 15 has only identified the accused in Court and he has not taken part in the test identification parade. The contradictions as per Exs.D.3, D.4 and D.5 elicited in his evidence regarding the exact spot where he sighted those two persons are minor in nature and much importance cannot be attached to the same. P.W. 15 was examined by P.W.61 on 29-8-83 itself ie., on the next day when his memory was fresh. Immediately after this witness, P.W. 16 saw them near his beedi shop. He has identified both the accused in the identification parade held on 17-11-83. P.Ws. 17 and 18 identified only accused Nos. 1 and 2 respectively in the test identification parade. No doubt, there has been delay in holding the identification parade by the Taluka Executive Magistrate Ramadhakrishna (P.W.41). It is also true that the photos of the accused had been published in "Udayavani" dated 1-9-83 (Ex.D.27). But, there is no material to show that the witnesses had in fact seen that paper and the photos of the accused. It is true that the delay in holding the identification parade throws a doubt on the genuineness thereof apart from the fact that it would be difficult for the witnesses to remember the facial expressions of the accused as observed in SONI v. STATE OF UTTAR PRADESH 1983 SCC 49. But if the delay is properly explained, the delay would not vitiate the identification proceeding as observed in Bharat Singh Vs. State of U.P., . In this case, the I.O. (P.W.63) could record the statement of P.W.18 only on 24-9-83 as he was not available till then. It was necessary for him to get the accused identified by P.W. 18 also. Hence, it is only on 26-9-83 that he wrote Ex.P.47 to the Taluka Executive Magistrate. The explanation given by P.Ws.41 and 63 is reasonable and it has been accepted by the learned Trial Judge. It is not even suggested to P.Ws.16, 17 and 18 that they had occasion to see the photos of the accused in Ex.D.27 and the accused. The fact that P.Ws.17 and 18 could not identify both the accused but only one shows that they must not have been shown the accused earlier. The earlier identification made by the witnesses at the test identification parade, by itself, has no independent value. Nor is test identification the only type of evidence that can be tendered to confirm the evidence of a witness regarding identification. The identity of the culprit can be fixed by circumstantial evidence also as observed in

Sampat Tatyada Shinde Vs. State of Maharashtra, In this case, there is the other clinching evidence to connect the accused with the commission of the offences and those circumstances will be referred to later. The learned trial Judge who had an opportunity of seeing the witnesses and marking their demeanour, has chosen to believe P.Ws.14 to 18 and has given good reasons for the same and we see no, reason to disagree with him, especially, as the said witnesses are not shown to be either interested in the deceased or ill-disposed towards the accused. The evidence of the said witnesses, if read together, would show that it is only the accused persons who must have got down from the lorry No. CAA 2177 which was stopped near Southehalla bridge.

42. Gajendra (P.W.25) has stated that the accused persons had been to his shop at about 7-45 a.m. on 28-8-83 at Mastikatte and purchased the plastic bag (M.O.74). He has also stated that both the accused were wearing kaki pants and accused No. 1 was wearing white shirt and accused No. 2 was wearing a shirt with designs. According to P.W.18, both the accused got down from his lorry at Mastikatte. Lakshminarayana (P.W.26) has stated that on 28-8-83 at about 7-45 a.m. both the accused had been to his beedi shop at Mastikatte and purchased a packet of "Bristol" cigarettes and were wearing the same dress as spoken to by P.W.25. Madhavarao (P.W.27) has stated that on 28-8-83 that the accused had been to his hotel at Mastikatte and had tea and that they were wearing the same dress, namely, kaki pants, white shirt and a shirt with designs, as stated by P.W.25. Dharmaraya Prabhu (P.W.28) has stated that on 28-8-83 at about 8-15 a.m. at Mastikatte the accused had been to link him that he gave tickets to them for travelling from Mastikatte to Siddapur in the bus called "Gajanana Motor Co. and that both the accused were wearing the same dress as stated by P.W.25. The conduct of the accused in leading the I.O. to the said witnesses lends support to the evidence of the said witnesses although no identification parade has been held. They have no axe to grind against both the accused. They are not shown to be interested in the deceased. From other surrounding circumstances also, we are satisfied that the evidence of P.W.s.25 to 28 substantially represents the truth.

43. Ramachandra Shetty (P.W.29) has stated that at about 1 p.m. on 28-8-83 both the accused persons had come near his wine shop at Koteswar in a lorry and purchased two bottles of beer and went into the adjoining hotel for meals and thereafter they got into the lorry. Vijaya (P.W.32) is the supplier in the hotel near the wine shop of P.W.29 and he has stated that both the accused came to the hotel, they had their meals and that they were wearing the same dress as stated by P.W.25. The accused have led the I.O. to the said witnesses and the said conduct of the accused lends support to their evidence. The clothes that they were wearing were recovered from the accused and that would also lend support to their evidence. Regard being had to the other circumstances in the case, we are satisfied that their evidence represents the truth and we accept the same.

#### 44. CIRCUMSTANCE NO. 10:

Jameer (P.W.13), PSI, has stated that on 30-8-83 he and his subordinates found accused Nos. 1 and 2 in their respective houses and apprehended them and produced them before the CPI (P.W.63) at about 2 p.m. on that day. P.W.63 has supported the same in that behalf P.W.63 arrested them immediately. P.W.63 has stated that he searched the person of accused No. 1 in the presence of panchas, one of whom was Gyanendra (P.W.1) and found a cash of Rs. 740/- (M.O.13) in his pant pocket. He has stated that out of the said amount of Rs.740/- the figure "10000/-" was written and there were initials as "PNR". P.W.63 has stated that he searched the person of accused No. 2 and found a sum of Rs.915/-(M.O.14). The two Tiger" tickets which were found with accused No. 1 and the switch key of the lorry and another key found with accused No. 2 were left with them. P.W. 1 has supported him in that behalf. M.Os.13 and 14 were seized under Ex.P.3 which has been proved by P.Ws.1 and 63. We see no valid reason to disbelieve the evidence of P.Ws.1 and 63 in that behalf. P.W.1 is a Commerce graduate and it is he who rang up the Rythabandhu Gramodyoga, Anandapura and informed them about their lorry standing near Nerle and that two dead bodies were in the cabin of the lorry, immediately after seeing them. We accept their evidence and hold this circumstance as satisfactorily proved.

#### 45. CIRCUMSTANCES NOS.11 to 18:

The I.O. (P.W.63) has stated that accused No. 1 told him as per Ex.P.90 to the effect "I have kept Rs. 63,900/-in a trunk under lock in my house and I have kept the bloodstained clothes beneath the tarpaulin on the cabin of my lorry." He has also stated that accused No. 1 told him as per Ex.P.91. But, Ex.P.91 appears to be the repetition of Ex.P.90 and so, it will not be admissible in evidence. He has further stated that accused No. 1 told him as per Ex.P.92 to the effect "I have thrown the leather bag in Hulikal Balebare ghat. If you take me I will produce the amount, the bloodstained clothes and point out the spot where I have thrown the leather bag and the spots of incident." P.W.63 has stated that thereafter, accused No. 1 led him and the panchas, one of whom was Subhaschandra (P.W.12) to a room in his residence at Sagar; that in that room on a stool a trunk and two small suit cases had been kept; that the accused kept the two suit cases on the floor and opened the lock put to the trunk with the key which he had; that after removing the clothes from inside the trunk, a plastic bag (M.O.74) containing the bundles of currency notes (M.Os.56 to 73) and produced it and that on the first note of most of the bundles, the figure indicating the amount and the initials of either "ASL" of deceased Lokesh or "PNR" of Rambhat (P.W.44) were there. P.W.12 has supported him in that behalf. Their evidence also finds support from the contents of the mahazar (Ex.P.24). P.Ws.12 and 63 have further stated that accused No. 1 lead them to the lorry which had the name board "Zubeda Express" parked in front of the house of accused No. 1 and accused No. 1 went over the cabin of the said lorry and from inside the tarpaulin he took out the pant (M.O.75) and shirt (M.O.76) which were bloodstained and

produced them. They were also seized under Ex.P.24.

46. P.W.63 has stated that accused No. 2 told him as per Ex.P.93 to the effect "I have kept Rs.49,000/- in a plastic bag in the big pot and 1 have spread the bloodstained clothes for drying." He has also stated that accused No. 2 told him as per Ex.P.94 to the effect I have thrown the knife in the forest." He has further stated that accused No. 2 told him as per Ex.P.95 to the effect" I have thrown the leather bag and the hand-bag containing clothes in the Hulikal ghat and if you take me I will produce the amount, clothes and point out the place where I have thrown the leather bag and the hand bag containing clothes." P.W.63 and P.W.12 have stated that accused No. 2 lead them to his house and opened the lock with the key he had; that he led them to a room where there was a big pot; that the accused took out a bag (M.O.45) from inside that pot and produced it; that the bag containing the bundles of currency notes amounting to Rs. 49,000/-(M.Os.46 to 53); that on the first note of most of the bundles the figure and the initials "ASL" (of deceased Lokesh) and "PNR" (of Rambhat (P.W.44) were there. They have also stated that accused No. 2 produced a shirt (M.O.55) and a pant (M.O.54) which had been spread on a rope for drying and which contains some washed bloodstains and that they were all seized under Ex.P.23.

47. I.O. (P.W.63) and Parameshwara (P.W.35) have stated that both the accused ? led them to Balebare ghat; that there they found the shoulder bag (M.O.82) and the plastic bag (M.O.84); that M.O.32 contained two kaki pants (M.Os.77 and 78) and two shirts, one having white colour (M.O.79) and another having rose colour (M.O.80) and a lung (M.O.83); that the plastic bag (M.O.84)contained a chit (M.O.85) and that they were all seized under Ex.P.38 P.Ws.63, 62 and 37 have stated that accused No. 2 led them to a spot on the right side of the road going from Thirthahalli to Agra and there they found a knife (M.O.81) which was bloodstained and it was seized under Ex.P.41.

48. P.Ws.42 and 44 have identified the kaki pant (M.O.77), the white shirt (M.O.79) and another shirt (M.O.80) and a lung (M.O.83) and shoulder bag (M.O.82) as belonging to deceased Manjunath. They have also identified kaki pant (M.O.78) as belonging to deceased Vishwanath Rai.

49. u/s 27 of the Evidence Act, only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word "fact" means some concrete or material fact to which the information directly relates, as held in *EARABHADRAPPA v. STATE OF KARNATAKA* . The fact discovered embraces the place from which the object is produced, and the knowledge of the accused as to this, and the information given must relate distinctly to this fact, as observed in *PULUKURI KOTTAYA v. EMPEROR* AIR 1947 PC 67. In this case, the evidence discloses that both the accused were in custody when they were interrogated by the I.O.(P.W.63). Their voluntary statement quoted above shows that they had knowledge where the amount and other articles had been kept by them and they also stated the place where they had been kept. So, the said statements are admissible u/s 27 of the Act.

50. Mr. B.V. Acharya, learned Counsel for the accused urged that as the existence of the key with accused No. 2 has not been mentioned in the mahazar and as the entry in the search register Ex.P.112(b) must have been made subsequently as the copy given to the accused (Ex.D.28) does not contain the said fact the evidence of P.Ws. 12 and 63 regarding the same must not be true.

51. We have examined Exs.P.112(b) minutely and we find that there has been no addition in it. Therefore, it follows that the extract (Ex.D.28) has not been correctly prepared. Hence, we see no force in the said contention of Mr.B.V. Acharya. As the keys were not seized and as they have been mentioned in the search register, there was no necessity to mention the same in the mahazar. It is also impossible to believe that such a huge amount was planted in the houses of the accused.

52. Mr.B.V. Acharya, learned Counsel for the accused urged that the pancha (P.W. 12) appears to be a stock pancha in view of his admission that he has acted as pancha earlier in some cases.

53. P.W. 12 is the owner of a bus. Therefore, he must be a man of means. Merely because he has acted as a pancha in some cases, it cannot be said that he is a stock pancha of the police. P.W. 12 has no reason to give false evidence against the accused. His evidence finds support from the recovery of the amount and other articles. It is corroborated by the evidence of the CPI and the panchanamas. Hence, we see no force in the said contention of Mr.B.V. Acharya.

54. M.O.Nos.46, 48, 59, 60, 62, 63, 64 and 67 out of the bundles of the currency notes were having the initial ASL" of deceased Lokesh on the top note of them as stated by P.ws. 12 and 63. They have also stated that M.Os.47, 49, 50, 51, 52, 53, 56, 57, 58, 61, 65, and 66 were having the initial "PNR" Of Rambhat (P.W.44). While discussing the evidence of P.W.44, it is already held that on the said currency notes, the initials of deceased Lokesh and Rambhat (P.W.44) were put. Thus, it is clear that including the amount found on the person and accused Nos.1 and 2, practically the whole of the amount, ie., nearly 1,15,000/- was recovered. It has been already held above that the said amount was entrusted and it was in the possession of Lokesh at the time of the murder.

55. The evidence of P.Ws. 12 and 63 also shows that the leather bag (M.O.84) belonging to deceased Lokesh and in which he had kept the said amount was recovered in furtherance of voluntary statement of accused No. 1 in Balebare ghat. Their evidence also shows that shoulder bag (M.O.82) belonging to deceased Manjunath and. M.O.78 belonging to deceased Vishwanatha Rai. The pant (M.O.75) and the shirt (M.O.76) produced by accused No. 1 are reported to be stained with "B" group human blood which was also the blood group found on the panche (M.O.30) of deceased Shivappa. The pant (M.O.54) and the shirt (M.O.55) produced by accused No. 2 are also reported to be stained with "B" group human blood which was also the blood group found on the panche (M.O.30) of deceased Shivappa(vide Exs.p.100, 103 and 105). The knife

recovered in furtherance of voluntary statement of accused No. 2 is also reported to be stained with human blood. "B" group blood was also found on the wooden logs which were found lying with bloodstains in both lorries. The accused have not given any explanation as to how their clothes came to be bloodstained. Under the circumstances, the fact that their blood is not tested would not assume importance. In view of the said reasons, we are satisfied that circumstances Nos.11 to 18 have been satisfactorily established by the prosecution.

#### 56. CIRCUMSTANCE NO. 19:

this point, there is the evidence of the Finger Print Expert (P.W.51), and the photographer (P.W.57) and the PSI (P.W.59) who took the finger prints of accused Nos. 1 and 2 and the pancha (P.W.1). P.W.59 has stated that on the direction of the CPI (P.W.63), he took finger prints of accused Nos. 1 and 2 on 30-8-83 as per Exs.P.63 and P.64 respectively.

57. Mr. B.V. Acharya, learned Counsel for the accused, urged that the finger prints ought to have been taken before or under orders of the Magistrate as required u/s 5 of the Identification of Prisoner's Act and therefore, the said finger prints cannot be pressed into service in view of the decision in Mahmood Vs. State of U.P., In the said case, it was observed thus:

"Further more, the specimen finger prints of the appellant were not taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. This is another suspicious feature of the conduct of investigation. It has not been explained why this Magistrate was kept out of the picture."

In our State, Section 4 of the Identification of Prisoners Act is in force and according to it, the police officer could take the finger prints, of the accused as they were arrested in connection with an offence punishable with death or imprisonment for life. Therefore, and in view of the decision in SHANKARIA v. STATE OF RAJASTAN AIR 1978 SC 1248 (para-80) the PSI could take the finger prints and hence we see no force in the said contention of Mr.B.V. Acharya.

58. P.W.51 has stated that he examined the cabin of the lorry No. CNS 4477 by using grey powder and developed 5 chance prints marked as "Q-1" to "Q-5" by him found on the left door glass pane, right side door glass pane, steering left side steel rod and the right side steel rod respectively. The pancha -(P.W.1) has spoken about the panchanama (Ex.P.2) in that regard. The alphabets which were on the number plate of the lorry bearing Reg.No. CNS 4477 in which the dead bodies of Lokesh arid Manjunath were found are found to be correct as on examining Ex.P.9(a) with the help of Micro Cord Reader, we found that the number plate of that lorry contained alphabets "CNS" and not "CNG" and so, in Ex.P.9, the mistake has crept in. The learned Advocates for the accused and the learned Additional State Public Prosecutor also saw Ex.P.9(a) with the help of Micro Cord Reader in the open Court and were satisfied that Ex.P.9(a) contains

the alphabets "CNS". P.W.57 has taken the enlarged photographs and the admitted finger prints as also the chance prints. After comparing them P.W.51 has stated that he found as many as 9 identical ridge characteristics between Exs.P.69 and 70 as stated by him in his deposition. He has also marked them in identical sequence in both of them with the help of red arrows. He has also stated that he found 9 identical ridge characteristics in Ex.P.71 and P.72. Similarly, he found 9 similar ridge characteristics in Ex.P.73 and 74. He also marked them by arrows. P.W.51 has stated that he has no hesitation in opining that the chance print at Ex.P.65(a) is that of the left middle finger of accused No. 1 and Ex.P.65 (b) is that of the left ring finger of accused No. 1 and that chance print Ex.P.66(a) is that of accused No. 2. According to him, the finding of 6 to 8 similarities in identical sequence in two prints, establish identity between them beyond any shadow of doubt. He has stated that the ridges are formed very early and they remain unchanged till the death of the person and till the dead body decomposes and that finger prints vary from person to person and no two finger prints are identical unless they are made by the same finger of the same person. P.W.51 has been cross-examined at length but nothing worthwhile has been elicited to discredit his testimony. We have also compared the chance prints and the admitted finger prints of the accused with the help of the magnifying glass and we are satisfied that the reasons given by P.W.51 are correct.

59. P.W.51 has stated that he has passed the finger print examination during 1974 session conducted by All India Experts Examination Board at Calcutta. He has been working as finger print expert since 11 years and has experience because he had examined thousands of finger prints. Hence, there is no doubt that he is an expert.

60. In *GOVINDA REDDY AND OTHERS v. STATE* AIR 1958 Mys 150 this Court while considering the value of the evidence of Finger Print Expert was pleased to observe thus:

"The science of comparison of finger prints has developed to a stage of exactitude. It is quite possible to compare the impressions taken from finger prints of individuals with the disputed impressions, provided they are sufficiently clear and enlarged photographs are available. The identification of finger impressions with the aid of a good magnifying glass is not difficult particularly when the photographs of latent and patent impressions are pasted side by side."

61. The learned trial Judge has rightly excluded the evidence regarding the comparison of the finger prints of accused Nos. 1 and 2 found in Ex.P.49 with the admitted finger prints and the chance print, of thumb impressions in the cabin of the lorry, as the same have not been proved. From the evidence of P.W.51 it can safely be concluded that the chance finger prints found on the door glass pane and on the steel rods in the cabin of lorry No. CNS 4477 in which the dead bodies of Lokesh and Manjunath were found are the finger prints of left middle and ring finger of accused No. 1 and of left index finger of accused No. 2.

62. The accused have not given any satisfactory explanation in regard to the said circumstances appearing against them. The absence of any explanation from the accused person of an incriminating circumstantial evidence of unimpeachable nature forges the link that completes the chain of circumstances, as observed in STATE OF PUNJAB v. BHURA SINGH AIR 1958 SCC 33

63. It has been satisfactorily established that deceased Lokesh was carrying a sum of Rs. 1,15,000/- [Rs. 71000/-entrusted to him by P.N. Rambhat (P.W.44) + Rs. 44,000/- which he had] in his bag (M.O.84) as stated by P.W.44. The four deceased persons were last seen alive in the company of the accused at about 2 a.m. on 28-8-83 at Thirthahally by P.W. 11 just a few hours before the dead bodies of Lokesh and Manjunath were traced at Nerle in the cabin of lorry No. CNS 4477. Earlier, they were seen travelling in two lorries by Chandra (P.W. 19). P.W. 14 saw the lorry bearing Reg.No. CAA 2177 coming to a stand still at some distance from Southehalla bridge in Varamballi village and that he found in the cabin of the lorry the dead bodies of Shivappa and Vishwanatha Rai. P.W. 14 saw two persons getting down from that lorry and going towards Jayanagar. Immediately thereafter, the accused were seen at Jayanagar by P.Ws.15, 16, and 17. They travelled from Jayanagar to Mastikatte in the lorry of P.W. 18. From the description of the clothes worn by the two persons and the clothes produced by the accused, it is clear that those two persons must have been the accused persons. They were also seen thereafter at Mastikatte and Koteswar. All the four dead bodies were found lying with injuries and it has been already held that those persons died a homicidal death and the amount that was carried by Lokesh was found missing. Hence, it is clear that the robbery and murders formed part of the same transaction. The amount of Rs.49,000/- which Lokesh carried was recovered from the exclusive possession of accused No. 2 in pursuance of his voluntary statement that he had kept it concealed in a big pot in his house and that he would produce it. A sum of Rs. 63,900/- which was also carried by Lokesh was recovered from the exclusive possession of accused No. 1 in pursuance of his voluntary statement that he had kept it in a trunk in his house and that he would produce it. The said amount is established beyond doubt as the amount which was in possession of Lokesh, in view of the fact that the initials "ASL" of deceased Lokesh and "PNR" of Rambhat (P.W.44) were found on the top note of the said bundles. The accused have not claimed the said amount as theirs. The finger prints of accused Nos.1 and 2 were found in the cabin of the lorry No. CNS 4477 in which the dead bodies of Lokesh and Manjunath were found. The finding of the finger prints of both the accused in the cabin of the lorry establishes the identity of the accused persons beyond all reasonable doubt and supports the evidence of other witnesses who have identified the accused persons and covers up the little deficiency, if any, in their evidence. From the said circumstance and the recovery of the amount of the deceased Lokesh, it is clear that these two accused alone must have committed murders of Lokesh and Manjunath in view of Illustration (a) to Section 114 of the Evidence Act, especially, as the amount was found in possession of the accused within two days

after the incident and in view of the decision in *Earabhadrappa v. State of Karnataka*. accused No. 2 had seen Lokesh and Rambhat (P.W.44) counting the currency notes. They left Mangalore in their lorry No. MEG 7583 at about 6-40 p.m. on that day and they were waiting for these lorries at Udupi bypass. The accused were employees in Rythabandhu Gramodyog, Anandapur, formerly and they were acquainted with the deceased and taking advantage of that fact they appeared to have gained entry into one of their lorries by putting up a lame excuse that their lorry was out of order. The accused have left their lorry at Hebri and took it at 11 a.m. and reached Shimoga in the morning on 29-8-83. The lorry of the accused and the lorries of the deceased were to travel together along the same route upto Thirthahalli. The way in which the injuries are inflicted on the four registered persons and the pattern in which the murder in these lorries had taken place would go to show that the murders in both the lorries must have been committed by the same set of persons. The little amount and other articles found with the deceased Vishwanatha Rai and Shivappa were not taken away by anybody, So, they must have been murdered with a view to see that they should not live to give evidence against the accused. If those two persons had been left alive, they would have immediately disclosed the names of the accused as the persons who were travelling in the lorry along with the deceased and they could have been caught. It must be with a view to see that they are not alive to depose against them, especially, as there was no reason for anybody to murder them. The evidence shows that it must be the accused who drove that lorry upto a spot in Southehalla and left it there and proceeded towards Jayanagar. The clothes of Shivappa were also discovered in pursuance of the statement made by the accused. The clothes of the accused were found to be stained with "B" group human blood which was also found on the "panche" of deceased Shivappa. the said circumstance also probabalises that it is these two accused who alone must have murdered deceased Vishwanatha Rai and Shivappa also. Thus, considering the totality of the circumstances established against the accused, we have no hesitation in holding that it is the accused alone who have committed the murders of all the four deceased persons and robbed Lokesh of his cash of Rs. 1,15,000/- in furtherance of their common intension and in pursuance of the conspiracy between them. If that is so, the conviction of the accused by the trial Court under Sections 120B, 302 read with Section 34 IPC and 392 IPC is proper.

64. This brings us to the question of sentence. Mr. B.V. Acharya, learned Counsel for the accused urged that this is a case resting on circumstantial evidence and there is no evidence regarding the part played by each of the accused. Under the circumstances, the learned trial Judge has properly exercised his discretion in awarding the sentence of imprisonment for life and he has given reasons for the same and therefore, the sentence awarded by the, trial Court does not call for interference.

65. The learned Additional State Public Prosecutor, on the other hand, urged that the accused have murdered four persons in a cold blooded and cruel manner for gain and therefore, they deserve the extreme penalty of death.

66. The learned trial Judge, relying upon the decision in Bachan Singh Vs. State of Punjab, and in Earabhadrapa v. State of Karnataka AIR 1947 PC 67 and regard being had to the young age of the accused and the fact that there were no bad antecedents to their credit, has chosen to impose the lesser sentence of imprisonment for life.

67. accused Nos. 1 and 2 have given their age as 30 years and 27 years respectively when they were examined u/s 313 Cr.P.C. by the trial Court on 3-6-85. So, they were about 28 years and 25 years, respectively at the time of the incident. accused No. 1 when questioned about the sentence by the trial Court has stated that he has his wife and a son and his parents to be looked after. accused No. 2 had nothing to say as regards the sentence.

68. In Bachan Singh v. State of Punjab AIR 1958 SCC 33 the Supreme Court moved by compassionate sentiments of human feelings has ruled that sentence of death should not be passed except in "rarest of rare" cases. In Earabhadrapa's case 10, the accused had strangled to death one Bachamma and committed robbery of her gold ornaments which were on her person and ransacked the iron safe and almirah kept in her bed room. Under those circumstances, the Supreme Court commuted the sentence of death imposed on the accused into one for imprisonment for life.

69. Regard being had to the fact that two persons in each of the lorries were murdered at the same time, it is most probable that each accused must have assaulted one of the deceased although there is no direct evidence regarding the overt-act played by each of the accused. The accused have murdered four young persons aged between 24 to 28 years at the time of their death. The murders were for gain. The murders have been perpetrated in a cruel, callous and fiendish fashion as observed in Javed Ahmed Abdulhamid Pawala Vs. State of Maharashtra, Under the circumstances, this case is one of the "rarest of rare" cases. In Javed Ahmed's Case<sup>15</sup>, cited above, the accused was aged about 22 years and the case against him rested on circumstantial evidence. Despite the said circumstances, the Supreme Court was pleased to observe that they were unable to refuse to pass the sentence of death as they would be stultifying the course of law and justice if they adopt such a course in that case, where the murders were of a lady and three children. The accused in this case have kept watch over the movements of the deceased after coming to know that the deceased Lokesh was carrying money. They must have gained entry into the lorries of the deceased by taking advantage of their acquaintances with them and pleading that their lorry had gone out of order. Hence, we are satisfied that the murders in this case were pre-planned and were actuated by their desire to become rich. After careful consideration of all circumstances in the case, we are of the view that this is one of the "rarest of rare" cases and the accused in this case deserve the sentence of death.

70. In the result, Criminal Appeal Nos.70/86 and 315/85 are dismissed. Criminal Appeal No. 365 of 1985 is allowed and the sentence of imprisonment for life

passed on the accused by the trial Court for the murders of four deceased persons is enhanced to the sentence of death and both the accused (Respondents in this appeal) shall be hanged by their neck till they are dead.