
(2009) 07 SC CK 0171

In the Supreme Court Of India

Case No : Criminal Appeal No's. 173 and 174 of 2004

Pantangi Balarama Venkata Ganesh

APPELLANT

Vs

State of A.P.
State Vs Vistaria Prakash

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Arms Act, 1959 — Section 25(1A), 27(2)
Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 45
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302

Citation : AIR 2009 SC 3129 : (2009) AIRSCW 5024 : (2009) 2 ALD(Cri) 462 : (2009) CriLJ 4144 : (2009) 10 SCALE 69 : (2009) 14 SCC 607 : (2009) 11 SCR 636 : (2009) 5 Supreme 506

Hon'ble Judges : S. B. Sinha, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : A. Sharan, ASG, Rajendra Sachchar, A. Dasharatha, Naveen R. Nath, Lalit Mohini Bhat, Hetu Arora, P.K. Dey, Amit Anand Tiwari, B.K. Prasad, P. Parmeswaran and Pramod Swarup, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Magunta Subbarama Reddy (for short Subbarama Reddy) was a Member of Parliament from Ongole Constituency in the State of Andhra Pradesh. He had a gun man, named Ch. Venkataratnam. Subbarama Reddy was a Philanthropist. He established 24 Colleges in the Prakasam and Nellore Districts of Andhra Pradesh. He otherwise donated a huge amount to a number of institutions. He was a resident of Bhagyanagar in the town on Ongole.

2. Subbarama Reddy reached Ongole on 1st December, 1995. He went to a place known as Markapur on the same date to attend a function. He was to attend two more functions in the afternoon in the town of Ongole. PWs. 2 and 3 came to invite him to attend the functions to be held at Islampet in the town of Ongole. While he was in his bed room, PWs. 1 to 3 went inside the bedroom and at the same time PW 13 also went inside the room. Ch. Venkataratnam, gunman, was

standing outside the door. While all of them were coming out from the bedroom of Subbarama Reddy, PW 1 found four-five persons having pistols standing there. Pantangi Balarama Venkata Ganesh, A-1 was said to be having a gun in his hand. The assailants fired at Subbarama Reddy and his gunman. PWs. 1 and 2 are also said to have sustained bullet injuries. A-1 was identified as a person wearing pink coloured shirt. The gunman allegedly fired a shot. Pursuant thereto appellant sustained bullet injuries. They escaped in a white Ambassador Car bearing registration No. AAK-7041.

3. One J. Srinivasa Rao, an Armed Police Constable, per chance, came near the place of occurrence and witnessed the assailants escaping in an Ambassador Car. However, the assailants made their escape good.

4. Accused No. 1 was arrested on the same day from a cashew garden with a bullet injury in his stomach. He was arrested and sent to hospital for treatment.

5. Subbarama Reddy died at 1600 hours while his gunman Ch. Venkatarantam died at 1800 hours on the same date i.e. 1st December, 1995. Accused No. 2 was, however, arrested on 15th December, 1995 from Uppugunduru railway station.

6. FIR was lodged by PW-1, Tatirparthi Subba Reddy, on 1st December, 1995 at about 1800 hours.

7. Initially eight persons were made accused. Two of them are said to have died. Four having absconded could not be put on trial.

8. After the arrest of accused No. 1 he made a declaration which was treated to be a dying declaration; the correctness whereof is not in question.

9. It is also not in dispute that a pistol with two live rounds were recovered from accused No. 1. They were sent for scientific examination. D.N.A. test was conducted.

Dr. G.V. Rao, who was examined as PW-46, submitted a report, opining:

Result of examination:

The DNA profile of exhibits 1, 2, 3 & 11 were tallying with each other and are from one and the same source. Exhibits 1, 2, 3 & 11 do not tally with the rest of the exhibits.

Exhibits 4, 5, 6, & 7 were tallying with each other and are from and the same source. Exhibits 4, 5, 6 & 7 do not ally with the rest of the exhibits.

Exhibits 13, 14 & 15 are tallying with each other and are from one and the same source.

Exhibits 16 & 17 are tallying with each other and are from one and the same source.

10. A pink colour shirt was seized from the abandoned car. The blood stains on the shirt was found to be matching with the blood group of accused No. 1.

11. One Shri G. Raj Gopal Reddy, an Assistant Director of State Forensic Science Lab carried out an investigation in respect of the pistol and the cartridges seized, which were marked as MO 16 and MO 17. He stated that cartridge cases item 6 (MO 18) and spent bullets of item 7 and 35 (MO 19 and 16) must have been fired from item 1 (MO 23).

12. Accused No. 2 was said to be the owner of Ambassador Car No. AAG-8300. He allegedly had changed the number plate of the car to AAK-7041 which was said to have been used by the accused for the purpose of escape. PW-9, N. Subbayamma; PW-10, Ch.Laxminarsimhan, PW-11, Yada Srinivasa Rao and PW-58, Y. Chellathurai were examined by the prosecution to show that accused No. 2 not only changed the number of the car ; he was driving the same. However, as the said car had broken down, the accused tried to hijack another car. They were, however, not successful in doing so. A taxi bearing No. AEE-2999 driven by PW-11, Yada Srinivasa Rao, was stopped and the said taxi was used for making good of their escape. PW-11, the driver of the taxi, stated that at gun-point he was threatened to get down from the car. The other persons, who were in the car, also were asked to get down. At gun point, the taxi, which belonged to him, was taken away.

13. Before the learned trial Judge 58 prosecution witnesses were examined; 117 documents were exhibited; 167 material objects were produced. Some documents were also brought on record on behalf of the defence which were marked as D-1 to D-6.

14. Both the accused were found to be guilty by the trial Judge. Accused No. 1 was sentenced to life imprisonment for the offences under Sections 302, 120B as also under Sections 449, 307 read with Section 149 of the Indian Penal Code and Section 27(2) of the Arms Act. He was also sentenced to undergo rigorous imprisonment for one year for the offence u/s 147 of the Indian Penal Code ; rigorous imprisonment for two years each for the offences u/s 148 and 506 of the Indian Penal Code ; rigorous imprisonment for seven years for the offences u/s 397 of the Indian Penal Code and rigorous imprisonment for five years for the offence punishable u/s 25(1A) of the Arms Act.

15. Accused No. 2 was also found guilty of the offences and sentenced to life each for the offences under Sections 302, 120B, 302 read with Section 149; 307 read with Section 149 of the Indian Penal Code; rigorous imprisonment for seven years for the offence u/s 397 of Indian Penal Code; rigorous imprisonment for two years for the offences under Sections 506 of the Indian Penal Code; rigorous imprisonment for one year for the offence punishable u/s 147 of the Indian Penal Code and rigorous imprisonment for five years for the offence punishable u/s 25(1A) of the Arms Act.

All sentences were, however, directed to run concurrently.

16. Aggrieved by and dissatisfied with the said judgment of conviction and sentence, an appeal was preferred by the accused before the High Court of Andhra Pradesh. Whereas the appeal of accused No. 1 was dismissed but that of the accused No. 2 was allowed.

17. Before us Accused No. 1 is the appellant in Criminal Appeal No. 174 of 2004. The State through Central Bureau of Investigation has preferred Criminal Appeal No. 173 of 2004 against the judgment of acquittal passed in favour of accused No. 2 - Vistaria Prakash.

18. Mr. Rajinder Sachar, learned senior counsel appearing on behalf of accused No. 1 principally raised the following contentions:

1) Appellant, although does not deny or dispute that he was present at the scene of occurrence, but came only for the purpose of persuading Subbarama Reddy to recommend opening of a PG Centre.

2) As, from the evidence of the prosecution witnesses, it would appear that firing took place only on the corridor; the prosecution did not explain as to how blood was also found in the bath room.

3) Prosecution witnesses having not participated in the Test Identification Parade and they having identified the accused for the first time in Court, no reliance thereupon could have been placed by the courts below.

4) Identification of the appellant with reference to pink shirt, allegedly worn by him, cannot be said to have been proved as PW. 1 did not refer that accused No. 1 had on his person a pink shirt either in the First Information Report or in his statement u/s 161 of the Code of Criminal Procedure.

5) Although, according to PW-2, Channareddy Penchal, accused No. 1 had fired at all the four people, namely two deceased; Ratnam and him, however, from the evidence of the Ballistic Expert, it is evident that two fire arms were used therefore and, thus, his evidence could not have been relied upon, particularly when PW-3 did not indicate as to who had actually fired the shot.

6) It is unusual that no bullet was recovered from the body of the deceased and if the fire arm was used by accused No. 1 for killing two persons and causing injuries to others, it has not been explained as to why only two bullets were recovered.

7) No reliance could be placed on the evidence of PW-58, the investigating officer as regards collection of blood stains.

8) The correctness of DNA test, even according to expert being 96.4 % correct and four people having not been arrested at all, no reliance could be placed thereupon.

9) In any event as the report suggests that the blood group of the appellant and the one which was found on the pink shirt was similar and not identical; no

reliance could be placed thereon.

19. Mr. Amarendra Sharan, learned Additional Solicitor General appearing on behalf of the Central Bureau of Investigation, on the other hand, would contend:

1) That the prosecution has proved its case not only through cogent ocular evidence but also by examining the DNA and Ballistic experts.

2) Indisputably the accused No. 1 was arrested from a cashew garden in an injured condition with a revolver and his presence at the scene of occurrence being admitted as also the fact that he was a member of Peoples War Group, sufficient evidence must be held to have been brought on record to prove his guilt.

3) The High Court committed a serious error in recording a judgment of acquittal so far as accused No. 2 was concerned in so far as it failed to take into consideration not only the evidence of PW-10, a police constable who had proved his presence but also the taxi driver, PW-11 and Smt. Nagineni Subbayamma, PW-9, the landlady of one of the conspirators, as also several documents proved on behalf of the prosecution which categorically show that accused No. 2 was the owner of the car and he had changed the colour thereof.

20. Mr. Pamod Swarup, learned amicus curiae, appearing on behalf of accused No. 2, contended:

1) The name of accused No. 2 having not been mentioned in the first information report, and as PW-1 and PW-2 could not identify him; the judgment of the High Court does not suffer from any infirmity.

2) The only evidence against accused No. 2 being that of PW-9, PW-10 and PW-11, which having not been found reliable and as the said witnesses could not identify him, no interference with the impugned judgment is warranted.

21. The fact that two persons had lost their lives and PW-1 and PW-2 suffered injuries at the hands of some miscreants at about 1400 hours on 1st December, 1995 is not in dispute. It is also not in dispute that immediately after the occurrence a search was carried out. Accused No. 1 was arrested on the same day from a cashew garden with a gun shot injury in his stomach.

22. It is also not in dispute that a car bearing No. AEE 2999 was found abandoned near Kadavakuduri. There is also no in dispute that recovery of several articles was effected from the place of occurrence including bullets, cartridges of various caliber; blood etc. It has also not been disputed that a car bearing No. AAK 7041 was found at the Kurnool bye pass Junction, Ongole at about 1930 hours. The appellant was admitted in the Trauma Hospital for treatment of his injury. As indicated heretofore, he made a statement before the VIth Additional Magistrate, Guntur.

Following questions were put to him by the learned Magistrate so as to satisfy himself that he was in a fit condition to make the statement:

(1) What is your name?

Ans. Panthangi Ganesh.

(4) What do you do?

Ans. I am an unemployed. Presently working as activist in Ganapathi Group of Peoples War Group.

(5) Where do you reside?

Ans. Working for public and for our party in Bellamkonda and Atchampeta Mandals of Sathenapalli Taluqa.

(6) Can you tell as to how did you sustain these injuries?

Ans. I will.

(7) I am the VI Additional Court Magistrate of Guntur. I came to record your statement as to how did you sustain these injuries. Do you understand?

Ans. I understand as you said it.

(8) Then, are you in a position to reveal as to how did you sustain these injuries?

Ans. Yes, I will reveal.

(9) Then, tell me.

Ans. As per the instructions of our party, I went to Ongole on 1.12.95 in the afternoon at about 1.30 hours to know the movements of Magunta Subbaramireddy at his residence and as to how close he is moving with the public. There at about 1.30 hours to 2.00 hours, I sustained one Bullet injury to my stomach. I do not know, who fired the Bullet and from where it had come. Soon after sustaining Bullet injury I fell down and lost my consciousness. After one or one and half hour, I re-gained my consciousness. When I regained my consciousness, I was in a Cashewnut Garden. Probably our Activists might have taken me to that place. The police came there and caught me. The police caught me at the time between 3.00 hours to 3.30 hours, Thereafter duly interrogating me they brought me to Guntur Hospital and admitted me herein. This is what all happened.

23. The First Information Report which was lodged by PW-1, Tatirparthi Subba Reddy, reads as under:

I belong to 3rd Line of Bhagyanagaram, Ongole. I am eking out my livelihood by doing agriculture. I am sympathizer of Congress Party. I move closely with the Ongole M.P., Sri Magunta Subbarami Reddy, Whenever I come Ongole, I used to meet him. Today i.e. 1.12.95 in the After Noon at 1.50 hours, the Ongole M.P. Sri Magunta Subba Rami Reddy, Kandukur Ex. MLA Sri Maheedhara Reddy and myself, after discussing party issues i.e., about the Programme of that evening, first of all the MP., started to go out of the Bed Room, behind him myself and Maheedhar Reddy following us, and when the MP. were crossing the Bed Room,

we listened fire from Revolver. On listening the said noise, 1 came in front of the M.P.; one person from out side the room fired the pistol in his hand towards the M.P., and when I plunged between them, I sustained bullet injury to my right hand wrist. Thereafter the said person fired Bullets on the M.P., and the M.P. fallen down. Then the M.P.'s Gunman Venkatarathnam fired bullets on the said person and the said person returned fire on Venkata Rathnam, the Gun man sustained bullets and felldown. The said person also fired on Chennareddy Penchala Reddy who was behind me. He also sustained bleeding injury. The person who fired bullets on us, left alongwith the five persons accompanying him and while running away, they fired their pistols into air and created panic among the people present thereat, and they' ran away in a white ambassador car bearing No. AAK 7041. The said persons are of the age group of 20-25 years. When this incident occurred the M.P.'s P.A. Mr. Nagabhushanam, Ongole Municipality Chairman Mr. Mantri Srinivasa Rao, Vice Chairman Sikhakollu Ravi, Aiyinabathina Ghana Syam, Balineni Venkateswara reddy and Some more people witnessed I can identify the persons who fired bullets on us. Immediately, the second Gun Man of the M.P., Srinivasa Rao and some others have brought us the injured in Cars to Ongole Government Hospital for treatment and admitted us. While the doctors are giving' treatment to us the M.P. lost consciousness he has been taking treatment in the Hospital. As you came and enquired I have revealed what happened. I have gone through my statement. You have mentioned exactly what I said. As I sustained bullet injury to my right wrist, I have affixed my left Thumb Impression. L.T.I. of Tatiparthi Subha Reddy.

24. Although initially the investigation was entrusted to C.B.C.I.D. of the State of Andhra Pradesh; on or about 12th January, 1996 it was transferred to the Central Bureau of Investigation (C.B.I.).

25. There are four eye witnesses to the incident, i.e., PWs. 1, 2, 3 and 13.

PW-1, T. Subba Reddy, was examined-in-chief on 1st April, 1999. He stated in details about the travels undertaken by the deceased Subba Reddy from the time of his arrival at Ongole in the morning of 1st December, 1995 till he returned to Ongole from Markapur. He categorically stated that when they were just coming out from the bed room of the MP, Subba Reddy, he saw 4 -5 persons of the age of 25 or so years; one of them had fired at him and others. He could not identify the person fired at him but had stated that who. had fired at the MP was wearing pink coloured shirt. He furthermore stated he could not identify the pink coloured shirt worn by one of the assailants.

26. It is true that he did not make any statement that pink coloured shirt was worn by the appellant in the first information report as also in his statement recorded u/s 161 of the Code of Criminal Procedure (for short 'the Code'), but the same in our opinion is not of much significance.

27. The first information report was lodged immediately after the occurrence took place, namely at 1400 hours. PW-1 was grievously injured. At that point of

time it was not expected of him that he would be in a position to make a statement containing minutest details. His statement u/s 161 of the Code must have also been recorded immediately thereafter.

28. PW-2, Channareddy Panchal was also examined on 1st April, 1999. He also received injury. Admittedly he was first taken to the Government Hospital, Ongole and thereafter he was shifted to Apollo Hospital, Hyderabad. He was admittedly operated upon and a bullet was removed from his body on 4th December, 1995. In the aforementioned situation it was not expected of him that he would make a statement before the police that accused No. 1, who had fired at him, was wearing a pink coloured shirt. He made such a statement before the C.B.I. Officers. It is interesting to note that it was suggested to him that he was at the door of the guest room while the MP was proceeding towards the hall near the curtain.

29. Manthri Srinivasa Rao examined himself as PW-3. He was declared hostile as he went back from his earlier statement made before the Investigating Officer. No reliance can be placed on his evidence.

30. One Manugunta Maheedhara Reddy examined himself as PW-13. He was also an eye witness. Although he could not identify the accused, he categorically stated that the assailant was wearing pink coloured shirt which was marked as MO 10.

31. So far as the second stage of the commission of offence is concerned, namely snatching of the car, PW-10, Cheukuri Laxmi Naersimham, a Police Constable was examined. He was a witness to the attempt on the part of the assailants to stop the Maruti car and being unsuccessful, stopped an Ambassador Car. According to him, the driver of the said car was threatened by showing revolver by one of the miscreants. The passengers of the car as also the driver left the car at that place. According to him they carried an injured person with them in car bearing No. AEE 2999 which was being driven by accused No. 2. According to him, however, accused No. 2 was arrested on the same date but as it appears from the record he was arrested after 15 days. We will deal with this aspect of the matter a little later.

32. Yada Srinivas Rao, PW-11, was the owner of taxi which was snatched. He also lodged the first information report Ext.P-9. He, however, could not identify the persons who snatched his car.

33. PW-9 Nagineni Subbayamma, although was the landlady of the appellant, deposed that he and his friends used to come by car and go back, the number whereof was AAK 7041. It was a white Ambassador car. She saw the driver of the vehicle at 10.00 a.m. on 1st December, 1995. The vehicle was parked in front of the house. She identified accused No. 2 as the driver thereof. But in her cross-examination she stated that the people to whom she let out the house were not seen by her. She could not establish their identities.

34. Mr. Sharan has drawn our attention to some documents exhibited before the learned trial Judge to contend that accused No. 2 purchased the car in question. The said exhibits are as under:

Ex. P-99 - Residence Certificate of Accused No. 2 issued by MRO.

Ex. P-100 - Affidavit of Accused No. 2 (Notarised)

Ex. P-101 Form 32 for purchase of vehicle AAG 8300

Ex. P-102 Delivery order in respect of Vehicle AAG 8300

Ex. P-103 Sale order in respect of AAG 8300

35. It, however, does not appear that the notary before whom the affidavit was sworn was examined. The said documents were not proved in accordance with law. We, therefore, do not intend to place any reliance thereon.

36. The fact that accused No. 1 was a member of Peoples War Group is not in dispute. His presence at the time of incident is also not in dispute. His statement before the learned Magistrate which was treated to be a dying declaration has not been disputed. The prosecution witnesses, although were not declared hostile, except PW-3, it is evident that for obvious reasons, before the Court, they did not intend to support the prosecution case fully. However, in a case of this nature the courts below, in our opinion, have correctly considered the broad aspects of the matter. If accused No. 1 went to the deceased M.P. for recommendation of opening of a PG Centre, he should have proved the same. PW-58, Y. Challadurai, Investigating Officer stated that he visited the premises in question on 14th January, 1996 alongwith the scientific experts from CFSL, New Delhi. He also proved the collection of blood samples from the floor of the guest room as well as floor of the bath room. Some fingerprints were also obtained. Another blood stained sample was also recovered on the piece of 'dhoti' marked as MO-47 which was found lying inside the car AAK 7041. He also took the blood samples, finger prints and specimen handwriting of the accused with the assistance of Jail doctor and Jail Superintendent. He also sent the blood samples to CCMB, Hyderabad. He also wrote a letter to Director CCMB, Hyderabad requesting him to give DNA Finger Print Opinion based on the blood samples of the accused and other objects vis-a-vis the blood samples which were sent to him from Director, FSL. He, on their advice, also obtained fresh blood samples of the accused on 15th February, 1996.

37. He proved that blood samples of PW-2 was taken at his instance by PW-47. Similarly blood samples of PW-1 was taken by PW-48. It was also proved that MO-10 was the subject matter of DNA finger print examination. Sh. C.B. Satyanarayana, Judicial First Class Magistrate, examined himself as PW-55. He deposed that on requisition from the Casualty Medical Officer of Govt. General Hospital, Guntur he had recorded the statement of accused No. 1 which was marked as Ex. P-96. He was not cross-examined. His evidence, therefore stood admitted.

38. Dr. G.V. Rao, PW-46, conducted the D.N.A. Test. Indisputably blood stains on a pink colour shirt and other material objects, in view of his report (Ext.86) it stands established that the blood samples of the shirt tallied with that of the appellant.

39. PW-49, G. Rajagopal Reddy, is a ballistic expert. He examined the pistol which is of 0.45 inch caliber seized from the possession of accused No. 1. It was marked as M.O. 23. In the opinion of PW-49 the bullet removed from the body of PW-2 was released from a 0.45 inch caliber pistol and it was fired from M.O. 23. The live cartridges which were seized from the appellant being also of 0.44 inch caliber could be fired from the pistol belonging to the appellant. The exhibits of entry on M.O. 9 and M.O. 10, according to the said witness were also caused by 0.45 inch caliber bullet. The fact that the bullet which was recovered from the person of PW-2 and the features of the weapon and the live cartridges seized from the appellant were same, categorically goes to show that the shots were fired from the pistol marked M.O. 23.

40. Drawing attention to paragraph 14 of the judgment of the learned trial court, it was urged by Mr. Sachar that therein it has been incorrectly recorded that the bullet was recovered from the body of deceased Subbarama Reddy. It is so but while discussing the evidence the learned Judge categorically noticed that the said bullet was recovered from the body of PW-2.

41. As the bullet from the body of PW-2 was recovered by the doctor of Apollo Hospital at Hyderabad, who was also examined by the prosecution as PW-14, viz., Dr. H. Anganatham, there cannot be any doubt whatsoever that the bullet in question was sent for opinion of the scientific expert.

42. We need not refer to the medical evidence as has been brought on record by the prosecution through PW-15, Dr. M. Ramchander Rao, and PW-16, Dr. Chandrasekhar Reddy, who held the postmortem examinations which led to corroboration of the ocular evidence to a great extent. The pistol recovered from the appellant indisputably was not a licensed one. If the appellant came to meet the deceased M.P. for recommendation for opening of a PG Centre, it was not necessary for him to come with an unlicensed pistol.

43. Furthermore although the identity of accused No. 2 could not be proved as being the driver of car bearing No. AAK - 7041, the fact that the said car was used in the crime, cannot be doubted having regard to the evidence of PW-10 and PW-11.

44. Mr. Sachar has relied upon the decision of this Court in *Vikramjit Singh @ Vicky Vs. State of Punjab*, , at page 314 wherein inter alia it has been held that a strong suspicion or that in all probabilities the accused was guilty of commission of heinous offence, would by itself not a substitute for proof.

45. In this case not only the appellant's presence has been admitted, the fact that he is a member of Peoples War Group also remains undisputed. His

participation in the crime with reference to the pink coloured shirt worn by him and his arrest immediately after the occurrence in an injured condition; recovery from him of the pistol and the two cartridges and the evidence of DNA Expert and the Ballistic Expert, must be held to be sufficient to prove his participation in the commission of the offence of murder of the deceased, namely Subbarama Reddy and his gunman Ch. Venkatarantam, and causing injuries to PW-1 and PW-3.

46. Submission of Mr. Sachar that the report of DNA should not be relied upon, cannot be accepted. What is DNA? It means:

(Deoxyribonucleic Acid), which is found in the chromosomes of the cells of living beings is the blueprint of an individual. DNA decides the characteristics of the person such as the colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred percent precise, experts opine.

There cannot be any doubt whatsoever that there is a need of quality control. Precautions are required to be taken to ensure preparation of high-molecular-weight DNA complete digestion of the samples with appropriate enzymes, and perfect transfer and hybridization of the blot to obtain distinct bands with appropriate control. (See Article of Lalji Singh, Centre for Cellular and Molecular Biology, Hyderabad in DNA Profiling and its applications)

47. But in this case there is nothing to show that such precautions were not taken. Indisputably the evidence of the experts is admissible in evidence in terms of Section 45 of the Evidence Act, 1872. In cross-examination PW-46 had stated as under:

If the DNA fingerprint of a person matches with that of a sample, it means that the sample has come from that person only. The probability of two persons except identical twins having the same DNA fingerprint is around 1 in 30 billion world population.

48. It is true that no identification parade was held but then the fact remains that the appellant remained in the hospital from 1st December, 1995 till 13th December, 1995. Holding of identification parade, therefore, would not have served any purpose.

49. We are not oblivious of the fact that the experts used the term 'similar' and not 'identical'. For the purpose of this case it may not be of much consequence as this Court has not taken into consideration the evidence of DNA Experts alone for the purpose of recording a judgment of conviction. It has been considered alongwith the other evidence. The prosecution case has been considered as a whole. Cumulative effect of the evidences adduced before the learned trial judge have been taken into consideration for the purpose of arriving at a finding of guilt against the appellant.

50. So far as accused No. 2 is concerned, we are of the opinion that that the High Court, although should have dealt with the matter at some more details, but keeping in view the fact that it recorded a judgment of acquittal, it is difficult to opine that another view is not possible. He was arrested 15 days after the occurrence from a railway platform. The fact that he was the driver of the car was sought to be proved by PW-10 and PW-11. PW-10, however, stated that he was arrested on the same day which was not a fact. PW-11 also could not testify the identity of accused No. 2. No identification parade was held, which could have been held, unlike the case of accused No. 1. He was not in the hospital or at some other place. No recovery has been made from him. The evidence of PW-9 Nagineni Subbayamma is shaky as she stated that she had not seen the tenants, whom the accused No. 2 used to visit by coming in an Ambassador car.

51. We, therefore, are of the opinion that both the appeals are liable to be dismissed. They are dismissed accordingly.