

(2009) 07 AP CK 0073

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 143, 258 and 293 of 2008

Sirima Narasimha Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120A, 120B, 201, 302, 34

Citation : (2009) 2 ALD(Cri) 743 : (2009) 3 ALT(Cri) 159 : (2010) CriLJ 769

Hon'ble Judges : D.S.R. Varma, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : C. Praveen Kumar and T. Bali Reddy for K. Suresh Reddy and O. Kailashnath Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

B. Seshasayana Reddy, J.—These three Criminal Appeals are directed against the judgment dated 10th January, 2008 passed in S.C. No. 242 of 2004 on the file of X Additional Sessions Judge (FTC) of Guntur at Narasaraopet, whereby and where under the learned Additional Sessions Judge found A1-Kalli Veera Rajeswari alias Chinna, A2-Manepalli Bala Koteswara Rao alias Bala alias Balaiah, A3-Manepalli Subbarao, A4 -Sirima Narasimha Rao and A5-Timirisa Krishna Prasad guilty for the offence under Sections 120-B r/w 34, IPC and Section 302 r/w 34 IPC and convicted them accordingly sentenced A1 to A5 to suffer RI for two years and pay a fine of Rs. 5,000/- in default to suffer. SI for one month each and. A1 to A4 to suffer imprisonment for life and pay a fine of Rs. 5,000/- in default to suffer. SI for two months each for the offence u/s 302 r/w, 34, IPC and A5 to suffer imprisonment for life and pay a fine of Rs. 1,000/- in default to suffer SI for one month for the offence u/s 302 r/w 34, IPC. However, the learned Additional Sessions Judge found A1 to A5 not guilty for the offence u/s 201 r/w 34, IPC and acquitted them accordingly.

2. Five accused persons were put on trial before the X Additional District and Sessions Judge, (FTC), of Guntur at Narasaraopet for the charges under Sections 120-B r/w 34, 302 r/w 34 and 201. r/w 34, IPC. The prosecution examined 27

witnesses and exhibited 22 documents and marked 10 material objects to bring home the guilt of the accused for the offences with which they stood charged.

3. The case of the prosecution as set out from the witnesses examined on its behalf, in brief, is:

A1 is wife of K. Subba Reddy, P.W. 2 Kalli Ramireddy and P.W. 3 Adapa Ramadevi are their children, P.W. 4 Adapa Verikata Sivareddy is son-in-law of A1 and Subba Reddy being the husband of their daughter-P.W. 3. P.W. 12 Devagiri Subbareddy is brother-in-law of A1 being the husband of her elder sister; P.W. 13 K. Subba Reddy and P.W. 15 Manukonda Nehru Reddy are cousins of A1. Except P.W. 4, all of them are residents of Manakondavaripalem. A2 and A3 are father and, son and residents of Chilakaluripeta. A2 has a Khadi Bhandar shop at Chilakaluripeta. He is native of Bhattiprolu and he shifted his residence to Chilakaluripeta about 15 years prior to the occurrence. He developed intimacy with A1 after few years of shifting his residence to Chilakaluripeta. Subba Reddy, his children and his relatives knew their intimacy. A1 was helping A2 by providing milk, pulses etc. A1 used to stay with A2 during night times. A2 fixed the marriage of his daughter-Jyothi and sought for financial help from A1 who in turn asked her husband Subba Reddy to provide Rs. 2.00 lakhs for performing the marriage of Jyothi. Subba Reddy refused to provide Rs. 2,00 lakhs. It is the version of the prosecution that A1 and A2 made up their mind to eliminate Subba Reddy so as to secure control over the properties owned by him. They allegedly hatched a conspiracy with A3 to A5 to eliminate Subba Reddy. The role ascribed to A5 who is a RMP doctor was to administer poisonous injection to Subba Reddy. About five or six months prior to the occurrence, P.W. 15 claims to have found A1, A2 and A5 at the house of A1, and heard A5 informing A1 and A2 cost of the injection to be administered as Rs. 3,500/-. P.W. 16 Narasani Kotireddy claims that about 15 days prior to the occurrence, he witnessed A1 questioning A5 at the shop of A2 in Chilakaluripet as to when he would administer injection and asked A5 to administer injection at the earliest possible time and that A5 informed cost of the injection as Rs. 3,500/-.

4. On invitation of P.W. 5, Subba Reddy went to Sivalayam of Chilakaluripeta to attend the birthday function of his grand son on 28-10-2002. Subba Reddy attended the birthday function and from there he along with A3 and A4 went to Nagarjuna Bar and Restaurant owned by P.W. 6. Talla Anjireddy and consumed liquor. It was at about 5.00 p.m. Subba Reddy asked a customer instead of a bearer to provide pulkas. A quarrel ensued between the customer and Subba Reddy and there upon P.W. 6 separated them and informed Subba Reddy as to non-availability of pulkas at that time. A3, A4 and Subba Reddy came out of the bar to secure pulkas, P.W. 8 Chiggu Satish Kumar, proprietor of Dhaba hotel near Anjaneya Swamy Temple of Boppudu states that A4 and another person came to his Dhaba and "had pulkas and the person accompanying A4 vomited in the Dhaba and that they paid bill amount. According to him, the person who accompanied A4 was in an inebriated condition. P.W. 7 China Sankara Reddy

claims to have seen A3 to A5 and Subba Reddy at about 8 p.m. near Anjaneyaswami temple of Boppudi. P.W. 14 Kalli Venkateswara Reddy alias Srinivasa Reddy states that he saw A3, A4 and Subba Reddy at Kalamandir Centre, Chilakaluripeta at about 9,30 p.m. According to him, A3 was riding the scooter and whereas A4 and Subba Reddy were on pillion seat. After 15 minutes, he saw A3 driving the bike in high speed with A4 on pillion seat, P.W. 9 Bika Venkata Reddy saw A2 riding bike in high speed on 28-10-2002 at 10.30 p.m. at Kalamandir Centre, Chilakaluripet. On reaching Nagabhairava Subbaiah's tank on the way to Manukondavaripalem, he found a male person in a pool of blood lying on the road. He did not go near the male person because of fear. Since Subba Reddy did not return home, his son P.W. 2 made a phone call to A2 to know whereabouts of Subba Reddy. A2 informed him of his not seeing Subba Reddy on that day P.W. 1 N. Sambasiva Rao, a panchayat Secretary of Manukondavaripalem village, received information that a dead body of a male person was lying on Chilakaluripet to Pedanandipadu road at 1/6 km. stone. He along with a village servant reached the scene and identified the dead body as that of Subba Reddy (hereinafter referred to as the deceased).

5. P.W. 1 submitted Ex. P.1 report before the Station House Officer, Chilakaluripet (Rural) Police Station. P.W. 26 M. Ranga Rao, Sub-Inspector of Police, Chilakaluripeta received Ex. P1 report and registered a case in Cr. No. 119 of 2002 and issued Ex. P. 20 FIR. He inspected the scene and prepared Ex. P.7 observation report in the presence of P.Ws. 1 and 24. While observing the scene, he lifted blood stained earth and controlled earth, which have been exhibited as MOs. 1 to 4. He also prepared rough sketch of the scene, which has been exhibited as Ex. P.21. He got the scene of offence photographed. Exs. P.W. 5 to 12 are photographs along with corresponding negatives. He also conducted inquest over the dead body of the deceased and affected seizure of wearing apparels of the deceased in the presence of P.Ws. 1 and 24. Ex. P3 is the inquest report and MOs. 4 to 6 are the wearing apparels of the deceased. He examined P.Ws. 1 to 4 and two others during the inquest. The opinion arrived at by the panchas, on hearing the statements of the witnesses examined during inquest, has been incorporated in Column No. XV of the inquest report. After the inquest, the dead body was sent for post-mortem examination. P.W. 20 Dr. P. Ankineedu Prasad, Medical Officer, Community Health Centre, Chilakaluripet held autopsy on the dead body on 30-10-2002 at 9 a.m. He found the following injuries on the dead body:

- 1) A cut injury over left side of mandible, obliquely, measuring 4 x 2 cm x 4 cm size entering into buccal cavity.
- 2) A transverse cut injury over left external ear, piercing temporal area of skull bone measuring 4 cm x 2 cm x 4 cm size.
- 3) A cut injury over left mastoid measuring 2 x 1/2 x 1/2 cm size.
- 4) Transverse cut injury over left parital area to occiput area 1 cm medial to 5th

injury measuring 3 x 1 cm size.

5) Transverse cut injury over left parital area measuring 6 cm x 1 cm size.

6) A cut injury over right eye-brow transversely measuring 3 x 1 x 1/2 cm size.

7) Oblique cut injury over right occipital measuring 4 x 1 x 1 cm size.

He opined that the deceased died of haemorrhagic shock due to multiple injuries. Ex. P15 is the post-mortem report issued by him. P.W. 27 K. Subba Rao, Inspector of Police, Chilakaluripet took up investigation and arrested A2 to A4 on the intervening night of 5/6-11-2002 while they were coming on MO. 10 motor cycle bearing registration No. AP 7 F 2263 near Vellore road and recovered MO. 8 steel folding knife in pursuance of the disclosure statement of A3 and MO. 9 wooden piece in pursuance of the disclosure statement of A4 under the cover of Ex. P. 19 in the presence of P.W. 24 and one K. Venkat Reddy. He arrested A1 on the same day i.e. 6-11-2002 and A5 on 5-9-2003. He forwarded incriminating material objects collected during the investigation to RFSL, Vijayawada. Ex. P.22 is the RFSL report. After completing investigation he laid a charge-sheet before the JFCM, Chilakaluripet. The learned Magistrate took the charge-sheet on file as P. R. C. No. 54 of 2003 and committed the case to the Sessions Division, Guntur as the offence u/s 302, I. P. C. is exclusively triable by a Court of Session. On committal, the learned Sessions Judge took the case on file as S. C. No. 242 of 2004 and made over the same to the Additional Sessions Judge, FTC, Guntur at Narsaraopet for disposal according to law. The learned Additional Sessions Judge, on hearing the prosecution and the accused, framed the charges u/s 120-B, 302 r/w. 34 and 201 r/w. 34, I. P. C. against A1 to A5. He read over and explained the charges to the accused, for which the accused pleaded not guilty and claimed to be tried. To bring home the guilt of the accused for the offences with which they stood charged, prosecution examined 27 witnesses and marked 22 documents and exhibited 10 material objects. The plea of the accused is that Subhani whose wife has illicit intimacy with the deceased may have killed the deceased or anyone set up by him. It is also their plea that all the material witnesses are blood relations of the deceased and they are planted to speak false against them. The learned Additional Sessions Judge, on appreciation of the evidence brought on record and on hearing prosecution and the accused, found A1 to A5 guilty for the offences under Sections 302 r/w. 34, I.P.C. and 120-0 r/w. 34, I. P. C. and convicted them accordingly and sentenced them as stated supra, by judgment dated 10-1-2008. Hence, these three criminal appeals by A2 to A5.

6. More precisely, Cri. A. No. 143 of 2008 is filed by A4 Cri A. No. 258 of 2008 is filed by A2 and A3 and Cri. A. No. 293 of 2008 is filed by A5.

7. Heard learned Sri. T. Bali Reddy, learned Senior Counsel appearing for appellants/A2 and A3 in Cri. A. No. 258 of 2008, Sri. C. Praveen Kumar, learned Counsel appearing for the appellant/A4 in Cri., A. No. 143 of 2008, Sri O. Kailashnath Reddy, learned Counsel appearing for the appellant/ A5 in Cri. A. No. 293 of 2008 and learned Public Prosecutor appearing for the respondent/State.

8. Sri. T. Bali Reddy, learned Senior counsel submits that the last scene theory introduced by the prosecution falls to the ground since P. Ws. 18 and 19 did not support the prosecution version. He would further submit that the lower Court is more carried away by the questionable relationship between A1 and A2 instead of testing the veracity of the witnesses as to the circumstances which the prosecution pressed into service to connect the accused with the death of the deceased. Learned Senior Counsel took us to the evidence of P. Ws. 2, 3 and 4 to show as to how they improved their version before the Court over their police statements with regard to altercation between A1 and the deceased in connection with the refusal of the latter to provide financial assistance to A2 to perform the marriage of his daughter-Jyothi. A contention has also been advanced by learned Senior Counsel that recovery of weapons allegedly used in the commission of the offence in pursuance of the disclosure statement of A3 and A4 from the house of A4 is of no use since the serologist report does not speak of the group of blood. The learned Senior Counsel would contend that the role ascribed to A5 has not been established since the post-mortem doctor did not find any poisonous substance in stomach of the deceased. He further contended that the prosecution version that A3 and A4 made the deceased to fully drunk before being assaulted proved to be false since the post-mortem doctor did not find any alcoholic contents in stomach.

9. Learned Public Prosecutor submits that the evidence of P. Ws. 8 and 9 clearly established that the deceased was last seen in the company of A3 and A4 and therefore they were the persons responsible for the death of the deceased. He would also submit that illicit relationship between A1 and A2 had been established by the prosecution through the evidence of kith and kin of A1 and the deceased, who have been examined as P. Ws. 2, 4, 12 and 13 and the deceased had no enemies and it was A2 who became enemy because of the deceased not extending his helping hand by providing Rs. 2.00 lakhs to perform the marriage of his daughter-Jyothi.

10. It is not in dispute that the deceased met with a homicidal death on the intervening night of 28/29-10-2002. Indeed the appellants did not assail this* part of the prosecution case during the trial. Therefore, we proceed to consider - whether the findings of the Court below that the prosecution succeeded in proving that each of the appellants had a role to play in doing away the life of the deceased can be sustained or not?

11. The case rests on circumstantial evidence. In case of circumstantial evidence it is necessary to find whether the circumstances relied on are capable of supporting the sole inference that the appellants are guilty of the crime charged. The circumstances in the first place have to be established by the prosecution by clear and cogent evidence and these circumstances must not be consistent with the innocence of the accused . For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be given to the totality of the circumstances. It is well

settled that the accused can be convicted on circumstantial evidence only if other hypothesis of guilt is completely excluded and the circumstances are wholly inconsistent with the innocence of the accused. The Supreme Court in Ramesh Chand Vs. State of Uttar Pradesh, has observed that the chain of circumstances must be complete and must clearly point to the guilt of the accused. Where the circumstances indicated do not really complete the chain as to lead to the conclusion that the accused and no other could have been the assailant then conviction cannot be maintained. The circumstances from which the guilt of the accused is to be drawn are to be established by unimpeachable evidence beyond a shadow of doubt. The circumstances are of a determinative tendency unerringly pointing to the guilt of the accused. The circumstances taken collectively are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

12. The motive for the commission of the offence according to the prosecution is questionable relationship between A1 and A2. At the cost of repetition it is to be noted that A1 is no other than the wife of the deceased. P. W. 2 is son and P. W. 3 is daughter and P. W. 4 is son-in-law of A1 and deceased. P. W. 12 is husband of elder sister of A1. P. W. 13 is cousin of A1. These witnesses candidly stated that A1 developed intimacy with A2 and their intimacy was since 15 years prior to the date of occurrence. Their evidence also reveals that A1 used to spend night times with A2 at his house. Of counsel, prosecution tried to establish that A2 secured a house on rent for his affair with A1. The sole witness to speak of the circumstances is P. W. 23 who is the owner of the house P.W. 23 did not support the prosecution and the prosecution declared him hostile and marked her Section 161 statement in the cross-examination as Ex. P. 16. Except this witness, there is no other witness to speak of A2 securing a separate residence for his affair with A1. Illicit intimacy between A1 and A2 had been spoken out not only by the kith and kin of A1 but also other witnesses (P. Ws. 5 and 6). Indeed P. W. 2 admits in cross-examination that his father (deceased) was never a hurdle to the activities of A1 and A2,. The immediate provocation for A2 to do away the life of the deceased is refusal to extend financial help by providing Rs. 2.00 lakhs to perform the marriage of his daughter-Jyothi. Illicit relationship seems to have been ignored by the kith and kin of A1 since A2 continues to come to the house of A1 for collecting milk daily and he is in visiting terms. P. W. 2 stated in the chief-examination that there was a quarrel between A1 and the deceased on the issue of providing Rs. 2.00 lakhs to A2 on the occasion of the marriage of his daughter-Jyothi. He admits in the cross-examination that his deceased-father was not a hurdle to the activities of A1 and A2 and his father used to flat due to heavy consumption of liquor and at times A2 used to bring him home. Whatever stated by him with regard to the quarrel between A1 and his deceased-father on the issue of providing Rs. 2.00 lakhs to A2 is an improvement over his police statement. This fact has been proved through the cross-examination of the Investigating Officer-P.W. 26. For better appreciation we may refer the cross-examination of P. W. 26 in his own words and it is thus:

...P. W. 2 had not stated to me that when a match came for the marriage of A2's daughter, A1 asked my father to give Rs. 2,00,000/-. Then my father questioned A1 as to why she requires such huge amount? Then A1 informed that Jyothi D/o. A2 got a match. Then my father questioned A1 as to why he should give money for the marriage of A2's daughter. Then all the accused conspired together to eliminate my father so that A1 will have the opportunity of getting all the properties of my father.

Whatever stated by P. W. 2 with regard to altercation between A1 and the deceased over the issue of providing financial assistance to A2's daughter is an improvement over his police statement. This improvement being on vital aspect, the same is liable to be excluded from consideration. P. W. 3 stated in the chief-examination that there was a quarrel between A1 and her deceased father when her de-ceased father refused to extend financial assistance to perform the marriage of A2's daughter. But, in the cross-examination she admits of not disclosing about the quarrels to the police and for the first time she stated about the quarrels between A1 and the deceased. P. W. 3 states in the cross-examination as follows:

Police examined me during the inquest at which time I stated that I do not know who killed my father. For the first time I am disclosing about the quarrels in our house and also about P. W. 2 making phone call to A2 at 7 p.m. and A1 receiving another phone call at 24.00 hours.

Since the evidence of P. W. 3 before the Court with regard to the quarrels between A1 and the deceased is an improvement over her police statement the same is liable to be excluded from consideration. P. W. 12 is the brother-in-law of A1 being the husband of her elder sister. He testifies that A1 and her husband used to quarrel on the issue of arranging money to A2. It is suggested to him in the cross-examination that he omitted to state before the police about quarrels between A1 and her husband-deceased on the issue of arranging money to A2. He denied the suggestion. But the omission got confirmed through the cross-examination of the Investigating Officer. It is stated by P. W. 27 Investigating Officer that P. W. 12 omitted to state before him that A1 pressed her husband-deceased to give Rs. 2.00 lakhs to A2. Whatever stated by P. W. 12 before the Court with regard to quarrels between A1 and her husband-deceased over arranging money to A2 is an improvement over his police statement and therefore the same is liable to be excluded from consideration. There is no other witness to prove the quarrels between A1 and the deceased on the issue of providing financial assistance to A2 on the occasion of his daughter's marriage. Therefore, the immediate motive as projected by the prosecution for A1 and A2 making up their mind to eliminate the deceased falls to the ground.

13. According to the prosecution , A1 to A5 laid a conspiracy to eliminate the deceased so as to have control over his properties. The essential ingredients of criminal conspiracy as defined in Section 120-A of I.P.C. are:

1. That there must be an agreement between the persons who are alleged to conspire; and

2. that the agreement should be

1. for doing of an illegal act, or

2. for doing by illegal means an act which may not itself be illegal.

14. Conspiracy is a matter of inference deduced from certain criminal acts of the accused done in pursuance of the apparent criminal purpose in common between them. The fact that some members of conspiracy are not members from the start but joined the conspiracy only later does not make them any the less liable to conviction. In a conspiracy persons are often required to do various acts at various stages, and if some of the accused come in only at a later stage, it cannot be said that they are not members of conspiracy. They are members thereof provided their act is calculated to promote the object of the conspiracy. It can be inferred from the circumstances proved. The Supreme Court in *S. Swamirathnam Vs. State of Madras*, held as follows:

In the case of single conspiracy although spread over for several years as long as there is one object of the conspiracy that is to cheat the members of the public, the fact that in the course of years others joined in the conspiracy of several instances of cheating took place in pursuance of the conspiracy does not change the conspiracy and it does not split up a single conspiracy into several conspiracies.

15. In another decision *Mohan Lal and Another Vs. Ajit Singh and Another*, , the Supreme Court held as follows:

The offence of criminal conspiracy u/s 120-A is a distinct offence. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the, conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator be interested. There must be unity of object or purpose but there may be plurality of means some times even unknown to the others. The only relevant fact is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.

16. P. Ws. 15 and 16 are the witnesses to speak of criminal conspiracy among A1 to A5 to do away the life of the deceased. A close reading of P. Ws. 15 and 16 indicates that they did not spell out as to whom A5 has to administer injection:

For better appreciation we may refer the chief - examination of P. Ws. 15 and 16 in their own words. The chief-examination of P. W. 15 reads as under:

I am resident of Manukondavaripalem and an agriculturist. I know A1 to A5. A1 is related to me as elder sister. At times I used to visit A1's house and take hand loans of Rs. 50/- to Rs. 100/- and return the same. About 5 or 6 months prior to the death of Subba Reddy one day at 9 to 10 a.m. I went to A1's house and found A1, A2 and A5 were talking. Then, I went to A1's house for asking hand loan of Rs. 100/-. Then, I went inside A1's house to have a glass of water with a view not to disturb them. Then, A1 questioned A5 as to when he will administer the injection. A1 also questioned A5 whether it will be possible through him else she will look after another person. Then, A2 interfered and asked A5 to administer the injection. Then, A5 informed that it is not a simple thing and it costs Rs. 3,500/-. While returning from A1's house I asked A1 Rs. 100/- at least on the next day and went away as A1 had not given the money.

The chief-examination of P. W. 16 reads as under:

I am resident of Manukondavaripalem. I cultivate vegetables and "sell the same in Chilakaluripet. I know A1 to A5. I used to keep the baskets at the shop of A2. After completion of the remaining work in Chilakaluripet I take back those empty baskets after collecting the amount and then go to Manukondavaripalem. About 15 days prior to Subba Reddy's death A1 questioned A5 as to when he will administer injection and asked A5 to administer at the earliest possible time. Then, A2 interfered and asked A5 to administer the injection at the earliest possible time to implement his words into deeds. Then, A5 informed that it costs Rs. 3,500/- for administering the injection and who will meet those expenditure. Then, A4 interfered and proclaimed that if money is the only criteria he will arrange for the money and asked A5 to administer the injection. Then, I took out my baskets and went away. On 29-10-2002 in the morning there was rumour in the village that Subba Reddy was murdered and that his body is lying on a road. Then, I went there and found his dead body in a pool of blood on the road. Due to fear I left that place. Police examined me on 31st at the library.

17. We have read and re-read the evidence of P. Ws. 15 and 16. They did not speak as to whom injection is to be administered by A5. It is a matter of record that the post-mortem doctor did not find any poisonous substance in the stomach of the deceased and it is not the case of the prosecution that the death, of the deceased: was due to administering poisonous injection on him. Such is the evidence available on record, it is highly difficult to draw any inference from the evidence of P. Ws. 15 and 16 that there was a conspiracy among A1 to A5, to do away the life of Subba Reddy. The trial Court without proper appreciation of the evidence of P. Ws. 15 and 16 jumped to the conclusion that the appellants had laid conspiracy to eliminate the deceased. Therefore, the conviction of the appellants/A2 to A5 for the offence u/s 120-B r/w. 34, I. P. C. is liable to be set aside.

18. The prosecution heavily relied on four circumstances to connect the appellants/A2 to A5 with the death of the deceased. Firstly, A2 making a call to A1 and informing her of completing the task. Secondly, last seen the deceased in the company of appellants/A2 to A5. Thirdly, recovery of weapons used in the commission of the offence in pursuance of the disclosure statements of A3 and A4. Fourthly, extra judicial confession of A2 before P. W. 25.

19. P. Ws. 2 and 3 are the witnesses to speak of A1 receiving a telephone call on the intervening night of 28-29/10/2002. They did not say that A2 is the person who telephoned to A1. It is stated by P. W. 2 in the chief-examination that A2 came to his house at 29-10-2002 at about 6 or 7 a.m. for collecting milk and he asked A2 as to whereabouts of his deceased-father. Thereupon, A2 told him that he came to the village via Vellore road and further informed him to search for his father on Pedanandipadu road. Neither P. W. 2 nor P. W. 3 stated that A2 is the person who telephoned to A1. Both P. Ws. 2 and 3 were examined during the inquest held on the dead body on 29-10-2002. They did not whisper before the Investigating Officer who recorded the statements during the inquest that A2 made a telephone call to A1 on the night of the incident. Even before the court whatall stated is that A1 received telephone call on the intervening night of 28/29-10-2002. Therefore, the prosecution version that A2 is the person who telephoned to A1 on the intervening night of 28/29-10-2002 is not substantiated and thus it is to be held that the prosecution failed to prove this circumstance.

20. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. When there is a long gap and possibility of other persons coming into between exists and in the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases vide decision of Supreme Court in *Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir*, .

21. In *Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh*, , the Supreme Court opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.

22. In *Jaswant Gir v. State of Punjab* (2005) 12 SCC 438, it was observed that in the absence of any other links in the chain of circumstantial evidence, it is not possible to convict the appellant solely on the basis of the "last-seen" evidence.

23. From the principle laid down by the Supreme Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that

the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that, the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. There can be no fixed or straightjacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author of the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstance in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence.

24. The prosecution examined P. Ws. 5, 6, 7, 8, 14 and 21 to show that the deceased was last seen in the company of A2 to A5.

25. P. W. 5 Manukonda Venkateswara Reddy is resident of Manukondavaripalem. He invited the deceased to attend birthday function of his grandson in Sivalayam of Chilakaluripet. According to him, the deceased attended the birthday function and left the venue at 2 p.m. He claims to have seen the deceased and A2 to A5 in the shop of A2 at about 3 or 4 p.m. It has come on record that the deceased and A2 were on visiting terms as on the date of occurrence despite illicit intimacy between A2 and A1. Indeed P. W. 10 stated in his chief examination that he saw A3 to A5, deceased and P. W. 2, who is no other than the son of the deceased, at the shop of A2. It can be said without any hesitation that P. W. 2 was very much with the deceased when the deceased found in the shop of A2. Therefore, at any strength of imagination presence of A3 to A5 along with the deceased in the shop of A2 on the evening of 28-10-2002 cannot be construed as incriminating circumstance. It can be said that it is casual visit of the deceased to the shop of A2.

26. P. W. 6 Talla Anjireddy is native of Manukondavaripalem. He runs a Bar and Restaurant in the name and style of Nagarjuna Bar and Restaurant in Chilakaluripet. He testifies that on 28-10-2002 at 5 p.m. the deceased, A3 and A4 consumed liquor. He claims to have informed the police on 30-10-2002 that A3 and A4 along with the deceased came to his bar and restaurant and

consumed liquor. At this juncture it is trite to refer the evidence of P. W.1 who speaks of the presence of P. W. 6 during the inquest. Had P. W. 6 witnessed A3 and A4 and the deceased consuming liquor in his bar on 28-10-2002 at 5 p.m. he would not have missed to mention the same during the inquest. The very fact of his silence during the inquest speaks volumes of it. Therefore, it creates any amount of doubt with regard to his witnessing A3, A4 and the deceased consuming liquor in his bar on 28-10-2002 at 5 p.m.

27. P. W. 7 Chirra Sankara Reddy claims to have seen A3 to A5 and the deceased on 28-10-2002 at 8 p.m. near Anjaneya Swamy temple of Boppudi. He stated in the chief examination that he witnessed A5 administering injection to the deceased on the night of the incident. But in the cross-examination he stated that A5 did not administer injection in his presence. There is no consistency in his evidence and therefore it is highly unsafe to place any reliance on his testimony.

28. P. W. 8 Chiggu Satish Kumar runs a dhaba near Anjaneya swamy temple of Boppudi. He speaks of A4 and another person coming to his dhaba. He does not speak of the deceased coming to his dhaba along with P. W. 4. Therefore, his evidence is of no avail to the prosecution.

29. P. W. 9 Bika Venkata Reddy is a resident of Manukondavaripalem and an agriculturist. He owns a tractor. On 28-10-2002 he transported gravel to C. R. College of Ganapavaram village and stopped day work at 10.30 p.m. He was waiting at Kalamandir centre at about 10.30 p.m. to go to his village. According to him, he saw A2 moving in the locality on his bike. It is to be recalled that A2 has a shop at Kalamandir centre. It is nothing unusual of A2's presence near about Kalamandir centre. Therefore, the presence of A2 at Kalamandir centre cannot be treated as an adverse circumstance against him. According to P. W. 9, he proceeded to his village via Pedanandipadu village and on the way near Nagabhairava Subbaiah's tank, he found a male person lying on the road in a pool of blood. It is stated by him in his cross-examination that the dead body occupied two third's of the road width. Having noticed the presence of the dead body, he did not mind to inform any of his villagers. His conduct in not informing to any of his villagers creates any amount of doubt of his very seeing the dead body on the way to his village.

30. P. Ws. 10. Tabuboddi Sivareddy and 11 Meka Ramireddy are agricultural coolies. Their evidence is not of much significance to further the prosecution case. P.W. 14 is resident of Manukondavaripalem. He testifies that on 28-10-2002 at about 9.30 p.m. he saw A3, A4 and the deceased proceeding on a motor cycle towards Manukondavaripalem and fifteen minutes thereafter A3 and A4 only returning in high speed though road condition does not permit for such high speed. In the cross-examination he admits that he proceeded to Manukondavaripalem on the same route through which A3 and A4 and the deceased went. But, he did not claim to "have seen the dead body on the way to Manukondavaripalem. Had really A3 and A4 are the assailants of the deceased,

the dead body of the deceased must have been noticed by P. W. 14 since the time gap is only 15 minutes.

31. P. W. 21 Manikonda Perireddy is resident of Manukondavaripalem. On 28-10-2002 he boarded the bus at 9.45 p.m. at Kalamandir centre to go to Manukondavaripalem. He claims that he saw A3 and A4 coming towards Chilakaluripet on a bike in a high speed. He did not claim of seeing the dead body of the deceased on the way to his village. Had he noticed A3 and A4, he should not have missed to see the dead body on the road, which admittedly occupied 2/3rd width of the ; road. His evidence is silent as to his seeing , the dead body of the deceased.

32. P. Ws. 18 Murikipudi Peraiah and 19 Gollapalli Nagabhushanam are the conductor and driver of the bus wherein P. W. 21 allegedly travelled in the bus conducted by them. But, P. Ws. 18 and 19 did not support the prosecution and the prosecution declared them hostile. Therefore, the version of P. W. 21 that he witnessed A3 and A4 coming in the opposite direction on the night of the incident cannot be believed. In view of the above discussion, we find that the last seen theory introduced by the prosecution cannot be believed.

33. The trial Court has given undue importance to the illicit intimacy of A1 and A2 and recorded finding on the basis of mere conjectures and surmises. Para 16 of the judgment impugned needs to be noted to suggest as to how the trial Court has drawn conclusion on mere conjunctures and surmises, which is thus:

16. The learned advocate for the defence contended that most of the P. Ws. belong to Reddys and rest turned hostile and questioned the propriety of the police in not examining the other community people. As can be seen from the charge-sheet, A1 and most of the witnesses that deposed against all the accused belong to Reddy community and the limited few witnesses (P. Ws. 18 and 19) that belong to other communities had turned hostile. It is apparent also that police had mostly examined Reddy community people as witnesses and cited them as witnesses in the charge-sheet and they were picked up for examination before the Court and the limited few witnesses that belong to other community were either given up even if examined out of necessity turned hostile. There appears some reason for this peculiarity. Admittedly, A1 belong to Reddy community and A2 belong to Vysya community. They developed unholy and illicit intimacy for the last 15 years or so and that is known to the localities of Manukondavaripalem and surroundings which appear to be predominantly dominated by Reddys. Its Sarpanch, is also a Reddy by name one Kalli Venkatreddy shown as L. W. 36 in the charge sheet. Because of the illicit intimacy between A1 and A2 and their moving together on the same bike in the presence of the husbands of that locality will certainly be felt as insult by the Reddy community at large of that area. In rural background of these parts, a lady, more so, a married lady, having children belong to upper caste slips from the moral platform and moves in questionable manner, then there is possibility for members of that caste to feel insult by the acts of A1 and her paramour. In

such manner, the Reddy community of these parts appear to have been aggrieved by the acts of A1 and A2....

It is nobody's case that illicit intimacy of A1 and A2 brought disgrace to the community as a whole to which A1 belongs.

34. The next circumstance is with regard to recovery of weapons used in the commission of the offence. P. W. 27 K. Subba Rao claims to have arrested A3 and A4 and recovered MOs. 8 and 9 in pursuance of their disclosure statement in the presence of P. W. 24 Manukonda Ratna Reddy and one K. Venkat Reddy. According to him, MOs. 8 and 9 had bloodstains. But, the evidence of P. W. 24 does not indicate that MO. 8 steel-folding knife having any bloodstains. Even otherwise the serology report does not speak of the group of blood noticed on MOs. 8 and 9. Therefore, this circumstance alone is not sufficient to connect the accused with the death of the deceased.

35. The last circumstance is extra judicial confession of A2 said to have been made before P. W. 25 Manukonda Nagireddy. His cattle shed is opposite to the house of deceased. Both A1 and the deceased are related to him. He testifies that on the intervening night of 28/29-10-2002 at about 11 or 12 p.m. A2 came to him and made a clean breast of the offence. He admits in cross-examination that he has no close association with A2 and he has no dealings with him. There is no reason for A2 to repose confidence on him. Added to that he did not choose to apprehend A2 soon after his making confession before him. He allows A2 to go away and made no effort to inform the police. For better appreciation we may refer the cross-examination of P. W. 25 in his own words and it is thus:

Cross-examination for defence : Sarpanch sent word to me/Then I went to the panchayat office where the sarpanch and the police were available. I stated the same to the police about A2 requesting me to eliminate them from this case. I stated to the police that I was working in a tobacco company. I failed SSLC. My house is separated and surrounded by residential houses. I do not know A3, A4 and A5. I have not asked my neighbours to apprehend A2 when he approached me. I have no acquaintance with the police and I was never shown as a witness in any other case. I was in Manukondavaripalem from 28th to 30th October, 2002 all through. I have no close touch with A2 and we have no dealings. It is not true to suggest that as A2 who belong to Vysya community kept A1 who belongs to Reddy community as his kept mistress and having been humiliated by such relation as it is stigma to our family prestige as A2 is related to me as sister I am deposing false. For the first time I informed about A2's request with me to eliminate them from the case. I cannot say who are the other witnesses that were present at the panchayat office when the police examined me. It is not true to say that I was not examined by the police.

His evidence cannot be believed for two reasons. Firstly, A2 has no close association with him to gain confidence. Secondly, he did not choose to inform the police immediately with regard to A2 making a clean breast of the

commission of the offence before him. It is highly unbelievable that A2 would go to the house of P. W. 25 whose house is situated nearby the house of the deceased and closeted by the people belonging to the community of the deceased. Therefore, the extra judicial confession projected by the prosecution through, P. W. 25 does not repose any confidence. The only evidence the prosecution is able to prove is recovery of MOs. 3 and 4 from the possession of A3 and A4. When almost all other evidence produced by the prosecution is disbelieved, the mere fact of the prosecution having recovered MOs. 8 and 9 at the instance of A3 and A4, on the facts and circumstances of the case, is not sufficient to connect them with the death of the deceased.

36. In the result, Cri. Appeal Nos. 143, 258 and 293 of 2008 are allowed setting aside the conviction and sentence of the appellants/ A2-Manepalli Bala Koteswara Rao alias Bala alias Balaiah, A3-Manepalli Subbarao, A4-Sirima Narasimha Rao and A5-Timirisa Krishna Prasad for the offences under Sections 120-B r/w. 34, I. P. C. and Section 2 r/w. 34, I. P. C. and are acquitted of the same., The appellants are directed to be set at liberty forthwith if they are otherwise not required in any other crime. Fine amount paid, if any, by the appellants is ordered to be refunded.