
(2006) 10 AP CK 0096
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 1061 of 2004

Thirakala Sreekanth

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-10-2006

Acts Referred:

Evidence Act, 1872 — Section 106, 114
Penal Code, 1860 (IPC) — Section 302, 364

Citation : (2007) 1 ALD(Cri) 323 : (2007) 1 ALT(Cri) 76

Hon'ble Judges : M. Venkateswara, J; Bilal Nazki, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—The sole accused in Sessions Case No. 227 of 1997, is the appellant. He was tried by the IV Additional Sessions Judge, Nellore for the offences punishable under Sections 364 and 302 of I.P.C. The learned Sessions Judge found the accused/appellant guilty for both the offences and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 100/-, in default, to undergo simple imprisonment for 15 days for the offence u/s 364 of I.P.C. He was sentenced to undergo imprisonment for life and also fined Rs. 100/-, and in default of payment of fine, he has to suffer simple imprisonment for 15 days for the offence u/s 302 of I.P.C.

2. The allegations against the accused, on which the charges were framed, were that on 30th of September 1996 he kidnapped a boy Chejerla Chaithanya from Little Angels Public School, Chillakur and then caused his death by stabbing him.

3. After the charges were framed, the accused pleaded not guilty and claimed to be tried. Prosecution examined 23 witnesses and exhibited 54 documents. The defence examined one witness and exhibited one document.

4. The prosecution story was that the deceased Ch. Chaithanya, a boy of 7 years, was a student of Little Angels Public School, Chillakur. He used to go to school every day by school bus. On 30th of September 1996 at about 11 a.m., the accused is said to have reached the school where the deceased was studying and made a false representation with the Correspondent of the school that the father of the boy was unwell, and therefore, he got the custody of the child from the school and took him in a car and then proceeded to a lodge and killed the boy in the room between 11.30 a.m. and 12.30 p.m. and left the lodge.

5. PW-1 is the father of the deceased boy. He stated that he was carrying on cloth business. He knew Lakshmipathi, Ravi, Narendra Reddy, who are residents of the village. His son was studying in 3rd standard in Little Angels Public School, Chillakur and the deceased used to go to school in school bus arranged by the school authorities every day at 8 a.m. along with other students. On 30th of September 1996, as usual, his son Chaithanya went to school in the school bus. At that time examinations were being conducted by the school. The deceased was his only son and he has another child who is a daughter. The daughter was younger to his son. His son did not come back on 30th of September 1996 in the bus in which he had gone to school. However, the bus driver Subrahmanyam informed the witness that somebody came in a car and took his son from the school by representing that the witness was not keeping good health. He informed the same to his friends Lakshmipathi, Ravi and Narendra Reddy. They started to search for his son. They went to school. While going to school, they had to pass Gudur. At Gudur also, they enquired about his son. They were informed that his son had been taken to Surya Lodge, Gudur in a car. He got information that his son had been taken in a car bearing Registration No. AAN-223. He, along with others, rushed to Surya Lodge. They enquired from the Manager of the lodge whether any boy was brought to the lodge. The Manager of the lodge informed them that one boy was brought to his lodge and they had occupied room No. 103. He, along with his friends, rushed to the room. They found room No. 103 locked from outside. They informed the Manager accordingly. The Manager opened the lock with a duplicate key and they saw that the boy was dead lying in a pool of blood with injuries. The child was wearing school uniform even at that time. He asked his friends to remain in the lodge and he himself went to the Police Station and lodged a report. Ex.P-1 was the report given by him to Police. After giving of report, he went to the lodge and Police arrived to the lodge. The Police noticed dead body of his son. Police also noticed a shirt was hanging in Room No. 103 of the lodge and a suitcase was also there. Police opened the suitcase and took out two certificates affixed with photos. These photographs were shown to the witness. On seeing the photographs, he told the Police that he could identify the person shown in the photos. The photos were of one Srikanth S/o. Hanumantha Rao who was running a medical shop in the village. The same Srikanth was the accused who was in the Court. M.O.1 was the shirt which was hanging in room No. 103 seized by the Police, M.O.2 was the suitcase which was found inside room No. 103, M.O.3 was the school bag of his

child, M.O.4 were two socks, M.O.5 was the black boots of his child, M.Os.6, 7, 8 and 9 were different articles like books, rubbers, geometry box and the like, belonging to his son. Ex.P-2 was the hall-ticket issued by the Board of Intermediate Education, Hyderabad, certifying the identity of the accused. Ex.P-3 was the Certificate of Registration of A.P. General Sales Tax, Gudur, certifying accused was running "Sri Lakshmi Vigneswara Medical Fancy Stores, Chennur" with photo.

6. In cross-examination he stated that Chennur was a major grampanchayat having population of about 25,000/-. There were number of phone facilities in the village. He himself had no phone on the day of occurrence. Soon after Subrahmanyam, the bus driver, informed him that his son had been taken away by somebody, he got suspicion. He did not try to inform the Police that Subrahmanyam had informed him that somebody had taken his son. He could not give the names of the persons who had informed that his son was taken in a car bearing No. AAN-223 to Surya Lodge. He enquired from the taxi stand at Gudur about AAN-223, but the car was not in the stand. He came to know from his enquiries that a person had engaged the taxi bearing No. AAN-223 to go to school and from school to Surya lodge. The name of the Manager of Surya lodge was Yllanti Ravi. He was resident of a neighbouring village. Parents of Yellanti Ravi used to come to his shop to purchase cloth. The C.I. of Police had shown him the photos of the accused between 10.30 and 11 p.m. on 30.09.1996. He was examined by Police on the same day. He was not author of Ex.P-1, but signed it. He could not remember the name of the person who drafted Ex.P-1 report. Date was not mentioned on the top of Ex.P-1 report. He denied the suggestion that Ex.P-1 report had been written between 7 and 7.30 p.m. Next day morning i.e. on 01.10.1996, the C.I. of Police had told him that Srikanth, accused, had murdered his son. There were no ill-feelings or disputes between his family and the family of accused. He did not know whether the accused was involved in any criminal case prior to this case. He denied the suggestion that he had not seen the shirt, suitcase, certificates with photographs, which were marked as M.Os.1 to 9 and Ex.P-2 and P-3. The Police arrested the accused after one week of the murder of his son. Police had not shown him the accused when he was in custody. He did not know for how many days the accused was in Police custody before being sent to Judicial custody. He denied the suggestion that Police had arrested the accused on 30.09.1996. He denied the suggestion that on arrest of accused on 30.09.1996, Police had recovered Ex.P-2 and P-3 from his house.

7. PW-2 is a resident of Chennur. He is also doing business in cloth. He knew PW-1, LW-3 Ravi and LW-4 Narendra and the accused. He also knew the deceased who was son of PW-1. He stated that on 30th of September 1996 at about 2 p.m., PW-1 came to him and informed him about the non-return of his son from school by the bus. They got suspicion. Thereafter he and PW-1, along with Ravi LW-3, went to Gudur to search for the son of PW-1. At Gudur, they learnt that the boy was taken in a car from school and brought to a lodge at Gudur. Then,

he, PW-1 and Ravi went to Surya lodge. They made enquiries about the son of PW-1. The room boy told them that the boy was kept in room No. 103. Then he almost corroborated the same story which was stated by PW-1 about the noticing of body in room No. 103 and noticing certain objects. He had been examined by Police and he had been shown some photographs of accused and he had identified the person who was Srikanth, accused.

8. PW-3 is a resident of Gudur and he was driver of the car bearing No. AAN-223. He stated that he used to park his car in taxi stand at Gudur. On 30.09.1996 at about 10.30 or 11 a.m., a boy aged 17 or 18 years, approached him and asked for car on hire. Said person asked him to go to Little Angels Public School, Chillakur, and the fare was agreed to be paid at Rs. 70/-. Then, he along with the said person, went in said car to Little Angels Public School, Chillakur. He parked the car in front of the school and the said person got down from the car and went into the school. He came back and told him to park the car near a telephone booth. He then went inside the booth and telephoned to somebody and again came to the car. Then he again asked him to go to school. He parked the car outside the school. After some time, the said person brought a boy aged about 3 or 4 years and sat in the car. The boy was carrying the school bag. Then he along with said person and the boy came to Surya lodge, Gudur. Said person and boy got down from the car and went into Surya lodge and the said person gave him the fare and he left. On the same night at about 10.30 p.m., Police came to him and asked him whether he had taken any passenger on hire to the school and also showed him a photograph and asked him whether the said person had taken the car on hire. He could recognize the person and told them that he had taken the same person. Police had shown him Ex.P-3 and he had identified the photograph Ex.P-3 as the photograph of the person who had taken his car during the day on hire. Thereafter, he was also taken for identifying the person who took the car on hire, in an identification parade before J.F.C.M., Gudur. He was examined by Police on 30th September 1996. He identified the person in the Court hall to be the person who had taken his car on hire and whose photograph he had identified in Ex.P-3.

9. In the cross-examination, he stated that the car bearing No. AAN-223 was a private car. One Uppalla Mallikarjuna was owner of car. Since the car bearing No. AAN-223 is a private car, it could not be hired on taxi. The Police showed him photo relating to accused, between 10.30 and 11 p.m. Police also took him to the Police Station and kept him there for a night and released on the next date. Police had not summoned the car bearing No. AAN-223 to Police Station. Police had not also examined Mallikarjuna, the owner of the car. He is having a license from the year 1996. Ex.X-1 was the license of the witness. Nobody followed the accused when he brought the boy from the school and boarded the car. He had parked the vehicle ten metres away from the main gate of the school. The car had been engaged by the accused at 10.30 a.m. at the taxi stand of Gudur and he had reached Surya lodge at about 11.20 or 11.30 a.m. The Police had never showed him the accused, but he had identified him before the J.F.C.M. He did not

remember the colour of the dress wore by the accused on the day of occurrence. The boy and the accused did not talk to each other in the car. When the accused went to telephone booth and talked to somebody, he stayed at some distance and could not hear the conversation. He did not know to whom the accused had telephoned. The accused gave him Rs. 10/- in order to have cool drink when he went to telephone booth. They waited for 10 minutes near the telephone booth and then returned to school.

10. PW-4 is the resident of Tungapalem, who was the Manager in Surya Lodge, Gudur on the day of occurrence i.e. on 30th September 1996. He stated that on that day at about 9.30 a.m., one person aged about 19 years came along with a suitcase in hand and asked for a room in the lodge. Accordingly he accommodated the said person in room No. 103 and entered the same in the register. Ex.P-16 was the register maintained by the lodge for accommodating the guests, Ex.P-17 was the relevant entry at page No. 16 in Ex.P-16. The signature in Ex.P- 17 pertains to that of person who had taken the room in the lodge. At around 10 a.m. or so, the said person left the lodge and on the same day at about 11.30 a.m, he returned to lodge along with a boy. The said boy was wearing school uniform and also having a school bag. The person and the school boy went to room No. 103. The person who had taken the room, left the lodge at about 11.30 a.m. or 12 noon on the same day. At about 4 p.m., four persons came to the lodge to enquire as to whether any person had brought a school boy to the lodge. He told them that a person had brought a school boy and that boy was in room No. 103. The four persons went to room No. 103 and returned back informing that the said room was locked. Thereafter, he went to the room with a duplicate key and opened the door. They found dead body of the boy in a pool of blood. Out of four persons, one went to the Police Station to give a report. After some time, Police arrived to the lodge, observed room No. 103 and noticed a suit case, school bag, etc. Police took out photos of a person and shown to him asking whether the person referred in the photos had taken the room in the lodge. The witness told them that the same person who was shown to him, had taken the room in their lodge. He also identified the person who had taken room in the lodge during the test identification parade before J.F.C.M. His statement was recorded by Police. The person who came to the lodge along with boy on 30.09.1996 and whom he had identified before J.F.C.M. was the accused present in the Court. Police had taken photos from room No. 103 of Surya lodge. Ex.P-4 to P-9 were the photos taken at the dead body. M.O.2 was the suitcase, M.O.3 was school bag. These objects were found in room No. 103 along with other material. In his cross-examination he stated that he knew PW-1 who was running a cloth shop at Chennur. He did not know whether PW-1 was a wealthy person. There were five entries in Ex.P-16 register pertaining to 29.09.1996. Out of five entries, four entries were written by parties and one entry was written by him. He had written the entry pertaining to one A.J.Sanjeeva Kumar. He had made the entry himself as he had received the 100% rent. In the rest of the entries it is stated that they had received advance of Rs. 100/- He had written the entry in

Telugu language in Ex.P-16. There are two entries in Ex.P-16 register pertaining to 30.09.1996. He had written one entry in Telugu language at 9.30 a.m. pertaining to G.Surya, Vizag. Since he did not know English, he used to write the entries in Telugu. In 1996, he was the only person who was working as Manager of the lodge. He joined Surya lodge on 25.09.1996 as Manager. Earlier to that, he had not worked at Surya lodge. He had made two entries himself in the entries register from 25.09.1996 to 30.09.1996. They were written on 29.09.1996 and 30.09.1996. One Suryanarayana was the owner of the lodge, but he did not know his surname. He worked in the lodge for about 5 months after 30th September 1996. He had no proof except the entries made by him in Ex.P-16 to show that he worked in the lodge. Surya lodge had a telephone facility. He had forgotten the phone number of Surya lodge. Surya lodge was situated East of I-town Police Station. To go to I-town Police Station from Surya lodge, one has to cross old bus stand and railway station. He did not state before the Police that the duplicate key was with his owner and that the owner handed over duplicate key of room No. 103. The duplicate keys of the lodge were always with the owner. The owner of the lodge also had an electric shop by the side of Surya lodge by name "Suryanarayana Electricals", and on his asking, the owner had given the duplicate key of room No. 103 to him.

11. The learned Counsel for appellant submits that this witness is a planted witness, who has made only two entries in the entry register, that too, on 29.09.1996 and 30.09.1996. According to him, these entries have been made only to project the witness as an important witness. But however, we do not think that having only two entries in the register in the hand of the witness, that too, on 29.09.1996 and 30.09.1996 is sufficient to come to a conclusion that this witness was a planted witness. As a matter of fact, this witness had only joined the lodge as Manager on 25.09.1996 and he stated that he made entries on 29.09.1996 and 30.09.1996 and other entries were made by some others or by the customers. That could not discredit this witness. It is also stated by learned Counsel that although this witness had worked there for five months, he did not remember the telephone number of the lodge. But, the witness had worked in the lodge in the year 1996 and he was examined after more than seven years i.e. on 24.09.2003 in the Court, and it is not unusual to forget the telephone number.

12. PW-5 is running a chicken centre at Gudur. Earlier he worked as room boy in Surya lodge. He also narrated the same story about coming of the accused to the lodge and taking a room and then going back and then coming along with a boy and then discovery of dead body when the father of the boy came to the lodge. He also identified the accused. In his cross-examination, he stated that he did not know PW-1. PW-1 met him at the time of serving summons to him. Police served summons on him at Chicken centre, Gudur. One Police Constable brought summons to him and PW-1 had accompanied the Constable. A day before, in the evening, PW-1 met him at Gudur. PW-1 did not pay any amount. He worked at Surya lodge for about a week. He did not remember when he had joined in the

lodge prior to 30.09.1996 and when he had left the lodge after 30.09.1996. He had been paid Rs. 200/- for working in Surya lodge for one week. He denied that he had never worked in Surya lodge and also denied that accused never came to the lodge with the school boy and that the accused was in no way connected with murder of the boy. He stated that Police had shown the photos of accused at 5 p.m. on 30.09.1996. Police took him to I-town Police Station on 30.09.1996. PW-4 was also taken to the Police Station along with him. Police recorded his statement and left him within 15 minutes.

13. The testimony of this witness was also challenged on the ground that it is not possible that a boy who work in a lodge, would work only for one week. We do not consider it an important circumstance, as it is not unusual that a boy in a hotel work only for a week.

14. PW-6 is the Correspondent of Little Angels School, Chillakur. He stated that the Little Angels School was established in the year 1985. During the year 1996 one Ramaguravaiah was the Principal of the school. They were plying school buses to get the children from various places. One Subrahmanyam was the bus driver in the year 1996. Devasena was office clerk of school at that time and Guravamma was sweeper at that time. On 30th September 1996 at about 11 a.m., the accused came to his school. He was in his office. The accused met him and told him that the father of Chaithanya was not doing well. At that time, quarterly examinations were being conducted in the school. Chaithanya, a student of his school, was also writing examinations. When the accused asked him to sent Chaithanya along with him, he asked him whether he had brought any letter from the father of Chaithanya. The accused told him that he did not bring any authorization letter. Then he asked the accused to furnish the phone number of father of Chaithanya. The accused replied that Chaithanya's father had no phone. He searched the application form of Chaithanya to ascertain whether any phone number was available. No phone number was furnished in the application of Chaithanya filed at the time of admission. He told the accused that he could not send the boy unless he gets a letter or phone call from the parents of Chaithanya. Then accused replied he would get a letter. He left his office. After ten minutes, the witness also left his office on some personal work. When he returned at 1.30 p.m., he received a phone call from parents of Chaithanya, informing him that Chaithanya had not returned from the school. Then he informed them that somebody had come and wanted the boy on the ground that his father was not well. He asked the parents to come to the school immediately. He himself went to the Principal. The Principal told him that he received a phone call from parents of Chaithanya and also a letter of authorization to permit the child to go along with the accused. On his enquiry, the bus driver Subrahmanyam told the Principal that he knew the driver of the car who came to school along with the accused. The Principal of the school further told him that he called for Chaithanya and asked whether he knows the accused.

15. Chaithanya told the Principal that he knew the accused. Having got satisfied, the Principal allowed Chaithanya to go along with the accused, as the father of Chaithanya was unwell. Parents of the boy came to school. At the same time, Subrahmanyam had taken the school bus to Chennur, where Chaithanya was residing. Subrahmanyam, after getting down children in their respective houses, returned back. The witness enquired from him and Subrahmanyam told him that the driver of the car who is resident of Gudur, was known to him. He sent Subrahmanyam to go to taxi stand and he also asked parents and Principal to rush to the Police Station to give a report. On the same day at around 4 or 5 p.m., he received news of murder of Chaithanya in the room of Surya lodge. He asked Principal to stay for some time in the Police Station. At around 6 or 7 p.m., Principal along with Police, came to school and Police recorded his statement on 30.09.1996.

16. In his cross-examination he stated that he was a Diploma holder in Mining Engineering. He did not know the accused prior to the alleged incident. He had not seen the letter brought by the accused as an authorization letter. Usually, they verify the signatures in authorization letters. They would not send a student out of the school during school hours unless the parents or guardian sends a letter or makes a phone call. When the accused came to school at 11 a.m., he did not enquire his name or address. The accused told him that he was working as a clerk in the shop of father of deceased. He do not know whether the father of the deceased was having a phone facility or not. He was put to a detailed cross-examination, but nothing worthwhile, which could help the defence, was extracted from him.

17. PW-7 is STD booth owner near Chillakur. He stated that on 30.09.1996 at about 11 a.m., the accused came in a car to his telephone booth and telephoned to school. The accused paid him Rs. 2/-. He participated in the test identification parade before J.F.C.M. and identified the accused during the test identification parade. In the cross-examination he stated that photo of accused was shown to him prior to the test identification parade. Police came to him for the first time two or three days after the accused telephoned from his booth. The accused came in a car from school to his booth. Again the accused returned back to school after telephoning from his booth. The accused had made a conversation in the phone that father of Chaithanya was serious and the boy could be sent. He did not entertain any doubts against the accused telephoning from his booth.

18. PW-8 is the person who was Principal of Little Angles School, Chillakur in the year 1996. He stated that on 30.09.1996 at about 11.15 a.m., one boy came and asked Chaithanya to be sent along with him, as the father of Chaithanya was ill. He asked his clerk to ascertain whether it was correct or not. His clerk informed him that there was a phone call also and he had been informed that the father of the boy also gave him an authorization letter said to have been written by father of Chaithanya, which was Ex.P-18. Then he made enquires with Subrahmanyam, driver of the bus. The bus driver told him that the boy knew the accused. With

hesitation, he sent Chaithanya along with boy who brought Ex.P- 18. He could recognize the person who had brought Ex.P-18 and the accused was the person who brought Ex.P-18 letter and who took Chaithanya along with him on 30.09.1996. He also identified the accused as the person who brought Ex.P-18 letter, in the test identification parade. He could recognize the photographs of deceased which were Ex.P-4 to P-15.

19. In the cross-examination he stated that Ex.P-18 read thus, "The parent of the above mentioned child have asked me to bring his boy from your L.A.P. School." He admitted that a reading of Ex.P-18 letter indicates that it was not addressed by parents of deceased Chaithanya. The letter had been written by one Ramesh. Ramesh had signed in Ex.P-18 in capital letters. The taxi number and some number was written on Ex.P-18 and the same was struck off. He handed over Ex.P-18 to Police on 30.09.1996 at 10 p.m. As could be seen from Ex.P-18, it was not addressed to the school, but it was addressed to Chaithanya, 3rd standard, Chennur. The accused did not put any signature in his presence, but the accused brought Ex.P-18 to him. He denied the suggestion that Ex.P-18 was fabricated in the school. In back side of Ex.P-18, a stamp of school was put. He denied the suggestion that a notorious criminal gang has taken away the child from the school without their notice and to cover up their latches, they had created the letter and colluded with Police and introduced PW-7 to give false evidence. He had identified the accused before J.F.C.M. during test identification parade. The learned Counsel for appellant submits that in order to avoid any liability, the school managed Ex.P-18. If school had to manage Ex.P-18, then they could manage a letter from the father of the child PW-1 also and they could have manufactured a letter suggesting that a letter was sent by the father or any of the relations of the boy, but the letter read, "the parent of the above mentioned child have asked me to bring his boy from your L.A.P. School". The accused managed a telephone call, for which also, there is cogent evidence which has been discussed in detail.

20. PW-9 is the clerk who received the phone call on 30.09.1996. He stated that on phone, he was told that the relations of Chaithanya was admitted in the hospital. Then he informed the phone conversation to PW-8 the Principal of the school.

21. PW-10 is a person, who was working as clerk in "Lakshmi Opticals and medicals". He stated that when he opened the shop, a person aged 19 years came to his shop and purchased black opticals with a cover containing the name of Lakshmi Opticals for Rs. 150/-. After paying the amount, the said person went away. M.O.10 was the optical cover and M.O.11 was the glasses purchased by the accused who was present in the Court hall. He told C.I. of Police that accused purchased M.O.11 along with M.O.10 for Rs. 150/- on 30.09.1996 at 7.30 a.m. He duly identified the accused of having purchased M.O.11.

22. PW-11 is a shop keeper, from whom the accused allegedly purchased a suitcase M.O.2 by paying Rs. 350/-. He also purchased M.O.12 white colour

cotton cap by paying Rs. 25/- on the same day. On 07.10.1996, the C.I. of Police and two others came to his shop and enquired whether accused known to him. He told the C.I. of Police that accused who was present in the Court hall, had purchased M.O.2 and M.O.12 from him on 30.09.1996.

23. PW-12 is the brother of PW-11. He stated that on 30.09.1996 at about 8.30 a.m., a person came to his shop "Poorna fancy and bakery" and purchased a button knife by paying Rs. 125/- to him. M.O.13 was the empty cover of button knife in which the button knife was kept and purchased by accused on 30.09.1996. On 07.09.1996, the C.I. of Police came to his shop and asked him whether he knew the person who had purchased the button knife, which was kept in M.O.13 cover. He told the Police that the accused had come to his shop on 30.09.1996 in the morning and purchased the knife. He identified the accused who was present in the Court hall, as the same person who had purchased the knife on 30.09.1996. PW-13 is the Magistrate, who conducted the test identification parade. He stated that the suspect told him that he had no objection to conduct the test identification parade and he also gave him a choice to stand in the row at any place he liked. He put him along with 11 members with similar complexion and height. He noted the names of non-suspects. He satisfied himself that non- suspects were of similar nature and complexion. Thereafter he took all precautions to see that the witnesses does not have any access to the accused prior to the identification parade. Thereafter he called PWs.3, 4, 6, 7 and 8 who had identified the accused. He had started the proceedings at 10.50 a.m. and concluded at 12.20 p.m.

24. PW-14 was the photographer who took photographs of the dead body and also of the objects in room No. 103. PW-15 was a person who was running a shoe shop opposite to Surya lodge. He stated that on 07.10.1996, the C.I. of Police brought some other persons and asked whether he can identify the person who was then in custody. He identified the said person and informed the Inspector that on 30.09.1996 in the morning hours, he sold a pair of chappals black in colour. The accused who was present in the Court hall was duly identified by him on 07.10.1996 as the person, who had purchased a pair of chappals for Rs. 35/- in his shop on 30.09.1996. M.O.14 was the paid of black chappals purchased by accused in his shop on 30.09.1996. PW-16 was running a Shamiyana shop at Gudur. He stated that on 30.09.1996 at about 8 or 8.30 p.m., Police called him, one Meera Reddy and Ramachandraiah. They went to room No. 103 of Surya lodge and noticed a dead body of the boy. He is a witness to the mediators report. He was also a witness to the inquest panchanama.

25. PW-17 is the D.S.P., Finger Prints Bureau, Hyderabad. He stated that on 01.10.1996 he visited the scene of offence in room No. 103, Surya lodge, along with Inspector of Police, Gudur in Crime No. 135 of 1996. He examined carefully the entrance and exit and also the following articles suspected to have been handled by unknown culprits-

1. Front door and its latches

2. One suit case.
3. one plastic water jug
4. one wooden cot
5. window frame and its glasses
6. one matchu kathi
7. one wooden tea poy
8. one school bag
9. bathroom doors and its latches
10. one wooden chair
11. one stainless steel tumbler

26. He had taken the chance palm prints A, B, C and D on different objects. He had also obtained the finger prints and palm prints of the deceased. The photocopy of chance palm print marked "B" disclosed on the wooden chair, the photocopies of chance finger print marked as "C" and "D" disclosed on the stainless steel tumbler concerning in the crime are wanting the clear ridge characteristics required for the purpose of establishing identity. Hence they were unfit for comparison. The photocopy of chance finger print marked as "A", disclosed on the wooden chair, is clear and fit for comparison and the same had been compared with the finger prints of the deceased and found not identical with any of the said finger prints of the deceased. The photocopy of chance finger print marked as "A", disclosed on the wooden chair concerning in the crime, had been compared with the finger prints of the accused supplied to him on 23.10.1996 through letter dated 18.10.1996 by the Inspector of Police, Gudur and he found that the photocopy of the chance finger print marked as "A" is identical with the left middle finger impression marked as "S1" on the F.P. Slip marked as "S", of the accused. Accordingly, he prepared the comparison chart with the chance finger print and specimen finger impression in substantiation of F.P. Inspector report. The chance finger print marked as "A" and the specimen left middle finger impression marked as "S1" are of loop patterns. He has given the points of identity.

27. PW-18 is the doctor, who conducted the postmortem on the dead body of deceased. He found the following injuries-

Injuries: Head and Neck:

1. Lacerated injury about 3" x 1/2" bone deep over the left parital area, parital bone fractures above 2". Wound is fresh, blood clots present.
2. A lacerated injury 1 x 1/2" size bone deep left side of the occipital area.
3. A small cut injury 1/2" bone deep over right parital area.

4. A lacerated wound 2" x 1/2" over the right perital bone. Bone deep. Blood clots present.

Face:

1. Multiple cut injuries over the face. Lacerated wound over the face about 5" extending from the left aspect of right eye to left side of face. Nasal bones fractured.

2. Cut injury across the mouth right side fact to the angle of the mouth about 4" deep to the upper teeth. Loss of upper central teeth, gums are congested, blood clots present. Two incisors teeth on left side lacerated fracture Maxilla present.

3. Cut injury 1 1/2" x 1/4" from right side of mouth.

4. Vertical cut injury over lower lip extending to chin about 1 1/2" x 1/2" size, bone deep.

5. Cut injury 1 t. aspect of left eye bone deep.

6. Cut injury 1 x 1/2" bone deep on 1 t. aspect of right eye.

7. 2 cut injuries 1/2" size over right fore head.

Neck:

Feachment like skin over the front of the upper part of the neck extending right to left side of the neck.

Chest:

1. Stabbing injury 1/2" x 1/4" over the left upper chest just below the left clavicle, unknown depth, blood clots present.

2. Stabbing injury 1/2" x 1/4" unknown depth over the chest 2" about left nipple.

Upper limbs:

1. Cut injury over left shoulder 2" x 1" and back, exposing left shoulder joint. Blood clots present.

2. Cut injury 1/2" x 1/4" over left shoulder.

3. Cut injury 1/2" x 1/4" over right chest on the back medial to right scapula.

4. Cut injury 1/2" x 1/4" middle of the left upper arm bone deep, blood clots present.

5. Curved laceration 1 1/2" x 1/2" bone deep posterior lateral aspect of left fore arm 2" below the elbow. Blood clots present.

6. 1 1/2" x 1/2" cut injury over middle of posterior lateral aspect of left fore arm.

7. 1 1/2" x 1/2" cut injury 1" below the wrist, bone deep.

8. 1 1/2" x 1/2" cut injury over posterior aspect of left hand.
9. 1" x 1/4" cut injury over post aspect of right fore arm.
10. 1" x 1/4" cut injury over posterior aspect of right fore arm.
11. 2" x 1/2" cut injury over the post aspect of right wrist. Bone deep. Blood clots present in all the above injuries.

INTERNAL INJURIES:

Skull : Scalp opened, sub is congested at the injury side, fracture about 2" in size of left parietal bone, left side hemispherical congestion. Haematoma present in the parietal region. Brain matter at left parietal lobe lacerated.

Neck: sub cutaneous tissue over the neck normal, hyoid bone normal, Larynx congested.

Chest : Haematoma in the left thoracic cavity present. Chest injury directed forwards and backwards over the 3rd rib. 3rd rib fractured, and intercostal muscle and found cut in mid mammillary line, surrounding tissue congested-left lung lacerated corresponding to the chest injury. Haematoma present. Lungs are collapsed. Cut sections floats on water, oozing of blood.

Heart: Heart chambers are empty. Stomach : About 100 ml of coffee coloured fluid present in the stomach, after blood.

Spleen : Normal, both kidneys are present and pale in colour.

Liver : Pale.

Bladder: Empty. External genitalia normal.

28. According to him, the injuries could have been caused with a sharp object like billhook and injuries were sufficient to cause death in ordinary course of nature.

29. PW-19 is the Circle Inspector of Police, A.C.B., Nellore. At relevant point of time, he worked as Sub-inspector of Police, I-town P.S., Gudur. He stated that on 30.09.1996 while he was at Police Station, at about 5 p.m., PW-1 came to Police Station and presented a report. Case was accordingly registered in Crime No. 135 of 1996. Earlier to registering the case, he telephoned to the C.I. of Police. He issued Ex.P-35 printed F.I.R. On reaching Police Station, the C.I. of Police took up investigation. Whenever he needed his assistance, he provided assistance to the C.I. of Police.

30. PW-20 is the handwriting expert. He was working as Scientific Assistant in A.P.F.S.L., Hyderabad along with one Sri K.V.Ramana, who worked as Assistant Director. He stated that Sri K.V.Ramana was a Science Post Graduate and Diploma holder in handwriting examination from Ministry of Home, Government of India. He has vast experience in handwriting examination and deposed several

cases. He can identify the signature of Sri K.V.Ramana, who gave opinion. He further stated-

On 02.11.1996, our Department has received a requisition from S.D.P.O., Gudur vide Lr. No. 62/FSL-SDOG/96, dt.18-10-96 along with letter of advice and documents for examination. Our Department received one Lodge Register (Ex.P.16) containing Ex.P.17 relevant entry containing disputed signature marked as Q.1 as Ex.P.17. Two note books containing standard writings of accused T.Srikanth marked as Section 1 to Section 22. Ex.P.36 is the note book pertaining to the accused. Ex.P.36 contains standard writings of T.Srikanth (accused) marked as Section 1 to Section 16. One more note book Ex.P.37 containing standard writings of T.Srikanth (accused) marked as Section 17 to Section 22 on the relevant pages at 3, 4, 11 to 14 in Ex.P.37 (Printed numbers). Ex.P.36 contains standard writings at page Nos. 1, 5 to 11, 29 to 32 and 61 to 64 marked in red colour. One sheet containing standard writings of accused, obtained by Investigating Officer marked as Section 23. Standard writing of accused obtained by Investigating Officer is Ex.P.38, dt.7th October, 1996. One sheet containing questioned writings (Ex.P.27) in red ball- point pen marked as Q.2. After careful examination of original documents, Sri K.V.Ramana opined that "the person who wrote the red enclosed writing marks Section 1 to Section 23 also wrote the red enclosed writing marks Q.1 and Q.2." Ex.P.39 is opinion given by late K.V.Ramana on 31-12-96, under his signature. The witness also identified the signature of K.V.Ramana, F.S.L. in Ex.P.39. Ex.P.40 is covering letter of Ex.P.39 opinion signed by late K.V.Ramana. Ex.P.40 also contains the signatures of K.V.Ramana. Late K.V.Ramana expired on 20.2.2002 while in service.

31. PW-21 is a shop keeper, from whom, a shirt was purchased by the accused on 30.09.1996. He gave him a receipt also. He stated that the accused, who was present in the Court, had purchased the shirt from him.

32. PW-22 is the Panchayat Secretary, in whose presence, the accused was arrested on 06.10.1996. He stated that the accused was holding a bag, in which, a knife, some old clothes, railway ticket and cash was found. The police arrested the accused in his presence and others and seized those articles under Ex.P-43 Mahazarnama, dated 06.10.1996. He and another V.A.O. had signed Ex.P- 43. Another V.A.O. who had signed Ex.P-43, had died. On 07.10.1996, he was again summoned by Police and he went to the Police Station and thereafter followed the C.I. of Police and mediators, to an optical store at Gudur. The optical shop owner had identified the person who had purchased M.O.10 opticals and M.O.11 cover. Police had prepared Ex.P-44 Mahazarnama dated 07.10.1996 for the seizure of M.Os.10 and 11. Similarly, he was taken to other shops where shop keepers gave statements that the accused had purchased different articles from them and whose testimony has already been discussed.

33. Ex.P-23 is the Inspector of Police who conducted the investigation in the case. He stated that after having received information from Sub-inspector and the F.I.R., he started the investigation and went to Surya lodge along with Police

Constables. Thereafter, completed the investigation and filed charge sheet.

34. The learned Counsel for appellant challenges the conviction and sentence mainly on the ground that the identification of the accused was always doubtful and identification was tried to be established on the basis of photographs, when the accused was available. We have discussed the evidence in detail. Before going to this contention of the learned Counsel for appellant, let us mention the circumstances which have been conclusively proved against the accused;

1. that the accused went to the school of the deceased and took him away with him in the car. This has been substantiated by the evidence of the Correspondent and Principal of the school and also of the driver of the car in which the boy was taken.

2. that the boy was taken to Surya lodge by the accused. This was proved by the evidence of the Manager and room boy of Surya lodge.

3. that the body of the boy was found murdered in room No. 103 of Surya lodge.

4. that a suit case which had been purchased by the accused from a shop keeper, who appeared as a witness, was found in the room in which the body of the deceased was found. In this suit case, certain papers were found, which had the photographs of the accused. On the basis of these photographs, in the first instance, Police tried to find out who was the person whose photographs they were.

35. Now, after going through these circumstances, if we examine the contention of the learned senior counsel for appellant, one comes to a conclusion that it has to be rejected because, the photographs were used by the Police only at the time when they did not have the custody of the accused. After they got custody of the accused, the accused was got identified during the test identification parade before the Magistrate.

36. The learned Counsel has referred to a judgment reported in Ram Kishan v. State of U.P. (2006) 1 SCC 603. In paragraphs 6 and 7, the Supreme Court held-

6. The counsel for the appellants strongly urged before us that the evidence of the other two witnesses, namely, PW 2 and PW 6, cannot be accepted as they were also not independent witnesses. It was pointed out that these witnesses were so close to deceased Shiv Shankar Singh that they even filed an affidavit before the court in support of the plea for the cancellation of the bail of these appellants. The incident allegedly happened at 8 o'clock in the morning. These witnesses are persons residing in the locality. PW 1 also deposed that these witnesses were present at the time of the incident. The courts below have relied on the evidence of these two witnesses. We do not find any strong reason to discard their evidence.

7. The counsel for the appellants further contended that the medical evidence adduced in this case disproved the prosecution case. PW 8 Dr.B.B. Subramaniya

conducted the post-mortem on the dead body of the deceased Shiv Shankar Singh. He deposed that the injuries found on the body of Shiv Shankar Singh may have been caused by a sharp, heavy-cutting weapon. Injuries 3, 4 and 6 are injuries which must have been caused by such a weapon. Injury 3 is a chop wound on the left forehead 18 cm x 4 cm brain-deep; Injury 4 is a chop wound 10 cm x 3.5 cm and Injury 6 is a chop wound 6.5 cm and 5 cm. All these three injuries are on the head and the brain was exposed. Counsel for the appellants contended that according to the prosecution, the appellants were armed with "lathis" fitted with iron rings and there was no case that any one of the appellants was having any sharp-cutting weapon. It is important to note that the "lathis" were fitted with iron rings and a heavy blow with such a weapon on the head would have caused the skull to break. The doctor was of the opinion that there were multiple fractures of the skull. Except the witnesses saying that "lathis" were fitted with iron rings, there is no evidence as to the nature of the weapons. During the course of the investigation, these weapons were not examined. What was the width of the ring which covered the "lathis" is not known. Under the circumstances, the Sessions Court and the High Court were justified in accepting the prosecution case.

37. But in the present case, we have found, as mentioned hereinabove, that the photographs were used in the intervening period i.e. from discovering the photographs at the scene of occurrence till the actual arrest of the accused. Therefore, this judgment is not going to come to the rescue of the accused.

38. Another judgment on which reliance has been placed by the learned Counsel for appellant is Murlidhar and Others Vs. State of Rajasthan, . This is a judgment in which the Supreme Court acquitted a person for the offence u/s 302 of I.P.C., but upheld the conviction u/s 364 of I.P.C. In paragraph 20 of this judgment, the Supreme Court considered the impact of its judgment in State of West Bengal Vs. Mir Mohammad Omar and Others etc., . It quoted paras 31 & 33 of that judgment as under-

The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine as though it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and the society would be the casualty.

39. This Court further observed thus (vide para 33):

Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning

and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.

40. In para 22 of the judgment, the Supreme Court held-

22. In our judgment, the High Court was not justified in relying on and applying the rule of burden of proof u/s 106 of the Evidence Act to the case. As pointed out in *Mir Mohammand Omar* (supra) and *Shambu Nath Mehra* (supra), the rule in Section 106 of the Evidence Act would apply when the facts are "especially within the knowledge of the accused" and it would be impossible, or at any rate disproportionately difficult for the prosecution to establish such facts, "especially within the knowledge of the accused." In the present case, the prosecution did not proceed on the footing that the facts were especially within the knowledge of the accused and, therefore, the principle in Section 106 could not apply. On the other hand, the prosecution proceeded on the footing that there were eye-witnesses to the fact of murder. The prosecution took upon itself the burden of examining Babulal (PW-5) as eye-witness. Testimony of Ram Ratan (PW-7) and Isro (PW-10) shows that their agricultural land was situated in a close distance from the house of Khema Ram. As rightly pointed out by the High Court, it is highly unlikely and improbable that their kith and kin Ramlal would have been given beating resulting in his death by the accused-appellants while keeping lights of their house on and door of the room opened. It is also unlikely that the accused-appellants would have taken the risk of dragging Ramlal to the house of Khema Ram, which was situated in the vicinity of agricultural land and well of Isro (PW-10), the father of Ramlal. The evidence of Govind (PW-13) also appears to be unnatural, as he had not disclosed the incident to anybody. The High Court has correctly analysed that all the witnesses, namely, Babulal (PW-5), Ram Ratan (PW-7), Isro (PW-10) and Govind (PW-13) are wholly unreliable as their evidence is replete with contradiction and inherent improbabilities.

41. There is no quarrel with the principles laid down by the Supreme Court. But the present case is a case where there is sufficient evidence to come to the conclusion that the deceased did not come into contact with anybody else after he came into contact with the accused. The accused took the boy from the school in a car along with him, he occupied room No. 103 in Surya lodge, thereafter he left the room, locked the room and took away even the keys of the room with him. When the accused left the lodge after locking the room leaving behind the boy, and when the boy's body was found, nobody else had entered that room. That is sufficiently proved by the testimony of the Manager of the lodge and also the ward boy, and as a matter of fact, the room had to be opened by a duplicate key after PW-1 and others and the Manager of the lodge suspected a foul play. Therefore, in our view, this judgment would also not come to the rescue of the

appellant.

42. For these reasons, the appeal is accordingly dismissed.