SUPREME COURT OF INDIA

Maqbool @ Zubir @ Shahnawaz

Vs.

State of A.P.

Crl.A.No.435 of 2008

(Dr.B.S Chauhan and Swatanter Kumar JJ.)

08.07.2010

JUDGEMENT

Swatanter Kumar, J.

1. The present appeal is directed against the Judgment of the High Court of Judicature of Andhra Pradesh at Hyderabad dated 27th February, 2007 wherein the Court passed the following judgment of conviction and order of sentence:

> "Crl. A. No. 1825 of 2004 is allowed in part. The convictions and sentences imposed on A.1 for the offence under Section 302 I.P.C. and Section 3 r/w 25 (1-B) (a) of Arms Act are confirmed. The conviction imposed on A.2 for the offence under Section 302 r/w 109 I.P.C. is modified and he is convicted for the offence under Section 302 r/w 34 I.P.C.
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> and sentenced to suffer imprisonment for life and also to pay a fine of Rs.1,000/- in default, to suffer 6 months simple imprisonment. The conviction and sentence imposed on A.1 and A.2 for the offence under Section 120-B I.P.C. is set aside. So far as A.4 and A.6 are concerned, they are found not guilty for any of the offences under Sections 120-B and 302 r/w Section 109 I.P.C. and accordingly, the convictions and sentences imposed on them for the said offences are set aside.
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> Therefore, A.4 and A.6 shall be set at liberty forthwith if they are not required in any other crime. The fine amount, if any, paid by them shall be refunded.
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> Crl.A. No.1886 of 2004 is allowed and the convictions and sentences imposed on A.8 for the offences under Sections 120-B and 302 r/w Section 109 I.P.C. are hereby set aside. He shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by him shall be refunded.

> Crl.A. No.2220 of 2004 is allowed and the convictions and sentences imposed on A.3 and A.5 for the offences under Sections 120-B and 302 r/w Section 109 I.P.C. are hereby set aside. They shall be set at liberty forthwith, if not required in any other crime.
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> The fine amount, if any, paid by them shall be refunded."

2. As is apparent from the above judgment of the High Court that it modified the judgment of the Trial Court insofar as conviction of accused No.A2 was concerned. However, it completely acquitted accused A3 to A6 and A8 of all the offences. From the record, it appears that A7 was merely the author of the diary and was charged along with other accused of the offence under Section 396 of the IPC and for that offence, the Trial Court had in fact acquitted all the accused of this charge including A7. At the very outset, we may notice that no appeal has been preferred against their acquittal by the State or the competent authority. Thus, in the present appeal we are only concerned with the appeal of accused Maqbool @ Zubir @ Shahnawaz and Mohd. Feroz Khan @ Feroz referred to as appellants herein.

3. The prosecution had brought before the Court of Session nine accused to face the trial. Out of these, one Azam Ghori is stated to have been killed in an encounter on 6th April, 2000 and consequently proceedings against him came to an end. While other eight accused faced the trial and were finally found guilty and were punished for different offences. A1 was found guilty for offence under Section 302, whereas A2 to A8 for the offence under Section 302/109 IPC.

> "However, they all were acquitted for the charge of an offence under Section 396 IPC but were also punished for 120-B IPC. The facts from the record shows that somewhere in July 1999, Azam Ghori who died during the Trial organized a Tanjeem along with his associates accused A1 to A8, hatched a conspiracy to snatch away the cash bag from one Ramakrishna Rao, the owner of a cycle shop called `Krishna Cycle Stores', New Bus Stand, Bodhan. In pursuance of the said conspiracy on 2nd August, 1999 accused chalked out plan at Sarbathi Canal Mosque, Bodhan that A1 should snatch the bag of the deceased and A2 Feroz Khan should drive the vehicle to escape from the scene after commission of the offence and remaining of them i.e. A3 to A9 should watch the movements by taking shelter near the shop and house of the deceased for successful implementation of their plan. A6 Mohd. Abdul Mateen @ Muzaffar had provided his motorcycle while A9 gave his pistol to A1 for the purposes of committing the crime. It was decided that in the event Ramakrishna Rao showed any resistance and did not hand over the bag containing cash, they will shoot him and run away from the place of occurrence. Ramakrishna Rao was in his cycle shop called `Krishna Cycle Stores' and also had second show collections of the theatre in the evening. He used to come back to his place with cash. On the night of 2nd August, 1999, a lorry loaded with spare parts of Hero Cycle came to the shop of the deceased and the goods were unloaded into the shop by 10.30 P.M. The deceased had second show collection from the theatre which is estimated to be of Rs.40,000/-. After

closing the shop, he was proceeding to his house which was about 500 to 600 feet away and his salesman was accompanying him. One Nazar and Hamid were following him and all of them were going on foot. When they were about to reach the house of the deceased that the accused intercepted and demanded the deceased to handover the bag. As already noticed, there was resistance and arguments, resultantly the accused had fired three shots from his pistol, snatched the bag and ran away. When the deceased fell down PW1 one Prasad, PW2, the wife of the deceased and his elder daughter took the deceased to the Government Hospital, Bodhan in an auto and as no doctor available at the Hospital they took the deceased to Santhan Nursing Home where he was declared dead by the doctors. Thereafter, PW1 went to the police station at about 11.50 P.M. and gave complaint to the Sub- Inspector of Police Station. The Inspector was examined as PW23 and a complaint submitted was Ext. P.1. On this basis, an F.I.R. was registered under Section 302 and 379 r/w 34 I.P.C. and Section 25 & 27 of Indian Arms Act being Ext. P.35. It may be noticed here that as per the evidence on record, the wife and daughter of the deceased were sitting on the first floor of the house and they came to have seen the deceased, PW1 coming to the house as well as his alteration with the accused. They had come down with the key to open the door for the deceased to enter the house however, when they opened the door the firing had taken place and the deceased was lying on the ground."

4. The investigating officer was examined as PW18, who took up the investigation, examined the witnesses and recorded the statement after preparing the sketch of the case of occurrence Ext. P11 and scene of offence panchanama Ext. P10. They were prepared in presence of PW9. The body of the deceased was sent for postmortem. PW14, Dr. B. Santosh conducted the autopsy over the dead body of the deceased and issued postmortem report certificate expressing the opinion as Ext.P15. The cause of death was identified to be internal hemorrhage and shock caused by a fire arm injuries.

5. Test Identification Parade for both the accused was held on 6th July, 2000 and 29th July, 2000 by PW17 and PW20 and relevant proceedings were marked as Ext. P17 and P28 respectively. After completion of the investigation, charge-sheet was filed in the Court.

"All the accused were subjected to trial. The prosecution examined as many as 26 witnesses and relied on documentary evidence Ex. P1 to Ext. P39. After making their statements under Section 313 Cr.P.C., the accused also examined four witnesses. Ultimately, they were found guilty and awarded sentence by learned Sessions Court as afore-noticed. The judgment of the Sessions Court was partially set aside by the High Court. Dissatisfied from the judgment of the High Court, the present appeal has been filed by the two appellants challenging the legality and correctness of the judgment of the High Court. The arguments advanced on behalf of the appellants are:

(i) The prosecution has not been able to establish the guilt of the accused beyond any reasonable shadow of doubt.

Non production of material evidence, findings being recorded on surmises and their being no direct evidence of conspiracy, the accused were entitled to the benefit of doubt.

(ii) The investigation of the case was so faulty that even important piece of evidence like blood stained earth, empties were admittedly not collected from the place of occurrence and no seizure memos were prepared, as stated by the Investigating Officer. This clearly creates a dent in the case of the prosecution.

(iii) The findings otherwise recorded are based on no evidence and are perverse.

(iv) From the case of the prosecution, it is clear that there was no light at the place of occurrence and the incident being that of 10.30 P.M. the visibility was bound to be NIL and as such, the version of the so called eye- witness was not true.

(v) In fact, the very persons of the eye-witnesses on the site is doubtful. The Identification Parade was conducted contrary to the settled law and in fact, it is no identification parade in the eye of law. The accused were in police custody and accused as well as their photographs had already been shown to the witnesses who were required to identify the appellant in the identification parade which itself was conducted after more than one year of the date of occurrence. Such identification parade could not be the basis of conviction as held by this Court in *Musheer Khan v. State of M.P.*[1].

6. There was complete denial of the charge by the appellants having completely denied their involvement and took up a stand that they had been falsely implicated in the crime and PW1 and PW2 both being interested witnesses, the prosecution case has not been established in accordance with law.

7. Common evidence will have to be discussed for deciding the merit of the submissions made on behalf of the appellant. Thus, we proceed to discuss all these issues together as in any case they are interlinked. First of all, we must record that PW1 and PW2 cannot be stated to be interested witnesses and in any case not of the kind that they should be disbelieved merely because they were in employment with the deceased and/or wife of the deceased. The circumstances of a case have to be examined in their normal conduct. It is but natural that the deceased employer who was carrying cash would normally ask some of his trusted employees to come with him. PW1 was working as a salesman. His statement clearly shows that he was fully aware about the facts of the business and had stated that a lorry of spare parts had come on 2nd August, 1999 at about 10.30 P.M. where PW3 and Hamid were also present. Cash of Rs.40,000/- approximately was in the bag, which the deceased was carrying.

"PW1 was walking with him, while PW3 was following from behind.

The appellant had shown a revolver and had stated that the bag should be given to him and when the deceased questioned the said person and PW1 wanted to interfere, he threatened him saying that if he took a step forward he would be shot. Again, on being questioned by the owner, he shot the owner thrice with the revolver and he fell down. The other person came on a motorcycle to the spot and these persons fled away on the motorcycle. He clearly stated that he could easily identify both the persons. This witness had sufficient time to recognize the assailant inasmuch as first the assailant had an altercation with the deceased. His demand for the cash bag containing the cash was resisted by the deceased, where after, he shot the deceased, snatched the bag and then waited for the vehicle- motorcycle to come, on which both A1 and A2 fled away from the site. It was nobody's case that these two persons were wearing helmets or that their faces were covered. In other words, there was sufficient time and opportunity for this witness and others to see and recognize both the assailants. About the availability of the light, he had stated that there was one tube light glowing at the house of the owner and there was also light from the illumination of Surya Nursing Home and even during the identification parade, he had identified both the co-accused. He had taken the deceased along with others to the Government Hospital and then to the Nursing Home. In his detailed cross-examination, nothing material could come out. He specifically denied that any photographs were showed to him by the police on the contrary, he received a letter to go to Chanchalguda Jail at Hyderabad to identify the assailant. In his cross-examination, he clearly stated as follows:

"The distance between the place where my owner fall down and the house of my owner is about 35 feet. The tube light was at the third shutter which pertains to the house of my owner. After one year of the incident I came to know that the persons who are responsible for the murder of my owner were apprehended. I came to know about their apprehension when the police came to me to enquire whether I can identify the assailant."

8. Similarly, PW2, the wife of deceased clearly stated that on the date of the occurrence, she had switched on the tube lights and the light would fall on the main road. She also confirmed that there was illumination from the Nursing Home which is opposite to the house and about the date of incident she made the following statement:

"On 2.8.1999 at 10.45 p.m. I was sitting by the side of the window. I was waiting for my husband. At about 10.45 p.m. my husband PW.1 and another person came upto my house. When my husband reached my house he had an altercation with one person.

At that time PW.1 and another person was there. I saw my husband and I got up with keys to go down stairs to open the lock. At that time I heard the sound of `Dam'. I heard that sound. By the time I got down from the house and went to the spot my husband was lying on the road. Hearing my cries, my family members and others gathered there. PW.1 told me that there was a cash of Rs.40,000/- in the bag. When I

questioned PW.1 he told me that the said bag was taken away. I can identify the person who had altercation with my husband. The accused are brought near to the witness chair and the witness pointed out A.1 who is standing in the fifth position from the left side and said that A.1 had altercation with her husband. I am seeing A.1 today in the Court after the incident. Police examined me. One motor cycle came to the spot and took away the assailant who shot my husband. One person was riding the motor cycle."

9. In the cross-examination, she specifically denied the suggestion that she could not see the persons who are coming from right side on the road and she stated that the out house is adjacent to the main road. PW3, Nasir Khan fully corroborated the statement of PW1 and that they stayed at Swathi Hotel for taking tea. The incident took place at the distance of 300 feet from the house of the owner. After hearing the sound, she immediately ran towards the body of the deceased and then took him to hospital. Their statements apparently appear to be correct. They have not exaggerated any facts. Their statements appear to be truthful description of the events that occurred in their presence or of what they have the knowledge. As far as PW1 is concerned, he is a witness to the entire incident. No doubt, the investigating officer had appeared as PW18 and according to him after he had taken up the investigation, he was working as inspector in the police station at the relevant time. He had prepared rough sketch of the place of occurrence which was Ext.11 and according to him it was a rainy day. He stated that PW2 had not stated before him that there was sufficient illumination because of tube light and Nursing Home and from the public street light. This witness has stated that when he went to the place of occurrence, number of people had assembled there. The following extracts of examination-in-chief of this witness, has been relied upon by the learned Counsel appearing for the appellant.

"It is true that PW.2 did not state before me that she would be watching the people who will be coming to her house while sitting at the window during her examination. It is true that PW.2 did not state before me that there was illumination from her house and from the Nursing home and from public street lights.

After taking up investigation firstly, I went to the scene of offence. I reached the scene of offence by about 12.45 A.M. When I went to the scene of offence many people were present there and from among the persons I secured Shivakumar (PW9). PW9 was in the public but I cannot tell exactly as to where he was standing or sitting in the public.

I have not collected anything from the scene of offence as it was drizzling and also as there was public rush at the spot. I have not examined any one at the auto stand. I saw blood stains on the left side of the road while facing towards Nizamabad. The blood stains were found on the edge of the road. It is true that opposite to the house of the deceased there are business shops. In Ext.P10 there is no mention about the existence of tube lights at the scene of offence."

10. While relying upon these extracts of the examination-in-chief and cross-examination of this witness, the learned Counsel appearing for the appellant contended that since the bloodstain earth and nothing else recovered from the premises including the empties of the gun shots. The entire investigation of the case is faulty and cannot be relied upon. The statement of the investigating officer is found to be not supporting the case of the prosecution. The whole case of the prosecution should fall. Firstly, we cannot read these statements out of context and they must be examined in their entirety. In other words, the statement of the investigating officer has to be read in its entirety and then any conclusion can be drawn.

> "Certainly, this investigating officer has failed to conduct the investigation as per the expected standards and we have no hesitation in observing that the case could have been investigated with greater care, caution and by application of scientific methods. It will not give the accused/appellants any benefit because PW1 was never confronted with his statement under Section 161 Cr.P.C. by the appellant during her cross-examination with regard to the above facts. What she had stated before PW14, would be best recorded in the statement under Section 161 Cr.P.C. That steps having not been taken by the appellant in accordance with law, now, they cannot drive any benefit. Secondly, not only PW2 but even other witnesses have stated that there was sufficient light in and around the place of occurrence because of street light, light from the house of the deceased, bus stand and the Nursing Home. There is no reason for us to disbelieve PW1, PW3 and other witnesses who said that there was sufficient illumination at the place of occurrence and the argument advanced by the appellants hardly has any merit. Yes, it was expected of the investigating officer to seize from the place of occurrence such articles or items including the bloodstain earth or empties, which were available even as per his statement. This lacuna in investigation stands completely covered by the statement of the witness, the medical report and the eye-witness version. Dr. K. Raja Gopal Reddy, Professor and Head of the Forensic Department, Gandhi Medical College who had performed postmortem was examined as PW24 and he stated that his opinion had been sought by the investigating officer. After going through the report and the inquest report, he had stated that the probable weapon used was rifle fire-arm and Ext.P13 was his opinion. In Ext.P15 which is the postmortem report, the injuries have been described as under:
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> "11.Injuries:
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> Fire arm:
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> Entry wounds:
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> 1. Ulnar medical surface of right wrist 2 cms diameter.
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> 2. Oblique 3 cm x 2 cm, below medical end of right clavicle in front of chest.

3. Circular 2 cm diameter below medical end of left clavicle in front of chest.

Exist wounds:

1. Radial lateral surface of right wrist 3 cm diameter.

2. Oblong 4 x 3 cm post surface of right side chest by the side of spine.

3. Circular 3.5 cm, 3 cm below the exist wound No.2."

11. The above evidence of the doctors as well as that of the PW1 clearly establishes the story of the prosecution. According to PW1, the assailants fired through armed shots and as per medical evidence also, there are three injuries and exists injuries on the body of the deceased. We have also noticed that the investigating officer failed to perform his duties appropriately in not recovering the bloodstain earth as well as the empties since they were not in the body of the deceased. According to the investigating officer, there were few other people and there was a bus stand near the place of occurrence. The Investigating Officer fully corroborated the statement of PW1 and other witnesses. Another important factor which has to be noticed is, probably the way this investigating officer has conducted the investigation, that investigation of the case was transferred to CID after some time and, it was CID which completed investigation of the case. PW25 and PW26 have then conducted investigation at a later stage. According to PW25, M. Vankata Rao he had arrested the accused as well as seized certain items vide Ext. P38 including a scooter while Ashok Kumar PW26 claimed that he was working as inspector and as per Memo No. 1214/C12/CID/2000 of the Additional DGP, CID this case was given to him for investigation. After the arrest of Mirza Qasim Baig, A.4 and his confessional statement, the systematic investigation was conducted by him and he arrested accused Kameel as well as accused Feroz somewhere on 2nd June, 2000. He even recorded the statement of PW4. On 17th June, 2000, he submitted a requisition before the JFCM for holding Test Identification Parade for identification of both the appellants and he was the main investigating officer who conducted the investigation and arrested the main accused. During investigation a diary/writing was also recovered relating to the activity of the accused particularly, the occurrence in question. The writing was sent for comparison to the Forensic Science Laboratory at Hyderabad and which had expressed an opinion that the persons who wrote the red enclosed writings marked as S1 to S29 also wrote the red enclosed writing marked Q1 to Q378, Q131/1 and Q.122/1.

"The identification parade was conducted on 29th July, 2000 at 3.30 P.M. vide Ext.P28. This was conducted and completed by 8th Metropolitan Magistrate, Hyderabad. This identification parade was performed in the jailor's office room and the witnesses were examined by the Magistrate. The Magistrate had required and the jailor then had provided non-suspect persons who were asked to participate in the parade after the accused had expressed his satisfaction, he even was asked to stand in any place in the row with the known-suspects and thereafter Y. Krishna Mohan (PW-1) was brought to the Test Identification Parade and then the accused was identified in

accordance with law. The identification parade was closed. Despite the above Test Identification Parade having been conducted in accordance with law, the appellants have raised objections to the identification parade and have stated that they were in illegal confinement of the police. Their photographs were shown and the identification parade itself has been conducted after such a long time. While relying upon the case of Musheer Khan (supra), it is contended that they were retained in police custody and that discrepancies discernable in his identification by the witness renders the identification unbelievable and improper."

12. These arguments do not impress us. The accused himself was arrested after one year and it was only thereafter that the investigating officers had been able to collect substantial evidence and then after arresting all the concerned accused, the identification parade was conducted on 27th July, 2000. Thus, there is no delay in conducting the identification parade. There is nothing on record to show or prove that these accused were in illegal custody or confinement of the police. In order to prove this plea, they have produced four witnesses D1 to D4 but they could not bring any records or any other cogent or substantial evidence to prove the alleged case of illegal confinement and/or for that matter that they were shown to the witnesses before the identification parade was conducted by the investigating officer. Both the learned Trial Court as well as the High Court had disbelieved the witnesses of the defence in that regard.

13. Somewhat similar plea was taken in regard to identification, according to the accused they were shown to the witnesses while in custody and their photographs have been taken from their residence which in turn were also shown to the witnesses. This plea was rejected by the Court in a very recent judgment. After discussing the law in some detail in the case of *Siddartha Vashisht @ Manu Sharma v. State (NCT of Delhi)*[2], the Court held as under:

"113. It is also contended by the defence that since the photographs were shown to the witnesses this circumstance renders the whole evidence of identification in Court as inadmissible. For this, it was pointed out that photo identification or TIP before the Magistrate, are all aides in investigation and do not form substantive evidence.

Substantive evidence is the evidence of the witness in the court on oath, which can never be rendered inadmissible on this count. It is further pointed out that photo identification is not hit by 162 Cr.P.C. as adverted to by the defence as the photographs have not been signed by the witnesses. In support of his argument the senior counsel for Manu Sharma relies on the judgment of *Kartar Singh v. Union of India*[3] at page 711 wherein while dealing with Section 22 TADA the Court observed that photo TIP is bad in law. It is useful to mention that the said judgment has been distinguished in *Umar Abdul Sakoor Sorathia v. Intelligence Officer, Narcotic Control Bureau*[4], at page 143 where a Photo Identification has been held to be valid. The relevant extract of the said judgment is as follows:- "10. The next circumstance highlighted by the learned counsel for the respondent is that a photo of the appellant was shown to Mr.

Albert Mkhatshwa later and he identified that figure in the photo as the person whom he saw driving the car at the time of interception of the truck.

11. It was contended that identification by photo is inadmissible is evidence and, therefore, the same cannot be used. No legal provision has been brought to our notice, which inhibits the admissibility of such evidence. However, learned counsel invited our attention to the observations of the Constitution Bench in Kartar Singh v. State of Punjab which struck down Section 22 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. By that provision the evidence of a witness regarding identification of a proclaimed offender in a terrorist case on the basis of the photograph was given the same value as the evidence of a test identification parade. This Court observed in that contest:

(SCC p.711, para 361) 361. If the evidence regarding the identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we feel that gross injustice to the detriment of the persons suspected may result. Therefore, we are inclined to strike down this provision and accordingly we strike down Section 22 of the Act.

12. In the present case prosecution does not say that they would rest with the identification made by Mr. Mkhatshwa when the photograph was shown to him. Prosecution has to examine him as a witness in the court and he has to identify the accused in the court. Then alone it would become substantive evidence. But that does not mean that at his stage the court is disabled from considering the prospect of such a witness correctly identifying the appellant during trial. In so considering the court can take into account the fact that during investigation the photograph of the appellant was shown to the witness and he identified that person as the one whom he saw at the relevant time. It must be borne in mind that the appellant is not a proclaimed offender and we are not considering the eventuality in which he would be so proclaimed. So the observations made in Kartar Singh in a different context is of no avail to the appellant."

Even a Test Identification Parade before a Magistrate is otherwise, is hit by Section 162 of the Code. Therefore, to say that a photo identification is hit by section 162 is wrong. It is not a substantive piece of evidence. It is only by virtue of section 9 of the Evidence Act that the same i.e. the act of identification becomes admissible in Court.

The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not born out of procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation.”

14. In view of the clear statement of law, we have no hesitation in rejecting the arguments of the appellant in relation to conduct of the identification parade.

15. In the statement under Section 313 Cr.P.C., the accused took a plea of complete denial. According to them, they were asked to come to the police station for interrogation and then were produced in Court. They offered no explanations and as already noticed, they even examined four witnesses in support of their case. As already noticed, nothing material could be established by these defence witnesses, specially, in regard to the present two accused. However, accused had been acquitted by the Court, as the prosecution could not produce any cogent and material evidence except the diary and therefore, the charge of conspiracy under Section 120-B was not proved against them. Vide Ext. P18 & Ext. P19 the accused had been arrested and produced before the Court of competent jurisdiction. The extract of diary which was recovered during the investigation had various entries, which related to the planning of the crime, its commission and result thereof. This aspect has been discussed by the learned Trial Court in para 28 of its judgment. The High Court has also examined this question in some elaboration.

> "The concurrent finding thus has been that these extracts from the diary provide substantial support to the case of the prosecution. On July, 1999 they had conspired and after consultation in Sarbathi Canal Mosque, Bodhan that after closing the show room the deceased goes on foot and nobody is there on the road and that the work has to be done within 2-3 days. These questions have been discussed by the trial court as well as by the High Court in their correct perspective and upon examination of the entire documentary and ocular evidence; we do not find any reason to interfere in the concurrent finding recorded by the Courts."

16. We are of the considered view that the prosecution has been able to prove its case beyond reasonable doubt. The gravity of the offence, the manner in which it had been committed and the conduct of the accused do not call for any interference by this Court even on the question of quantum of sentence.

17. For the manner in which the Investigating Officer (PW-25) had conducted the investigation requires much to be desired. We cannot also ignore the fact that he showed utter carelessness in not collecting the blood stained earth and empties and other material pieces of evidence, which were available at the place of occurrence.

> "The occurrence had taken place late in night i.e. at 10.45 P.M. and hardly there would be such gathering. It was expected of the Investigating Officer to perform his duties with greater caution, sincerity and by taking recourse to appropriate scientific methods for investigating such a heinous crime. Thus we direct the Director General of Police, Andhra Pradesh to examine this aspect and take action in accordance with law."

18. Consequently, the appeal is without any merit and is hereby dismissed.

[1]*(2010) 2 SCC 748*
[2] *JT 2010 (4) SC 107*
[3]*(1994) 3 SCC 569*
[4]*(2000) 1 SCC 138*