

Shaji @ Methan Shaji, S/O. Shahul Hameed Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Aug. 12, 2021

Acts Referred: Code of Criminal Procedure, 1973 " Section 211(7), 236, 298

Indian Penal Code, 1860 " Section 364A, 395

Evidence Act, 1872 " Section 25, 26, 27, 30

Hon'ble Judges: K.Vinod Chandran, J; Ziyad Rahman A.A., J

Bench: Division Bench

Advocate: V. Shankar, Shajin S. Hameed, Alex M.Thombra

Judgement

Vinod Chandran, J.

1. Abduction, dacoity, demand for ransom and eventual rescue by the police is the prosecution case, with a few country bombs thrown in for effect;

every spicy ingredient; barring a few, to make a movie. The accused cry foul, of a case foisted by a senior police official to favour a relative who

owns a construction company. The accused, numbering seven, have been convicted and sentenced with life under Section 364A IPC, two years

rigorous imprisonment under Section 395 IPC and to pay a fine of Rs.10,000/- & Rs. 5,000/-respectively, with default sentences. The appellants,

except one (A6), have been incarcerated for the last five years.

2. The prosecution case is that PW1 employed as a driver in a construction company of which PW3 is the Manager, while transporting a load of sand

for the company, was waylaid, abducted for ransom and threatened to be dismembered if the ransom demands were not met. When he was in

confinement, pursuant to the abduction, PW1 was also thieved of an amount of Rs.1000/-, a mobile phone and an ATM Card; which in the context of

the number of assailants involved takes the character of dacoity. On being informed by PW3 about the abduction and the ransom demand, the police

set up a ploy, of PW3 delivering the ransom amount and accompanied him, on the sly. At the reconnaissance spot, PW3 panicked and tried to drive

away when the captors of PW1 tried to summon him back. The police swung into action and the perpetrators of the crime attempted to make a

getaway by exploding a few country bombs. In the melee, PW1 escaped and A5 was captured. On the confession made by A5, the others were

rounded up. The investigation was completed, the final report filed and the accused stood trial. The prosecution examined twelve witnesses and

marked twenty-eight documents. The defence marked four contradictions. The trial Court convicted the accused and sentenced them as noticed

above.

3. Learned Counsel Lavaraj M.G. argues on behalf of A1, A2 and A5. It is pointed out that there is no specific allegation against any of the accused.

The evidence of PW1 is vague and there is no identification of the accused. Though PW1 said that he was waylaid by 3-4 people, he does not identify

those from among the seven accused. The confession of A1 under Section 27, is concerning the ATM Card and mobile and not the autorickshaw. The

alleged items which were concealed having not been recovered, the seizure of the autorickshaw does not offer any connection with the crime. PW1

speaks of A2 having thieved an ATM Card and mobile phone, which were not recovered. PW1 does not at all speak of A5 and though he is said to

have been arrested in the alleged melee, there is nothing to show that A5 was a member of the gang.

4. The other learned Counsel adopts the above arguments and adds a few. Sri. D. Ajith Kumar, learned Counsel appearing for A3 and A6, would

assert that there is no material evidence proffered before Court. Paragraph 43 is pointed out, where the trial Court has relied on the alleged confession

made by A5 to the investigator, to book all the other accused, which confession is not admissible under the Indian Evidence Act. Sri. V. Shankar,

appearing for A4 reiterates that the role of each of the accused is not specified and neither is the identity established nor the overt acts pinned on any

of the accused arrayed. In Vayalali Girishan v. State of Kerala 2016 KHC 204 a Division Bench has delineated on how identification has to be carried

out in a trial Court; which procedure was not followed here. An unreported decision of a learned Single Judge in CrI.A.1403 of 2009 Francis @

Franchi v. State of Kerala dated 01.10.2010 is also relied on for the very same purpose. Sheik Ahamed v. State of Telangana 2021 SCC OnLine SC

436 is relied on to contend that to attract Section 364A the person abducted should speak of the apprehension of death or hurt, having been caused.

Shajin S.Hameed, arguing for A7 specifically points to Ext.P22 report dated 12.10.2011 by which A7 was booked in the crime, on 22.10.2011, after

about 20 days; a clear afterthought. A7 has been implicated based on A5's confession. A5 was alleged to have been arrested on the same day, while

Ext.P15 FIR concerning the allegation of throwing bombs and causing obstruction to discharge of official duties was registered on the very next day.

A7 was not arraigned as an accused in the said FIR while the others who were at large then, were so arraigned. Learned Counsel specifically takes

us through paragraph 45 of the judgment to assail the identification as relied on to find the guilt of the accused.

5. The FIS was by PW3, who is the Manager of the construction company, in whose employment allegedly PW1 was. PW1, as per the FIS, was

transporting sand in a Tipper Lorry bearing registration No. KL-01-AQ-2423. The transport originated around 5.30 p.m. from SIDCO, Menamkulam

and the destination was Vizhinjam. When the vehicle reached near Ananthapuri Hospital at Chakka, four persons in an autorickshaw detained the

lorry. PW1, the driver, was forcefully taken from the lorry and was transported to an unknown place in the autorickshaw. From PW1's telephone

PW3 was contacted at about 6.45 p.m. with a demand of Rs.50,000/- and a threat levelled of dismembering PW1 if the ransom was not paid. PW3

was also asked to come to All Saint's College junction and call PW1's telephone. PW3 in the FIS expressed concern that the employee-driver was

abducted for ransom money and informed the police that the lorry was abandoned near Ananthapuri Hospital. PW3 was not aware of the identity of

the persons who abducted PW1.

6. PW3, before Court, significantly embellished his story. After speaking in tandem with the FIS, he further said that an incident had happened on the

same evening, before the abduction. In the evening three lorries were proceeding from SIDCO to Vizhinjam with loads of sand, one of which was

driven by PW1. When the three vehicles were so proceeding, some goondas waylaid the convoy and PW1 and the driver of another vehicle, Baiju,

informed PW3 of demand of money being raised by the goondas who waylaid the vehicles. PW3 called the police on '100' and within twenty minutes

the police reached the spot where the vehicles were held up. The goondas took to their heels on seeing the police and the convoy resumed their

journey and a bit later, the incident complained of in the FIS occurred. Someone called from PW1's mobile with the ransom demand, when PW3 again

called '100' and later approached the Vanchiyoore Police Station. It is PW3's deposition that the captors at the first instance itself required the ransom

to be delivered at All Saint's College Junction. PW3 accompanied the police to the place where PW1's vehicle was abandoned. An Assistant

Commissioner ['AC' for short] was also present at the spot when again PW3 was called from the telephone of PW1. On the instructions of the AC,

the phone was put on speaker mode. The ransom demand was made again and the threat repeated. PW3, along with a police team, went to the

reconnaissance spot at All Saint's College junction and called PW1's mobile phone. PW3 was asked whether he came alone, which he affirmed.

When he stepped out, sensing the presence of police the miscreants threw country bombs. One of them was caught by the police, who was identified

as A5. The FIS was marked as Ext.P1, the cash memorandum issued for transportation of sand as Ext.P2, its seizure mahazar as Ext. P3 and Ext.P4

is the seizure mahazar of the lorry. Exts.P5 and P6 scene mahazars are of the spot, of abduction and final confrontation respectively.

7. PW1 also spoke of three vehicles loaded with sand proceeding to Vizhinjam as a convoy, with himself at the tail-end. He spoke of the convoy

having been stopped at Poundkadavu by goondas and the information passed on to the office of the Company. He confirmed that when the police

arrived, the goondas fled and the convoy resumed their journey. Later, near Ananthapuri Hospital, 3-4 persons travelling in an autorickshaw ambushed

PW1's vehicle, forcefully took him out and with a sword held to his neck, he was forced into the autorickshaw. He was then taken to an abandoned

place near All Saint's College from where his phone was taken and a call made to PW3. He spoke of hearing one of his captors demanding a ransom

of Rs.50,000/ over the phone and threatening his dismemberment if their demand was not met. In cross-examination he denied having heard anything.

His ATM Card, an amount of Rs.1000/- entrusted by the company for filling diesel in the vehicle and a Samsung mobile phone of Rs.5,000/- were

stolen from him. PW1 was then restrained in an isolated place and kept, literally in the dark. His captors had lethal weapons and bombs. When PW3

came to the spot, according to PW1, he saw the miscreants armed and hence panicked. Then the miscreants asked PW1 to call PW3 and assure him

that no harm would befall him. PW3 who drove away did not pick up the telephone, but his car stopped a few feet away. Three to four persons

emerged from PW3's vehicle and realizing that they were police, the miscreants threw country bombs at them. PW1 escaped from the clutches of the

miscreants and ran to the car of PW3 and sat inside. The police arrested one of the miscreants, who was taken to the police station.

8. PW2 is the cleaner of another vehicle that preceded the vehicle of PW1. He spoke of the earlier incident of the convoy having been stopped by the

miscreants, who fled on seeing the policemen who came to the spot. He only heard about the abduction of PW1 and demand of ransom; later. PW4 is

the owner of the vehicle. However, no evidence was produced to prove his ownership. PW5 and PW6 are witnesses to Ext.P8 mahazar, which

evidenced the seizure of the autorickshaw; not relevant at all, since there was no identification of the auto. PW7 is the Senior Civil Police Officer

['SCPO' for short] who took the FIS and registered FIR [Ext.P1(a)]. PW7 specifically stated that there was no information about the incident before

the FIS. He also denied PW3 having stated about the earlier incident at Poundkadavu or about the information passed on to the Control Room in the

number '100'. In cross-examination, PW7 confirmed that he was the person having General Diary (GD) charge on the said day and the wireless

messages from the Control Room were received by him. He did not speak of any information having been conveyed from the Control Room, as to the

incident at Pondukadavu or the subject abduction near Chakka.

9. PW8 is the Addl. Sub Inspector on night patrol duty, who accompanied PW3 to the reconnaissance spot along with PW9 Sub Inspector and police

party comprising of 'shadow police'. The party reached the reconnaissance spot at 11.15 p.m. and when PW3 contacted the miscreants, he was asked

to proceed to the mosque near All Saint's College. PW8 along with some of the members of the police party hid in the shadows when they saw 3-4

people coming out of the mosque. Sensing the presence of the police, the miscreants threw country bombs. A5 is said to have led PW1 outside, when

the police party surrounded them and arrested A5 and rescued PW1.

10. PW9, Sub Inspector who commenced the investigation had also accompanied PW3 on the crucial day. But for a casual statement that he was a

member, the prosecution did not elicit the details of the encounter from this witness. He only spoke of the investigation carried out, including the

seizure of the autorickshaw as per Ext.P8(a) confession, by Ext.P8 mahazar. A1 was arrested as per Ext.P13, A2 as per Ext.P14. PWs.10 and 11

are the Officers of the Valiyathura Police Station, where crime No.725 of 2011 [FIR marked as Ext.P15]; alleging unlawful assembly, rioting with

dangerous weapons, obstruction to official duties and offences under the Explosives Act, as complained of by PW8, was registered. PW12 is the I.O

who filed the final report in the instant case.

11. We perfectly agree with the appellants that there was neither proper identification of the accused nor was the role of each of them elicited from

PW1, the victim of abduction. Paragraph 43 of Vayalalil Girishan assumes significance and we extract it hereunder:

“43. Undoubtedly, substantive evidence is the identification of the accused by the witness before the Court. But in the instant case, the deposition of the

witnesses only reveals that the learned Sessions Judge has merely recorded the rank number of the accused in the charge and no effort is seen undertaken to

certify in the deposition, with exactitude and certainty, that the person referred by witness as one of the members of the unlawful assembly which perpetrated the

horrendous act is the person who was standing in the dock. We are unable to discern for certain as to whether the witness was referring to the particular accused

whose name finds a place in the charge or to some other person. Obviously the witness will not be aware of the rank number of the person standing in the dock in

the array of the accused. There is absolutely no clue available from the deposition either, as the Court has not recorded this aspect in the evidence as to the

manner in which the particular accused was identified. The Apex Court as well as this Court, time and again, have reminded the Trial Courts, the importance of

recording in the deposition the most cardinal fact that the witness has specifically identified the accused as the person who was involved in the crime so that the

complicity and presence of the accused at the scene of the crime could be fixed with exactitude. This is all the more important in a case of this nature where most of

the accused are attempted to be roped in on the reason that they were members of the unlawful assembly and they had shared the common object. ~~It is not~~

12. The Charge sheet specifies the persons who abducted PW1 as A1, A2, A4 & A7 and those of the accused who later joined them being A3, A5 &

A6. Even going by the case of the prosecution, the accused were not known to the victim. However, PW1 saw them from close proximity because

they not only waylaid the vehicle but forcefully abducted him from the lorry and carried him in the autorickshaw with a knife held to his neck and kept

him captive. As pointed out by the learned Counsel for the appellant, the accused numbering seven were in the dock, before Court. The clear

evidence of PW1 is that 3-4 persons waylaid his vehicle and abducted him. He should have identified those persons who abducted him in the

autorickshaw and the other miscreants who joined them at the place where he was held captive, which also is mentioned in the charge sheet. PW1

made a laconic statement that those who abducted him are standing in the dock. The only identification made, was of A2 by the dress he wore and A3

who was identified from his position in the dock. However, though they were identified and the allegation was raised of A2 having thieved the ATM

Card and Mobile phone and A3 having taken Rs.1000/-; their role in the abduction was not specified. As rightly pointed out by the learned Counsel for

the appellants, their role in the abduction having not been specified, no offence can be charged against them under Section 364A. Under Section 395,

the trial Court has convicted the accused and sentenced them to 2 years imprisonment, which they have already undergone. The trial court in the

present case adopted a very callous approach and, but for A2 & A3 none of the accused was properly identified from the dock.

13. Even on the charge of dacoity, we cannot but notice that the factum of PW1 having an ATM Card was not established. Similarly, the number of

SIM Card used in the mobile phone was also not elicited from PW1 and the subscription of a mobile number also was not established. The only flimsy

evidence is against A3, of he having taken Rs.1000/- from PW1, which the victim says was entrusted by the company for filling diesel in the vehicle.

The prosecution failed to elicit from PW3, the Manager who admitted to be in charge of the vehicles of the company, whether such an amount was

entrusted to the driver.

14. In this context, it has to be observed that neither the vehicle nor PW1 has been connected to the construction company in which PW3 is the

Manager. PW3 was questioned in cross-examination about his authority to represent the Company. The vehicle, as we saw, even according to the

prosecution, does not belong to the Company. PW4 is proffered before Court as the registered owner of the vehicle, but no documentary evidence

was produced to prove the fact. There is also no agreement produced to evidence the vehicle having been rented out to PW3's company. PW1's

employment with the company is also not established. Ext. P2 cash memo, on the strength of which sand was transported in the vehicle allegedly

driven by PW1, also does not show any connection with the company of PW3. The sand is sourced from SIDCO and the purchaser is one

'Noohukhan', who is nowhere in the picture. The charge specifically speaks of the driver of the named Company being abducted, which is crucial

since the ransom demand is from the Company and not from an individual. The prosecution ought to have established that the ambushed vehicle was

plying in the Company's business. In addition to this, are the glaring inconsistencies in the testimonies of the witnesses.

15. As we noticed, the earlier incident at Poundukadavu was not stated in the FIS. The miscreants in both incidents are not identical as has been

stated by PW1. Even then, the complaint was of illegal obstruction of a vehicle by goondas, seeking monetary gratification. When this is informed to

the Control Room over the telephone; we would think, it is at least, worthy of a GD entry, especially when a police party was dispatched to the crime

scene. No such evidence is forthcoming and PW7, the Senior CPO, having GD duty on the day is not aware of any such information having been

passed on to phone number '100' as informed from the Control Room. We are kept in the dark as to the jurisdictional police station from which the

police party was dispatched to the earlier crime scene, ie: Pondukadavu, which PW12 admits is within the limits of Pettah Police Station. PW12 admits

that no investigation was conducted about this prior instance spoken of by the witnesses. We find no credence in the story of the convoy of vehicles

having been stopped illegally at Poundukadavu.

16. Now we come to the abduction, demand for ransom, dacoity and so on. Even according to the FIS, PW3 was called over the telephone and the

ransom demand was made at 18.45, but, the FIR was registered only at 21.45 hours, that is, after three hours. PW3 at the second instance also has a

claim that on being told of the abduction, he immediately informed the police in the Control Room number. But, PW7 denies any such message having

been communicated from the Control Room. PW7, the Senior CPO having GD charge of Vanchiyoore Police Station, first hears of the crime when the

FIS was recorded. More importantly, in the FIS, PW3 speaks of the captors of PW1 having called from the captive's mobile number 91426 82314.

The subscription of the said number has not been established and pertinently the prosecution does not elicit the mobile number from PW1 in his chief-

examination. In cross-examination, PW1 says that his mobile number is 91426 82114 which is different from the number spoken of in the FIS. PW1

also admits to having two mobile numbers at the relevant time, which he passed on to the Police.

17. We now look at the testimonies of the various witnesses insofar as the rescue operations launched by the police; with PW3 in accompaniment.

PW1 speaks of PW3 having come to the reconnaissance spot and panicked on seeing the miscreants armed with lethal weapons. He speaks of PW3

having taken the car forward and then stopped, from which 3-4 persons emerged. In the resulting melee caused by the explosions, PW1 speaks of

having escaped from the clutches of the captors and running to the car of PW3, inside which he took refuge. PW8, however, deposes that the police

team rescued PW1 from the clutches of A5, who was leading him out from the mosque near All Saint's College. PW8 does not speak of PW3 having

panicked and taken forward the vehicle from which the policemen emerged. PW8's version is that the police party was hiding in the shadows when

PW3 approached the captors of PW1. Sensing the presence of police, the miscreants threw country bombs and A5 was leading PW1 out from the

mosque, presumably in a bid to escape when the police party surrounded A5. A5 was thus arrested and PW1 was rescued from the clutches of his

captors. PW3, the Manager, also does not speak of having panicked at the reconnaissance spot. He merely narrates that when they reached the spot,

he called the miscreants and having affirmed that he was alone, he got out of the vehicle, when the miscreants sensing the presence of the police,

threw country bombs. We find the testimonies of the witnesses to be inconsistent and not sufficient to establish the case of the prosecution beyond a

reasonable doubt. PW9 who was a member of the police party was not asked about the rescue operation. There were other police personnel involved

in the alleged operation, none of whom were examined before court. PW3 even goes to the extent of saying that the AC was present in the Police

party, not attested to by PW8 or PW9 who admitted their presence at the reconnaissance spot. Further, admittedly the encounter occurred, near the

All Saint's College, within the jurisdiction of the Valiyathura Police Station; where Ext. P15 crime was registered, concerning the bomb blasts alleged.

The encounter was planned by the police, as per the prosecution case and the FIS on abduction was at 21.45. The police party reached the

reconnaissance spot at 11.15 p.m (23.15). But nobody thought it fit to inform the jurisdictional Police, ie: Valiyathura Police Station, when at the initial

stage itself PW3 was informed of the exact spot specified for the exchange.

18. We fully agree with the defence that there is no recovery under Section 27 of the Evidence Act. Ext.P8(a) does not speak of concealment of the

autorickshaw. The autorickshaw in which the assailants travelled and waylaid PW1's lorry was not identified by PW1, either by its registration number

or by any unique colour or mark on the vehicle. The confession at Ext.P8(a) was also of the ATM Card and the Mobile phone having been kept

concealed in the back of the autorickshaw. Ext.P8 mahazar does not reveal the recovery of the ATM Card or the Mobile phone. The recovery under

Section 27 falls to the ground.

19. We see that the judgment of the trial court is interspersed with surmises and conjectures. PW1's shock and surprise when the two vehicles

preceding him sped away and fear, having made him tight-lipped while abducted are not seen from his deposition. PW4 is described as the RC owner

of the lorry without any such document, based only on Ext. P7 kychit by which he received the seized vehicle from the police. It was omitted to be

noticed that the release of the vehicle was made by the police, as spoken of by the I.O, PW12 and not by a Court. We notice this because if it was a

Court that released the vehicle there is at least some reason to assume that without production of the RC or some document to assert ownership the

Court would not have effected the release. We may not be mistaken as having said that such a presumption would be valid, since if the release was

effected by a Court, then of course there was no difficulty in producing those documents in the trial Court. The finding that PW3's company hired

PW4's vehicle, without even the prosecution having put forth such a case and that the money recovered from A5 to be that looted from PW1, are not

discernible from the evidence led. Unnecessarily harping on the total amount recovered from A5, being short of that thieved and the reliance on the

recovery of the autorickshaw also indicate the levity with which the evidence was analysed and the preconceived view of the Court. Whatever be the

amount recovered from A5, there is no reason to assume that it was the amount belonging to PW1, especially when there were alleged to be seven

miscreants and there is no consistent version of who thieved the money from the possession of PW1; which contradiction is specifically noticed by the

Court, but brushed aside as irrelevant.. The impugned judgment sadly reveals a fertile imagination rather than an astute evaluation of evidence which

later course every adjudicator has to necessarily adhere to and ensure especially in a case of the instant nature, where the adverse consequence

would be incarceration for life.

20. More surprisingly the learned Judge relies on the information supplied by one of the accused, A5 about the involvement of the others, which is

styled as a confession, admissible under Section 30 of the Evidence Act. No independent witness speaks of such a confession and no proof of any

confession has been offered in evidence. The only clue we get is from Ext. P15 FIR and Ext. P16 Final Report, which crime is on the complaint made

by PW8 to Valiyathura Police Station, regarding the use of explosives by the miscreants amid the rescue operations. In the FIS, PW8, a Police

Officer, complains of rioting, obstruction of discharge of official duties etc., the arrest of A5 and the information obtained from him as to the

involvement of A1 to A4 and A6. A7 was included later, as pointed out by his Counsel. The impugned judgment specifically notices that the identity of

co-accused was elicited from A5 on detailed interrogation, which is raised to the plane of a proved confession under Section 30, totally disregarding

Section 25 and 26 of the Evidence Act; respectively a blanket prohibition and a restricted permission on the admissibility of a confession of the

accused under the Evidence Act. Section 25 is a prohibition in proving any confession made to a police officer, against a person accused of an

offence. Section 26 makes inapplicable the prohibition only and only if, it is made in the presence of a Magistrate. The learned Judge also admits to,

any lingering doubts in the substantial evidence having been set at rest, taking into account 'the version given by A5 regarding the co-culprits to the

investigator' (sic-para 43); according to us a shocking observation, to say the least, considering the higher standard of 'proof beyond a reasonable

doubt', required to enter a conviction. The doubt entertained by the Court is very clear from the above statement, but it is stated to have been dispelled

by the FIR & Final Report in another crime, where the complainant, a police officer says that the information about the co-accused, in this case, was

obtained from the accused initially arrested.

21. Significantly, there is no evidence led in the instant case regarding the use of explosive substances amid the rescue operations said to have been

launched by the police. The alleged use of explosive substances comes within the very same transaction which is the subject matter of the instant

charge. The alleged abduction and the subsequent rescue operations are part of the same transaction and a subsequent FIR launched concerning an

offence that arose out of the very same transaction is bad in law as held by the Hon'ble Supreme Court in T.T.Antony v. State of Kerala [(2001) 6

SCC 181], Babubhai v. State of Gujarat [(2010) 12 SCC 254] and Amitbhai Anilchandra Shah v. CBI [(2013) 6 SCC 348]. We would not say anything

further on this, since we are not concerned with the subsequent FIR or the charge therein. However, the alleged act of the accused, using explosive

substances to foil the rescue attempt of the police, is an act committed in the course of the same transaction alleged in the instant case and the

prosecution should have led evidence on the said acts also to bring home the guilt of the accused, which they failed to do. The impugned judgment

went wrong in placing reliance on Exhibit. P16 Final Report to find the seizure of explosive substances from the place of occurrence. It is from that

Final Report, it was further found that the Assistant Director (Explosives) FSL, Thiruvananthapuram carried out an examination in which was found

'explosive components'. The reliance placed on the FIR and the final report is against all canons of criminal law.

22. At this juncture we would also point out that the 'rotten antecedents' of the accused as spoken of by the trial Judge is also without any evidence on

that count. The so-called 'rotten antecedents' of the accused seems to have influenced the learned judge to find the accused guilty without any case on

that account being projected by the prosecution as seen from the evidence led. Antecedents are anathema to criminal law to arrive at a finding of guilt,

for entering a conviction as against an offence/offences charged. Antecedents, that too resulting in a previous conviction alone, are relevant; only if

such a previous conviction makes the offender liable for enhanced punishment. In which event the fact, the date and place of the previous conviction

shall be stated in the charge or if omitted, the Court may add at any time before the sentence is passed, as provided under Section 211(7) of the

Criminal Procedure Code. That such previous conviction can be looked at only after the conviction is entered, is evident from Section 236 Cr. P.C.,

which enables evidence to be led on that aspect, if there is a dispute raised. Such evidence can be led only after a conviction is entered into. The mode

of proof is also provided under Section 298 Cr. P.C; by a certified copy issued by the Court in which such conviction was held or the certificate of the

jail in which the punishment or any part of it was undergone or by the production of warrant of commitment and by any other mode provided by law.

In the present case, it is futile to speak of proof since, there is no statement of a prior conviction made in the charge at any time nor are the offences

charged, liable for an enhanced punishment on subsequent or repeated convictions.

23. Every defence raised by the accused have been rubbished in the impugned judgment by a bland statement that the I.O has explained it. The

conviction has been entered merely on the perceived gravity of the offence alleged, labelling as insignificant and the inconsistencies in the evidence

pointed out. The accused alleged that the owner of the Construction Company in collusion with a senior police official, who is his relative, has foisted

this false case on the accused and A5 was in the custody of the police on the previous day itself. There is no explanation as to why the false case was

foisted against these individuals, but then, we are not oblivious to goonda gangs operating in various parts of the State and the often unholy nexus they

have in illegal sand mining and unauthorised filling up of paddy and wetlands. But this is not the way to curb such activities or settle scores when

animosity arises between the perpetrators. When an offence is alleged under the IPC or any other enactment and criminal prosecution is set in motion,

then it has to be carried out as per the accepted practices, following the Criminal Procedure Code and the evidence has to be analysed and conviction

entered on the higher standard, of proof beyond reasonable doubt which is applicable in criminal trials as distinguished from, a balance or

preponderance of probabilities. The exacting standard of proof is insisted since, in criminal trials, the finding of guilt as established from the evidence

entails the grave consequence of a sentence resulting in curbing the very freedom of an individual, which has been held to be most sacrosanct by

human communities from time immemorial. Trial Judges cannot allow themselves to be led by the hand to accept any fanciful narrative woven by the

Police and convict accused merely for the reason of their antecedents. We cannot but express our disagreement with the trial Court's judgment in the

strongest of terms; when we set aside the same and find that the prosecution case has not been proved, at all. We acquit the accused and direct them

to be released forthwith if they are not wanted in any other case.