

(2009) 08 AP CK 0037

Andhra Pradesh High Court

Case No: Criminal Appeal No.1592 of 2006

Mayank Bohra

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: Aug. 3, 2009

Acts Referred:

- Arms Act, 1959 - Section 25, 25(1), 25(1B)
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Identification of Prisoners Act, 1920 - Section 4, 5
- Penal Code, 1860 (IPC) - Section 302, 307, 363, 364

Citation: (2009) 2 ALD(Cri) 626 : (2009) 3 ALT(Cri) 184 : (2009) 3 APLJ 422 : (2010) CriLJ 152 : (2011) 7 RCR(Criminal) 1015

Hon'ble Judges: D.S.R. Varma, J

Bench: Single Bench

Advocate: K. Suresh Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

B. Seshasayana Reddy, J.

This Criminal Appeal is directed against the judgment dated 17.10.2006 passed in Sessions Case No. 206 of 2002 on the file of the Metropolitan Sessions Judge, Hyderabad, whereby and where under the learned Metropolitan Sessions Judge found A1-Mayank Bohra guilty for the offences under Sections 302, 397, 364-A, 307, 506-Part II of IPC and 25(1B)(a) of Arms Act and convicted him accordingly and sentenced him to suffer life imprisonment and to pay a fine of Rs. 100/- for the offence u/s 302 IPC; life imprisonment and fine of Rs. 100/- for the offence u/s 364-A IPC; rigorous imprisonment for seven years for the offence u/s 307 IPC; rigorous imprisonment for seven years for the offence u/s 397 IPC; rigorous imprisonment for three years for the offence u/s 506-Part II IPC and rigorous imprisonment for two years for the offence u/s 25(1B)(a) of the Arms Act while recording acquittal of A2 Khurmal Dounel alias Boon for the offence u/s 25(1)(a) of Arms Act.

2. The case of the prosecution, in brief, is:

(a) A1-Mayank Bohra imbibed ambition to become rich by hook or crook. He got influenced by crime movies, more particularly, English movie viz., KNR (Kidnap and Ransom). He secured a Maruti Van bearing No. AP 9 Q 7374 and changed its number plate as WB-20-7301, purchased a toy pistol, four knives, plastic rope bundles, gloves, binoculars, masks, wigs etc. He took a flat in Sai Praveen Kuteer, Methodist Colony, Begumpet, to carry on his operation. He targeted Dulichand Surana to extract money from him. It appears once ULFAs at Assam kidnapped PW.1 Dinesh Surana son of Dulichand Surana and thereupon Dulichand Surana paid Rs. 1.00 Crore to get his son PW.1 Dinesh Surana released. PW.1 Dinesh Surana and PW.3 Rajesh Surana are twins and they are sons of Dulichand Surana and PW.2 Manju Surana. They were to celebrate their birthday function as well as New Year day on the night of 31.12.2001 at Hotel Taj Krishna, Banjara Hills. They reside in Srinath Complex, S.D.Road, Secunderabad. Dulichand Surana and his wife-PW2 Manju Surana left their residence in a Santro car bearing No. AP 28 5001 at about 10.00 or 10.30 P.M. to Hotel Taj Krishna, Banjara Hills. PW.1 Dinesh Surana, PW.3 Rajesh Surana, PW.4 Narayana Agarwal and other family members were to come by a Qualis to Hotel Taj Krishna. Dulichand Surana was on driving seat of Santro car and whereas his wife PW.2 Manju Surana was by his side. On reaching Automic Mineral Development Office, Begumpet, A1 Mayank Bohra who had come there arrived there on his white Maruti Van, stopped the Santro car driven by Dulichand Surana. A1 got into the Santro car and took a rear seat, pointed a pistol on temple of Dulichand Surana and directed him to move the car. In the meanwhile, PW.1 Dinesh Surana, PW.3 Rajesh Surana and other family members reached near Automic Mineral Development Office and found the Santro car stationed there. PW.1 Dinesh Surana got down from Qualis and tried to reach the Santro Car. Finding PW.1 Dinesh Surana coming near the Santro car, Dulichand Surana shouted at him to run away. A1 directed Dulichand Surana to drive the Santro car towards flyover and after getting down the flyover, made him to stop the car on left side in a lane near Blue Moon Hotel. A1 tied the hands of Dulichand Surana and his wife PW.2 Manju Surana and made them to sit on back seat. He drove the Santro car upto Amruta Mall and then took a turn and reached a secluded place at Mahindra Hills, where road was upgradient. He demanded Dulichand Surana to pay Rs. 2.00 Crores otherwise he would kill him and his wife. Dulichand Surana pleaded his incapacity to arrange such a huge sum. However, he agreed to secure Rs. 10.00 Lakhs within two hours. He closed the nostrils of Dulichand Surana and hacked him with a knife on face, chest, abdomen and thighs. PW.2 Manju Surana pleaded him to leave her husband Dulichand Surana. She offered to give their entire property, but he did not heed to her request. Instead, he stabbed her with a knife on temple, cheek, right upper arm, right shoulder and neck. She caught hold of the knife in the process of offering resistance to him and thereupon, A1 bite on her hand and he too sustained injury to index finger. He snatched gold chain, bangles and ear tops from her and threw

these items in a briefcase, which he carried. He tried to remove wristwatch and ring from her, but he could not succeed. Later, he dragged out her and her husband Dulichand Surana from the Santro car to some distance and whisked away from the place by the Santro car. Fifteen minutes thereafter, A1 returned to the spot and lifted the hand of PW.2 Manju Surana and scratched her left leg with a knife to test whether she was alive or dead. She did not venture to move due to fear. After A1 leaving the scene and waiting for few minutes, PW.2 Manju Surana tried to wake-up her husband Dulichand Surana by shaking him. Her efforts proved to be futile to bring her husband back to senses. With great difficulty she move forward and noticed a couple sleeping in an unfinished house. She woke them up and requested them to provide water for drinking. She furnished her residence phone number to one of the boys, who reached there. She talked to her son PW.3 Rajesh Surana over cell phone. She informed him that A1 stabbed her and her husband and asked him to come immediately to Mahindra Hills.

(b) PW.1 Dinesh Surana on failing to trace the Santro car, which his father drove from Automic Mineral Development Office towards Somajiguda, went to Sanjeev Reddy Nagar Police Station and brought the police to Hyderabad Public School and spotted the place where his father Dulichand Surana parked the car. In the meanwhile, PW.25 P.William Carey, the then Inspector of Police, Begumpet P.S., received a radio message at about 11.15 P.M. He rushed to Automic Mineral Development Office, Begumpet and found white Maruti Van and some police constables of Sanjeeva Reddy Nagar Police Station apart from civilians. The Maruti Van bears registration No. WB 20 7301. He checked the Maruti van and found MO-2 Original R.C. book relating to Maruti van bearing No. AP 9Q 7374, MO. 3-two broken plates of Maruti van bearing No. AP 9Q 7374, MO. 4-Grey coloured Nokia Cell phone, MO. 5-Eight pieces of black coloured cloth; MO. 6-Black T-Shirt; MO. 7- Pair of ladies wigs; MO. 8-Pair of black leather hand gloves; MO. 9-Four packets each containing one pair of surgical gloves; MO. 10-Five small knives and one middle knife bearing brand name Fiscars; MO. 11-Scissor with brown cloloured handles; MO. 12-Small scissor with orange coloured handles; MO. 13-Titanus injections 3 in number; MO. 14-Three live syringes; MO. 15-Three bundles of blue coloured rope; MO. 16-Brown Coloured plastic thread of two bundles; MO. 17-Black coloured binocular and MO. 18-Citizen Club Card issued in the name of Mayank Bohra (A1) and Ex.P2 Transfer forms along with a receipt pertaining to vehicle bearing No. AP 9Q 7374. He found last received call in MO. 4 Cell phone as 7800519. He phoned up to the said number and learnt that the name of the receiver of the call as Susheel Bohra and that cell number 9848036059 belongs to his son who is no other than A1. He posted the guard at the scene, reached the police station and received Ex.P1 report from PW.1 Dinesh Surana and registered a case in Crime No. 1 of 2002 under Sections 363 and 506 IPC and issued Ex.P55 FIR. He returned to scene and prepared Ex.P.19 observation report in the presence of P.W.17 Mohd.Subhan and L.W.22 Syed Ghafoor and effected seizure of Mos.1 to 18 under the cover of Ex.P.20 seizure

report. He also prepared rough sketch of the scene, which has been exhibited as Ex.P.21. He returned to the police station at about 3 a.m. He received a phone call from P.W.3 Rajesh Surana as to his (PW.3) parents lying with bleeding injuries at Mahendra Hills. He along with P.W.1 and his staff rushed to Mahendra Hills and found Dulichand Surana and PW.2 Smt. Manjula Surana lying with injuries. Both the injured were shifted to Apollo Hospital, Karkhana where Dulichand was declared as brought dead. P.W.2 was shifted to Apollo Hospital, Jubilee Hills for further treatment. P.W.25 filed memo of alteration by adding Section 302 and 307 IPC. Ex.P.56 is the memo of alteration filed by him in court. He secured P.W.16 B.Rama Rao and L.W.22 Brahmananda Reddy, observed the scene at Mahindra Hills, lifted blood stained earth and controlled earth and effected seizure of MO. 24 pair of chappals, MO. 21 Nokia cell phone and , MO. 35 Plastic duplicate driving license of A1. Ex.P.15 is the observation report and Ex.P.16 is the seizure panchanama. He also prepared rough sketch, which has been exhibited as Ex.P.18. He got the scene of offence photographed through clues team. He examined P.Ws. 1, 3, 4, L.W.4 Swetha, L.W.5 Jyothi, L.W.6 Naresh and recorded their statements u/s 161 Cr.P.C. He shifted the dead body of the Dulichand Surana (hereinafter referred to as the deceased) to Gandhi Hospital from Apollo Hospital, Karkhana. He held inquest on the dead body of the deceased at Gandhi Hospital in the presence of P.W.16 and L.W.24 Brahmananda Reddy. He effected seizure of wearing apparels of the deceased, which has been exhibited as Mos.38 to 42. Ex.P.17 is the inquest report. He received phone call from P.W.19 with regard to interception of maroon colour Santro car bearing No. A.P. 28 Q 5001 at AOC gate at 1.45 p.m. He rushed to AOC gate, secured the presence of mediators viz P.W.14 and L.W.25 Arjun Patro. He interrogated the person found in the Santro car and his interrogation turned out that the person found in the Santro Car is no other than A1. In the presence of panchas, A1 made a confessional statement which led to seizure of MO. 22 country made pistol, MO. 19 Gold bangle, MO. 20 Diamond ring, MO. 23 Knife, MO. 29 Maroon coloured santro car bearing No. AP 28 Q 5001, MO. 30 Pair of toy pistols, MO. 31 Wooden toy revolver with concealed knife, MO. 25 Black coloured jacket, MO. 26 Black coloured pant, MO. 27 Black coloured shirt, MO. 24 Pair of chappals, MO. 32 Nokia cell, MO. 33 nylon rope, MO. 28 Suit case and MO. 37 Cash of Rs. 4,000/-. Ex.P.13 is the relevant portion of confessional statement of A1 and Ex.P.12 is the seizure panchanama. Clue teams and finger prints bureau officials inspected the scene and lifted chance prints. He sent requisition to XXII Metropolitan Magistrate for recording dying declaration of P.W.2. Since A1 had an injury on the right index finger, he sent him to Gandhi Hospital for treatment. He also sent fingerprints of A1 and chance prints found on Santro car through the Inspector, CCS, finger Prints Bureau to A.P.Forensic Science Laboratory, Hyderabad for comparison. He obtained the custody of A1 for a period of 10 days under the orders of XI Metropolitan Magistrate, Secunderabad. A1 lead him and panchas to the flat which he took on rent. Incriminating material found in the flat came to be seized under the cover of Ex.P.45 panchanama. The incriminating materials seized from the flat which A1 took on rent are:- Ex.P.40

Driving license issued in the name of Vicky, Ex.P.41 Two receipts of blue dart express courier, Ex.P.42 Jane's Guns Recognition Guide by Lanhogg, Ex.P.43 Book of hand guns rifles by Lanhogg, MO. 45 Cash of Rs. 10,000/-. Ex.P.46 Single rule note book. He obtained specimen handwriting, specimen signatures of A1, which have been exhibited as Exs.P.47 to 52 in the presence of P.W.22 K.Grunath Rao. He sent all the material objects to Forensic Science Laboratory through the Assistant Commissioner of Police. Ex.P.57 is the letter of advice and Ex.P.58 is the copy of the letter of advice.

[c] P.W.12 Dr. K.Rajagopal Reddy conducted post mortem on the dead body of the deceased and found the following intemortem injuries:

1. Multiple abrasions with contusion 4 x 2 cm on the forehead above the right eyebrow.
2. Laceration 1x1/2 cms on medial side of the right eyebrow.
3. Abraded contusion 2 x 1 cm over the right maxilla.
4. Incised injury on the lower part right side of face from midpart of lower lip extending to angle of mandible with tailing present at angle of mandible of rightside measuring 11x2 cm x bonedeeep.
5. Stab injury on front of right side of the chest obliquely placed 3 cm below the right mid clavicular line inner angle is sharper with clean cut margins measuring 2 x 1 cm entered chest cavity.
6. Stab injury on front of the right side of chest, 2 cm below the sternal end of the right clavicle, innerangle is sharper with clean cut margins measuring 2 x 1 cms entered the chest cavity through first intercostals space and injured the upper lobe of right lung.
7. Stab injury on front of the chest 9 cm below the sternalnotch horizontally placed, measuring 2 x 1/2 cm with clean cut margins entered the chest cavity through IIIrd intercostals space, cutting the sternum on left side and injured the asending aorta.
8. Stab injury on front of the chest 13 cm below the sternal notch, horizontally placed inner angle is sharp with clean cut margins measuring 2 x 1 x 2 cms.
9. Stab injury on front of the left side of abdomen, 3 cm below the left costal margins 6 cm from the midline, measuring 3 x 2 cm cavity deep on blandly placed upper and outer angle is sharper and clean cut margins.
10. Stab injury on front of left side of abdomen 13 cm from midline, 15 cm from the umbilicus, 3 cm above the umbilical plane measuring 1 x 1/2 cm x 2 cm with clean cut margins.
11. Stab injury on front of middle of left thigh measuring 1 1/2 x 1 cm.

12. Stab injury on the outside of middle of left thigh measuring 1 1/2 x 1/2x1/2 cm with clean cut margins.
13. Abrasion on outer part of right leg measuring 2 x 1/2 cms.
14. Abraded contusion upper part of the left leg 4 x 3 cm.
15. Stab injury on front of middle of right thigh measuring 1 1/2 x 1/2 x 1 1/2 cm.
16. A scratch mark on middle of dorsum of right hand 4 cm in length.
17. Abrasion on back of right wrist region measuring 4 x 2 cm.

He opined that the deceased died of hemorrhage and shock consequent to multiple stab injuries. Ex.P.3 is the post mortem certificate issued by him.

(d) PW.25 arrested A2 on 10.1.2002 and sent him for remand. He filed requisition before the Commissioner of Police, Hyderabad and obtained sanction orders to prosecute A1 and A2 u/s 25 of Indian Arms Act. Ex.P.59 is the sanction letter relating to A1 and Ex.P.60 is the sanction letter relating to A2. P.W.18 C.K.Surya Prakash developed chance prints and compared the same with standard finger prints of A1 and issued Ex.P.31 report. P.W.20 T.Suresh, Scientific Officer in Clues Scientific Investigation team, CCS, Hyderabad assisted P.W.25 P.William Carey in collecting the physical evidence at AMD office as well as AOC gate. After completing investigation, P.W.25 laid a charge sheet before the XI Metropolitan Magistrate, Secunderabad (redesignated as XI Additional Chief Metropolitan Magistrate). Learned Magistrate took the charge sheet on file as P.R.C. No. 8 of 2002 and committed the case to the Metropolitan Sessions Division, Hyderabad as the offences under Sections 302, 397, 398 and 307 IPC are exclusively triable by a Court of Session. On committal, the learned Metropolitan Sessions Judge took the case on file as S.C. No. 206 of 2002. On hearing the prosecution and the accused, the learned Metropolitan Sessions Judge framed the following charges:

Charge No. 1: Against A1 for the offence u/s 302 IPC;

Charge No. 2: Against A1 for the offence u/s 397/398 IPC;

Charge No. 3: Against A1 for the offence u/s 364-A IPC;

Charge No. 4: Against A1 for the offence u/s 307 IPC;

Charge No. 5: Against A1 for the offence u/s 506 Part II IPC;

Charge No. 6: Against A2 for the offence u/s 25(1)(a) of Indian Arms Act;

Charge No. 7: Against A1 for the offence u/s 25(1B)(a) of Indian Arms Act.

He read over the charges to the accused, for which they pleaded not guilty and claimed to be tried. Subsequently, A1 jumped bail and thereupon case against him stood separated and registered as S.C. No. 490 of 2005. When the case stood posted

for trial against A2, the police apprehended A1 on execution of NBW and produced before the learned Metropolitan Sessions Judge and thereupon S.C. No. 490 of 2005 came to be merged with the original case i.e. S.C. No. 206 of 2002 and the evidence came to be recorded in S.C. No. 206 of 2002. To bring home the guilt of the accused for the offences with which they stood charged, prosecution examined 25 witnesses and proved 61 documents and exhibited 45 material objects. The plea of the accused is that P.W.1 and his family members foisted the case against him due to disputes. The accused did not choose to adduce any evidence except marking the contradictions in S.161 Cr.P.C statement of P.W.19 as Exs.D1 and D2. Learned Metropolitan Sessions Judge, on considering the evidence brought on record and on hearing the prosecution and the accused, found A1 guilty for the offences under Sections 302, 397, 364-A, 307 and 506 Part II of IPC and convicted them accordingly and sentenced them as stated supra while recording acquittal of A2 for the offence u/s 25(1)(a) of Arms Act, by judgment dated 17th October, 2006. Hence, this criminal appeal by A1 Mayank Bohra.

3. The appellant/A1 initially engaged Sri.K.Suresh Reddy, learned advocate to represent him in the appeal. On 30.6.2009 Sri.K.Suresh Reddy reported no instructions on the ground that A1 himself wanted to argue the matter. Thereupon, this Court directed the Superintendent, Central Prison, Cherlapally to produce A1 before the Court on 3.7.2009 so as to ascertain whether he would argue the matter in person or need any legal aid. On 9.7.2009 when the matter came up for hearing, A1 as well as his mother requested the assistance of Sri.T.Bali Reddy, learned Senior Advocate to represent his matter. A1 expressed no objection for appearance of Sri.K.Suresh Reddy, Advocate, if he argues. Keeping in view the inconsistency in the stand taken by A1, we requested Sri.T.Bali Reddy, learned Senior Counsel to represent A1 and also to assist the Court. The order passed on 9.7.2009 reads as under:

The accused, who was present before this Court, on the earlier date of hearing, wanted to argue the matter as party in person instead of being represented by the learned Counsel on record Sri.K.Suresh Reddy. Sri.K.Suresh Reddy, learned Counsel also stated before this Court that the papers concerning the present Criminal Appeal, had been taken away and he had no further instructions to argue the matter on behalf of the appellant/accused. Therefore, the appellant/accused himself was directed to be present before this Court.

When the matter came up for hearing today, both the mother of the accused and the accused himself, initially requested the assistance of Sri.T.Balireddy, learned Senior Counsel, to represent the matte in place of Sri.K.Suresh Reddy, learned Counsel. Again, they state that even if Sri.K.Suresh Reddy, learned Counsel, argues the matter, the accused had no objection.

Though the accused, who is present along with his mother before this Court, has been shifting the stands quite frequently, we understand that the accused is in a

state of indecisiveness and because of this, we could only see the high degree of anxiety and sense of insecurity in the mind of the accused. Hence, we requested Sri.T.Bali Reddy, learned Senior Counsel, in the interest of justice to represent the appellant/ accused and also to assist this Court simultaneously for which Sri.T.Bali Reddy, learned Senior Counsel agreed to extend his cooperation.

The proposal of this Court in requesting Sri.T.Balireddy, learned Senior Counsel, to represent the appellant/accused was accepted by the appellant/accused and his mother, who is accompanying the accused. Hence, list the matter on 16.7.2009.

The appellant/accused also shall be produced before this Court on the said date of hearing.

4. Heard Sri T.Bali Reddy, learned Senior Counsel representing the appellant/A1 and learned Public Prosecutor appearing for the respondent/State.

5. Sri T.Bali Reddy, learned Senior Counsel submits that the evidence of PW.2 Manju Surana, who is the sole eyewitness to the occurrence, suffers from serious infirmities and inconsistencies and therefore, it is highly unsafe to place implicit reliance on her testimony. He further submits that PW.2 Manju Surana was not aware of the assailants of her as well as her deceased husband since she stated before the doctor that unknown assailants stabbed her at Mahindra Hills. Learned Senior Counsel would further contend that the specimen handwritings and finger prints were obtained by the Investigating Officer neither in the presence of the Court nor under the orders of the Court and in which case, no authenticity could be attributed to the reports submitted by PW.18 C.K.Surya Prakash, Finger Print Expert, and PW.24 Smt. Rajani, Handwriting Expert. In elaborating his arguments, it is contended that it is highly unbelievable that the appellant/A1 could silence the deceased and PW.2 Manju Surana, who were of sound health and more particularly when PW.1 Dinesh Surana and PW.3 Rajesh Surana were following the Santro car in which she and her deceased husband were allegedly abducted. The learned Senior Counsel took us to the evidence of PW.2 Manju Surana very minutely to convince us that her evidence is artificial and that the appellant/A1 has been falsely implicated in the case. Learned Senior Counsel also referred the postmortem examination report to convince that it is highly impossible for any assailants single handedly to inflict so many injuries on the deceased. In support of his submissions, reliance has been placed on the decision of the Supreme Court in Mohd. Aman and Anr. v. State of Rajasthan 1997 SCC 777 wherein it has been held that u/s 4 of the Identification of Prisoners Act, 1920, police is competent to take specimen fingerprints of the accused, but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence, it was eminently desirable that they were taken before or under the order of a Magistrate. Much emphasis has been laid on para.8 of the cited judgment, which reads as hereunder:

8. After careful perusal of the evidence adduced in proof of the above circumstance we notice a glaring missing link, in that, the prosecution has failed to establish that the seized articles were not - or could not be - tampered with before it reached the Bureau for examination. Though evidence was led to prove that after seizure the articles were packaged and then sealed, no evidence was led to indicate what was the mark given in the seals and whether the Bureau received the packages with the marked seals intact. Indeed, even the contemporaneous letters exchanged between them (Ext. P. 59 and P. 60) do not throw any light on this aspect of the matter. Rather, other circumstances appearing on record makes the prosecution case doubtful in this regard: first, the articles were kept in the police station for five days without any justifiable reason, secondly the Investigating Officer (P. W. 20) admitted that the seal, mark of which was put on the articles, was with him since the time of seizure and lastly his letter (Ext. P. 59) forwarding the seized articles to the Bureau contains admittedly, an overwriting as regards the date of its writing/despatch and no satisfactory explanation is forthcoming for the same. Apart from the above missing link and the suspicious circumstances surrounding the same, there is another circumstance which also cast a serious mistrust as to genuineness of the evidence. Even though the specimen finger-prints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that u/s 4 thereof police is competent to take finger-prints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate. The other related infirmity from which the prosecution case suffers is that the brass jug, production of which would have been the best evidence in proof of the claim of its seizure and subsequent examination by the Bureau, was not produced and exhibited during trial - for reasons best known to the prosecution and unknown to the Court. For the foregoing discussion we are unable to sustain the convictions of Mohd. Aman.

6. Learned Public Prosecutor appearing for the respondent/State submits that PW.2 is an injured witness and her testimony is corroborated by PW.1 Dinesh Surana, PW.3 Rajesh Surana, PW.5 T.Ramulu, PW.23 Anuroop Reddy apart from medical evidence. He would also contend that the incriminating materials seized during the course of investigation lend ample corroboration to the testimony of PW.2 Manju Surana and therefore, the conviction of the appellant/A1 for the offences under Sections 302, 397, 364-A, 307, 506-Part II of IPC and 25(1B)(a) of Arms Act does not suffer from any infirmity warranting interference by this Court in this Criminal Appeal. A further submission has been advanced by the learned Public Prosecutor that for taking specimen fingerprints of the accused, there is no need for the investigating officer to obtain order from a Magistrate. In support of his submissions, reliance has been placed on the following decisions:

1. [The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi,](#)

2. Shankaria v. State of Rajasthan AIR 1978 S.C. 1248

3. Chita Narasimha Prasad and Anr. v. Sub-Inspector of Police, CBI/SPE/Visakhapatnam 2006(1) ALT 165 (A.P.)

7. The point that arises for consideration in this criminal appeal:- is whether the conviction and sentence of the appellant/A1 for the offences under Sections 302, 397, 364-A, 307, 506-Part II of IPC and 25(1B)(a) of Arms Act is legal and proper?

8. To bring home the guilt of the accused for the offences with which they stood charged, prosecution examined 25 witnesses, proved 61 documents and exhibited 45 material objects. The plea of the appellant/A1 is that the case has been foisted against him due to disputes. Nothing is elicited in the cross-examination of PW.1 to PW.3 as to what sort of disputes he had either with them or with the deceased. Except making a bald suggestion to PW.1 to PW.3 that the case has been foisted against him due to disputes, no effort has been made by him to elicit from them as to what sort of disputes he had with them.

9. Be that as it may, PW.2 is the injured witness. The fact that she sustained injuries on the night of the incident at Mahindra Hills is fully established by the prosecution. PW.5 T.Ramulu was a watchman with a contractor by name Narsing Rao at Mahindra Hills. He testified that he found PW.2 Manju Surana with bleeding injuries and he provided drinking water to her. He went to nearby building and brought the students, who were celebrating a New Year day on that night, to the scene. One of the students provided a cell, through which PW.2 Manju Surana talked to PW.3 Rajesh Surana, who is her son, and informed him of her receiving injuries. PW.23 Anuroop Reddy is one of the students who responded to the call of PW.5 T.Ramulu and provided a cell to PW.2 Manju Surana. The evidence of PW.5 T.Ramulu and PW.23 Anuroop Reddy corroborated the testimony of PW.2 Manju Surana to the extent of her receiving injuries at Mahindra Hills on the night of the incident. PW.13 Dr. Alok Ranjan is the treating doctor of PW.2 Manju Surana. Ex.P8 is the wound certificate. There cannot be any doubt as to PW.2 Manju Surana receiving injuries on the night of the incident.

10. The testimony of injured witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence lends support to his/her testimony and that he/she was present during the course of occurrence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case,

hyper-technical approach in persuasion of evidence should be avoided. The Supreme Court in [State of U.P. Vs. M.K. Anthony](#), observed that even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer.

11. The occurrence of the offence is in two parts. The first part is near Atomic Mineral Development Office (AMC) and the second part is at Plot No. 90, Road No. 2, III Cross, Balaramaraju Street, Mahendra Hills.

12. P.W.17 is the panch witness for the observation of scene at AMD office, Begumpet. Ex.P.19 is the observation report and Ex.P.20 is the seizure panchanama. Mos.1 to 18 came to be seized under the cover of Ex.P.20 panchanama. The incriminating materials seized under the cover of Ex.P.20 scene of offence panchanama are:- MO. 1 White coloured Maruti Van bearing No. WB20 7301, MO. 2 Original R.C. Book relating to Maruthi Van bearing No. AP 9Q 7374, MO. 3 Two broken plates of Maruti van bearing No. AP 9Q 7374, MO. 4 Grey colored Nokia Cell phone, MO. 5 Eight pieces of black coloured cloth, MO. 6 Black T shirt, MO. 7 Pair of ladies wigs, MO. 8 Pair of black leather hand gloves, MO. 9 Four packets each containing one pair of surgical gloves, MO. 10 Five small knives and one middle knife bearing brand name Fiscars, MO. 11 Scissor with brown coloured handles, MO. 12 Small scissor with orange coloured handles, MO. 13 Titanus injections 3 in number, MO. 14 Three live syringes, MO. 15 3 Bundles of blue coloured rope, MO. 16 Brown coloured plastic thread of two bundles, MO. 17 Black coloured binocular, MO. 18 Citizen Club Card issued in the name of Mayank Bohra, Ex.P.2 Bunch of transfer forms along with receipt pertaining to vehicle bearing No. AP 9Q 7374. Of these incriminating materials collected, Mos.1, 2, 4, 18 and Ex.P.2 play a vital role in fixing the culprit. P.W.7 Mohd.Yakub Ali was the owner of MO. 1 maruti van. MO. 2 is the R.C. book relating to the Maruthi Van. P.W.7 testifies that he entrusted the van to P.W.8 Pavan Kumar for sale. It is the evidence of P.W.8 that A1 purchased the Maruthi van on 13.10.2001 for Rs. 1,20,000/- and paid the sale consideration and thereupon he delivered the maruti van to A1. Ex.P.2 is the transfer form. P.Ws.7 and 8 are the independent witnesses and they have no reason to speak false. Both of them identified A1 as the person who purchased MO. 1 Maruti Van and there upon they delivered the same along with necessary documents. Therefore, as on the date of the offence A1 was the owner of the said Maruti Van. MO. 4 Nokia cell phone came to be seized under the cover of Ex.P.20 seizure panchanama. The cell phone number is 98480 36059. P.W.21 Roy Joseph is the Senior Manager (Admn) Idea Cellular. He testifies that the cell phone bearing No. 98480 36059 belongs to A1. He produced customer's application form along with enclosures submitted by A1. The application form has been marked as Ex.P.37. Ex.P.38 is the Xerox copy of the call details relating to cell phone No. 98480 36059. P.W.11 Rahul Mahdiratta is friend of A1. His phone number is 7768628. Ex.P.38 is the call details of cell phone number of A1, which indicates the cell phone number of P.W.11 as incoming call on 31.12.2001.

The evidence on record clearly established that MO. 21 cell phone seized under the cover of Ex.P.20 seizure panchanama belongs to A1. MO. 18 Citizen Club Card stands in the name of Mayank Bohra (A1). The evidence brought on record clearly established that the above referred incriminating materials belong to A1. These incriminating materials corroborate the evidence of PW.2 in fixing A1 as the culprit.

13. P.W.16 B.Rama Rao is the panch witness for the observation of scene at plot No. 90. He testifies that the police observed the scene and seized MO. 21 cell phone, MO. 24 Pair of chappals, MO. 35 Plastic duplicate driving license card, MO. 36 Blood stained earth and control earth under the cover of Ex.P.16 Seizure panchanama. Of these incriminating material, Ex.MO. 35 corroborates the testimony of P.W.2. MO. 35 is a driving license found at the scene of A1. It is not the case of A1 that the driving license has been snatched from him and then planted it to have been seized at the scene of offence. Seizure of MO. 35 at the scene of offence corroborates the testimony of P.W.2 with regard to participation of A1 in the commission of offence.

14. The other important circumstance which fixes A1 in the commission of offence is recovery of the car owned by the deceased. P.W.19 G.Someshwar Rao, Inspector of Police, Malakpet P.S., apprehended A1 on 1.1.2002 i.e. at 2 p.m. According to him, he found A1 driving the santro car bearing No. AP 28Q 5001 at AOC gate. He intercepted the said car and apprehended A1. He passed on the message to Inspector, Begumpet Police Station. P.W.25 P.William Carey, Inspector, Begumpet Police Station received the message and reached AOC gate and took custody of A1 along with Santro car bearing No. AP 28 Q 5001. Indisputably the Santro car bearing No. AP 28 Q 5001 stands registered in the name of the deceased. No explanation is coming forward from A1 as to under what circumstances he came into possession of the car owned by the deceased. The evidence of P.Ws.1, 2 and 3 is consistent to the fact that the deceased and P.W.2 left the house on the Santro Car, which has been exhibited as MO. 29.

15. Learned Senior Counsel argued that the specimen hand writing and specimen finger prints are obtained neither in the presence of Magistrate nor under the orders of the Court and therefore the opinion of the Scientific Officers who have been examined as P.W.18, 20 and 24 is of no avail to the prosecution. Indisputably the specimen handwritings and fingerprints of A1 were taken neither in the presence of the Magistrate nor under the orders of the Court. The specimen handwritings, finger prints and chance fingerprints and standard handwritings were sent to the scientific officers by P.W.25 on 5.2.2002. He did not claim to have properly packed the specimen handwritings, fingerprints, chance prints and standard writings while being forwarded to the Scientific Officers. Even P.W.24 Smt. Rajani, Scientific Officer who has examined the standard writings and the disputed writings did not speak of her receiving the material from the Investigating Officer in a properly sealed manner. There is a gap of nearly a month between collecting the material and forwarding the same to the Scientific Officer. What proper care the

Investigating Officer has taken to keep the incriminating material intact is not evident from the record. In these circumstances, we find it difficult to give any authenticity to the report submitted by the Scientific Officers. Even if this piece of evidence is discarded, the other circumstances which have been referred to supra gave ample corroboration to the testimony of P.W.2. Therefore, the conviction of A1 for the offences u/s 302, 397, 364-A, 307 and 506-Part II of IPC does not warrant any interference in this Criminal Appeal.

16. With regard to the conviction and sentence u/s 25(1B)(a) of Arms Act, neither MO. 22 Country made pistol is sent to ballistic expert or any one was examined to speak of its working condition. The onus of proving that a weapon had not lost its specific character of firearm is upon the prosecution. The investigating officer who has been examined as PW.25 admits in cross-examination that the Ballistic Expert has not given any opinion regarding working conditions of the fire arm seized during the investigation. There is no evidence to show that MO. 22 is in serviceable condition. In the absence of evidence to show that MO. 22 satisfied the definition of "Fire Arm", conviction u/s 25(1B)(a) of Arms Act cannot be sustained. The Supreme Court in Buta Singh v. State of Punjab 1997 SCC 1217 has held that objects allegedly seized from the accused must satisfy the definition of "arm" and "ammunition" or "firearm" as contained in the Arms Act to make the accused liable for the offence u/s 25(1B)(a) of Arms Act. The decision referred supra squarely applies to the case on hand. Therefore, the conviction of A1 for the offence u/s 25(1B)(a) of Arms Act cannot be sustained and is acquitted of the same.

17. In the result, this Criminal Appeal is partly allowed setting aside the conviction of A1-Mayank Bohra for the offence u/s 25(1B)(a) of Arms Act and he is acquitted of the same while confirming the conviction and sentence of the appellant/A1-Mayank Bohra for the offences under Sections 302, 397, 364-A, 307 and 506-Part II of IPC.

Before parting the case, we record our appreciation to the valuable assistance rendered by Sri T.Bali Reddy, learned Senior Counsel.