

(2004) 10 AP CK 0092

Andhra Pradesh High Court

Case No: Criminal Appeal No. 901 of 2002

Selvaraj

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: Oct. 12, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 45, 73
- Evidence Act, 1872 - Section 25, 26
- Identification of Prisoners Act, 1920 - Section 4, 5
- Penal Code, 1860 (IPC) - Section 201, 300, 302, 363

Citation: (2005) 1 ALD 812 : (2005) 1 ALD(Cri) 812

Hon'ble Judges: S.R.K. Prasad, J; G. Bikshapathy, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

G. Bikshapathy, J.

Killings for illegal enrichments have become the Order of the day. This evil spree did not spare even an innocent and crawling child. We have a case here, where the accused has swallowed sweet life of two years kid for his money thrust and lust.

2. Appellant is the sole accused in S.C.NO. 154 of 1999 on the file of the learned Additional Sessions Judge, Hindupur. He was tried by the learned Sessions Judge for the charge u/s 363 IPC and he was found guilty and sentenced to suffer Rigorous Imprisonment for five years. Under 2nd charge he was tried for the offences u/s 302 IPC and he was found guilty and sentenced to undergo imprisonment for Life. Under the 3rd charge, he was tried for the offence u/s 201 IPC and found guilty and sentenced to suffer Rigours Imprisonment for five years. All the sentences were directed to run concurrently.

3. The substance of the charge against the accused was that on 14.9.1998 at about 5-30 p.m. he kidnapped one Niranjana (deceased) aged about 2 years from plot No. 479 Model colony, Hindupur. Thereafter he caused the death of the boy in his house by tying his hands and legs. Later he hid the dead body on the roof of Latrine situated behind his house.

4. The case of the prosecution in brief is as follows:

P.W.1 is the father and P.W.2 is the mother of the deceased. The material witnesses, deceased and the accused were living in Model Colony, Hindupur. On 14.9.90 at about 5 p.m. the accused went to P.Ws. 1 and 2's house and asked P.W.2 (mother of the deceased) to send her son stating that he wanted to purchase biscuits. Accordingly, P.W.2 handed over the son, but the accused did not get back the deceased. At about 8 p.m. when her husband P.W.1 returned from Bangalore informed the same. On this information they went to the house of the accused and enquired about their son, but the door was locked. At about 8.30 p.m. the father, mother and sister of the accused came to their house, then P.Ws. 1 and 2 again went there and asked about their son. They stated that the accused would bring the deceased and asked them not to worry. Accused came to the house at 9 p.m. when he was asked about the deceased, the accused told them that he left the deceased at the house after buying the biscuits. Thereafter, P.Ws. 1 and 2 and the accused and his parents went in search of the boy through out night and came back to their respective houses. At about 3-30 a.m. on 15.9.1998, P.Ws. 1 and 2 heard some noise of steps of persons and when they got up and opened the doors he found a chit Ex.P-1 placed in a cover at the door steps. P.W.1 took the chit and read the contents. It was mentioned at the top of paper as "Sathya" in Telugu that P.W.1 should place Rs. 80,000/- cash at Masque behind the colony on the next day before 10.00 P.M. and also warned him that if he reveals this, his son would be killed and at the end of the letter it was mentioned as "Satya" in Telugu. Then P.W.1 consulted his father-in-law, who is residing at Bangalore on Phone and P.W.1 went to the II Town police station and reported the matter to the police. He narrated the incident to P.W.8-Circle Inspector of Police, who reduced the same into writing and Ex.P-2 is the report signed by P.W.1. Basing on the said report, P.W.8 registered a case in Crime No. 78 of 1998 u/s 363 IPC. However, P.W.8 asked P.W.1 not to reveal about giving report to police and asked him to let the accused know that P.W.1 is arranging money as demanded in Ex.P-1. P.W.1 went to the father of the accused, who had taken loan of Rs. 10,000/- from him and asked him to repay the loan, but the father of the accused gave Rs. 1,000/-. The father of the accused also advised him not to place the cash at the mosque as demanded and advised him to place only white paper between the currency notes. P.W.1 stated that he will place currency notes only as demanded so as to get back the deceased safely. As directed by P.W.8, P.W.1 went to the mosque at about 10 p.m. and placed a zip bag containing 8 bundles of white papers between the currency notes and went back home and at about 12 "O clock mid night the accused went to the place having covered himself with a mask

and he picked up that zip bag left by P.W.1 and while he was leaving that place P.W.8 and his staff, who were watching the place incognito caught hold of the accused in the presence of P.W.6 and one Muthyal Rao. P.W.8 questioned the accused and brought him to the police station and he confessed that he has committed the offence. Ex.P-4 is the admissible portion of the confessional statement of the accused. At the instance of the accused, P.W.8 recovered a gunny bag from a under-construction house at plot No.486 of Model Colony, Hindupur. The dead body was wrapped in the bag. P.W.8 called P.Ws. 1 and 2, who identified the dead body as that of their son. He drafted panchanama Ex.P-5, Ex.P-6 and Ex.P-4. Thereafter, additional Sections 201 and 302 IPC were added. Ex.P-13 is the altered F.I.R. On 16.9.1998, P.W.8 conducted inquest of dead body in the presence of P.W.6 and another and Ex.P-8 is report. P.W.8 recorded the statements of P.Ws.1 to 3. The dead body was sent for autopsy and on the same day P.W.5 conducted autopsy and it was opined that the cause of death was due to Asphyxia and haemorrhage and Ex.P-3 is the post mortem report. He prepared three rough sketches. Ex.P-14 is where the accused was arrested, Ex.P-15 shows the houses of the deceased and the accused and Ex.P-16 shows the place where the dead body was recovered. P.W.8 examined and recorded the statements of P.W.4 and others. Thereafter P.W.8 obtained specimen writings of the accused under Ex.P-7 and Ex.P-1 and Ex.P-7 for hand writing expert. He also sent bloodstained clothes to Forensic Science Laboratory and Ex.P-17 is the Forensic Science Laboratory report and Ex.P-8 is the opinion of hand writing expert P.W.7.

5. After completion of investigation P.W.8 filed the charge sheet in the Court of Judicial Magistrate of First Class, Hindupur, who registered the same as P.R.C.No. 53 of 1998, as the offence u/s 302 IPC is exclusively triable by the Court of Sessions and committed the same to the Sessions Division, Ananthapur, who registered the same as S.C.NO. 154 of 1999 and thereafter it was made over to the learned Additional Sessions Judge, Hindupur for trial and disposal of the case according to law.

6. After hearing the prosecution and the accused, the trial Court framed the following charges:

"Charge No.1: That you on or about the 14th day of September, 1998 at about 5.30 p.m. kidnapped one Niranjana, aged two years son of B. Venkateswarlu, r/o in 1st Model colony, Plot No.479, Hindupur from his house and you thereby committed an offence punishable u/s 363 Indian Penal Code and within my cognisance.

Charge No.2: That you on or about the same date, time mentioned in charge No.1 and in the course of same transaction at your house situate in 1st Model Colony, Hindupur in Plot No.477 did commit murder by intentionally or knowingly causing the death of Niranjana, aged 2 years son of B. Venkateswarlu, residing in Plot No. 479, 1st Model colony, Hindupur by tying the hands and legs of the said boy and applying plaster to his mouth and you thereby committed an offence punishable u/s 302 of Indian Penal Code and within my cognisance.

Charge No.3: That you on or about the same date and in the course of same transaction mentioned in charge No.1, knowingly or having reason to believe that certain offence, to wit, murder punishable with death or imprisonment for life has been committed by you, did cause disappearance of evidence of the said offence committed, hid the dead body of the said boy Niranjana on the roof of latrine situated behind your house at 1st Model Colony, Hindupur and thereby committed an offence punishable u/s 201 of Indian Penal Code and within my cognisance."

The accused pleaded not guilty and claimed to be tried. In support of the case of the prosecution 9 witnesses were examined and Ex.P-1 to P-17 were marked and Ex.D-1 to D-3 were marked and the learned trial Judge after considering the evidence adduced by the prosecution found the accused is guilty of the offence u/s 363, 302 and Section 201 IPC and accordingly convicted and sentenced as detailed above by a judgment dated: 19.7.2002. Assailing the said judgment of the trial Court, the present appeal has been preferred by the accused.

7. The learned Senior Counsel appearing for the Appellant-accused submits that the finding recorded by the learned trial Judge that the prosecution has established the guilt of the accused with which he was charged is absolutely misconceived and there is no evidence to connect the accused with the alleged offence. He further submits that the boy was taken by the accused for offering biscuits and thereafter he was left at the house. Therefore, the accused is under no obligation to explain the whereabouts of the boy. The learned counsel would submit that there is no provision under the Criminal Procedure Code requiring the accused to write in his hand Ex.P-7 as was written in Ex.P-1 and sent the same for opinion of the Expert. Therefore, Ex.P-1 cannot be relied on and it cannot be treated as incriminating circumstances against the accused. Further, it is contended that the confession alleged to have been made by the accused also hit by Section 25 of Evidence Act. The entire confession could not have been marked except the admissible portion. Even in the confession, the accused has stated that after taking the boy from the custody of P.W.2, he tied his hands and pasted plaster to his mouth and intended to take him away to some other place. Since the boy was weeping he closed his mouth tightly, after some time he stopped weeping and then he intended to take that boy on bicycle, but he found the deceased dead as there was no movements. Then he had thrown the body on the latrine roof situated on the backside. In the early hours at about 3 a.m. he carried the dead body of the deceased wrapped in a gunny bag and kept, near the latrine of a house under the construction and to erase the finger prints on the dead boy, he cut the throat of that boy with blade and then returned to home. He submits that the confession alleged to have been made by the accused though cannot be used by the prosecution against the accused, but the same can be used by the defence in support of the defence for the accused. He submits that when the accused had stated that the plaster was put on the mouth of the boy, the medical evidence does not reveal any such plaster. He further submits that there was no necessity for the accused to go to Idga to collect the money as he had heard

the conversation between his father and the P.W.2 to the effect white paper bundles with two currency notes should be kept in the bag and having heard this, he could not have gone to the place to collect the bag. Therefore, he submits that a false case was foisted against the accused as he was an immediate neighbour. Thus, he submits that the prosecution has miserably failed to establish the guilt of the accused and he is entitled for acquittal.

8. Per contra the learned Public Prosecutor submits that the accused has committed a grave crime on a very innocent and young child of two years for evil desire of getting money. The Accused was an un-employed person and therefore, he entertained an idea of earning money by threatening P.W.2 at the cost of the child. The circumstantial evidence is so strong and reliable, that there is no scope for disbelieving the prosecution evidence. Thus, the learned Public Prosecutor submits that the trial Court has very thoroughly considered the evidence and recorded the findings. Hence judgment of the trial Court is valid and sustainable and there are no grounds for interference with the judgment of the trial Court.

9. The issue that arises for consideration is whether the judgment of the learned trial Court is sustainable in law and whether the prosecution has been established the guilt of the accused beyond reasonable doubt u/s 363, 302 and 201 Indian Penal Code?

10. The entire case rests on the circumstantial evidence. P.W.2 is the mother of the deceased and P.W.1 is father of the deceased and husband of P.W.2. According to P.W.2 they were staying at the relevant time at Model Colony. The house of the accused is situated after one house in the same row. The father of the accused is Sessaiah @ Seshappa. The accused and the family are acquainted with P.Ws. 1 and 2 as they are their immediate neighbours. On 14.9.1998 at 5 p.m. one Smt. Sudamma was at the house of P.W.2 to take plastic wire to make baskets. At that time, accused went to the house of P.W.2 and asked her to send her son as he wanted to purchase the biscuits for him and therefore, she allowed the accused and he has taken away the boy. But, however, the accused did not get back his son. P.W.1 was not available at the house as he was gone to Bangalore at about 6-30 a.m. and at 8 p.m. when he was returned she informed that the accused had taken their son and did not return. They went to the house of the accused and it was found locked. After half an hour, the parents of the accused and sister came. They stated that the accused would get the son and they need not worry. At about 9 p.m. the accused returned to the house, but however, the accused stated that after purchasing the biscuits, he left the boy at their house. When P.W.2 and his friends, his son-in-law and Sudamma searched for his son, they could not trace. But, however, at about 3 a.m. they heard somebody moving in front of the house, and thinking that child was brought, P.W.1 opened the door and found a cover in varandah. P.W.1 took out the letter Ex.P-1 from it and read it and it was styled as one "Satya" had written it. The contents of the said letter were read over by her husband P.W.1. In the said letter, they

demanded Rs. 80,000/- and that their son is safe and if he is reported to the police, their son will be killed. They became very panic and at about 6 a.m. P.W.1 left the house to report the matter to the police and he returned back at 11-30 a.m. and he told that he complained the matter to the police. On the next day at about 5 a.m. the police constable came and took them to park in the colony, where they found the dead body of the son in front of the house under-construction and the dead body was kept in a gunny bag. M.O.3 was shimmy, the deceased was wearing at the time. They also noticed cut marks on the neck in front side. The accused was also found in the custody of the police. In the cross-examination she stated that the accused was leading the life of indifferent character. The accused used to visit their house and rather well acquainted with their son. Therefore, she gave her son to the accused on that evening. He was not visiting the house since the date of missing of his child.

11. P.W.1 is the father of the deceased. According to him on the date of the incident, he went to Bangalore and came at about 8 p.m. then he was informed by his wife P.W.2 that their son was taken away at 5-30 p.m. by the accused and did not return and therefore, he went to the house of the accused, which was locked, but at about 8-30 p.m. the parents and the sister of the accused came to the house and again they informed that the accused would bring the boy, they need not worry. Even when the accused came at 9 p.m. when they enquired, he stated that the boy was left after purchasing the biscuits by him. Therefore, the P.W.1, P.W.2, parents of the accused and accused started searching the boy, but in vain. The father of the accused advised P.Ws.1 and 2 to go and have rest and that the deceased boy will be left in his house. Therefore, they went to the house to take rest. In the mid night they heard noise at the steps, thinking that the boy was left, they opened the door and found a chit Ex.P-1 placed. In the chit, it was written by "Satya" and when the contents are read, it is stated that his boy is safe and he should place Rs. 80,000/- cash at the mosque in Model Colony before 10 p.m. on the next day and warned that if this is revealed to the police, his son will be killed. Ex.P-1 is the letter found at the doorstep of the house. After telephoning to his father-in-law to Bangalore, he went to the police station at about 7 a.m. to report the matter to the Circle Inspector of Police. The Circle Inspector of Police recorded the statement Ex.P-2. The Circle Inspector of Police (P.W.8) asked not to reveal the same to the accused about giving complaint to the police and let the accused know that P.W.1 was arranging the money. When he went to the father of the accused and asked him to repay Rs. 10,000/-, which was given on loan earlier, but he paid only Rs. 1,000/-. The father of the accused also advised to place white papers in lieu of currency notes. But, however, he replied that he will put entire currency notes as demanded with a view to get back the deceased safely back. According to P.W.1, at about 10 p.m. he went to the mosque and placed zip bag with 8 bundles containing white papers and currency notes. M.O.1 is the bag containing the papers. The said place is at a distance of 1 k.m. from the house and he came back to the house. On the next day morning at 5 a.m. Circle Inspector of Police (P.W.8) called him to the police station.

Therefore, himself and his wife (P.W.2), L.W-3 and some others found the accused was with the handcuffs in the custody of the police. The Circle Inspector of Police brought one gunny bag and took out the dead body of the boy and asked him to identify the dead body. M.O.2 is gunny bag from which gunny bag the deceased was taken out. He found cut injury over the neck of the deceased. M.O-3 is T-shirt and shimmy which was worn by the deceased. The police recorded the statements. He stated that the accused was moving with the bad company and he was indulging in galata and he was fined by Gowribindur Court. In the cross examination, he denied that he passed on information to the extremists about the travel of the deceased Kogira Aswartha Reddy in the bus on that day. He denied that he is doing money-lending business. The house of the accused was situated in the west of his house after the house of one Ediga Ramaiah. The deceased son was well attached to them and the accused used to take his son to play with him and bring back. He used to work as labour on occasions in Pre-cot Mill, where his father was working. He further stated that he has enquired with the petty shops in the locality whether the accused bought his son and purchased the biscuits, but he was told that the accused did not purchase any biscuits. He further stated in the cross examination that he met Shamiullah and he appraised Ex.P-1 to him. Except Shamiullah, he did not meet any one and reveal Ex.P-1 to anyone. The said Shamiullah also accompanied him to the police station. Father of the accused came and advised on 15.9.1998 at 4 p.m. in connection with the Ex.P-1 report. When the father of the accused were advised him he should keep only 20 white papers and two sides notes, the accused was there and that he was observing what his father advised him.

12. P.W.3 is Ediga Sudamma. According to her, she used to take plastic wire for preparing baskets and she was being paid the labour charges. On the date of the incident at about 5 or 5.30 p.m. she went to the house of P.W.1. At that time, the accused came and asked the P.W.1 to take the son telling her that he would be taking the body to the shop. For some time, she stayed there and next day she learnt that the deceased was killed. She also went to the park where the dead body was found. Police also examined her.

13. P.W.4 is a retired teacher and residing in Model colony. According to him on 14.9.1998 he has seen the deceased boy at 5-30 p.m. along with the accused taking from the house of P.W.1. On 15.9.1998 at about 7 or 7-30 a.m. he came to know that the dead body was lying in front of the park.

14. P.W.6 is a Village Administrative Officer. According to him on 15.9.1998 he was called by the police to II Town Police Station. Another Village Administrative Officer of Sreekantapuram was also called to the police station. They all with the Sub-Inspector of Police went in a jeep to the Kotipi road, on that road there were Neelagiri trees near burial grounds of Muslims. We were asked to watch by the Police. At about 10 p.m. they found one person came to that burial ground and kept a bag in a ditch, which is situated between the road and the burial ground. AT about

12-30 mid night, they found a person with mask coming into burial ground and he has picked up the bag and when he attempted to leave, the police apprehended him, then the police secured the bag. The Circle Inspector of Police has asked him to disclose the identity, he disclosed his identity as Selvaraj, who is present in the Court. The accused confessed that he has committed the offence and also informed that since he wanted money, he wanted to extract the money from the parents of the accused and he also revealed that the boy was already died and the dead body was kept in one of the latrines of the house under-construction. Mazhar was also prepared at that place incorporating all these facts and they all signed on it. He can identify the said bag. Then along with the accused, they went to Model colony and they found a gunny bag in latrine and that gunny bag was brought out from the latrine and when it was opened, they found the dead body of a small boy. Then, the Circle Inspector of Police called P.Ws.1 and 2 and they identified the dead body as their son. Mazhar Ex.P-5 was prepared, the gunny bag is M.O.2 and the Sub-Inspector of Police obtained the signatures along with others. The Circle Inspector of Police held the inquest over the dead body and also recorded the statements of blood relations of the deceased. He found cut injuries on the neck of the dead body and there was silver waist thread around the waist of the deceased boy. He, however, stated that in the Mazhar it was not mentioned whether the said person was with mask and the said mask was seized. He signed the Ex.P-4 confession made by the accused.

15. P.W.8 is the Circle Inspector of Police, who conducted the investigation. According to him, after complaint was registered by P.W.9 in Crime No. 78 of 1998, he took up the investigation by altering sections of law to 302 and 201 IPC. On 15.9.1998 at 11-45 a.m. P.W.1 went to the police station and gave a oral complaint, which was reduced into writing. Basing on it, a crime was registered u/s 363 IPC kidnapping of infant for ransom. He advised P.W.1 to keep the moneybag at Idga as stated in Ex.P-1. Thereafter, he arranged constables and also Village Administrative Officers referred to above. They started watching from a non-visible area. At about 10 p.m. P.W.1 came and left zip bag near Idga and went on his scooter. At about 12 mid night the accused came to the said place having covered with mask and he picked up the said bag left by P.W.1 and while he was leaving that place P.W.8 and his staff surrounded him in the presence of two mediators P.W.6 and another and caught him and when he questioned the accused, the accused did not give any answer and he was found in highly confused state of mind and then took him to the police station and questioned him and he gave voluntary statement Ex.P-4 admissible portion. In pursuance of the Ex.P-4, the accused lead all the persons to No.1 Model colony, Plot nO.486 in which there was a house under-construction and there were two rooms, one was bathroom and another was latrine. Accused went inside one of the two rooms and brought a gunny bag in which the dead body of the infant was there. Immediately, thereafter he secured the presence of P.W.1 and P.W.2 and they identified the body as that of their son. He drafted another Mazhar,

all these facts were written in Ex.P-5. Thereafter, the F.I.R. was altered adding Section 201 and 302 IPC and he has taken up the further investigation in the case. He conducted the inquest in the presence of P.W.6 and another Village Administrative Officer Sreekanthapuram under Ex.P-6. During the course of inquest, he examined and recorded the statements of P.Ws.2 and 3 and the dead body was sent to Government hospital for autopsy and prepared the rough sketch of the scene of offence panchanama under Ex.P-14 and another rough sketch of the house was under construction under Ex.P-15. When questioned at the police station the accused, he reiterated the earlier confession and he has obtaining writings as per the contents found in Ex.P-1 in the presence of mediators P.W.6 and another Mutyal Rao. He sent the same to hand writing expert and hand writing expert gave the report.

16. P.W.7 is hand writing expert, who stated that the handwritings on Ex.P-1 tallies with the hand writing in Ex.P-7. Ex.P-9 is the opinion.

17. According to the doctor, who conducted post mortem examination. It was done on 16.9.1998 at about 11-50 p.m. and he found the following injuries:

"External injuries:-

1. Cut injury over the front of the neck extending from the middle of the left side of the neck to the middle of the right side of the neck measuring 3 inches length, 1 inch width, 1 inch depth subcutaneous haemorrhagic spots present around the wound margin.

2) Cut injury above the injury No.1 extending from front of middle of the neck to middle of the right side of the neck measuring 3 cm length x 1 cm width x 1 cm depth.

Internal examination:

Scalp, skull intact -brain - congested. Brain partly liquefied. Mouth normal - Neck - Hyoid intact. Neck muscles cut at middle of the neck. Thoract -Ribs - intact oesophagus cut at the middle of the neck. Trachea - cut at the middle of the neck just below the thyroid cartilage. Lungs - Both lungs congested. Heart - Both chambers empty. Abdominal peritoneal cavity free. Stomach - normal on opening containing liquid diet milk. Liver - Pale, spleen - pale, kidney - Both kidneys pale, small intestines distended and filled with gas. Large intestines distended greenish in colour cut section yield foul smell gas. Bladder - Normal empty - external genitalia - Normal. Spinal card intact."

He was of the opinion that the cause of death was due to asphyxia and haemorrhage and 36 to 48 hours prior to post mortem examination.

18. Ex.P-1 is the chit containing the demand for Rs. 80,000/- to be paid at the Mosque, which is behind the park. Ex.P-2 is the complaint lodged by P.W.1 on

15.9.1998. P.W.1 stated in the complaint as stated by him in the evidence before this Court. In the said complaint he also expressed that he has got suspicion on the accused.

19. From the aforesaid evidence, it is clear that P.Ws. 1 and 2 are wife and husband and their son was taken away by the accused around 5-30 p.m. to purchase some biscuits for him. P.W.3 also categorically states that when she was in the house of P.W.2, accused came and took the boy and thereafter the boy was not returned. This was informed to P.W.1 when he returned from Bangalore at 8 p.m. It is also in the evidence of P.Ws.1 and 2 that immediately they went to the house of the accused. It was locked and after half an hour, they again went there and by that time, the parents of the accused came and P.Ws. 1 and 2 informed the parents of the accused about the missing of their son, they stated that they need not worry that the accused will bring him. When the accused returned to his house, they again went and enquired about their son. The accused reported that he had already dropped the boy after purchasing the biscuits. It is also established in the night they made searches in the area. P.W.3 was also there and the parents of the accused and the accused also participated in the search activity. However, having found no clue, they went to the house at 2 a.m. 15.9.1998 and while they were awake they heard some noise. Thinking that their son was dropped, P.W.1 opened the door, but surprisingly he found a cover and he opened the cover and saw the contents, wherein it was stated that he should place a sum of Rs. 80,000/- at mosque by tomorrow by 10 p.m. Accordingly, police were informed by P.W.1. Thereupon, the police have alerted the persons and made a plan. P.W.8 asked the P.W.1 to keep the bag as was desired by the accused at 10 p.m. at the mosque and that however to make arrangements for payment of Rs. 80,000/-. P.W.1 demanded the father of the accused, who was taken the loan for return of the loan so as to make arrangements for payment of Rs. 80,000/-. But, however, he paid only Rs. 1,000/- and advised him that he should not keep bundles of currency notes and only outer notes should be currency notes and inside it should be white papers. This was not accepted by P.W.1 and he stated that he would place actual money for the safety of his son. When his advise has been tendered by the father of the accused and the accused was present hearing the same.

20. The learned Senior Counsel would contend that when the accused was hearing that white papers will be placed in the zip bag, it would be a futile exercise for the accused to go and collect the same and therefore, it is a case of falsely implicating him in the incident. This contention cannot be accepted, even though the accused was present and the father of the accused was being advised, but it has to be seen that the accused is a unemployed and according to P.W.1, he stated to the father of the accused that he would make available the currency notes only. On that premise, it cannot be ruled out that the accused has an idea of collecting the bag whatever it may be. The accused as already noted unemployed. Even assuming that papers would be put in the bundles except outer notes, but, yet, even then it is substantial

amount and it is not improbable, in such a situation for the accused to go and collect zip bag. The learned counsel would contend that the presence of the accused on the mid night of 15.9.1998 is not established. Further, the confession alleged to have been made by the accused also cannot be used against him. We are afraid, we cannot accept this contention. P.W.6 is an independent person was asked to accompany the party and he has categorically stated that at about 10 p.m. one person came and kept one zip bag and they were observing from the dark area. Since it has been clearly stated by him that at 12-30 mid night or so, one person came with mask and lifted the bag, at that point of time, the police party caught hold of the accused and apprehended him and thereafter he was taken to the police station, where he confessed that he has committed the offence and P.W.6 also signed to the confession. He further contends that he will show the body if the police accompanied. Thereupon, they went to the house which was under construction and the accused indicated the place of latrine, where the dead body was kept in a gunny bag and one gunny bag was taken out and the dead body of the child has seen and immediately thereafter P.W.8 called P.Ws. 1 and 2 to identify the body and to their surprise, it was their son. This evidence of P.W.6 clinchingly establishes that the amount was kept in zip bag at Idga and the accused took the said zip bag. We do not find any ground to suspect the evidence of P.W.6. It has been clearly stated that he has seen the accused for the first time and he never seen on the earlier occasion. Therefore, the incident of catching the accused read handed and in pursuance of the confession made the recovery of the deceased was effected and the dead body was identified as that of son of P.Ws. 1 and 2. All these circumstances would clearly indicate that the accused only has committed offence and none else. He stated in his confession that when the deceased was weeping he put a tape on his mouth, and when he wanted to close his mouth, he was dead and therefore, that he kept the body at the backside of his house and thereafter in the mid night he has took out the body to the house under construction and kept there in a gunny bag and kept in latrine. He also stated that he cut throat after the boy was dead. Even though the entire confession is not admissible in evidence, but the confession leading to recovery of dead body to that extent, it is established that the confession can be relied on.

21. It has been consistently laid down by the Supreme Court that where a case rests squarely on the circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be closely connected with the principle fact sought to be inferred from those circumstances. (See: VILAS PANDURANGA PATIL Vs. STATE OF MAHARASHTRA (AIR 2004 S.C.W. 3441).

22. The learned counsel for the appellant, however, submits that the police have no authority to take the signatures or ask the accused to write in telugu as was written

in Ex.P-1 and send it to expert. P.W.8 was required to take the signatures or writings before the Magistrate or under his Orders. The learned counsel submits that the Judge conducting the trial is only entitled to ask the accused to give sample hand writings, but there is no provision empowering the Investigating Officer to take the sample hand writings. The Supreme Court in STATE (DELHI ADMINISTRATION) Vs. PALI RAM¹ in para 25 observed as follows:

"Section ON 73 is therefore to be read as a whole, in the light of Sec. 45. Thus read, it is clear that a Court holding an inquiry under the Code of Criminal Procedure in respect of an offence triable by itself or by the Court of Session, does not exceed its powers u/s 73 if, in the interests of justice, it directs an accused person appearing before it, to give his sample writing to enabling the same to be compared by a handwriting expert chosen or approved by the Court, irrespective of whether his name was suggested by the prosecution or the defence, because even in adopting this course, the purpose is to enable the Court before which he is ultimately put up for trial, to compare the disputed writing with his (accused's) admitted writing, and to reach its own conclusion with the assistance of the expert."

Therefore, the learned counsel would submit that any sample writings taken cannot be used against the accused.

23. In MOHD. AMAN Vs. STATE OF RAJASTHAN², the Supreme Court observed as follows:

"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."

24. Admittedly, in the instant case, no reasons were forthcoming as to why handwritings were not taken in the presence of the Magistrate or under the Orders of the Magistrate. However, there is no blanket prohibition to take the writings of the accused. But, only to create confidence and reliability, it was found desirable that such finger prints are to be taken in the presence of a Magistrate or under the

Order of the Magistrate. P.W.6 has testified that P.W.8 asked the accused to write as was written in Ex.P-1 and accused had accordingly wrote Ex.P-7. Even assuming that the accused was asked to write as was written in Ex.P-1, it is only illegality which cannot in any way affect the case of the prosecution. The learned Senior Counsel even tried to contend that the confession of the accused before the police Officer cannot be used against him, but at the same time, it can be used for the defence of the accused. The learned counsel relies on the judgment of the Supreme Court reported in MADIAH Vs. STATE BY YELANDUR POLICE³. The Supreme Court stated that there is nothing in the Evidence Act that precludes an accused from relying upon his confession for his own defence. This advantage, no doubt, the prosecution does not have because of the total ban enacted u/s 25 in making use of the confession in any manner barring the limited user, the prosecution can make of it u/s 26 provided the confession is made in the presence of a Magistrate. The accused is not untrammelled by either of these Sections in case he desires to rely on the confession. The Supreme Court observed that the confession statement made to the Police Officer at the police station, but also the statements made to the witnesses adumbrated in their deposition, can be relied on by the accused at least to spell out a stand that the offence committed by him was not murder but something less than that.

25. In SHRI MURLI @ DENNY Vs. STATE OF RAJASTHAN⁴, which is relied by the learned Senior Counsel the Supreme Court observed as follows:

"It may be mentioned here that we are not using the statement of the accused before the SHO for any purpose in favour of prosecution and against the accused. The only admission which we find in the statement in favour of the accused is being taken into account to examine whether the case falls under exception No. 1 to S. 300, IPC, particularly, in view of the fact that there is no other evidence disclosing as to how the quarrel ensued and attack took place."

26. Relying on the decisions of the Supreme Court, the learned counsel for the appellant submits that the accused has clearly stated in his evidence that he tried to close the mouth of the accused by putting a plaster, but, however, he died in that process. Therefore, the learned counsel would submit that the accused never wanted to kill the boy, but only he wanted that the sound of his cries should not come out. Thus, the accused had no intention to kill the boy and therefore, the offence would not fall u/s 302 IPC. We are afraid, we cannot accept this contention. The accused has taken the custody of the boy aged about two years from the custody of the mother P.W.2 to purchase the biscuits and to give him and he did not bring back the deceased. It is for him to explain as to what happened to the deceased. This was not at all explained by him except stating that he returned back the boy. On the other hand, he tries to make out a case for lesser punishment by taking advantage of the statement made in the confession made before the Police. We also do not find any reason for P.W.1 and P.W.3 to speak falsehood to implicate

the accused. The accused is an unemployed person and he was aged about 20 years and it cannot be said that if the mouth of such a small boy is closed he will survive. Knowingly well, that he would not survive, he closed the mouth of the boy, which caused asphyxia. Yet another contention sought by the learned counsel for the Appellant is that when the accused pasted the plaster on the mouth of the deceased and the doctor has not stated in the post mortem examination report that there were traces of plaster on the mouth. But, this contention leads nowhere. The learned Senior Counsel would submit that there was no motive for the accused to kill the accused. We are also unable to accept the said contention. The contents of Ex.P-1 coupled with the fact that he was apprehended at mid night at 15.9.1998, and the trap by the police party, which was spoken to by P.W.6, who was an independent person, would clinchingly establish that the accused intend to make quick money out of threat which plan was foiled. We find that the circumstantial evidence as adduced by the prosecution is quite reliable, dependable and truthful and we do not suspect any ground to the credibility of the prosecution witnesses.

27. Under those circumstances, we find the prosecution has been able to establish the guilt of the accused beyond reasonable doubt and the findings recorded by the trial Court has correctly appreciated the evidence available on record. Therefore, we do not find any infirmity in the judgment of the trial Court. Accordingly, we dismiss the appeal and confirm the judgment of the learned trial Court.

28. Accordingly, the Criminal Appeal is dismissed.