HIGH COURT OF TELANGANA

Bench: Hon'ble Sri Justice K. Lakshman and Hon'ble Smt. Justice K. Sujana

Date of Decision: 3rd May 2024

CRIMINAL APPEAL Nos. 343 AND 344 OF 2015

Gopal Ramana Shetty, Mini Gopal, …Appellants

VERSUS

State of Telangana, Rep. by Public Prosecutor, …Respondents

Legislation:

Section 395 of the Indian Penal Code (IPC)

Section 25(1A) of the Arms Act, 1959

Subject: Appeals against conviction in a dacoity case where the appellants were accused of participating in an armed robbery, looting valuables worth approximately Rs. 1.5 Crores.

Headnotes:

Criminal Law – Conviction for Dacoity – Appellants convicted under Section 395 IPC for involvement in dacoity at M/s. Rajlakshmi Jewellers, armed with daggers and revolvers, taking valuables worth about Rs.1.5 crores – Trial court sentenced to life imprisonment, based on collective actions with other accused, more than five in number – High Court reviewed and upheld the conviction but reduced the sentence to ten years considering the circumstances and evidence presented during the trial [Paras 1-48].

Identification and Arrest – Accused No. 2 arrested based on information from Mumbai Crime Branch – Confession during custody led to recovery

of part of the stolen property – Both appellants identified by witnesses in a test identification parade – Trial court found delay in conducting the parade not fatal to prosecution's case due to complexity and magnitude of the investigation [Paras 9, 37].

Procedural Challenges – Appellants challenged the sufficiency of evidence, particularly the delayed FIR and gaps in investigation procedures – High Court considered the entirety of evidence and procedural conduct, maintaining that delays were reasonable given the case's complexity and the immediate investigative actions taken post-incident [Paras 12-18].

Sentencing Policy – High Court reviewed principles of proportionality, deterrence, and reformation in sentencing – Considered mitigating factors including conduct during incarceration – Modified life imprisonment to ten years – Directed release of accused based on time already served [Paras 40-46].

Decision – Partial Allowance of Appeals – Held – The conviction for dacoity under Section 395 IPC is upheld, but the sentence of life imprisonment is modified to ten years due to reformation considerations and time served – Directions issued for release of the accused if not required in other cases [Para 47].

Referred Cases:

- Sarwan Singh Rattan Singh v. State of Punjab AIR 1957 SC 637
- V. Suresh v. State 2011 (1) ALD (Crl) 11 (AP)
- Mousam Singha Roy v. State Bank of West Bengal (2003) CCR 250 (SC)
- Thanedar Singh v. State of M.P. 2002 SCC (Crl.) 153
- Thulla Kali v. The State of Tamil Nadu 1972 Crl.L.J. (SC) 1296
- State of U.P. v. Bhagwan . 1997 (2) ALD (Crl) 415 (SC)
- Ramthu Thomas @ Ankaiah v. State of A.P. 2007 (1) ALD (Crl) 422 (AP)
- Ali Mohan v. State of West Bengal AIR 1996 SC 3471

- State of Rajasthan v. Tejya Ram AIR 1999 SC 1776
- Govt. of NCT Delhi v. Sunil (2001) 1 SCC 652
- Public Prosecutor, High Court of A.P. v. Paluri Suryanarayana @ Suribabu 2004 (1) ALD (Crl) 538 (AP)
- Bommimalli Kharjuna alias Malka v.State of A.P. 2004 Crl.L.J. 2162 (AP)
- Turaka Veerabhadra Rao @ Veerabhadram v. State of A.P 2008 (1) ALD (Crl.) 381 (AP)
- Ganesh v. State of Maharashtra 1985 Crl.L.J. 191 (Bom.)
- Gireesan Nair v. State of Kerala Crl.Appeal Nos.1864-1865 of 2010, decided on 11.11.2022
- Shaikh Umar Ahmed Shaikh v. State of Maharashtra (1998) 5 SCC 103
- Shivarathir @ Gundlakomuraiah v. State of Andhra Pradesh 2000 (2) ALD (Crl.) 748 (AP)
- Wakil Singh v. State of Bihar AIR 1981 SC 1392
- Manzoor v. State of U.P. 1982 SCC (Cri) 356
- Sirama Venkatarao @ Bayya @ Bakkodu v. Stateof A.P. 2007 (1) ALD (Crl.) 472 (AP)
- Pramod Mandal v. State of Bihar2004 LawSuit (SC) 1061
- State of Karnataka v. Putta Raja(2004) 1 SCC 475
- State of Rajasthan v. Teja Ram1999 LawSuit (SC) 333
- Soman v. State of Kerala (2013) 11 SCC 382
- Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648
- Hazara Singh v. Raj Kumar (2013) 9 SCC 516
- State of Uttar Pradesh v. Sanjay Kumar (2012) 8 SCC 537
- Santa Singh v. State of Punjab (1976) 4 SCC 190
- Ramashraya Chakravarti v. State of Madhya Pradesh (1976) 1 SCC 281

Representing Advocates:

For Appellant(s): Mr. Garlapati Jithendar Reddy

For Respondent(s): Mr. T.V. Ramana Rao, Additional Public Prosecutor

COMMON JUDGMENT: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. Garlapati Jithendar Reddy, learned counsel for the appellants - accused Nos.1 and 2 and Mr. T.V. Ramana Rao, learned Additional Public Prosecutor appearing on behalf of the respondent.

Both the appeals are filed by accused Nos.1 and 2 separately challenging the judgment dated 09.03.2015 in S.C. No.533 of 2010 passed by learned Special Judge for Economic Offences - cum - VIII Additional Metropolitan Sessions Judge at Hyderabad.

The appellants herein are arraigned as accused Nos.1 and 2 in the aforesaid S.C. No.533 of 2010. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed in S.C. No.533 of 2010.

Vide the aforesaid judgment, the trial Court convicted the appellants - accused Nos.1 and 2 for the offence under Section - 395 of IPC and accordingly imposed life imprisonment.

The case of the prosecution is as follows:

i) Accused No.1 planned the dacoity and formed a gang with active association of accused Nos.2 to 9 and another person. As per their plan, they all came to Hyderabad on 26.12.2003.

ii) On the same day in the night around 9.10 P.M., they went to M/s. Rajlakshmi Jewellers, Abids, Hyderabad in a Qualis Car, which was stolen and entered into the jewellery shop armed with dagger and revolvers.

iii) They have threatened PW.1 and his staff with dire consequences and one among them beat PW.1 with dagger and took away his cell phone as well as customer (PW.4). PW.1 and his staff including the customer were confined in a room situated on the top (inside corner) of the showroom and bolted from outside.

iv) Within fifteen (15) minutes, they have collected gold and diamond ornaments worth about Rs.1.5 Crores and fled away in the same Qualis Car. Later, all the accused went to Mumbai and shared the booty at Mumbai. Thus, accused Nos.1 and 2 herein and other accused committed the aforesaid offence by threatening PW.1 - jewellery shop-keeper and his staff with dagger and revolvers.

v) On receipt of Ex.P1 - complaint from PW.1, the Police of Abids, Hyderabad, registered a case in Crime No.577 of 2003 under Section - 395 of IPC and Section - 25 (1A) of the Arms Act, 1959 (for short 'Act, 1959') and took up investigation.

vi) During investigation, the Investigating Officer recorded the statements of witnesses. On completion of investigation, the Investigating Officer had laid charge sheet and the same was committed to the Sessions Judge which was numbered as Sessions Case No.533 of 2010.

6. The trial Court, after framing the charge for the offences under Section - 395 of IPC and Section - 25 (1A) of the Act, 1959 proceeded with trial. During trial, PWs.1 to 28 were examined, Exs.P1 to P26 were marked and MOs.1 to 64 were exhibited. On behalf of the accused, Exs.D1 to D6, relevant portions of the statements recorded under Section1 - 161 and 164 of the Cr.P.C. and final report were marked.

7. After hearing both sides and perusing the entire evidence, both oral and documentary, the trial Court recorded conviction against the appellants herein for the offence under Section - 395 of IPC and accordingly imposed life imprisonment on them, however, acquitted them for the offence under Section - 25 (1A) of the Act, 1959.

8. Challenging the said conviction and sentence of life imprisonment, accused Nos.1 and 2 preferred the present appeals.

9 . Learned counsel for the appellants - accused Nos.1 and 2 would submit as under:

i) Though the subject crime was closed on 18.11.2004 as undetected, it was reopened on 02.02.2005 basing on the information received from Mumbai Crime Branch stating that they have arrested accused No.2 in Crime No.136 of 2004 for the offences under Section - 392, 394, 397 read with 34 of IPC.

ii) Accused No.2 confessed to have committed offence in Crime No.642 of 2003 of ADR, CCS, Hyderabad, on 26.12.2003 along with his associates.

iii) Though the incident was occurred on 26.12.2003, there was delay in registering the first subject Crime (Ex.P18). There is also delay in recording the statements of material witnesses i.e., PWs.1 to 12. Their statements were recorded only on 30.12.2023.

iv) According to the prosecution, part of the stolen property was seized from LW.38 on 18.10.2007 though the incident was occurred on 26.12.2003, LW.38 was not examined.

v) Though finger prints were collected, the same were not tallied with the accused. Other witnesses are planted witnesses. vi) There are contradictions in the depositions of *panch* witnesses including PW.23 with regard to seizure of MOs.1 to 30. There are major contradictions in the depositions of material witnesses.

vii) Prosecution utterly failed to prove the identity of both the appellants and also the property recovered. There is violation of procedure laid down under Rules - 34 and 35 of Criminal Rules of Practice. Thus, the prosecution failed to prove even the seizure.

viii) Perusal of Ex.D6 would reveal that the partners of the subject jewellery shop have claimed insurance.

ix) The contents of the depositions of prosecution witnesses lack ingredients of Section - 395 of IPC. The trial Court having acquitted the appellants for the offence under Section - 25 (1A) of the Act, 1959, convicted them for the offence under Section - 395 of IPC. There should be acceptable legal evidence to record conviction against the accused. In the present case, the same is lacking. It is a moral conviction. The prosecution has to prove the guilt of the accused beyond reasonable doubt. In support of the same, he has relied upon the decisions in **Sarwan Singh Rattan Singh v. State of Punjab**[1] **V. Suresh v. State**[2] and **Mousam Singha Roy v. State Bank of West Bengal**[3]. In the present case, the prosecution failed to prove the same. When two views are possible, the view which is beneficial to the accused shall be given. The accused are always entitled for benefit of doubt.

x) Without considering the said aspects, the trial Court convicted the appellants herein. They were in Jail for one and half year before commencement of trial and presently they are in jail from 09.03.2015.

With the said submissions, learned counsel for the appellants sought to set aside the impugned judgment and acquit the accused of the aforesaid offence.

10. On the other hand, learned Additional Public Prosecutor would contend as follows:

i) As per Ex.P1 - complaint, accused are unknown.

ii) The police including the Investigating Officer tried their level best to apprehend the accused in the present case, but they could not. Therefore, the subject crime was closed as undetected. Thereafter, on receipt of information from the Mumbai Police, they have reopened it as per the procedure laid down under law.

iii) The Investigating Officer has recorded statements of the witnesses, recovered the material and thereafter on completion of investigation laid charge sheet.

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[1]. AIR 1957 SC 637
[2]. 2011 (1) ALD (Crl) 11 (AP)
[3]. (2003) CCR 250 (SC)

iv) The prosecution proved the guilt of the accused beyond reasonable doubt.

v) All the material witnesses including PWs.1 to 12 and PW.22 categorically deposed about the role played by the appellants herein.

vi) The prosecution proved both identity of the appellants and property.

vii) There are no contradictions, much less major contradictions in the depositions of prosecution witnesses as alleged by the appellants.

viii) Delay in recording statements of witnesses is not fatal to the case of the prosecution. It was a sensational case at that particular point of time and the appellants along with other accused committed the offence in the heart of the City by entering into the subject jewellery shop, threatening the witnesses. ix) Non-examination of LW.38 is not fatal to the present case.

x) On consideration of entire evidence only and gravity of the offence, the trial Court recorded conviction against the appellants herein. There is no error in it. It is based on acceptable legal evidence, but not moral conviction.

With the said submissions, he sought to dismiss the present appeals.

11. As discussed above, to prove guilt of the accused, prosecution has examined PWs.1 to 28, Exs.P1 to P26 were marked and MOs.1 to 64 were exhibited.

12. It is contended by learned counsel for the appellants that there was delay in lodging Ex.P1 - complaint. In support of the same, he has relied upon the decisions in **Thanedar Singh v. State of M.P.**[4] and **Thulla Kali v. The State of Tamil Nadu**[5]**.**

[4] . 2002 SCC (Crl.) 153
[5] . 1972 Crl.L.J. (SC) 1296

i) It is relevant to note that as per Ex.P1 - report, the incident took place on 26.12.2003 at 9.10 P.M. PW.1 lodged Ex.P1 - report with the Police, Abids Police Station, Hyderabad on the same day at 21.45 hours. On receipt of the said complaint, the police, Abids, have registered a case in Crime No.577 of 2003 against unknown persons for the offences punishable under Section - 395 of IPC and Section - 25 (1A) of the Act, 1959, and thereafter investigation was transferred to ADR Team, CCS, DD, Hyderabad.

ii) PW.1 deposed that he is the son of Ramesh Chand, who is partner in Rajyalakshmi Jewelers, Abids, Hyderabad. The incident took place at 9.30 P.M. on 26.12.2003. After the culprits left the shop and observing that he and others did not hear any movements or sound, they tried to pen the door by pulling resulting the door got opened and they all came out. They found none was present. Then, he has seen Mr. Shiva Kumar and Mr. R. Ashok Kumar to go to police station for giving information. The police arrived at the shop and thoroughly examined. Then, he lodged Ex.P1 - report. The whole transaction of the incident took within fifteen (15) minutes.

iii) PW.22 - Inspector of Police, Abids, Hyderabad, also deposed that on 26.12.2003 at about 9.45 P.M. he received complaint (Ex.P1) from PW.1 and he registered a case in Crime No.577 of 2003 for the offences punishable under Section - 395 of IPC and Section - 25 (1A) of the Act, 1959 against unknown offenders. The said FIR was dispatched to all the concerned. Thereafter, he proceeded to the scene of offence. Considering the graveness of the offence, the file was transferred to CCS, Hyderabad on 29.12.2003.

iv) Considering the said aspects, the trial Court gave a specific finding with regard to the contentions of the appellants that there is delay in lodging the complaint. In fact, there is no delay in lodging the complaint.

v) Perusal Ex.P18 - first FIR No.577 of 2003 would reveal that the same was received by learned Magistrate on 27.12.2003 at 3.15 A.M. On the top of Ex.P18, it is mentioned as ‘express’. The incident occurred around 9.30 P.M. on 26.12.2003, report was given by PW.1 with the Police, Abids, Hyderabad on the same day at 21.45 hours (9.45 P.M.), whereas the police after registration of the crime, sent the FIR to the concerned Magistrate, who received it in the wee hours on 27.12.2003 i.e., at 3.15 A.M. Thus, there is

no delay at all either in lodging the complaint, registration of the same and sending the FIR to the concerned Magistrate. Therefore, there is no error in the finding recorded by the trial Court on the said aspect. Thus, the contention of learned counsel for the appellants that there is delay in lodging Ex.P4 - report, registration of crime and sending FIR to the concerned Magistrate, is untenable. The decisions relied upon by his are not helpful to him.

13. With regard to the contention of learned counsel for the appellants that there is delay in recording the statements of PWs.1 to 12, according to him, though the incident occurred on 26.12.2003, the Investigating Officer recorded the statements of PWs.1 to 12 on 30.12.2003. In support of the same, he has relied upon the decisions in **State of U.P. v. Bhagwan**[6], **Ramthu Thomas @ Ankaiah v. State of A.P.**[7] and **Ali Mohan v. State of West Bengal**[8].

i) In this regard, the deposition of Investigating Officer in Crime No.577 of 2003 (PW.22) is relevant. According to him, considering the gravity of the offence, the file was transferred to CCS on 29.12.2003. He has handed over the file to CCS, Hyderabad. He has deposed that on registration of crime and dispatching the FIR, he has proceeded to the scene of offence, secured *panchas*, conducted scene of observation *panchanama* (Ex.P2) and also drawn rough sketch of scene (Ex.P3).

ii) However, during cross-examination, he admitted that he secured the *panchas* from the scene of offence. He has reached the scene of offence by 10.00 P.M. and he was there at the scene till 3.00 A.M. He has not recorded the statements of any witness when he visited the subject shop. None of the persons approached him during the period 27.12.2003 from 3.00 A.M. to 8.00 P.M. on 29.12.2003informing that they know anything about the case. On 27.12.2003, he again visited the shop. During his second visit, PWs.1 to 4 and other witnesses have not made any statement. When he insisted for the statement of PW.1, who in turn, informed that he would make statement after verifying the stock. On subsequent dates i.e., 28th and 29th December, 2003, none of the witnesses made any statement before him. During four days,

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[6]. 1997 (2) ALD (Crl) 415 (SC)
[7]. 2007 (1) ALD (Crl) 422 (AP)
[8]. AIR 1996 SC 3471

PW.1 did not produce any stock register to show the availability of the stock on 26.12.2003.

iii) As discussed above, the scene of offence is heart of the City. It was a sensational case at that particular point of time. As deposed by PW.1, after closing the shop, they were checking the stock and organizing the same. Perusal of the record would reveal that considering the gravity of the offence, so many Higher Officials including the Commissioner of Police, Director General of Police and Chief Minister visited the scene of offence. The explanation offered by PW.1 is that he would give statement only after verifying the stock.

iv) According to PW.22, considering gravity of the case, the file was transferred to CCS, Hyderabad. In the light of the same, in a matter like this, the said delay in recording the statements of witnesses is not fatal to the case of prosecution. On consideration of the same, the trial Court gave a specific finding that the delay in recording the statements of PWs.1 to 12 is not fatal to the case of prosecution. Thus, the said contention of learned counsel for the appellants is unsustainable.

14. It is also not in dispute that the subject crime was closed on 18.11.2004 as undetected. On 02.02.2005, the case was reopened basing on the information received from the Mumbai Crime Branch stating that they have arrested accused No.2 in Crime No.136 of 2004 and he was remanded to judicial custody. He confessed to have committed the offence in Crime No.642 of 2003 on 26.12.2003 along with his associates. A Special Escort Team of ADR Team, CCC, Hyderabad, went to Mumbai to bring accused No.2 on production of warrant.

i) As discussed above, as per the depositions of PW1 and PW.22, accused were unknown. It is a dacoity case. According to the Investigating Officers, despite making all possible efforts, they could not trace out the accused and, therefore, they have closed the said FIR as undetected. Thereafter, on receipt of information, more particularly confession of accused No.2, the said case was reopened. There is no procedure irregularity in re-opening the case.

ii) On consideration of the contents of Exs.P17 and 18 and depositions of PW.1 and PW.22, in paragraph Nos.31 to 36 of the impugned judgment,

the trial Court gave specific finding. In paragraph No.37 of the impugned judgment, there is specific finding with regard to the delay of three (03) days in recording the statements of eye witnesses.

iii) It is relevant to note that on the analysis of the entire evidence in paragraph No.37, the trial Court gave a finding that at the most, only improvement was relating to the quantity of lost ornaments and their details. The statement of PW.1 alone reflects such a variation and other witnesses account is inconsistent with the earlier complaint under Ex.P1. Therefore, the contention of learned counsel for the appellant that there are major discrepancies in the depositions of prosecution witnesses is untenable. The said variation was result of thorough examination of lost articles.

15. Learned counsel for the appellants vehemently contended that the subject crime was registered to claim insurance. Referring to Ex.D6 - final report, learned counsel would contend that on the request made by the partner of the subject jewellery shop, Ex.D6 - final report was filed. They have made request only to claim insurance. As rightly held by the trial Court there is consistency in the statement of eye-witnesses other than owner of the jewellery shop to support the said incident. The deposition of PW.4, an independent witness and customer supports the occurrence of incident, which is consistent with the deposition of eye-witnesses including partner and sales persons. There are confession statements of some of the accused. Therefore, the contention of learned counsel for the appellants that the appellants - accused Nos.1 and 2 were implicated in the present case by the partners of the subject jewellery shop only to claim insurance is untenable.

i) According to learned counsel for the appellants, there were major discrepancies in the evidence of material witnesses. Except with regard to quantity and particulars of material lost, there are no material discrepancies. On consideration of the entire evidence, the trial Court gave a specific finding with regard to the said contention of the appellants. There are only minor contradictions and there are no major contradictions in the depositions of prosecution witnesses.

16. The contention of learned counsel for the appellants that though finger prints were collected, the same were not tallied with the finger prints of the appellants is untenable. There is no supporting legal evidence to

substantiate the said contention of learned counsel for the appellants. The trial Court considered the said aspect and gave a specific finding on the said aspect. Thus, there is no error in the said finding.

17. Learned counsel for the appellants strenuously contended that according to the prosecution, though there was recovery of stolen property from LW.38 on 18.10.2007, it failed to examine LW.38 and, therefore, the same is fatal to the case of prosecution. The said contention of learned counsel for the appellants is untenable.

i) LW.38 was not keeping well and, therefore, he was not in a position to give evidence in the said case. The same was considered by the trial Court in paragraph No.52 of the impugned judgment. Thus, non-examination of LW.38 is not fatal to the case of prosecution.

ii) The contentions of learned counsel for the appellants that there is no consistency in the deposition of *panch* witness for recovery of MOs.1 to 30 cannot be accepted. Perusal of the deposition of *panch* witness including PW.23 would reveal the said fact.

18. Learned counsel for the appellants also vehemently argued that prosecution failed to prove the offence committed by the appellants - accused Nos.1 and 2 beyond reasonable doubt by producing cogent and relevant evidence.

i) As discussed above, prosecution has examined PWs.1 to 3 - eye witnesses, PWs.21 to 23 - Investigating Officers and *panch* witnesses including MOs.1 to 30, recovery and seizure *panchanama* (Ex.P20), Ex.P21 confession leading to recovery of more than one (01) kg., gold from the house of LW.38. After confession of accused No.1, MOs.63 and 65 were recovered in the presence of PWs.24 and 25. The said depositions were supported by the claim of PW.26 regarding recovery of MO.63 - pistol and MO.64 - cartridges on the basis of Ex.P21.

ii) Learned counsel for the appellants also raised an objection for marking of Ex.P21 stating that such confession contains the signatures of accused No.1 and there is no reflection of names and signatures of *panch*

witnesses. Considering the said objection and relying on the principle laid down by the Apex Court in **State of Rajasthan v. Tejya Ram**[9] and **Govt. of NCT Delhi v. Sunil**[10], the trial Court in paragraph Nos.44 and 45 of the impugned judgment gave a specific finding overruling the said objection raised by the appellants. The trial Court placed reliance on the depositions of PWs.24 and 25 *panch* witnesses to the said confession and also for recovery of MOs.63 and 64 under Ex.P20 - *panchanama*. There is no error in it.

iii) During cross-examination, the appellants failed to elicit anything from the prosecution witnesses to contend that the confession of accused No.1 in Ex.P21 was obtained under force. On consideration of the said evidence, in paragraph No.50 of the impugned judgment, the trial Court held that the prosecution proved that there was voluntary and free confession of accused No.1 under Ex.P21.

19. Learned counsel for the appellants contended that there are inconsistencies with regard to position of bag in the police station and also with regard to seizure of MOs.63 and 64. According to him, the witnesses had admitted that the bag, from which MOs. were seized was already kept on the table by the time the witnesses reached. In the chief-examination, both the witnesses (PWs.24 and 25) deposed that the bag was with accused No.1. The said inconsistency is only a minor and it may be due to long lapse of time between the date of seizure and date of their evidence. Therefore, it is not a major discrepancy and it is not fatal to the case of prosecution in view of the graveness and seriousness of the offence. On consideration of the said aspects, the trial Court gave a specific finding on the same in paragraph No.51 of the impugned judgment and there is no error in it.

20. Relying on the depositions of PW.23 and PW.26 - Investigating Officer and Ex.P23 - seizure *panchanama*, the trial Court gave a specific finding in paragraph No.52 of the impugned judgment with regard to recovery of MOs.1 to 30 based on confession of accused No.1. There is no error in it.

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[9] . AIR 1999 SC 1776
[10] . (2001) 1 SCC 652

21. Learned counsel for the appellants also contended that the prosecution failed to prove identity of ornaments. In support of the same, he has relied upon the decisions in **Public Prosecutor, High Court of A.P. v. Paluri Suryanarayana @ Suribabu**[11], **Bommimalli Kharjuna alias Malka v.State of A.P.**[12] and **Turaka Veerabhadra Rao @ Veerabhadram v. State of A.P.**[12]. With regard to the same, depositions of PW.1 and PW.26 are relevant.

i) PW.1 deposed that all the jewellery available in the shop was taken away by the culprits and they are bangles, long harams, necklaces, hangings, tops, black-beads, rings, baby bangles, pendants, patties, diamond rings and some other items of jewellery. Out of them, the items of jewellery consist of gold and stones are different colours, besides taken away about ½ kg. solid gold and cash of Rs.1,20,000/-. Since he identified the stolen ornaments, the same were marked through him as MOs.1 to 62. During cross-examination, he has admitted that they are maintaining the Registers showing the purchase of jewellery, sale of the same and also the stock register. He admitted that he has not given the particulars of property lost, however, he stated that subsequently the list of items of property furnished to the CCS police either on 29th or 30th December, 2003. MOs.1 to 62 are available for purchase in the open market. MOs.31 to 47 are of different carets from 18 to 22 cts. He admitted that he described loss of gold chains marked under MOs.32 to 34, but number of rows of each item lost stated before the Investigating Officer.

ii) PW.26 - Investigating Officer in Crime No.347 of 2007 of Banaswadi, deposed that on 15.10.2007 he arrested accused No.1 at Viveka Nagar, Bangaluru City. He interrogated him. Accused No.1 confessed to have committed the subject crime in the presence of *panch* witnesses (PWs.24 and 25) and he seized MOs.63 and 64 in the presence of *panch* witnesses. During police custody, accused No.1 confessed to have sold MOs.1 to 30 to

[11] . 2004 (1) ALD (Crl) 538 (AP) [12]. 2004 Crl.L.J. 2162 (AP)
[12] . 2008 (1) ALD (Crl.) 381 (AP)

LW.38 for Rs.2.00 lakhs. Pursuant to the said confession, he seized MOs.1 to 30 under Ex.P23 - *panchanama* in the presence of PW.23 and LW.37.

iii) PW.1 is the son of Mr. Ramesh Chand, who is partner of M/s. Rajyalakshmi Jewelers, Abids, Hyderabad. PW.26 is the Investigating Officer in Crime No.347 of 2007 of Banaswadi Police Station registered for the offences under Section - 395 of IPC and Sections 3, 25 and 27 of the Act, 1959. During the course of investigation, he arrested accused No.1 herein on 29.09.207 and seized the aforesaid MOs. and later intimated the same to the CCS Police, Hyderabad.

iv) In this regard, it is opt to refer to Rule - 35 of the Criminal Rules of Practice and Circular Orders, 1990 and the same is extracted hereunder:

"**35. Identification of property**:- (1) Identification parades of properties shall be held in the Court the Magistrate where the properties are lodges;

(2) Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects.

(3) Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leving shall not allowed to communicate with the witness not yet called."

v) In view of the above evidence and discussion, the appellants herein failed to disprove their evidence during trial. Nothing contra was elicited from them during cross-examination. Therefore, the said contention of learned counsel for the appellants is unsustainable.

There is a specific finding with regard to the said aspects in paragraph Nos.53 to 55 of the impugned judgment. Thus, there is no error in it.

22. Learned counsel for the appellants also strenuously contended that the prosecution failed to prove the identity of the appellants - accused Nos.1 and 2. In support of the same, he relied on the decisions in **Ganesh v. State**

of Maharashtra[13], **Gireesan Nair v. State of Kerala**[14], **Shaikh Umar Ahmed Shaikh v. State of Maharashtra**[15], **Shivarathir @ Gundlakomuraiah v. State of Andhra Pradesh**[16] and **Wakil Singh v. State of Bihar**[17]. Therefore, in this regard, depositions of PWs.1 to 4, 16 and 20 to 21 and 23 are relevant.

i) PW.1 in his evidence deposed that he can identify three culprits and accordingly he identified accused Nos.1 to 3 when they were present in the Court. Even during test identification parade, he identified accused Nos.1 and 2.

ii) PW.2 deposed that the culprits might be in the age group of 25 - 30 years. He can identify them. He identified them when he gave evidence in the Court as accused Nos.1 to 3 and 8 to 13. He visited the Central Prison, Chanchalguda, Hyderabad, to identify the culprits. In the I.T. Parades, he identified two culprits, who were present in the Court as accused Nos.2 and 3.

iii) PW.3 deposed that he can also identify the culprits. He identified accused No.1 as one of the culprits.

iv) PW.4 deposed that the culprits were in the age group of 30 years. They were talking in Hindi language.

v) PW.16, the then Magistrate, Hyderabad, deposed that pursuant to the request made by the Inspector of Police, he took steps for conducting Test Identification Parade. He further deposed that the Jail Authorities produced 15 non-suspects along with 3 suspects i.e., at the rate of 1:5 having similar age and personalities. The suspects did not complain any objection regarding non-suspects. One of the suspect by name Gopal Ramana Shetty @ Mini Gopal @ Rakesh stated that he was shown to witnesses Naveen Kumar, Shiva Kumar and Jagan Mohan Reddy about 135 days back at CCS office by police and rest of the suspected were also shown to witnesses about 48 days back by the police at CCS office, Hyderabad and police took their

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[13] . 1985 Crl.L.J. 191 (Bom.)
[14] . Crl.Appeal Nos.1864-1865 of 2010, decided on 11.11.2022
[15] . (1998) 5 SCC 103
[16] . 2000 (2) ALD (Crl.) 748 (AP)
[17] . AIR 1981 SC 1392

photographs by gun pointed video camera. During test identification parade, Shiva Kumar went and identified all the three suspects correctly.

vi) PW.20, during cross-examination admitted that PW.2 and 3 did not give any identifying descriptive particulars of the culprits except age group.

vii) PW.21 deposed that he obtained production warrant of accused No.2 from the Court and deputed Mr. Anjaiah, the then SI and team to produce accused No.2 from Mumbai and accordingly they produced accused No.2 before him. He further deposed that in the last week of April, 2005, he received information from Mumbai police informing arrest of 2 more accused, namely accused Nos.3 and 4. Then, he deputed the aforesaid team who accordingly produced accused Nos.3 and 4 before him on 06.05.2005. He further deposed that he got information from Mumbra, Thane District regarding arrest of accused No.11 in connection with offence committed under Section - 124 of the Bombay Police Act. When they were taking efforts to get PT warrants, accused No.11 was released on bail. His efforts to apprehend accused No.11 were in vain.

viii) PW.23 during cross-examination admitted that the Additional Public Prosecutor was present with the police when they came to him along with Nagesh Shetty. He also admitted that the ornaments were recovered from Nagesh Shetty on being showed by accused No.1.

ix) Nothing contra was elicited from the aforesaid witnesses during their cross-examinations. On consideration of the entire evidence and the judgment of the Apex Court and presumption under Section - 114 (a) of the Indian Evidence Act, 1872, the trial Court gave a specific finding in paragraph No.56 of the impugned judgment. As rightly held by the trial Court, the normal rule is when conviction is sought to be placed on the testimony of the witnesses of identification, the Court must insist for prior test identification parade to get assurance. There are exceptions to the same. On consideration of the same, the trial Court gave a specific finding. The trial Court also explained with regard to delay in conducting test identification parade. PW.16 and PW.20 are the relevant witnesses to speak about the same and their evidence is already discussed above. Thus, the relevant

witnesses identified the accused in the manner stated above and therefore, there is no error in the finding given by the trial Court on the said aspect.

23. It is also contended by learned counsel for the appellants that the prosecution failed to prove identity of gold ornaments and that there are discrepancies with regard to the quantity and particulars of ornaments.

i) As discussed above, PW.1 and PW.6 specifically deposed about the said aspects. It is a jewellery shop. The alleged incident was occurred at about 9.00 P.M. when the shop was closed and when they are conducting verification of stock. Therefore, the appellants cannot take advantage of the same and contend that they have not committed any offence. The said aspects were considered by the trial Court in the impugned judgment.

24. Learned counsel for the appellants also contended that the Investigating Officer did not conduct any investigation and did not seize stock register. M/s. Rajlakshmi Jewellers implicated the appellants in the present case only to claim insurance. As discussed above, PW.4, an independent witness and customer deposed specifically about the incident. Moreover, in Ex.P1, PW.1 specifically stated that some unknown culprits committed dacoity. As discussed above, the subject crime was closed on 18.11.2004 and, thereafter, it was reopened on 02.02.2005. Thus, the appellants cannot contend that they were implicated in the present case only to claim insurance.

25. It is relevant to note that on consideration of the entire evidence, the trial Court gave specific finding that accused No.1 committed the offence under Section - 395 of IPC.

26. With regard to the role played by accused No.2, there is specific evidence of PWs.1 to 3. Prior to test identification parade in which accused Nos.2 and 3 were identified as participants in the commission of offence. The test identification parade was held in the presence of PW.16 - Magistrate. Ex.P14 is the TIP consolidated report/proceedings including sketch of arrangement of rows with suspects and non-suspects.

i) Ex.P4 is the admissible portion of confession of accused No.2 in the confession statement which led to recovery of MOs.31 to 47. To prove the

same, prosecution has also examined PW.6 and PW.21 - Investigating Officer.

ii) Perusal of Ex.P4 - confessional-cum-seizure *panchanama* of accused No.2 made in the presence of *panch* witnesses i.e., PW.6 and LW.16 would reveal about his apprehension by the Mumbai Police and his confession to have committed the present crime. In the said confession, he also confessed to have robbed jewellery worth 13 kgs., and net cash of Rs.1,70,000/- from the strong room. Accused No.1 handed over one plastic bag containing two different pockets containing 1½ kg. gold ornaments as share to him and to Mr. Pursha and also gave Rs.12,000/- as cash. Thereafter, he sold certain gold ornaments in the shop and spent the amounts for his wishes.

iii) PW.6, one of the *panch* witness to the said confessional statement of accused No.2 deposed during enquiry by PW.21, accused No.2 confessed to have committed dacoity in the subject jewellery shop. He further deposed that accused No.2 also confessed that his share of ornaments was handed over to his friend who sold them and said that if the police accompany him, he would show where they were sold. Ex.P4 is the confession of accused No.2 leading to discovery of ornaments. He further deposed that two days after confession of accused No.2, he led the police, Naven and himself to Mumbai to the places where the jewellery was sold. First, they went to Thane where accused No.2 shown various shops where sold the ornaments and thereafter to Zaveri Bazar.

iv) PW.21 - 3rd Investigating Officer deposed that accused No.2 confessed as in Ex.P4 and led them to Mumbai to show the places of disposal and to identify PW.8 and 14 who helped him in disposing the stolen property. On 16.02.2005 in the morning hours, accused No.2 led them to the house of PW.14, who was in the house and on identifying him by accused No.2, he examined and recorded his statement. From there, accused No.2 led them to the shop of PW.8, who was examined and recorded his statement. On 17.02.2005 at the instance of accused No.2 and PW.14, they went to the shop of PW.13. At the instance of accused No.2 and PW.14, he recovered gold ornaments vide MOs.31 to 34 weighing 794 gms., under cover of seizure *panchanama* Ex.P5).

v) To prove the role played by accused No.2 in the commission of offence, the prosecution has also relied on the recoveries made pursuant to confession under Ex.P5 to P10 - seizure *panchanamas.* To prove that accused No.2 was in possession of ornaments prior to the sale to the purchasers and subsequent to the recovery, the prosecution relied upon deposition of PW.6, PWs.8 and 14. They have also examined PWs.7, 9, 10, 11, 12 and 13 to prove that the ornaments recovered under Exs.P5 to P10 - *panchanamas* from them.

27. It is relevant to note that PW.6 is close relative of PWs.1 and 5. In fact, PW.1 is the son of PW.5, partner of M/s. Rajlakshmi Jewellers, Abids, Hyderabad. Just because they are relatives, it cannot be said that Ex.P4 - confession of accused No.2 is not reliable. The evidence of PW.6 is corroborative with the evidence of PW.21 - 3rd Investigating Officer. During trial, the accused failed to elicit contra from them to demolish Ex.P4 - confession. PW.6 is also *panch* for the seizure under Exs.P5 to P10 for recovery of MOs.31 to 47 ornaments. There is specific deposition of PW.14, who deposed that on 29.12.2003, while he was travelling in the train, accused No.2 met him and represented that his sister was coming from Dubai with some ornaments and requested him to sell the said ornaments. On 01.01.2004, accused No.2 met him Dombvali with ornaments. Thereafter, on the same day, accused No.2 and he went to Zaveri Bazar, Mahajan Galli, Mumbai. They met one Jank Bai who was running jewelry shop and they have showed the ornaments weighing about 1100 gms., to him. That shop owner purchased ornaments and gave Rs.7.00 lakhs. He handed over the said amount to accused No.2, who in turn gave an amount of Rs.50,000/- as commission. Thus, he specifically deposed that accused No.2 sold the ornaments with the help of PW.8 at various gold shops. PW.7 is one of the purchasers and his evidence would show that he purchased MO.36 and the same was sold by PW.14 and his friend. However, he has not identified accused No.2 as one of the friends.

28. The deposition of PW.14 would reveal that when MO.36 was sold, accused No.2 was present and recovered the same under Ex.P7, the same is supported by the deposition of PW.7. His evidence is further supported by the evidence of PW.6, who is *panch* witness to Ex.P7 - seizure *panchanama.*

29. The depositions of PWs.8, 9, 10, 11 and 13 are also relevant with regard to the role played by accused No.2 in commission of offence. According to PW.8, Pw.14 and accused No.2 approached him for sale of MOs.41 to 47 i.e., one gold chain 0009 gms., two gold necklace with white stones 0033 gms., two gold pendants with pearls and ruby stones 0060 gms., one pair of gold ear hangings with pearls and rubies 0020 gms., 11 pairs of gold ear rings of different designs 0045 gms., 2 pairs of gold ear tops with black beads pearls and rubies 0014 gms., and 6 pieces of gold pendants with pearls, rubies, emerald 0019 gms. He sold the said ornaments to PW.12, owner of Nutan Jewelleries. The deposition of PW.8 is consistent and supported by the deposition of PW.12 - purchaser. PW.12 categorically admitted that he has purchased MOs.41 to 47 from PW.8.

30. Perusal of depositions of PWs.8 and 14 would reveal that accused No.2 and PW.14 together approached for sale of MOs.41 to 47. Recoveries vide Ex.P9 - *panchanama* supports the same.

31. PW.9 also supported recovery of MO.35 under Ex.P6 - *panchanama*. Nothing contra was elicited from him to disbelieve the version of PW.9.

32. PW.10, owner of gold shop at Zaveri Bazar, deposed that in the year 2004, he purchased 7 or 8 items of gold ornaments from PW.14 which were owned by his friend. Subsequently, the police informed him that the purchased gold ornaments are theft properties. The police recovered the said gold ornaments from him under Ex.P8 - *panchanama*. The total weight of all the ornaments was about 170 gms. Thus, his evidence is supported by Ex.P8 - *panchanama*. His evidence also would show that PW.14 shown the ornaments with accused No.2 and he identified accused No.2 as well as ornaments.

33. PW.11 is the purchaser of MO.40 bangles. MO.40 was sold by PW.14 and accused No.2. PW.11 also identified accused No.2 as one of the persons found along with PW.14 when he purchased MO.40 bangles. He also identified MO.40 bangles.

34. PW.13 is another owner of jewellery shop in Zaveri Bazar, Mumbai. Earlier, he worked in Rajvanth Jewellery, Talabvpali, thane, West Mumbai from 2003 to 2007. According to him, in January, 2004, PW.14 along with another person approached him for sale of gold ornaments. He purchased the gold ornaments brought by them which were approximately weighing about 790 gms. In the month of February, 2005, the police, Mumbai and Andhra came to his shop along with PW.14 and other person, who was with him at the time of sale. The police informed that the gold ornaments purchased by him were theft articles. He handed over all the ornaments which he purchased from PW.14 and other person. The police seized the same under Ex.P5 - *panchanama,* which contains his signature. He has identified MO.31 to 34 - ornaments which were seized from his possession. He has identified accused No.2 is the person who came to his shop along with PW.14. However, nothing contra was elicited from him during cross-examination.

35. Perusal of the aforesaid depositions and *panchanamas* and material objects exhibited would reveal the role played by accused No.2 in the commission of offence. On consideration of the same, the trial Court gave a specific finding that accused No.2 is guilty of the offence under Section - 395 of IPC.

i) Referring to the decision in **State of Rajasthan v. Teja Ram**[18], learned Additional Public Prosecutor would submit that there is nothing wrong or illegal on the part of Investigating Officer in obtaining the signature of the accused on the seizure memo. In view of the above discussion, the said contention of learned Additional Public Prosecutor is sustainable.

36. It is apt to note that in paragraph Nos.75 to 78, the trial Court gave a specific finding with regard to the contention of learned counsel for the appellants that the prosecution failed to prove identification of the ornaments. The trial Court observed object of missing of suspects and non-suspects. The trial Court also considered Ex.P14. It is a reasoned order. There is no error in it. In the light of the same, the contention of learned counsel for the

[18] . 1999 LawSuit (SC) 333

appellants that the prosecution failed to prove the identification of ornaments is unsustainable.

37. As discussed above, learned counsel for the appellants vehemently argued that there is delay in conducting test identification parade. He has also placed reliance on the decisions in **Manzoor v. State of U.P.**[19] and **Sirama Venkatarao @ Bayya @ Bakkodu v. Stateof A.P.**[20].

i) On the other hand, learned Additional Public Prosecutor would contend that such delay is not fatal to the case of prosecution. In support of the same, he has relied upon the decision in **Pramod Mandal v. State of Bihar**[21].

ii) As rightly held by the trial Court, accused No.2 was produced before the primary Court on execution of P.T. warrants on 09.02.2005. Police custody was granted from 12.02.2005 to 23.02.2005. On completion of police custody, accused No.2 was remanded to judicial custody. Requisition (Ex.P11) was made on 09.06.2005 and test identification parade was conducted on 25.06.2005 as deposed by PW.16. Thus, the delay caused between the requisition and conducting of test identification parade cannot be attributed to the prosecution. However, PW.21 - 3rd Investigating Officer explained the delay. According to him, the delay was on account of arrest of other accused. The said delay is not fatal to the case of prosecution. The said aspects were considered by the trial Court. In paragraph No.84 of the impugned judgment, the trial Court also gave specific finding that there is consistency in the depositions of PWs.1 and 2 with regard to identification of accused No.2. PW.11 is also identified accused No.2.

38. Thus, as discussed above, the trial Court recorded conviction against both the appellants - accused Nos.1 and 2 on consideration of entire evidence, both oral and documentary. In view of graveness of offence, minor discrepancies in the depositions of prosecution witnesses are not fatal to the case of prosecution. Therefore, the prosecution proved the guilt of both the accused i.e., accused Nos.1and 2 beyond reasonable doubt. They have also

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[19] . 1982 SCC (Cri) 356
[20] . 2007 (1) ALD (Crl.) 472 (AP)
[21] . 2004 LawSuit (SC) 1061

produced legal and acceptable evidence. On consideration of the same, the trial Court convicted both the appellants.

39. As discussed above, the offence alleged against the appellants - accused Nos.1 and 2 are under Section - 395 of IPC and Section - 25 (1A) of the Act, 1959. On consideration of the evidence, the trial Court acquitted them for the offence under Section - 25 (1A) of the Act, 1959. No appeal was preferred against the said judgment acquitting the accused for the offence under Section - 25 (1A) of the Act, 1959. However, the trial Court convicted the appellants - accused Nos.1 and 2 for the offence under Section - 395 of IPC.

40. As discussed above, Section - 391 of IPC deals with dacoity and it says that when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”. Thus, the following are the three (03) ingredients of dacoity.

i) There should be five (05) persons or more; ii) Commit or attempt to commit the robbery; and iii) All such persons should act conjointly;

41. As discussed above, in the present case, there are more than five (05) people. Many of them are absconding. However, the trial Court having acquitted accused Nos.8 and 13 convicted accused Nos.1 and 2 vide impugned judgment.

42. As discussed above, there is no loss of life. The stolen property was recovered. At the cost of repetition, as discussed above, the trial Court acquitted accused Nos.1 and 2 for the offence punishable under Section - 25 (1A) of the Act, 1959. No appeal was preferred.

43. Punishment prescribed for dacoity under Section - 395 of IPC is imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Even then, the trial Court

imposed sentence of imprisonment for life holding that the appellants herein along with other accused committed the offence in the prime commercial locality of Hyderabad City, and that too, at the edge of closing time of the shop. The entire gold ornaments were looted from the shop and the accused were part of the members who were armed with daggers and revolvers. The offence had great impact on the mind set of business community and public in general and it challenges the very capabilities of the State to offer security to the public. Taking lenient view in a case this kind will give a wrong signal to the public and it would not have any impact on the potential future offender. The punishment must not only serve the reformation but also have a deterrent effect on the potential future offender. Otherwise, societal interest would be at stake. The trial Court also considered that 25 to 30 kgs., of ornaments were looted from the shop which is centre of commercial city centre and that too in the busy public movement time.

i) The trial Court also relied upon the principle laid down by the Apex Court in **State of Karnataka v. Putta Raja**[22]. But, in the said judgment, the offences alleged against the accused therein are under Sections - 376 and 376A IPC. The said offences are heinous offences against the society and women, whereas, in the present case, the trial Court has acquitted the accused for the offence under Section - 25 (1A) of the Act, 1959. The trial Court also failed to consider the Sentencing Policy while imposing life imprisonment on the appellants.

44. The maximum punishment of life imprisonment can be imposed under certain circumstances as held by the Apex Court. In **State of Uttar Pradesh v. Sanjay Kumar**[23], the Apex Court held that Courts for the purpose of deciding just and appropriate sentence, have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been committed. To balance the two, is the primary duty of Courts.

i) In **Santa Singh v. State of Punjab**[24]**,** the Apex Court observed as follows:

"3. … a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances—extenuating or

[22] . (2004) 1 SCC 475
[23] . (2012) 8 SCC 537
[24] . (1976) 4 SCC 190

aggravating—of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, society and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence."

ii) In **Soman v. State of Kerala**[25], the Apex Court referred number of principles that it took into account "while exercising discretion in sentencing", such as proportionality, deterrence and rehabilitation. It was specifically noted that as part of the proportionality analysis, mitigating and aggravating factors should also be considered.

iii) Expounding upon the rationale of proportionate sentencing, in **Alister Anthony Pareira v. State of Maharashtra**,[26] the Apex Court held that:

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of [the] crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

iv) In **Hazara Singh v. Raj Kumar,**[27] the Apex Court highlighted the importance of proportionate sentencing in the following words:

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[25] . (2013) 11 SCC 382
[26] . (2012) 2 SCC 648
[27] . (2013) 9 SCC 516

"10. … The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict.

11. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence."

v) The **factors weighing with the Court in determining the sentence** has been best explained by the Apex Court in **Ramashraya Chakravarti v. State of Madhya Pradesh**,[28] in the following words:

"1. To adjust the duration of imprisonment to the gravity of a particular offence is not always an easy task. Sentencing involves an element of guessing but often settles down to practice obtaining in a particular court with inevitable differences arising in the context of the times and events in the light of social imperatives. It is always a matter of judicial discretion subject to any mandatory minimum prescribed by law.

2. Hegel in his 'Philosophy of Right' pithily put the difficulty as follows:—

"Reason cannot determine, nor can the concept provide any principle whose application could decide whether justice requires for an offence (i) a corporal punishment of forty lashes or thirty-nine, or (ii) a fine of five dollars or four dollars ninety three, four, etc., cents, or (iii) imprisonment of a year or three hundred and sixty-four, three, etc., days, or a year and one, two, or three days. And yet injustice is done at once if there is one lash too many, or one dollar or one cent, one week in prison or one day, too many or too few".

……..

6. In judging the adequacy of a sentence the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to society, effect

[28] . (1976) 1 SCC 281

of the punishment on the offender, eye to correction and reformation of the offender, are some amongst many other factors which would be ordinarily taken into consideration by courts. Trial courts in this country already over-burdened with work have hardly any time to set apart for sentencing reflection. This aspect is missed or deliberately ignored by accused lest a possible plea for reduction of sentence may be considered as weakening his defence. In a good system of administration of criminal justice pre-sentence investigation may be of great sociological value. Throughout the world humanitarianism is permeating into penology and the courts are expected to discharge their appropriate roles."

In the present case, the trial Court failed to consider the said aspects while imposing sentence of imprisonment for life on accused Nos.1 and 2.

45. In the light of the aforesaid discussion, the conviction recorded on the appellants - accused Nos.1 and 2 for the offence under Section - 395 of IPC by the Special Judge for Economic Offences - cum - VIII Additional Metropolitan Sessions Judge at Hyderabad, vide impugned judgment dated 09.03.2015 in S.C. No.533 of 2010, is hereby confirmed. During incarceration, there are no remarks or allegation against the conduct of accused Nos.1 and 2. Therefore, keeping in view that reformation is one of the objects of sentencing policy and also the conduct of accused Nos.1 and 2 during their incarceration period and gravity of the offence, the sentence of imprisonment for life imposed on accused Nos.1 and 2 is modified to that of ten (10) years.

46. As discussed above, as per nominal rolls dated 29.04.2024, the appellant - accused No.1 is in jail from 09.03.2015. He was also in judicial remand for about one (01) year seven (07) months and three (03) days and served the actual sentence of imprisonment of eight (08) years nine (09) months and ten (10) days. Thus, as on 29.04.2024, he has served out the total sentence of imprisonment of ten (10) years four (04) months and thirteen (13) days which excludes remission period in Central Prison, Cherlapally, Medchal - Malkajgiri District. As far as the appellant - accused No.2 is concerned, he has served out the actual sentence of imprisonment of nine (09) years one (01) month and twenty (20) days as on 29.04.2024 and he was in judicial remand for a period of two (02) years four (04) months and

twenty six (26) days, which excludes remission period. Thus, the appellant - accused No.2 has served out the total sentence of imprisonment of eleven (11) years six (06) months sixteen (16) days. In view of the same, both the accused have completed the sentence of imprisonment of ten (10) years period which is imposed by this Court modified from life imprisonment.

47. Accordingly, the Superintendent, Central Prison, Cherlapalli, Medchal - Malkajgiri District, is directed to release accused No.1 - Vasantha Saliyana @ Vasanth Pujari @ Yada Vasantha @ Vijay @ Vijay Saliyana S/o Kakkar Pujari, forthwith, if his presence is not required in any other cases. Similarly, the Superintendent, Central Prison, Chanchalguda, Hyderabad, is directed to release accused No.2 - Gopal Ramana Shetty @ Mini Gopal @ Rakesh S/o Ramana Shetty, forthwith, if his presence is not required in any other cases.

48. Both these appeals are accordingly allowed in part to the extent indicated above.

As a sequel thereto, miscellaneous applications, if any, pending in these appeals shall stand closed.