I. RAVINDRA REDDY

v.

SHAIK KHADER MASTHAN AND ORS.

(Criminal Appeal No. 1216 of 2008)

AUGUST 4, 2008

[DR. ARIJIT PASAYAT AND G.S. SINGHVI, JJ.]

Penal Code, 1860 – ss. 364, 302, 404 and 201 r/w s. 109 – Prosecution under – Circumstantial evidence – Deceased last seen together with the accused persons – Time gap between the point when deceased was seen alive and when he was missing was very small – Accused persons identified by the witness who had seen the deceased last in the company of the accused – Conviction by trial court – Acquittal by High Court holding that chain of circumstances not complete – On appeal, held: Acquittal not justified – High Court did not indicate any reasons for its finding – Order of trial court restored.

Respondents-accused Nos. 1 and 2 alongwith accused No. 3 were prosecuted for having killed one person. According to prosecution case there was some dispute between father of the deceased (P.W.1-complainant) and father of appellant-accused No. 1 (Accused No.3) in respect of purchase of a car on loan and payment of instalments thereof. Deceased and accused No. 1 studying in the same college, had also some dispute on the issue in the college. On the same day appellants-accused bought two kitchen knives from the shop of P.W. 5. The deceased was last seen together with accused No. 1 and 2 by P.W. 9. One hour later deceased was not seen by him with accused Nos. 1 and 2. P.W. 9 also got suspicious about the circumstances there. During Test Identification Parad, PW-9 also identified both the accused. Initially on the complaint of PW-1 missing report of lodged. After arrest of accused Nos. 1 and 2, at their instance, Demains

A of skeleton and some burnt articles were found. Some of the articles were identified by P.W. 1. Knives were also recovered from the house of accused Nos. 1 and 34. Thereafter report was altered u/ss. 364, 302, 404, 201 r/w s. 109 IPC. Trial Court relying on the evidence of PW 9
B and applying the theory of last seen together convicted the appellants-accused Nos. 1 and 2. However, accused No. 3 was acquitted. High Court acquitted both the accused on the ground that chain of circumstances were not complete. Hence the present appeal by the complain-
C ant.

Allowing the appeal, the Court

HELD: 1.1 The judgment of the High Court is indefensible. The High Court has not indicated any reason
D whatsoever as to why he found the evidence of PW-9 to be not acceptable or as to why the chain of circumstances highlighted by the prosecution did not unerringly point at the accused persons to be guilty as the authors of the crime. PW-9 identified A-1 and A-2 at the Test Identification Parade. His evidence regarding identification has re-
E mained unshaken. [Paras 20 and 21] [887 A,B]

1.2 PW-5 stated that A-1 had purchased two knives which were seized by PW-24 covered under M.Os. 7 and 8. The High Court took exception to the fact that when
F PW-5 produced a duplicate bill to the police, the investigating officer did not produce the original in the Court. It is not understood as to how the duplicate becomes irrelevant. [Para 20] [886 G,H]

2.1 Where a case rests squarely on circumstantial
G 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 the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn
H have to be proved beyond reasonable doubt and have to

be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [Para 8] [882 C, 882 E]

Bhagat Ram v. State of Punjab **AIR 1954 SC 621**; *Eradu and Ors. v. State of Hyderabad* **AIR 1956 SC 316**; *Hukam Singh v. State of Rajasthan* **AIR 1977** *U.P. v. Sukhbasi and Ors.* **AIR 1985 SC 1224**; *Balwinder Singh v. State of Punjab* **AIR 1987 SC 350**; *Ashok Kumar Chatterjee v. State of M.P.* **AIR 1989 SC 1890**; *Padala Veera Reddy v. State of A.P. and Ors.* **AIR 1990 SC 79**; *C. Chenga Reddy and Ors. v. State of A.P.* **(1996) 10 SCC 193 - relied on.**

"*Circumsantial Evidence*" **by Sir Alfred Wills - referred to.**

2.2 There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumsantial evidence. The conditions precedent, before conviction could be based on circumstantial evidence, must be fully established. They are: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established; (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (3) the circumstances should be of a conclusive nature and tendency; (4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. [Paras 13 and 15] [884-D], [855 B,C,D,E,F]

Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh **AIR 1952 SC 343**; *Sharad Birdhichand Sarda v. State of Maharashtra,* **AIR 1984 SC 1622**; *State of Rajasthan v. Rajaram* **2003 (8) SCC 180**; *State of Haryana v.*

A *Jagbir Singh and Anr.* **2003 (11) SCC 261**; *State of U.P. v. Ashok Kumar Srivastava* **1992 Crl. LJ 1104**; *Kusuma Ankama Rao v. State of A.P.* **2008 (10) SCR 89 – relied on.**

2.3 The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. [Para 17] [886 A,B]

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C *State of U.P. v. Satish* **2005 (3) SCC 114**; *Jaswant Gir v. State of Punjab* **2005 (12) scc 438**; *Ramreddy Rajesh Khanna Reddy v. State of A.P.* **2008 (10) SCR 89 - relied on.**

Case Law Reference

AIR 1954 SC 621	**Relied on.**	**Para 8**
AIR 1956 SC 316	**Relied on.**	**Para 8**
AIR 1977 SC 1063	**Relied on.**	**Para 8**
AIR 1983 SC 446	**Relied on.**	**Para 8**
AIR 1985 SC 1224	**Relied on.**	**Para 8**
AIR 1987 SC 350	**Relied on.**	**Para 8**
AIR 1989 SC 1890	**Relied on.**	**Para 8**
1996 (10) SCC 193	**Relied on.**	**Para 9**
AIR 1990 SC 79	**Relied on.**	**Para 10**
1992 Crl.LJ 1104	**Relied on.**	**Para 11**
AIR 1952 SC 343	**Relied on.**	**Para 14**
AIR 1984 SC 1622	**Relied on.**	**Para 15**
2003 (8) SCC 180	**Relied on.**	**Para 16**
2003 (11) SCC 261	**Relied on.**	**Para 16**
2005 (3) SCC 114	**Relied on.**	**Para 17**
2006 (10) SCC 172	**Relied on.**	**Para 18**

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2005 (12) SCC 438 Relied on. Para 19 A

2008 (10) SCR 89 Relied on. Paras 16 & 19

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1216 of 2008

From the final Judgment and Order dated 27.7.2005 of the High Court of Judicature of Andhra Pradesh a Hyderabad in Criminal Appeal No. 850 of 2005 B

J.K. Das and V.N. Raghupathy for the Appellant.

D. Bharathi Reddy and Manish Kumar (A.C.) for the Respondents. C

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court directing acquittal of the respondents 1 and 2. The appeal has been filed by the informant. The accused 1 and 2 were tried for offences punishable under Sections 364, 302, 404 and 201 read with Section 109 of the Indian Penal Code, 1860 (in short the 'IPC') D E

There was another person described as A-3 who also faced trial alongwith them. The trial Court found that prosecution has been able to establish the guilt of A-1 and A-2 beyond reasonable doubt while directing acquittal of A-3. The conviction and the sentences imposed by the trial Court were as follows: F

A-1 and A-2 are sentenced to rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to rigorous imprisonment for a period of six months each for the offence under Section 364 read with Section 34 IPC. G

A-1 and A-2 are further sentenced to imprisonment for life and to pay a fine of Rs.1,000/-, in default, to rigorous imprisonment for a period of six months each for the offence under Section 302 read with Section 34 IPC.

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A-1 and A-2 are further sentenced to rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to rigorous imprisonment for a period of six months each for the offence under section 404 IPC.

A-1 and A-2 are further sentenced to rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default, to rigorous imprisonment for a period of six months each for the offence under Section 201 IPC.

The sentences inflicted under the above offences shall run concurrently.

Being aggrieved by the judgment of the trial Court, A-1 and A-2 filed appeal before the High Court which as noted above was allowed and they were acquitted of the charges.

3. Prosecution version in a nutshell is as follows:

A-1 is the son of A-3. A-2 is a friend of A-1. They are all residents of Nellore. PW-1 is the father (hereinafter referred to as the 'deceased'), of Isanaka Pradeep Kumar Reddy. About 16 years prior to the incident, A-3 worked as car driver under P.W.1. During that time A-1 also studied along with the deceased in 10th class and Intermediate in National School, Nellore. In the year 1996, P.W.1 purchased one Ambassador car bearing registration No. AP 7C 9499 from P.W.12, but it was not transferred in the name of P.W.1. In the year 1997 P.W.1 sold the said car to A-3 for Rs.2 lakhs, and handed over the same to him. But he did not pay the amount. When P.W.1 demanded the amount, A-3 informed that he would purchase one Maruti car in his name by taking loan from Apple Credit Corporation and accordingly A-3 purchased Maruti Car bearing registration No. AP 26 D 5767 in May, 1997 and handed over the same to P.W.1. The deceased was using the same. A-3 paid some instalments to the Finance Company and later stopped payment. When the Finance Company asked P.W.1 to pay the instalments, he paid two instalments. For non-payment of subsequent instalments, Finance Corporation employees seized the vehicle on 27-2-

1999 when P.W.1 was at Hyderabad. The deceased informed the same to P.W.I on phone. On P.W.1 returning to Nellore, the deceased informed him that he asked A-1 with regard to amount of the car in the college but he did not pay any amount. On 9-3-1999 at about 11.15 AM while taking English class for the students, PW-3 found some disturbance in the class and found the deceased and A-1 talking to each other. After completing the class, the deceased approached P.W.3 and complained against A-1 that he was asking for money. Thereupon he asked the deceased as to whether he had to pay any amount to A-1, to which the deceased replied that no amount was due to A-1. Immediately P.W.3 slapped A-1. P.W.17, a student of the college witnessed the said incident. While so, on 10-3-1999 at about 11 AM, P.W.4 who is a classmate of the deceased asked the deceased about the incident on 9-3-1999, and the deceased informed him about purchasing of car by P.W.1 and non-payment of instalments by A-3. On the said date, A-1 and A-2 went to the shop of P.W.5 and purchased two kitchen knives, one of "Prestige" company for Rs.220/- and another "Crystal" for Rs.50/-. On 11-3-1999 the deceased went to the college at about 9 AM but did not return from the college till 1.30 PM. On that day at about 9.30 a.m. the deceased had gone to the shop of P.W.2 and asked P.W.2 whether any Maruti car is available. Then PW-2 informed him that there are no Maruti cars available and he would inform him whenever cars are available. At about 10 A.M., P.W-6 who is a Mechanic in Auto Nagar and also broker in buying and selling cars found the deceased at the shop of P.W.2. At about 12.30 p.m. the deceased went to P.W.6 along with A-1 and another person and asked for 1986 or 1987 model Maruti car. Then the deceased asked A-1 to get a scooter. A-1 informed him that he would give a scooter which he was using and get another scooter from Amancherla. Then all the three persons left the place at about 1.30 or 2 PM. At that time P.W.17 was also present. P.Ws.7 and 8 saw the deceased and A-1 and A-2 going on a scooter towards Podalakur side. At about 2 PM, P.W.9, who was in search of his two missing buffaloes which were lost one month back, saw three persons getting down from

A the scooter at a place called "GuruThippa" which is at a distance of two kilometers from Podalakur road. P.W.9 asked them as to why they came there leaving the main road. One of them replied that they came for collecting some medicinal leaves. Then PW-9 left the place. One hour later while he was search-
B ing for his buffaloes at a distance of ten baras from the place where he first saw the boys together, he saw only two boys were going on the scooter. He went to the top of Guru Thippa and found some smoke and got suspicion and returned to his village. As the deceased did not return from the college till 3 PM,
C P.W.1 went in search of him. P.W.7, a tailor, informed him that he found three persons including the deceased going on a grey colour scooter towards Podalakur and the deceased was sitting in the middle of the scooter. On 12-3-1999, at about 12.15 PM P.W.1 went to IV Town Law and Order Police Station, Nellore
D and submitted a written report to P.W.23, who registered the same as in Cr.No.27/99 under "Boy Missing" and issued, FIR covered under Ex.P-43. He took up investigation and recorded the statements of PWs 2, 4 and 17 and examined P.W.7 on 15-3-1999. On 24-3-1999 at about 1-30 PM, P.W.23, arrested A-1 and interrogated him in the presence of P.W.11. Then A-1 lead
E to Ayyappa temple and pointed out A-2. P.W.23 arrested A-2 in the presence of P.W. 11. Thereafter A-1 and A-2 took P.W.23 and PW.11 to Guruthippa where they found remains of a skeleton scattered here and there, due to the eating away by some animals. He also found burnt shoes, burnt wrist watch, spec-
F tacles with gold frame and burnt banian covered under M.Os.1 to 4. He collected all the bones. Meanwhile P.W.1 came to the scene and identified M.Os.1 and 2. P.W.23 prepared observation report covered under Ex.P-44 and held inquest over the skeleton remains in the presence of P.W.1 and Ex.P-45 is the
G inquest report. On receipt of observation report covered under Ex.P-44, P.W.22, Head Constable, altered the sections of law from "Boy Missing" to Sections 364, 302, 404, 201 r/w 109 IPC. P.W.24, Inspector of Police, who took up further investigation, on 23-5-1999 visited the scene of offence and prepared scene
H of offence panchanama covered under Ex.P-12. He arrested

A-3 on 27-3-1999, and examined P.Ws.8 and 9 and recorded their statements on 28-3-1999. He also examined P.W.10 and P.W.5 and recorded their statements on 29.3.1999 and 30.3.1999 respectively. He interrogated A-1 and in pursuance of his confession, knives (M.Os. 7 and 8) were recovered from the house of A-3 apart from seizing Bajaj scooter from the house of A-1 and A-3. Pursuant to the confession of A-2, shirt (M.O.10) and gold chain (M.O.6) were recovered under Ex.P.16 panchnama. PW-18 who is a Judicial First Class Magistrate, Nellore, conducted test identification parade on 22.5.1999 and deposed that PW-8 identified A-2 but could not identify A-1 and PW-9 identified A-1 and A-2. On receipt of the reports from the Forensic Medicine, S.V. Medical College, Tirupathi and Forensic Science Laboratory, Hyderabad and after completion of the investigation, PW-24 laid the charge sheet for the offences as noted above. As accused persons abjured guilt trial was held.

The trial Court found the evidence of PW-9 to be cogent and credible and applying the principles of last seen found A-1 and A-2 guilty. The High Court however by a practically cryptic order allowed the appeal. It observed that the main evidence was of recovery and therefore the chain of circumstances to establish the guilt of the accused was not complete.

4. In support of the appeal, learned counsel for the appellant submitted that the High Court by a cryptic order directed acquittal overlooking the detailed discussion made by the trial Court to find A-1 and A-2 guilty.

5. Learned counsel for the accused on the other hand supported the judgment.

6. At this juncture, it is to be noted that learned counsel for the State supported the stand of the appellant and prayed that the judgment of the trial Court is to be restored.

7. PW-9 deposed that at about 2.00 p.m. on the date of occurrence while he was going in search of his two buffaloes which were lost one month back he saw three persons getting

A down from a scooter at a place called "Guru Thippa". When he asked them as to why they came there leaving the main road, one of them replied that they came for collecting some medicinal leaves. Thereafter, he left that place. He further deposed that after about one hour while he was searching for buffaloes B at a distance of ten baras from the place where he first saw the boys, he saw only two boys were going and found some smoke and got suspicion about the matter and returned to the village.

8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the C 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 the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* AIR (1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); D *Earabhadrappa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukhbasi and Ors.* (AIR 1985 SC 1224); *Balwinder Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Kumar Chatterjee v. State of M.P.* (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused E is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be F such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

9. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Ors. v. State of A.P.* (1996) 10 G SCC 193, wherein it has been observed thus:

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all

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the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....". A

10. In *Padala Veera Reddy v. State of A.P. and Ors.* (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: B

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; C

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and D

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. E F

11. In *State of U.P. v. Ashok Kumar Srivastava,* (1992 Crl.LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. G

12. Sir Alfred Wills in his admirable book "Wills' Circum- H

A stantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the B party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innoC cence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

13. There is no doubt that conviction can be based solely D on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

14. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh,* (AIR 1952 SC 343), wherein it was observed E thus:

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first F instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one G proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

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15. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra,* (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

16. These aspects were highlighted in *State of Rajasthan v. Rajaram* (2003 (8) SCC 180), *State of Haryana v. Jagbir Singh and Anr.* (2003 (11) SCC 261) and Kusuma Ankama Rao v State of A.P. (Criminal Appeal No.185/2005 disposed of on 7.7.2008)

17. So far as the last seen aspect is concerned it is necessary to take note of two decisions of this court. In *State of U.P. v. Satish* [2005 (3) SCC 114] it was noted as follows:

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2."

18. In *Ramreddy Rajesh Khanna Reddy v. State of A.P.* [2006 (10) SCC 172] it was noted as follows:

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration".

(See also *Bodhraj* v. *State of J&K (2002(8) SCC 45).*)"

19. A similar view was also taken in *Jaswant Gir v. State of Punjab* [2005(12) SCC 438] and *Kusuma Ankama Rao's case (supra).*

20. It is to be noted that PW-5 stated that A-1 had purchased two knives which were seized by PW-24 covered under M.Os.7 and 8. The High Court took exception to the fact that when PW-5 produced a duplicate bill to the police, the investigating officer did not produce the original in the Court. It is not understood as to how that the duplicate becomes irrelevant.

The High Court has not indicated any reason whatsoever as to why he found the evidence of PW-9 to be not acceptable or as to why the chain of circumstances highlighted by the prosecution did not unerringly point at the accused persons to be guilty as the authors of the crime. PW-9 identified A-1 and A-2 at the Test Identification Parade. His evidence regarding identification has remained unshaken.

21. In view of what has been stated above, the judgment of the High Court is clearly indefensible and is set aside and that of the trial Court is restored. The respondents 1 and 2 shall surrender to custody forthwith to serve the remainder of sentence.

22. The appeal is allowed.

K.K.T. Appeal allowed.