

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND**

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No.1028 of 2010

Dated: 25th April, 2016

Between

Dunga Ganesh

.....Appellant/Accused No.1

And:

The State of A.P., rep.by the
Public Prosecutor, High Court, Hyderabad

.....Respondent

Counsel for the Appellant: Smt.A.Gayatri Reddy

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND**

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused No.1 in S.C.No.66 of 2009, on the file of the learned VIII Additional Sessions Judge (FTC), Visakhapatnam filed this appeal against his conviction under Sections 302 and 201 IPC and sentencing to suffer imprisonment for life and a fine of Rs.100/-, in default, to suffer simple imprisonment for fifteen days for the offence punishable under Section 302 IPC and to suffer rigorous imprisonment for three months and a fine of Rs.50/-, in default to suffer simple imprisonment for fifteen days for the offence punishable under Section 201 IPC.

The case of the prosecution in a nutshell is that the deceased was the daughter of PW.1 and was aged 17 years. She studied upto 5th

class. Since two months prior to 10.03.2008, she was learning tailoring work in the shop of PW.7 at Thanam village. Accused No.1 was the owner of a poclainer and Gurram Appalaraju and Pathivada Nagabhushanam (LWs.22 and 23 respectively) were working as helpers under him. Accused No.1 was having a black colour pulsar motor cycle bearing registration No.AP31 AR 8346. He used to spend much time with LWs.22 and 23 in a rent house. The house of the deceased was located in the same street. The deceased used to come to the public bore near the house of Rongali Sanyasi (LW.16) at Thanam Village and she used to talk to accused No.1. Since two months, their friendship got strengthened and the deceased used to visit the house of LWs.22 and 23 and there, accused No.1 used to have sexual intercourse with her several times. Accused No.1 promised the deceased that he will marry her and on such belief, the latter has surrendered herself to accused No.1. The deceased also used to meet accused No.1 at Vasudha near Pharmacy where herbs and flower plants are situated and there also she used to indulge in sexual intercourse with accused No.1. After some time, the deceased started pressing accused No.1 for marrying her. As the marriage of accused No.1 was already settled with one Madhavi who is no other than his niece, he wanted to discard the intimacy with the deceased. So accused No.1 wantonly avoided meeting the deceased. The deceased contacted accused No.3 and his friends to know the whereabouts of accused No.1 and she proclaimed that she will see for how long accused No.1 will escape from her without marrying her and also warned that she can create nuisance by putting their affair before the parents of accused No.1 and the parents of Madhavi. Accused No.3 has informed these aspects to accused No.1.

After his return to Vadrappalli from Bhimavaram, accused No.1 went to Thanam village on 22.08.2008, met LWs.22 and 23, but he did not talk to the deceased. However, the deceased has not stopped her attempts and she continued to demand accused No.1 to marry her. In this situation, accused No.1 sought the help of accused Nos.2 and 3 to eliminate the deceased and they have conspired with each other and

hatched a plan to kill the deceased.

On 29.02.2008, accused No.1 met the deceased and told her to meet him on the next day at 13.00 hours at Lemarathi junction so that they can discuss about the marriage. On 01.03.2008 at 09.00 hours accused No.1 went to Anakapalli and gave his motor cycle for servicing. Later, he met accused No.2 and directed him to meet him at Lankelapalem at 3.30 pm. Accused No.1 then went to Lemarathi junction, met the deceased and informed her that his relations are at Lankelapalem and he will come again and meet her wanting her to wait till he returns. Accused No.2 came to Lankelapalem junction on the direction of accused No.1 and both of them took one Varalakshmi to Bangarammapalli and dropped there. Later, both of them went to Anakapalli in the auto of accused No.2, where accused No.1 instructed accused No.2 to meet him at Vennelapalem junction at 8.00 pm. Accused No.1 took his motor cycle from servicing centre and at about 6.00 pm, he met the deceased at Lemarathi junction and took her on his motor cycle and they moved together on his motor cycle till 8.30 pm. Finally, at about 9.00 pm, accused No.1 handed over the deceased to accused No.2 at Vennelapalem junction and directed them to wait till he returns. Later, accused No.1 went to his house at Vadrappalli, collected two plastic bags, blue colour nylon thread, bodkin, plastic rope piece and navy blue colour belt from his house and kept them in the cover over the petrol tank of his pulsar motor cycle, kept a pin to the cap of the cover and went to accused No.3. Accused No.1 told accused No.3 that all the villagers learnt about the missing of the deceased from her house and as the cell phone numbers of both of them are available in the clothes of the deceased, the village elders and family members of the deceased are suspecting them. He has further suggested that now itself if the deceased was killed and they can screen the dead body, they can create a rumour in the village that the deceased went away with someone else. Both accused No.1 and accused No.3 went to Vootagedda junction where accused No.2 and the deceased were waiting for them. By then,

the time was 11.15 pm. Then accused No.1 gave his motor cycle to accused No.3. Accused No.1 and the deceased boarded the auto of accused No.2 and reached the scene of offence at 11.30 pm on 01.03.2008. Accused No.1 brought the deceased to Vootagedda by keeping her in conversation, when accused Nos.2 and 3 were closely following. Accused No.1 convinced her to have talks about the marriage and brought her from the bridge into the gedda by engaging her in conversation. As planned by accused Nos.1 to 3, suddenly accused No.1 closed the mouth of the deceased with one hand and twisted her right hand wrist to her back. Accused Nos.2 and 3 brought the plastic bags, blue colour nylon thread, plastic rope and the navy blue colour belt from the motor cycle cover. Accused No.1 pushed down the deceased and sat on her chest, accused No.3 caught hold of her legs tightly and then accused No.2 rounded the navy blue belt and plastic rope around the neck of the deceased, as a result of which, the deceased died. To confirm the death, once again they both repeated the above mentioned process. All the accused folded the legs of the deceased to her back, tied her legs with her langa and kept the dead body in the plastic bags and stitched the cover of the plastic bags with bodkin, threw the dead body bag in the small water pond near the pillar of the bridge, covered the pond with garbage and left the place with a view to conceal the evidence of the murder. Thereafter, all the accused left the place of offence on their vehicles.

The parents of the deceased not finding their daughter at home informed the same to the village elders and relations. Fearing that the news of her missing will affect her marriage chances in future, they have not given police report and instead started searching and making enquiries about the deceased. On 10.03.2008 at about 03.00 pm., PW.1 came to know about the presence of the dead body of his daughter at Vootagedda vaagu under the bridge and he gave a report in Paravada police station. PW.16 registered the report as Crime No.23 of 2008 under Sections 302 and 201 IPC. PW.17 took up the investigation. During the investigation, PW.17 visited the scene of offence on

10.03.2008 at 3.30 pm and got the scene of offence photographed by a private photographer, prepared the rough sketch of scene of offence, conducted inquest over the dead body of the deceased and sent the same for post mortem examination. Along with the body, the plastic rope and navy blue belt were also forwarded to the medical officer. After the autopsy, PW.14, medical officer, has returned the articles along with the clothes and properties over the dead body of the deceased and issued Ex.P9 post mortem certificate. During the investigation, on 20.08.2008 at about 05.00 am., the accused were arrested by PW.17 at Salapuvanipalem village near the hill slope on NH-5 while they were coming on the auto bearing registration No.AP31 TT 2380. The accused have given separate confessional statements before two mediators about the manner in which they executed the evil plan of murder. The accused were arrested and the auto was seized. In pursuance of the confessional statement, they have led the police to the scene of offence at 0800 hours on 20.03.2008 and at the time of reconstruction of the scene of offence, the bodkin was seized near an electrical pole ahead of the Thanam bridge. Following the confessional statement of accused No.1, the police have seized the bajaj pulsar motor cycle bearing registration No.AP31 AR 8346 at the house of accused No.1 at Vadrapalli village; the pin which was fixed to the motor cycle cover; the blue colour nylon thread from which accused No.1 cut and separated some piece and plastic rope, which were used by the accused for commission of the offence.

PW.14, Assistant Professor Forensic Medicine Department, Andhra Medical College, Visakhapatnam conducted autopsy over the dead body of the deceased on 11.03.2008 at 10.05 am and opined that the deceased would appear to have died due to asphyxia due to ligature strangulation. PW.17 prepared letter of advice and forwarded the material objects i.e., (1) Four rows plastic rope piece, (2) Blue colour nylon thread, (3) Four rows plastic rope and (4) Blue colour nylon thread bundle to APFSL, Hyderabad under the cover of letter of advice. After

analysing the said MOs, Dr.S.Gowthami (LW.35) has sent analysis report. After completion of the investigation, PW.17 filed the charge sheet.

The accused pleaded not guilty, denied the charges and claimed to be tried. During trial, the prosecution examined PW.1 to 17 and marked Exs.P1 to P30, besides producing MOs.1 to 13. On behalf of the defence, DW.1 was examined and Exs.D1 to D4 were marked.

On appreciation of oral and documentary evidence, the lower Court acquitted accused Nos.2 and 3 of all the charges and convicted the appellant and sentenced him to undergo imprisonment as noted supra.

We have heard Smt. A. Gayatri Reddy, the learned counsel for the appellant/accused No.1 and the learned Public Prosecutor for the State of Andhra Pradesh.

This is a case based on circumstantial evidence and last seen theory. As noted above, the motive alleged against accused No.1 was that after having relationship with the deceased, he wanted to eliminate her as she was coming in his way of marrying another woman and insisting him to marry her. PW.1 who is no other than the father of the deceased did not raise a whisper about the alleged relationship between the deceased and accused No.1.

The only witness who has seen accused No.1 and the deceased moving on motor cycle two or three times is PW.11. He deposed that he knew about the love affair between the deceased and accused No.1. A careful perusal of his evidence does not inspire confidence. This witness has not disclosed as to how he came in touch with accused No.1 and the deceased. It is not his case that he is either a relative or a neighbour or a friend. Merely because he happens to be a resident of the same village, he is not expected to know the relationship between accused No.1 and the deceased, especially Thanam village is at the outskirts of Visakhapatnam city. Lack of credibility in his evidence is further enhanced by the fact that no other witness including PW.1 spoke anything about the alleged relationship between the deceased and

accused No.1. On a careful scrutiny of his evidence, we feel that the prosecution has pressed him into service only to establish the motive and prove the last seen theory.

In this context, it is relevant to note that PW.17 has deposed that he has contacted the Air Tel and Vodafone authorities and obtained the call particulars of accused No.1 and his contacts. For the reasons best known to it, the prosecution has not produced the call details. If accused No.1 had relationship with the deceased, the call details would have served as the best evidence to prove the same. Non filing of the call data would give rise to adverse inference against the prosecution.

In the light of the above discussion, we are of the opinion that the prosecution has failed to prove the relationship between accused No.1 and the deceased and consequently it has failed to prove the motive part of its case.

As regards the evidence let in by the prosecution, except PWs.11 and 12, no other witness spoke about accused No.1 being in the company of the deceased. PW.11 has deposed that on 01.03.2008 at about 6.00 pm when he was at Lemarthy junction, he saw accused No.1 taking the deceased on his motor cycle towards Paravada side and that on the next day, he came to know that the deceased was not traced. However, he has admitted that he has not informed anyone about this fact expecting that the deceased would come back and that on 10.03.2008, he came to know that the dead body of the deceased was traced. The conduct of PW.11 does not conform to that of a person of ordinary prudence. His evidence proceeded as if he had acquaintance with the deceased and her family members. If he had really seen the deceased going along with accused No.1 on motor cycle and when he knew that the whereabouts of the deceased were not known on the next day, he would have immediately informed the same to PW.1. As per his admission, he did not inform about his seeing the deceased with accused No.1 for ten days till the dead body of the deceased was traced. Therefore, no credence can be attached to the evidence of

PW.11.

The other crucial witness is PW.12, who is running a pan shop at Vennelapalem junction at Paravada. He has stated that he knows accused No.1 and that he has seen him once. He has further deposed that on 01.03.2008 at about 7.30 pm, accused No.1 brought one girl on motor cycle and after taking a drink in his shop, they have left. That subsequently it was published in the newspaper that a girl was killed and he guessed that the said girl is the one he has seen when she came to his shop. He has admitted that he was not examined by the police. However, he has contradicted his earlier statement in the very next sentence and stated that he was examined by the police. In his cross-examination, he has stated that he cannot say how many girls and boys will come to his pan shop. He has admitted that he has not observed the girl who was brought by accused No.1. He has further deposed that his father was running the shop and he was at the shop when accused No.1 brought the girl. He has further stated that he has not observed from which side accused No.1 came. He was unable to state as to who visited the shop two minutes earlier or later when accused No.1 came to his shop. He has also stated that accused No.1 does not belong his village. He has admitted that he does not observe the customers who come to his shop. He has also deposed that he has seen a news item on 10.03.2008 and he does not know the deceased girl and he did not go and see the dead body.

The evidence of PW.12 discussed above reveals that he is a stranger to accused No.1 and that he had no acquaintance whatever with accused No.1. He also does not know the deceased. He was unable to recount as to who came to the pan shop a few minutes before and after accused No.1 and the deceased visited the pan shop. The police have not conducted identification parade to establish the identity of the accused by PW.12. When the body was found on 10.03.2008, the police have not examined PWs.11 and 12 till 18.03.2008. This also gives rise to a serious doubt about the trustworthiness of the testimony of PWs.11 and 12 that they have last seen the deceased and accused No.1

on 01.03.2008. All these reasons impel us to hold that PW.12 is not a truthful witness and he is set up by the police to prove the non-existent last seen theory.

As regards the arrest and confessional statement of the accused, much needs to be discussed. PW.1 himself has deposed in his evidence that on 02.03.2008, accused No.1 came to a person by name Chandramma who was not examined and the said Chandramma took him to Paravada police station and the other three persons whose telephone numbers were found also came to the police station, that all the four persons stated that they do not know the deceased and the police have left them asking them to search for the deceased. That on 10.03.2008 after the body of the deceased was found, all the three accused and some other neighbours were taken by the police and that PW.1 and others have gone to the police station six or seven times, that all the three accused were kept in the police station from 15.03.2008 to 20.03.2008.

DW.1, who is the poclainer operator, deposed that one Ramana of Thanam Village brought him and two others to the Police Station of Paravada on 01.03.2008 where they were taken to a room, beaten up and handed over to Parawada Police, that Ramana took the cell phone numbers of accused No.1, and Laxmana Rao, the owner of the house in which they were staying, that on 02.3.2008 the Police called and beat them, and asked them to come for five days continuously to the Police Station. That on 02.3.2008 the Police called accused No.1 on phone to the Police Station, he came to the Police Station on that day and thereupon he was asked to come to the Police Station for five days on everyday. Thereafter, the Police asked them not to visit the Police Station. He has further deposed that the Police used to suspect them along with ten local youth of Thanam Village and on 10.3.2008 both accused No.1 and Lakshmana Rao have come to the Police Station, that accused No.3 was brought to the Police Station on 12.3.2008 and accused No.2 was brought to the Police Station on 16.3.2008, and that

all the accused were sent to the Court on 22.3.2008. The defence has marked Exs.D.1 to D.4, newspaper reports, showing that PW.1 and others were taken to the Police Station on 10.03.2008. Ex.D.2 is a part of the relevant news item published in Ex.D.1, newspaper. Similarly, Ex.D.4 is a part of the relevant news item in Ex.D.3, newspaper. A perusal of these two news reports would show that it was published therein that the Police have unravelled the mystery behind the death of the deceased and identified the accused, including accused No.1. It is not reported in either of these news reports that the accused are yet to be apprehended. It is therefore reasonable to presume that the accused were apprehended and were in the Police custody prior to 20.3.2008, the date of which the Police claimed that they have apprehended the accused. This presumption is amply supported by the evidence of PW.1 himself, besides that of DW.1. However, as per the prosecution case, the material objects, such as a piece of navy blue colour belt, blue colour nylon thread, blouse, langa with small flowers, inner petty coat, bra, rold-gold chain, rold-gold ear ring, rold-gold nose stud were recovered on 10.3.2008, while the motor-bike, the auto, and the bodkin (dabbalam) were recovered only on 20.3.2008. The evidence of PW.1 and DW.1 to the effect that the accused were apprehended on 10.3.2008 itself and they were under the control of the Police since then, falsifies the prosecution case that the confessional statements of the accused were recorded on 20.3.2008 and based on the same, the material objects referred to above were recovered. The above facts would create a serious suspicion over the whole theory of the prosecution pertaining to recovery of the material objects. It is quite obvious that the accused were in the custody of Police on 10.3.2008 itself and they were shown to have been arrested on 20.3.2008. This casts a serious doubt on the whole case of the prosecution as to the manner in which the offence has allegedly taken place.

In a case based on circumstantial evidence, it is no doubt true that the last seen theory plays a pertinent role. It is obligatory on the part of the prosecution to establish not only the fact that the accused and the

deceased were last seen together at a particular point of time, but also there should be cogent evidence which should establish proximity of time of the death of the deceased. In the present case, as per the prosecution, the deceased and the accused were last seen together on 01.3.2008. The Medical Officer, P.W.14, who conducted autopsy over the dead body has not spoken about the time of the death of the deceased. It may be recalled that the deceased died went missing on 01.3.2008 and the corpse was traced on 10.3.2008. The Medical Officer, P.W.14, stated in his evidence that the dead body was in a highly decomposed state and noted anti-mortem injuries, but still he could not say the approximate time of the death of the deceased. In the circumstances, it cannot be said that the prosecution has successfully established the last seen theory.

We have also gone through the judgment of the lower Court and we do not find any strong reason to convict accused No.1, having acquitted accused Nos.2 and 3 while observing that suspicion, however, strong cannot be the basis for conviction and that the prosecution has failed to prove the theory of conspiracy. In our opinion, the same reasoning holds good for accused No.1 as well, as once conspiracy theory failed and accused Nos.2 and 3 are acquitted, the whole edifice on which the prosecution built its case, crumbles. Even if the relationship between accused No.1 and the deceased was true, the prosecution miserably failed to establish this part of the case by adducing cogent evidence, such as call data. In the absence of such evidence, it is not possible to convict accused No.1 based on mere suspicion and the incredulous testimony of the witnesses such as P.Ws.11 and 12.

In the result, the appeal is allowed. The conviction and sentence recorded against the appellant/accused No.1 in the judgment under appeal are set aside. Consequently, the appellant shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him. M.Os.11 and 12

shall be handed over to the respective owners, if not already done.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

25th April, 2016

VGB/BNR