

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

CRIMINAL REVISION CASE No.474 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment in CrI.A.No.102/2004, dated 29.01.2007 on the file of the Additional Sessions Judge, Hindupur, by and under which, the conviction and sentence as imposed by the trial Court was confirmed.

2. Heard the learned counsel appearing for the revision petitioners/A2 to A4 and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that on 14.09.2000 at 1.30 p.m. while the deceased Yejje Nagarathnamma along with PWs 2 to 4 and others was working in the field of Githa Ganganna, A1 to A4 came there in a Jeep, out of them A1 to A3 went to Nagarathnamma and informed that her father was attacked with fits and wanted to see her. Believing their words Nagarathnamma followed A1 to A3, and after proceeding a short distance, A1 to A3 physically lifted her and carried her to the Jeep against her protest, and forcibly took her in the Jeep even though PWs 2, 4 and others tried to obstruct them. A1 to A4 took Nagarathnamma to Bagepalli and there A1 tied tali around her neck against her will and threatened her to remain silent. Thereafter, A1 had sexual intercourse with Nagarathnamma against her wish in a lodge. On the next day, when the Jeep was broke down, A1 to A4 along with Ngarathanamma got into a bus and at Gummaiahgaripalli A1 and Nagarathnamma got down the bus, A2 to A4 proceeded further in the said bus. On receiving the information about the incident through PW 2 and others, PW 1, the father of Nagarathnamma, lodged a complaint before the concerned police, which was registered as a case in Cr.No.46/2000 of Kothacheruvu Police Station under sections

366-A and 494 IPC. During investigation, the investigating officer on 15.09.2000 at 10 a.m. traced out the victim girl Nagarathnamma at Gummaiahgaripalli cross road, brought her to the police station, seized her clothes and recorded her statement. On 20.09.2000 A1 to A4 were arrested. After completion of investigation, the police filed charge sheet, by adding section 376 IPC against A1 to A4. The jurisdictional Magistrate committed the case to the Sessions Division, which in turn made over to the Assistant Sessions Judge, Penukonda vide S.C.No.600/2002.

4. When the case was listed for appearance of the accused, it was informed that A1 was killed and hence the case against A1 was abated, and proceeded against A2 to A4 only. The trial Court had taken the case on file for the offence alleged against the petitioners/A2 to A4, and on their appearance, they were examined and the charge under Section 366 r/w.34 IPC has been framed against them for which, they pleaded not guilty and claimed to be tried.

5. During course of trial, it was brought to the notice of the Court that the victim girl Nagarathnamma, after 1½ months of the incident, consumed poison and died.

6. To bring home the guilt of the petitioners/A2 to A4, the prosecution examined PWs 1 to 14 and got marked Exs.P1 to P12 on its behalf. After closure of the prosecution evidence, the petitioners/A2 to A4 were examined under Section 313 Cr.P.C putting all incriminating material available against them, but they denied the material evidence and marked Exs.D1 to D4 on their behalf.

7. On appreciation of oral and documentary evidence, the trial Court while observing that the prosecution only established kidnapping of victim girl Nagarathnamma, but failed to establish the purpose for which the victim girl Nagarathanamma was kidnapped and hence found the petitioners/A2 to A4 guilty of the offence under sections 363 IPC instead of 366 IPC, convicted and sentenced A2 to

A4 to undergo imprisonment for 7 (seven) years and to pay a fine of Rs.500/- each, in default, to suffer imprisonment for 6 (six) months each.

8. The petitioners/A2 to A4 challenged the conviction and sentence passed by the trial Court in CrI.A.102/2004. On re-appreciation of evidence on record, the appellate Court dismissed appeal while confirming the judgment of the trial Court. Aggrieved thereby, the petitioners/A2 to A4 filed the present criminal revision case.

9. The point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioners/A2 to A4 is sustainable, or whether it needs interference.

10. It is an unfortunate case where the victim girl having born on 05-05-1985 has committed suicide by consuming poison within few months after the incident which is said to have taken place on 14-09-2000 wherein she is alleged to have been forcibly kidnapped by A.1 to A.4 while she was working in the fields and taken to Bagepalli where A.1 is alleged to have tied *tali* to her, stayed there in a lodge had intercourse with her and next day morning i.e., on 15-09-2000, they returned to the village where the victim girl was traced, however, A.1 who was till then in the company of the victim girl escaped from there and even prior thereto, the petitioners, who are A.2 to A.4, have gone away somewhere. For this incident, on the basis of the complaint Ex.P1 from PW 1, the father of the victim girl, a case in Cr.No.46 of 2000 was registered by Police, Kothacheruvu. The case of the prosecution witnesses is that the victim girl has committed suicide by consuming poison unable to bear the humiliation and insult in view of this crime and insofar as the suicide of the victim girl is concerned, the jurisdictional police has registered a case in Cr.No.51 of 2001 under Section 174 Cr.P.C. The suicide case crime was investigated but

nothing happened thereafter.

11. Another unfortunate turn which the case took is that within a year after the incident of the alleged kidnap, the prime accused namely A.1 was murdered and it is on record that PW.1, the father of the victim girl, PWs.5, 9, and four others namely Lingamaiah, who is the cousin brother of PW.1, Pothulaiah, another cousin brother of PW.1, Nagendra, son of PW.1 and Golla Kistappa, who was the member of the group of PW.1, are accused of that murder and are facing trial.

12. It is also on record that there are two factions in the village and there were disputes due to political differences. Bearing in mind the above sequence of events, the evidence on record has to be perused and in cases riddled with faction, a careful scrutiny of the evidence of the prosecution witnesses is required to be taken up while appreciating the evidence of the witnesses.

13. Before adverting to the factual matrix of the case, it may be placed on record a serious lapse on the part of the prosecution which adversely affects the case. As is the practice, in cases of this nature, the statement of the victim girl will be recorded not only by the investigating agency but also the statement will be recorded by the jurisdictional Magistrate under Section 164 Cr.P.C. The said procedure has been followed in the instant case and it is admitted that the Judicial Magistrate of First Class has recorded the statement of the victim girl under Section 164 Cr.P.C. Even before the investigation concluded and charge sheet is laid, the victim girl died. Therefore, the statement of the victim girl recorded by the Magistrate under Section 164 Cr.P.C. and the evidence of the learned Magistrate who recorded the statement will be of paramount importance but curiously neither the statement has been filed nor the learned Magistrate who recorded the statement has been listed and examined as witness during the course of trial. Due to this omission on the part of the investigating agency, the learned Counsel appearing for the petitioners/accused rightly

submit that the material evidence has been suppressed by the investigating agency ostensibly for the reason that had that statement been made part of the record, it would falsify the case of the prosecution alleging that it is A.1 to A.4 who have forcibly kidnapped the victim girl from the fields took her to a far off place in Karnataka State and committed the other offence as alleged.

14. Yet another serious discrepancy in the case is with regard to the alleged apprehension of both the victim girl as well as A.1 and thereafter A.2 to A.4. According to the Investigating Officer, even before 10.00 a.m., on 15-09-2000, they could locate the victim girl, who was in the company of A.1 and while they could take the custody of the victim girl, A.1 has ran away from there. It is the case of the investigating agency that five days thereafter i.e., on 20-09-2000, A.1 to A.4 were arrested and investigation followed. This claim of the investigating agency is falsified by the evidence of PW.1 who is the father of the victim girl and the *de facto* complainant herein. According to him, when the victim girl was kidnapped during the afternoon of 14-09-2000, by about 10.00 p.m., he went to the Police Station and lodged the complaint-Ex.P.1. Next day i.e., on 15-09-2000 on coming to know that his daughter/victim girl has been traced and is in the police station, he along with others went to the Police Station and at that time not only found the victim girl in the Police Station, but A.1 to A.4 were also in the Police Station at that time i.e., on 15-09-2000. If what PW.1 says is true, there was no need, whatsoever, for the investigating agency to show the arrest of A.1 to A.4 on 20-09-2000.

15. Another aspect on which learned Counsel appearing for the petitioners rely to make inroads into the case of the prosecution is that the lodging of the F.I.R., and its being received by the jurisdictional Magistrate. As stated above, the complaint-Ex.P.1 was lodged at 10.00 p.m., on 14-09-2000 and even before 10.00 a.m., on 15-09-2000 the victim girl was traced. The F.I.R. having been registered at 10.00

p.m., on 14.09.2000 was sent through a Constable to the jurisdictional Magistrate at about 02.00 p.m., on 15-09-2000. This delay in F.I.R. reaching the Magistrate though would not have been of much significance but in view of the fact that even before the F.I.R., was sent to the Court, the victim girl was traced and the accused were also in the police station goes to show that the F.I.R.-Ex.P.1 was not lodged at 10.00 p.m., as claimed by PW.1. Another circumstance which supports this contention is that it is categorically admitted by PW.1 that when he went to the Police Station at 10.00 p.m., on 14-09-2000, neither the C.I. of Police nor S.I. or Police was present in the Police Station and that the complaint was received by a Head Constable. This evidence of PW.1 falsify the claim of PW.13-S.I. of Police who says that it is he who received the complaint-Ex.P.1 and registered the crime.

16. Be that as it may, the facts in brief are that on 14.09.2000 when the victim girl, aged less than 16 years, was attending the agricultural operations in the field of one Ganganna, who has not been examined, along with her relations namely PWs.2, 3 and 4, A.1 to A.4 came there in a jeep, which was parked at a distance of about 150 yards, that A.1 came to the victim girl and informed her about the alleged ailment of her father, hearing which while she was proceeding towards the jeep, all the four accused have forcibly dumped her into the jeep, and took her away towards Sathipalli side and seeing this, PWs.2, 3 and 4 and PW.10 who was the son of Ganganna, rushed to the house of PW.1 and informed him as to what happened. It is further the case of the prosecution that PW.1 along with others went in search of the girl but they could not trace her. The victim girl was taken to Bagepalli, Karnataka State where A.1 is alleged to have tied *tali* around her neck and all of them stayed in a lodge and next day morning they returned to the village.

17. Learned Counsel appearing for the petitioners at the outset

submits that in addition to the above lacunas in the case of the prosecution, the other material circumstance is that when the victim girl, who was just short of 16 years, was forcibly taken into the jeep from the agricultural fields to a far off place of another State and kept in a Lodge, she did not raise any alarm so as to attract the attention of anybody. The time was broad day in the afternoon and if really the victim girl was forcibly kidnapped by A.1 to A.4, she would have certainly attempted to alert the people on the road when she was taken in a jeep, which will virtually be open, to a far off place. The driver of the jeep, whose presence is spoken to by the material witnesses, has not been listed and examined. According to the prosecution, the accused took the victim girl to a lodge in Bagepalli, Karnataka State and stayed overnight. Absolutely no iota of evidence is gathered by the investigating agency with regard to the events which are said to have taken place in Bagepalli, Karnataka State. Not even a single witness from the Lodge is examined nor any register produced to show that A.1 to A.4 along with the victim girl have stayed in the Lodge for considerable time.

18. Even at the cost of repletion, it may be stated here that the non-production of Section 164 Cr.P.C., statement of the victim girl is decisive.

19. PW 1, the father of victim Nagarathnamma stated that he was informed by PW 4, PW 2 and PW 10 that the accused taken away his daughter Nagarathnamma in a jeep, then himself and PW 9 proceeded to Settipalli side in search of his daughter, but could not traced them out and returned back at 10 .m. and went to Kothacheruvu Police Station and lodged Ex.P1 complaint and on the next day afternoon his daughter was traced out by police and brought to the to police station by 3 p.m.

20. PWs 2 to 4 stated that about 3 years ago about the time of taking meal in the lands of Githa Ganganna, all the accused came in a

jeep, they called Nagarathnamma on the pretext that her father was seriously ill and when she followed them, the accused forcibly took her in their jeep and when they obstructed the accused, the accused pushed them aside and proceeded towards Settipalli, and thereafter the same was informed to PW 1.

21. PW 5 stated that about three years ago on one day at 9 a.m. when he was present in the convent school, PW 13-SI of police along with constables came and called him and they all proceeded in a jeep to Gummaiahgaripalli cross-road and there they noticed a girl aged about 15 years, standing by the side and PW 13 brought that girl to Kothacheruvu Police Station and there they seized the clothes of that girl under cover of panchanama. He further deposed that on the next day he was called to police station and by the time he went there, one person by name Rangappa (A1) was present there, the S.I. of Police seized the drawer from Rangappa (A1) under cover of Panchanama in his presence and he attested the same.

22. PW 6 Dr. Satya Prakash stated that on 23.09.2000 A1 was produced before him through P.C.129 and H.C.1499 for a report as to certain rape said to have been caused on 14.09.2000, he examined the person and submitted his report Ex.P5.

23. PW 7 stated that in 2000 on one day at 2 p.m while himself and PW 5 were going to Junior College, Kothacheruvu, PW 13-S.I. of Police asked them to sign in three mahazars and that himself and PW 5 attested the three mahazars Exs.P6 to P8.

24. PW 8, the Head Master of MPUP School of Yerraballi village stated that as per records the date of birth of Nagarathnamma is 05.05.1985.

25. PW 9 stated that he learnt through PWs 2, 3, 4 and Sanjeevamma that the accused forcibly took away Nagarathnamma, the daughter of PW 1, and he saw PW 1 in the bazaar and enquired him about the incident and PW 1 informed him that the accused took

away his daughter forcibly and he accompanies him in search of the victim girl Nagarathnamma.

26. PW 10 stated that while himself and others were attending in agricultural works in his garden, a jeep came and stationed near their land at a distance of about 50 to 70 feet, A1 to A3 came nearer to their agricultural well, A4 was present near the jeep and they came and informed Nagarathnamma that her father was not keeping well and while Nagarathnamma followed them, the accused forcibly lifted Nagarathnamma and put her in the jeep and proceeded towards Settupalli village. When his wife and others intervened, the accused pushed them aside. Later, all of them went to the house of PW 1 and informed the incident to him.

27. PW 11 stated that the incident occurred about three years ago during lunch hour, and at that time he was returning to his house from their agricultural land. At that time a jeep came in opposite direction to him, he moved aside, the jeep was proceeding towards Settupalli side. He noticed A4 was sitting by the side of the driver and A1 to A3 and Nagarathnamma were sitting back side of the jeep.

28. PW 12 Dr.Gowri Devi stated that she examined Nagarathnamma and issued Ex.P10 wound certificate.

29. A perusal of the above evidence shows that there are certain material discrepancies which affect the veracity of the testimony. As noticed above, PW.1 is not the eye-witness to the incident and he only came to know about it through PWs.2, 3 and 4. In the cross-examination, it is admitted by PW.1, the father of the victim girl that A.1 never met his daughter Nagarathnamma prior to the incident, that the victim girl was freely moving in the village, that A.1 never spoke to the victim girl, that the victim girl never visited the house of A.1 nor A.1 visited their house, that A.1 used to move friendly with him and that the petitioners/A.2 to A.4 were doing labour work and attending to the coolie work whoever engages them. With regard to lodging of the

F.I.R., it has already been stated above, according to PW.1, it is Head Constable who registered the crime and also recorded his statement, but not the S.I. of Police-PW.13 as claimed by the investigating agency. It is further admitted by PW.1 that the house of himself and A.2 is opposite to each other, that there is coconut tree in front of the house of A.2 but he denied the suggestion that there were disputes between him and A.2 with regard to the said coconut tree.

30. The material evidence, however, is that of three ladies who are examined as PWs.2, 3 and 4. PW.2 is said to be the sister-in-law of PW.1 as claimed by PW.1. However, she denies stoutly any relationship with PW.1. It is in her evidence that on the date of the incident, when they were taking their lunch, a jeep came there, that all the accused got down from the jeep and called Nagarathnamma on the pretext that her father was seriously ill. She further deposed that the victim girl washed her hands and followed the accused and they also followed her and they have seen the accused forcibly taking her in the jeep. She further claims that when they tried to obstruct the accused, the accused pushed her aside and went away. However, in the cross-examination, PW.2 admits it is only A.1 to A.3 who came near them but A.4 did not come into the agricultural fields. She further admits that none of them tried to obstruct the jeep from proceeding. As against the above claim of PW.2, it is in the evidence of PW.3, who is also the sister-in-law of PW.1, that A.1 to A.4 came into the fields and took away the victim girl. She claims that herself, PW.2 and PW.10 tried to obstruct them but the accused have pushed them aside. She also clarifies in the cross-examination that it is only A.1 to A.3 came to the fields and that A.4 was standing near the jeep. When PW.1 admits that the husband of P.W.3 is one of the accused in the murder case of A.1, for the reasons best known to her, PW.3 says that she do not know about it.

31. PW.4, another caste woman of PW.1, also stated that it is

only A.1 to A.3 who came into the fields and asked the victim girl to follow them and thereafter forcibly lifted the victim girl into the jeep. When the other witnesses say that the accused came there and took away the victim girl while they were taking the lunch, PW.4 would have it that at that time they were attending to the weeding work.

32. The other eye-witness is PW.10, who is the son of Ganganna in whose fields PWs.2, 3 and 4 and the victim girl were working. According to him, when the incident took place, PWs.2, 5, his wife Sanjeevamma, the victim girl and his father-Ganganna were attending to the agricultural work. He does not speak about the presence of PW.3 but includes his own father whose presence is not spoken to by any other witnesses. PW.10 further asserts that at the time when the victim girl was taken away neither himself nor PWs.2 to 4 were taking lunch, which aspect is asserted to by the other eye-witnesses. When the victim girl was being forcibly lifted into the jeep even though other ladies obstructed, PW.10 being a young person, aged about 30 years, did not obstruct the accused from forcibly taking away the victim girl. The material contradictions are marked as Exs.D.2 to D.4. When according to the case of prosecution, the victim girl returned to the village on the very next day i.e., on 15-09-2000, PW.10 would have it that she returned to the village 10 to 15 days after the incident.

33. PW.11 is a person who claims to have seen A.1 to A.4 taking away the victim girl in a jeep, which was being driven by another driver, who has neither been prosecuted by the prosecution as an accused or examined as a witness. PW.11 claims that he has seen A.1 to A.3 sitting behind in the jeep along with the victim girl. Significantly, he did not notice any abnormal behaviour on the part of the victim girl when she was being taken away in the jeep towards Sathepalli. When A.1 to A.4 have forcibly lifted the victim girl into the jeep and were taking away to Sathepalli, much against the wish of the girl, she would not have kept silent when A.1 to A.3 were taking her in

the jeep towards Sathepalli forcibly. Further more, he having seen the victim girl being taken away in the jeep, he claims that he did not inform anybody in the village as to what he has seen even though he claims that about 50 villagers came and were searching for the jeep. Still, he did not inform any of the villagers that he has seen the jeep, the accused and the victim girl proceeding towards Sathepalli as is claimed by him.

34. The above evidence cannot be said to conclusively prove that it is the accused who have forcibly lifted the victim girl into the jeep and took her to a far off place in a broad day light by misrepresenting her that her father is sick. Further more, having informed that the victim girl that her father is sick and the victim girl was voluntarily following them towards the jeep, there was no need whatsoever for the accused to forcibly lift the victim girl on to the jeep and drive away.

35. In view of what is discussed in the preceding paragraphs, the evidence of the so called eye-witnesses cannot be said to be consistent, cogent, convincing nor does it inspire the confidence of the Court for holding that it is the accused who have forcibly kidnapped the young girl, aged about 16 years, from the agricultural fields when she was working in the company of several people such as Ganganna, the owner of the land, his son-PW.10 and several other ladies including PWs.2, 3, 4 and the wife of PW.10.

36. The Courts below have not appreciated the evidence on record in proper perspective and have erroneously held the petitioners guilty of the charges. As stated above, A.2 to A.4 are only labourers working as coolies in the village and the substantive allegation is against A.1 who is alleged to have taken the girl, tied *tali* to her and committed sexual assault on her since A.1 died allegedly at the hands of prosecution witnesses. The Judgments of both the Courts below cannot therefore be sustained and the same are liable to be set aside.

37. For the reasons stated above, the Criminal Revision Case is

allowed. Consequently, the judgment of the appellate Court dated 29.01.2007 in CrI.A.No.102 of 2004 as well as the judgment of the trial Court dated 02.12.2004 in S.C.No.600 of 2002 are set aside and the petitioners/A.2 to A4 are acquitted of the offence for which they were found guilty and convicted. The bail bonds of the petitioners/A.2 to A4 shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioners/A.2 to A4.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 22.01.2016

Dsr/Smr