

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**TUESDAY, THE 26th DAY OF APRIL,
TWO THOUSAND AND SIXTEEN**

**PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

CRIMINAL APPEAL Nos.1045 AND 1116 of 2010

Between:

Vishwanadhapally Veera Swamy (A.4)
Kanna Satheesh (A.1)
Deepak Pariwar Bahadur (A.2)
Atuldas @ Rajhul (A.3)

..... APPELLANTS

AND

State of Telangana, rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant (A.4) : **SRI GOPALA KRISHNA
KALANIDHI**

Counsel for the Appellants (A.1 to A.3): **SRI P.PRABHAKAR REDDY**

Counsel for the Respondent : **PUBLIC PROSECUTOR
(Telangana)**

The Court made the following:

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

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

CRIMINAL APPEAL Nos.1045 and 1116 of 2010

COMMON JUDGMENT: (Per Hon'ble Sri Justice M.S.K.Jaiswal)

These two criminal appeals arise out of Judgment dated 11.08.2010 in S.C.No.265 of 2009 on the file of Principal Sessions Judge, Nalgonda.

2. Criminal Appeal No.1045 of 2010 is filed by A.4 whereas Criminal Appeal No.1116 of 2010 is filed by A.1 to A.3 in the Sessions Case.

3. A.1 to A.3 were convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- each under Section 302 I.P.C., and further convicted and sentenced to suffer R.I. for one year for the offence under Section 379 I.P.C. A.4 was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- for the offence punishable under Section 302 r/w 109 I.P.C., and he was further convicted and sentenced to suffer R.I. for a period of one year for the offence under Section 379 r/w 109 I.P.C.

4. The facts in brief are as under:-

A.1 and A.4 are friends and they are natives of Guntur District. A.2 is a native of Nepal country and A.3 is a native of Assam State.

A.1 habituated to commit theft of motor cycles and A.4 is said to have assured A.1 that he will dispose of the vehicles which were committed theft of and he instigated A.1 to commit theft of a car rather than two wheelers. A.1 developed friendship with A.2 and A.3 who were doing odd jobs in Hyderabad. In pursuance to the

conspiracy, on 30.08.2008, the accused alleged to have hired the taxi of the deceased for going to Guntur. They went to Guntur but while going they could not implement their plan. On 31.08.2008, while returning to Hyderabad and after crossing Miryalaguda in Nalgonda District, A.1 to A.3 have killed the deceased by strangulation, thrown the dead body in thorny bushes by the side of the road at the outskirts of Rainigudem besides Narkatpally-Addanki State Highway within the jurisdiction of Thipparthi P.S., stole away the car and also one of the two cell phones and cash of Rs.20,000/- in the possession of the deceased. On 01.09.2008, P.Ws.3 and 4 informed the police about the dead body lying by the side of agricultural land. PW.14 – the Investigating Officer informed PW.1 – the father of the deceased about the death of the deceased with the help of cell phone. PW.1 filed a complaint – Ex.P.1, on the basis of which Cr.No.124 of 2008 was registered for the offences punishable under Sections 302 and 379 I.P.C., and the investigation was taken up. During the course of investigation, the scene of offence was examined, inquest was held over the dead body of the deceased in the presence of PW.8 and another and the dead body was sent for post-mortem examination. PW.13 conducted post-mortem over the dead body and opined that the deceased died due to fracture of the base of the skull and head injury. The accused were arrested and incriminating material objects were recovered at their instance. After the investigation was completed, charge sheet was filed.

5. Learned Sessions Judge framed charges under Sections 302 and 379 I.P.C., against A.1 to A.3 and charges under Sections 302, 379 read with 109 I.P.C., against A.4.

6. The accused denied the charges and claimed to be tried.

7. In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 15, mared Exs.P.1 to P.15 and produced M.Os.1 to 5. When examined under Section 313 Cr.P.C.,

the accused denied the evidence on record. On behalf of the defence, no oral and documentary evidence was adduced.

8. Upon perusing the oral and documentary evidence on record and hearing the arguments of both sides, the trial Court convicted and sentenced A.1 to A.4 as stated above.

9. Learned Counsel appearing for the appellants/A.1 to A4 submitted that the prosecution could not establish the nexus in between the appellants and the crime by any cogent evidence. It is submitted that there is no evidence to show that it is the appellants who have hired the vehicle/services of the deceased for going to Guntur and that they committed the crime with the motive of committing theft of Indica Car which was allegedly hired by them. It is submitted that there is no evidence to show that there was any communication culminating into transaction of hire in between the appellants and the deceased. It is submitted that even the Investigating Officer candidly admitted that the voluminous data gathered from the Service Providers of the different cell phones do not show that there was any communication in between the appellants and the deceased. Learned Counsel submitted that the prosecution could not even establish that the car that was said to have been seized from A.1 fifteen days after the incident belongs to the deceased. The trial Court has erroneously convicted the appellants and hence the same is liable to be set aside.

10. Learned Public Prosecutor, on the other hand, submitted that considering the nature of the crime that was perpetrated by the appellants, the best possible evidence has been placed before the Court in the shape of circumstances, which do not lead to any hypothesis other than that of the guilt of the appellants. He submitted that there is record to show that there was unusual number of phone calls emanating from the cell phone which has

been used by A.3 and the deceased even though it could not be shown that cell phone even used by A.3 was standing in his name. Learned Public Prosecutor further submitted that the Court below has appreciated all the aspects in proper perspective and determined the guilt of the accused which does not warrant any interference.

11. The point for consideration is as to whether the prosecution proved its case against the appellants/A.1 to A.4 beyond reasonable doubt so as to sustain their conviction and sentence or whether the same need to be set aside, modified or varied?

12. According to the prosecution, the deceased is the owner-cum-driver of private taxi bearing registration No.AP-10-TV-0981. A.1 was a criminal whose *modus operandi* was to rob the people for gain. He is alleged to have been involved in the commission of such crimes involving certain two wheelers, laptops etc. A.4 is said to be a person who used to help A.1 in disposing of the vehicles and he is alleged to have instigated A.1 to go in for a big catch and commit theft of a four wheeler promising that he will help him in its disposal. A.2 who is a native of Nepal and A.3 who is native of Assam have migrated to Hyderabad and were doing odd jobs. The allegation is that a conspiracy was hatched in between the appellants which resulted in A.1 to A.3 hiring the taxi of the deceased for going to Guntur on 30.08.2008 and their plan of committing the crime while going to Guntur did not fructify. However, while returning back from Guntur to Hyderabad on 31.08.2008 and after crossing Miryalaguda, they killed the deceased, thrown his dead body in the adjacent fields by the side of the road at the outskirts of Rainigudem besides Narkatpally-Addanki State Highway and drove away the car and also took away one of the two cell phones which was being used by the deceased. The dead body was noticed in the morning of 01.09.2008 by P.Ws.3 and 4 who alerted the police and with the help of cell

phone found in the pocket of the deceased, his identity was established. The further investigation revealed the involvement of A.1 to A.4 and hence they were charged.

13. The material evidence in the case comprises the alleged confession leading to the recovery of the material objects from the possession of the appellants and the telephonic conversation in between the appellants and the deceased on 30.08.2008 and 31.08.2008. The oral evidence on this aspect comprises of PW.11 and the Investigating Officers – P.Ws.14 and 15. The relevant documents are Exs.P.14 and P.15 which are the call data sheets of different cell phones and the confession and recovery panchanama Exs.P.4 and P.5.

14. The other evidence on record comprises of the parents of the deceased who are examined as P.Ws.1 and 2, who spoke about the fact that on 30.08.2008 the deceased left Hyderabad with the car informing them that he has been hired by the people to go to Guntur. Their evidence also shows that they were identified the dead body. Thereafter, PW.1 lodged the complaint. P.Ws.3 and 4 are the persons who have noticed the dead body and alerted the police. P.Ws.6 and 7 are the landlords of two different premises which were taken on rent by A.1 to A.3. PW.13 is the Medical Officer who conducted autopsy over the dead body and found five injuries and opined that the cause of death is due to fracture of the base of the skull and head injury. The medical evidence establishes the fact that the death of the deceased took place in between 08.40 p.m. and 10.40 p.m., on 31.08.2008.

15. PW.5 is the person who is running a Bakery in Secunderabad. He is examined for the purpose of establishing the fact that the telephonic contacts in between the deceased and A.3 were made with the help of a cell phone which was provided by

PW.5 to A.3. According to PW.5, A.3 worked in his Bakery for about six days in the year 2008. He claims that one day A.3 informed him that even though he has got a SIM card, he does not have an instrument and therefore PW.5 provided an instrument to A.3 to be used by him and after having worked for about three days, A.3 stopped coming and when PW.5 tried to contact A.3, the latter's phone was switched off. It is also in the evidence of PW.5 that some times A.2 used to come to the Bakery and go away with A.3.

16. A perusal of the testimony of PW.5 does not, in any way, strengthen the case of the prosecution for the reason that it do not establish that the cell phone bearing a particular number was being used by A.3 so as to help that the call data which shows that there were several calls in between a particular cell number and the phone of the deceased were made by the cell phone being used by A.3. It may be recalled that A.3 was a native of Assam. Therefore, PW.5 cannot be believed when he says that he gave a telephone instrument to A.3, more particularly, when he was not known to him and who worked with him for about six days.

17. According to the prosecution, on the basis of call data, A.3 was identified and his apprehension led to resolving the mysterious death of the deceased. The evidence which is relevant on this aspect is that of PW.15 – the C.I. of Police. He deposed that his investigation revealed that there were frequent calls in between cell phone No.9966981965 and 9948413744 on 30.08.2008 and 31.08.2008. He further deposed that the former number was that of A.3 and the latter number was that of the deceased. According to the Investigating Officer, on 14.09.2008 A.2 and A.3 were apprehended and they confessed having committed the crime along with A.1 and led to the house of A.1. It is also in the evidence of the Investigating Officer that motor cycle bearing No.AP-09-BF-4465 and cash were seized from A.3. From A.2, another vehicle bearing

chassis No.DHU BLE 41840 and some cash were recovered. It may be stated here that the two motor cycles seized from the possession of A.2 and A.3 do not belong to the present crime and it is also not placed on record as to which crime those two motor cycles pertain to. It is further in the evidence of PW.15 that thereafter A.2 led the police and the panchas to the house of A.1 where both A.1 and A.4 were apprehended and in pursuance to the confession made by A.1, the car bearing No. AP-10-TV-0981, one cell phone bearing No.9290177604 and one laptop were recovered from the possession of A.1. From the possession of A.4, another motor cycle bearing No.AP-07-AH-3939 and the cell phone bearing No.9090019335 were recovered. Here also it may be stated that the motor cycle seized from the possession of A.4 is not in respect of the present crime and it is not known to which crime it relates to.

18. The Investigating Officer further spoke about the call data which he has obtained from the Service Providers and stated that Ex.P.14 is the call data particulars consisting of 21 sheets and Exs.P.11, P.12 and P.13 are the requisitions made by him to the Service Providers of Tata Indicom and Vodafone. On the basis of this call data, a nexus is sought to be established in between the crime and the appellants. However, even without going in detail, it may be stated that the Investigating Officer himself admitted that the cell numbers mentioned in Ex.P.5 do not belong to the accused. Therefore, any amount of evidence evidencing the communication in between the deceased and the cell phones cannot be said to be of any help to the prosecution which is admittedly even as per the voluminous call data, none of the calls received by the deceased on the crucial dates were from the cell phones used by any of the appellants.

19. Be that as it may, we have perused the call data sheet

carefully and it is noticed that there were unusual number of calls in between the cell phone being used by the deceased and the phone bearing No.9966981965. As already stated, even though the prosecution alleges that this cell phone was being used by A.3, absolutely no evidence is produced. On the other hand, the ownership particulars produced by the prosecution shows that the cell phone which was seized from A.1 belongs to one P.Laxmi and the cell phone which was recovered from A.3 belongs to one Rabbani. From either of the cell phones the data of which was gathered shows that they are owned and possessed by A.1 and A.3. Even if the ownership could not be established, the prosecution ought to place on record cogent evidence to show that the particular cell number was being used by any of the appellants. Even that would not forthcoming. As already stated, even the evidence of PW.5 does not help the prosecution in its endeavour to establish that the cell phone which was being used by A.3 was bearing number – 9966981965 from which there were frequent calls to the cell phone of the deceased on 30.08.2008 and 31.08.2008. The entire exercise made by the investigating agency to connect the appellants with the crime became futile since none of the cell phones with which calls were made to the phone of the deceased were admittedly owned, possessed or were being used by any of the appellants.

20. The other circumstance that is sought to be relied upon by the prosecution is the confession said to have been made by A.1 which led to the recovery of Tata Indica Car bearing No. AP-10-TV-0981. At the outset, it may be stated that according to the prosecution, the motive for the gruesome murder of the deceased was to rob him of the said car. This is said to have been committed in between 08.30 p.m., and 10.30 p.m., on 31.08.2008. The prosecution wants it to believe that fifteen days thereafter the said car was found in the same condition parked in front of the house of A.1 at Hyderabad.

Apparently, no attempt, whatsoever, was made by A.1 to either change the appearance of the car or its registration number. If really A.1 intended to make easy money by disposing of the car, even by resorting to killing the deceased, he would not have kept the car in the same condition in his possession for nearly fifteen days and that too allowed it to be parked in front of his house. This is an unnatural conduct of a criminal. It may also be recalled that the role that is attributed to A.4 is that he instigated A.1 to commit theft of a car promising him to facilitate in its disposal. The persons who commit grave crime for the purpose of unjust enrichment cannot be expected to keep the car with them for such a long time, that too fully exposing it to public gaze.

21. Be that as it may, the evidence that is sought to be relied upon on this aspect is that of PW.11. According to the prosecution, in the presence of PW.11 and another, A.2 and A.3 confessed the crime and led to the house of A.1 where A.1 and A.4 were also apprehended and that their confessions were made which led to the recovery of the material objects. PW.11 is not a resident of the neighbourhood where A.2 and A.3 apprehended at Begumpet and A.1 and A.4 apprehended at Yusufguda. He claims himself to be passing through the area of Begumpet by chance and at that time the Investigating Officers called him and was made to act as a panch witness for the confession and recovery from A.2 and A.3 and thereafter from A.1 and A.4. Even though, PW.11 claims himself to be an independent and impartial witness, it is admitted by him in the cross-examination that PW.1, who was the father of the deceased, is the father-in-law of one Sinreddy Ram Reddy who is a friend of PW.11. That means, PW.11 can be said to know all the entire family of the deceased and he cannot be said to be an independent or a disinterested witness. Therefore, we do not feel it safe to rely upon

the testimony of such a witness for holding that A.1 to A.4 voluntarily made the confessions while in the custody of the police which led to the recovery of three motor cycles, one car, one laptop and some net cash. It may also be stated that we are not concerned with the motor cycles which are said to have been recovered from the appellants. The only material object that is recovered is Tata Indica Car bearing No. AP-10-TV-0981.

22. When the prosecution intends to connect the accused with the crime, what is obligatory on the part is to prove by cogent evidence with the material object that was seized from the possession of the appellants at their instance is the object which belongs to the deceased. In their words, the prosecution should establish that the car bearing No. AP-10-TV-0981 which was seized from the possession of A.1 belongs to the deceased. Absolutely no evidence either oral or documentary is produced to show that Tata Indica car bearing No. AP-10-TV-0981 was owned and possessed by the deceased or for that matter he was driving the said vehicle on 31.08.2008, the date on which he was done to death. Even the parents of the deceased could not give the number of the car which was owned and driven by the deceased. Even the registration certificate of the said car has not been produced to show that the deceased was the owner of the car which was committed theft of by the appellants after having physically liquidating him. There is no convincing evidence to hold that appellants have hired the car which was owned by the deceased and the same was committed theft of and that subsequently it was found parked in front of the house of A.1 fifteen days after the incident. The prosecution could not also establish that there was any telephonic communication in between the deceased and the appellants for determining that it is the appellants who were hired the taxi/services of the deceased. In the absence of satisfactory evidence, we find it difficult to hold that the

prosecution could establish that there is nexus in between the appellants and the crime.

23. Upon carefully perusing the oral and documentary evidence on record, we have no hesitation in holding that the prosecution could not prove its case against the accused beyond reasonable doubt and the Court below has erred in holding that the appellants are the perpetrators of the crime and consequently, the Judgment under appeal is liable to be set aside. The conviction and sentence of the appellants cannot be sustained in view of what is stated above and hence the appeal is entitled to be allowed.

24. In the result, both the Criminal Appeals are allowed. The conviction and sentence of the appellants/A.1 to A.3 in Criminal Appeal No.1116 of 2010 for the offences punishable under Sections 302 and 379 of I.P.C., and the conviction and sentence of the appellant/A.4 in Criminal Appeal No.1045 of 2010 for the offences punishable under Sections 302, 379 read with 109 I.P.C., are set aside. Consequently, the appellants/A.1 to 4 shall be set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:26.04.2016

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