

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.746 OF 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) Accused No.1, in Sessions Case No.149 of 2012 on the file of the Special Sessions Judge-cum-IV Additional Sessions Judge, Tirupati, is the appellant herein. Originally a charge sheet was filed against three accused for the offences punishable under Sections 120-B, 364, 302 and 201 IPC, which was taken on file as P.R.C.No.10 of 2009 on the file of the II Additional Judicial Magistrate of First Class, Tirupati, which on committal came to be numbered as S.C.No.360 of 2009. Subsequently, the case against the appellant/ accused No.1 was split up and numbered as S.C.No.149 of 2012. Vide common judgment dated 22.06.2012 the Sessions Judge, while acquitting accused Nos.2 and 3, convicted accused No.1 for the offences punishable under Sections 364 and 302 IPC and sentenced him to suffer "imprisonment for life" for the offence punishable under Section 302 IPC; and further sentenced him to suffer imprisonment for a period of ten years for the offence punishable under Section 364 IPC. Both the sentences were directed to run concurrently.

2) The gravamen of the charge against the accused is that on 06.11.2008 at about 4.30 p.m. at Tirupati, accused No.1

kidnapped one Ayesha (hereinafter referred to as “the deceased”) to extract money from her parents and thereafter killed her on the same day evening.

3) The facts in issue are as under:

i) PW.5 is the mother of Ayesha, who was abducted and killed. The accused is the brother of PW.5. PWs.1 and 2 are relatives of PW.5, while PW.4 resides in the same street. PW.11 is a child, who used to travel along with the deceased in the school bus. PW.12 is the driver of the lorry, in whose vehicle the body was found. PW.14 is the friend of PW.5. PWs.15 and 17 are the witnesses, who were examined to speak about the accused and deceased being seen together.

ii) PW.5 was residing in Korlagunta at the time of incident while her husband was in Kuwait. Every day the deceased used to return from the school by 4.30 p.m. On 06.11.2008 the deceased failed to return to the house. At about 5.00 p.m., PW.5 received a call to her landline phone number stating that the deceased was kidnapped and if a sum of Rs.2.00 lakhs was paid, they would leave her. It was further informed that if the said information is given to others they would kill the deceased. As she was alone, PW.5 informed about the same to her relatives and her younger brother (accused No.1). All the relatives went independently in search of the deceased. At about 7.00 p.m., accused No.1, came to the house of PW.5 and told her that he would find out the source of the phone call and

so saying left the house. Half an hour later, accused No.1 again came back to the house of PW.5 and told her that he could not secure the caller I.D.

iii) In search of the deceased, PW.1 went to the house of one Sushma, who was is examined as PW.11, and who also got down the bus along with the deceased. Whe asked about the deceased returning to the house along with her in the bus, PW.11 informed to PW.5 that both of them returned back in the school bus and at 4.30 p.m. got down at T.M.R. Kalyana Mandapam. According to her, accused No.1, who is the uncle of the deceased, took her on a motor cycle stating that he will purchase and give LIPS Chocolates. She identified accused No.1, who is present in the Court Hall, as the person who took the deceased on that day. The evidence of PW.5 discloses that when she contacted PW.11 and enquired about the girl, PW.11 is said to have told her that after getting down from the bus, the deceased went on a motor cycle of her uncle. When PW.11 asked her with whom she is going, the deceased told her that it was her uncle. Some time later, PW.5 came to know that the dead body of the girl was found in the driver's seat in a lorry near Ramulavarigudi street.

iv) On 06.11.2008 at about 10.30 hours PW.1 went to the police station and lodged a report with PW.21-the Inspector of Police. Ex.P1 is the report. Basing on the said report, a case in Crime No.282 of 2008 came to be registered for the offences

punishable under Sections 364-A, 302 and 201 IPC. Ex.P.17 is the first information report. Thereafter, PW.21 visited SVRPGG Hospital and he learnt that the body was shifted to Mortuary in S.V.Medical College. He constituted a special team to trace out the culprits. On 07.11.2008, he visited S.V.R.R.Hospital and conducted inquest over the dead body of the deceased in the presence of R.M.O. During inquest, he examined PWs.1 to 4 and recorded their statement. After conducting inquest, he sent the body for postmortem examination.

v) PW.20-the Assistant Professor in Departmental of Forensic Medicine in S.V.I. Medical College, conducted autopsy over the dead body of the deceased at 2.30 p.m. and issued Ex.P14-the postmortem certificate. After receiving the F.S.L.Report, which is placed on record as Ex.P5, he gave opinion that the cause of death was "due to asphyxia as a result of smothering."

vi) PW.21, in continuation of the investigation proceeded to the scene of offence, prepared a rough sketch of the scene, which is placed on record as Ex.P19. He also prepared an observation report of the scene, which is marked as Ex.P18. He proceeded to Keshavareddy Concept School and examined PWs.9 and 14 and recorded their statements. On 08.11.2008, on reliable information, PW.21 sent two panch witnesses to East Police Station, Tirupati, and proceeded to Karakambadi Railway gate, where he found accused Nos.1 and 2. On seeing the raid

party, they tried to conceal their presence but with the assistance of his staff, he detained accused Nos.1 and 2 and interrogated them. Pursuant to which, both of them confessed about the commission of offence. Ex.P9 is the admissible portion of the confessional statement. On search they secured one snuff colour purse containing debit card of Union Bank of India, one pan card in the name of Habeeb Pasha (accused No.1) and cash of Rs.700/- from the possession of accused No.1 and Noka Cell Phone and cash of Rs.210/- from the possession of accused No.2. The police also recovered a vehicle belonging to accused No.1, which was used in taking the deceased. They also seized the Hero Honda Motor Cycle, basing on the confession made by accused No.2. Ex.P11 is the seizure proceedings. On 23.11.2008 accused No.3 was arrested at Kaluru cross on Tirupati-Madanapalle road. PW.21 seized Rs.50/- from the possession of accused No.3. After collecting all the material, PW.21 filed the charge sheet, which was taken on file as P.R.C.No.10 of 2009 on the file of the II Additional Judicial Magistrate of First Class, Tirupati, which on committal came to be numbered as S.C.No.360 of 2009. Subsequently, the case against the appellant was split up and numbered as S.C.No.149 of 2012.

4) On appearance, charges under Sections 120-B, 364 and 302 read with 201 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) In support of their case, the prosecution examined PWs.1 to 21 and got marked Exs.P1 to P22 and M.Os.1 to 10. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. DW.1 was examined on behalf of the accused but no documentary evidence was produced in support of his defence.

6) Out of 21 witnesses examined by the prosecution, PWs.1, 3, 6, 8, 9, 10 and 15 did not support the case of prosecution and were treated as hostile by the prosecution. After considering the evidence available on record, more particularly the circumstances relied upon by the prosecution to connect the accused with the crime, the Sessions Judge convicted accused No.1 as stated supra, while acquitting accused Nos.2 and 3. Challenging the same, the present appeal came to be filed by accused No.1.

7) Learned counsel for the appellant would submit that there is absolutely no evidence to connect the appellant with the crime. According to him, the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime. In view of the improvements made by PW.5 in her evidence with regard to meeting PW.11 and PW.11 informing about the deceased going along with accused No.1 in a motor cycle, he would submit that the said circumstance cannot be

made a basis to connect the accused with the crime. He further submits that even the evidence of PW.17 that accused No.1 and deceased came to his push cart and consumed pani puri cannot also be accepted. According to him, PW.17 is set up witness to speak to the theory of last seen. Commenting upon the evidence of PW.4, learned counsel for the appellant would contend that he never stated that he saw the deceased and accused No.1 together to PW.5. According to him, if really PW.4 has seen accused No.1 and the deceased together, definitely he would have informed PW.5 when returned from the marriage at 9.30 p.m. Therefore, it is urged that no reliance can be placed on the evidence of PW.4 to show that he has seen the deceased and accused No.1 together. Having regard to the conduct of PW.4, the version in the inquest and the improvements made by PWs.5 and 11 in their evidence before the Court, he would contend that the circumstances relied upon by the prosecution do not form a chain of events to connect the accused with the crime.

8) On the other hand, the learned Public Prosecutor strongly opposed the same contending that there is nothing on record to show that PW.4 is speaking falsehood. He would submit that the accused No.1, who is the brother of PW.5 acted in a clever manner by coming to the house after abducting the deceased, so as to divert the attention of PW.5 and also to find out as to what was happening in the house of PW.5. He would further submit that the act of PW.5 going to the house of PW.11 was spoken to

by her in her earlier statement. He would submit that the evidence of PW.15 coupled with the evidence of PW.17 and the evidence of PW.10 which corroborates the evidence of PW.11 amply establish the culpability of the accused in the commission of offence. Having regard to all the circumstances, he would submit that accused No.1 alone is responsible for the death of the deceased.

9) There is no dispute that the entire case rests on circumstantial evidence. The question now is whether the circumstances relied upon by the prosecution form a chain of events to connect the accused with the crime.

10) The deceased is none other than the daughter of PW.5 and accused No.1 is the brother of PW.5. One of the main circumstances relied upon by the prosecution is that the accused No.1 was seen in the company of the deceased prior to the incident. In support of the same, the prosecution examined PWs.17, 15, 14, 11 and 4. Before proceeding further, it would be appropriate to extract the relevant portions of chief examination of all these witnesses and the cross-examination done on relevant aspects.

11) PW.4 was studying B.Tech in Tirupati Engineering College. He knows the deceased and their family, as they were his neighbours. On the date of incident at about 4.30 or 4.50 p.m. he saw accused No.1 with the deceased, taking her on a motor cycle. On that night he went to a marriage function, and

returned back to the house at 9.30 p.m. He came to know that the deceased was abducted and murdered. At about 9.30 p.m., while he was watching T.V., there was a news item stating that Habeeb Basha (uncle of deceased) kidnapped and killed the deceased Ayesha. He stated the said fact before the police when he was examined.

12) The argument of the learned counsel for the appellant is that if really PW.4 had seen the deceased and accused No.1 at 4.30 p.m. he would have definitely informed the same to PW.5 when he came to know about the abduction and killing of the deceased. His conduct in not informing PW.5 about seeing the deceased and accused No.1 together at 4.30 p.m. cannot be said to be abnormal. The evidence of PW.4 discloses that he came back to his house at 9.30 p.m., which fact was also elicited in the cross-examination. At that point of time, he came to know about the abduction and killing of the deceased. He could not have anticipated that accused No.1, who is the brother of PW.5, would be responsible for the death of the deceased. It is also probable that since he could not have imagined that a known person would have committed the offence, he might have felt any necessity to inform about seeing the accused and deceased together at 4.30 p.m. However, the fact that he saw both of them together was mentioned in his earlier statement, though he did not mention in his earlier statement with regard to he

coming to know about the involvement of accused No.1 while watching T.V.

13) PW.15 is a cleaner in Kesavareddy Concept School, Tirupati. In his evidence, he deposed that PW.9 is the driver of the vehicle and on that day their van started from the school at 3.30 p.m., with students from L.K.G. to third class. His evidence discloses that the deceased, PW.11 and some other students got down the van at T.M.R.Kalyana Mandapam and thereafter the van moved further.

14) From the evidence of PW.15, coupled with the evidence of PW.9, who was the driver, it is clear that on that day, PW.11, deceased and others traveled in the school bus and got down at T.M.R.Kalyanamandapam. What happened after they got down at Kalyana Mandapam is spoken to by PW.11.

15) In her chief evidence, PW.11 deposed that at about 4.30 p.m. they got down the bus at T.M.R. Kalyana Mandapal. At that time, accused No.1, who is the uncle of the deceased, took her on motor cycle stating that he will purchase LIPS chocolate. She identified accused No.1, present in the court hall, as the person who took the deceased. After the deceased left her company, she went to her house. Her evidence further discloses that some time thereafter, the mother and grandmother of the deceased came to their house and questioned her as to whether the deceased came along with her. She told them that accused No.1 took the deceased to purchase LIPS chocolate. However, in

the cross-examination, she admits that she came to know about the name of accused No.1 as Habeeb Basha . Pursuant to a telephone made to accused No.1 by PW.5. It was also elicited from her earlier statement she did not state before the police that accused No.1 took the deceased stating that he will purchase and gives LIPS chocolate. To a suggestion that she did not state before the police that PW.5, her mother and another came and enquired, she told them that uncle of Ayesha took her stating that he will purchase LIPS chocolate was denied by her. The same was suggested to PW.21-the investigating officer. In his evidence, PW.21 admits that PW.11 did not state before him that PW.5, her mother and others came and enquire and then she told them that uncle of Ayesha took her to purchase LIPS Chocolate. But it is to be noted here that accused No.1 took the deceased on his motor cycle has been established through the evidence of PW.11. The omission was only with regard to purchases of LIPS chocolate, which do not go to the root of the matter or cast any doubt on her version.

16) PW.5 also deposed about she going to the house of PW.11 and enquiring about the deceased, but in her earlier statement she did not mention about enquiring PW.11 and coming to know that the uncle of the deceased took her on motor cycle.

17) PW.7 in her evidence deposed that when accused No.1 informed PW.5 that he could not trace the caller I.D., PW.5 and 7 went to the house of the classmate of the deceased and

enquired about the deceased. In the cross-examination of PW.7, it has been elicited that when PW.5 asked the classmate of the deceased, she told them that her uncle took the deceased. At that time, PW.7 was by her side. She admits that she does not know the name of the classmate of the deceased, but when PW.5 asked for the information, the said classmate informed that the deceased left with her uncle. Though PW.7 in her earlier statement did not refer to the purpose for which the deceased was taken by accused No.1 but the fact that the deceased was taken by accused No.1 was spoken to by PW.7, who in turn informed about the same to PW.5.

18) The evidence of PW.17 which remained un-impeached goes to show that though PW.17 is not a resident of the place where the deceased resides, but on that day accused No.1 came to his buddy to eat pani puri, along with a girl on a motor cycle. The girl was aged about 8 to 9 years. On the request of accused No.1, PW.17 gave one plate pani puri and after taking the plate, they sat on the stone and ate it. For some time the girl was alone but about 15 minutes later, the accused No.1 came and took the girl from that place. In the cross-examination of PW.17, it was elicited that after seeing accused No.1 on that day with that girl, he has not seen accused No.1 thereafter. He also admits that he did not see the girl thereafter. About two days thereafter police came to his buddi and examined him. In his evidence he also gave description what a pani puri and how it is

consumed. Therefore, the theory of accused being last seen in the company of the deceased stands established, through the evidence of PWs.5, 7, 11, 14 and 17.

19) Learned counsel for the appellant would submit that if the deceased actually ate pani puri at 4.50 or 5.00 p.m. some undigested food should have been there in the stomach and as such the evidence of doctor falsifies the time of incident.

20) It is to be noted here that pani puri, as stated by PW.17 is nothing but a small "puri" with lot of tamarind water in it. The tamarind water must have got diluted in the body and there is nothing wrong in stomach being empty, by the time of the incident. Even as per the evidence of PW.17, pani puri was consumed by the deceased at 4.50 p.m. and she was there till 6.30 p.m. So, even if the said pani puri was consumed at 5.00 p.m. it must have got digested by 6.30 p.m.

21) The next circumstance which is pressed into service by the prosecution is the conduct of the accused. PW.17 in his evidence deposed that he last seen the accused and deceased together at 6.00 or 6.30 p.m. and half an hour thereafter accused No.1 alone came to the house of PW.5, which is evident from the evidence of PW.5. He tried to gather information saying that he will find out the caller ID and so saying left the house. When the evidence of PWs.4, 5, 7, 11, 14 and 17 are to be accepted, the conduct of accused No.1 in coming alone to the house of PW.5 at

7.00 p.m. throws any amount of doubt on his innocence. More so, when he was last seen along with the deceased at 6.30 p.m. by PW.17. His conduct in coming alone at 7.00 p.m. and behave as if he was not aware of anything, throws any amount of doubt on his conduct. If really, he was innocent, he would have been present atleast after tracing the body, which is lacking in the case.

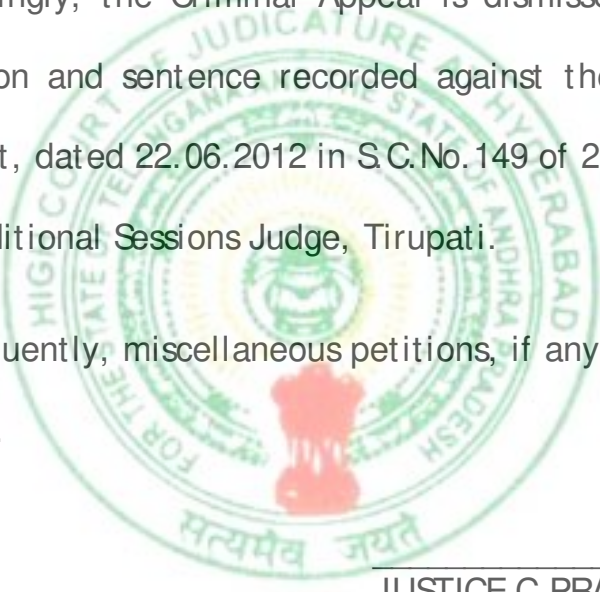
22) The evidence of PW.12, who was the driver of the lorry bearing No.AP-04-U-3743 shows that the said lorry belongs to Vasavi Transports. On 06.11.2008 at about 8.00 p.m. when he got into the lorry so as to reverse the same for un-loading, he noticed a dead body in the cabin of his seat. Immediately, he went and informed the said fact to the Secretary of Vasavi Transport and thereafter the same was informed to the police. From his evidence, it is clear that at about 8.00 p.m. the dead body was found and the same was intimated to the police, who inturn took the body to the hospital, where PW.5 identified her. If really the accused was innocent, he would have been present even after tracing of the body. All these circumstances more particularly accused No.1 being seen at 4.45 p.m. by PW.4 and PW.11, but thereafter between 5.00 and 6.30 p.m. by PW.17, then accused No.1 coming to the house of PW.5 at 7.00 p.m. and trying to assure PW.5 of tracing the caller ID and thereafter tracing the body at 8.00 p.m. establish the theory of accused being seen last in the company of the deceased, which is very

proximate to the time, when the body was recovered. In the absence of any explanation given by the accused, the said circumstances are sufficient to convict the accused.

23) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/ accused No.1 beyond reasonable doubt and the trial Court has rightly convicted the appellant and sentenced him as stated supra.

24) Accordingly, the Criminal Appeal is dismissed, confirming the conviction and sentence recorded against the appellant in the judgment, dated 22.06.2012 in S.C.No.149 of 2012 on the file of the IV Additional Sessions Judge, Tirupati.

25) Consequently, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

08.12.2017
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