

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

CRIMINAL APPEAL No.566 OF 2011

JUDGMENT:

(Per Hon'ble Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged the order and judgment dated 20.01.2011 passed in S.C. No.496 of 2008 on the file of III Additional Sessions Judge, Tirupati, whereby A2 was not found guilty for the offence under section 302 IPC. However, A1/appellant was found guilty for the offence under Section 302 IPC. Accordingly, he is convicted under Section 235 (2) Cr.P.C., and sentenced to undergo Imprisonment for LIFE and also to pay fine of Rs.100/-, in default of payment of fine, A-1 shall undergo Simple Imprisonment for one month. The remand period of A-1 from 16.06.2008 to 06.08.2008 shall be set off under Section 428 Cr.P.C.

2. The brief facts of the case as per prosecution is that :

About four months prior to the incident, the villagers, namely, Guruswamy, Papaiah, Govinda Reddy and some others sold their lands to Chinnagottipallu people and they have evened the field with JCB to lay plots. At that time, the villagers, including Gali Ramana-PW.2, Gali Yellamma-PW.3 had brought the petty trees to use it as fire wood and put in front of their houses. A-2-Gundluru Alivelu raised allegation

against PW.2 and PW.3 that they have committed theft of wood and put in front of her house, upon which, both started quarrelling with each other. On 10.06.2008 evening both the accused have picked up quarrel with PW.2 and PW.3 and forced them to take an oath on their children that they have not taken away the wood. For which, they both refused. Accordingly, the accused became furious and challenged PW.2 and PW.3 to see what will happen within 2 or 3 days to their children.

3. On 11.06.2008 morning PW.2-Gali Ramana went to graze the sheep and returned home at about 7-00 p.m. At that time, the deceased was found playing in the sand in front of their house and PW.3-Gali Yellamma was preparing food inside the hut. The said PW.2 after putting the sheep in the sheepcote went to his younger paternal uncle to engage labour for construction of colony house. At about 6-30 and 6-45 p.m., PW.5-Gali Nagarani, visited the house of PW.2 and PW.3 to return the Ration Card, and at that time, she found the deceased Gali Tharun, aged about 1½ years, son of PWs.2 and 3 playing with A-1. At about 7-00 p.m., the accused A-1 and A-2 took the deceased into the fields of K.Nagi Reddy, killed him by smothering and thereafter absconded.

4. At about 8-30 a.m. on 12.01.2008, PW.12, the S.I. of Police, Rompicherla Police Station, received a report from LW.1 and registered the same as case in Crime No.16 of 2008 under Section 302 IPC and submitted the copies of F.I.Rs to

all the concerned officers through special messenger. PW.14- Amarnath Fredericks, Circle Inspector of Police, Piler Circle, took up investigation in this case, held inquest over the dead body of the deceased in the presence of LW.12 and LW.13 and another, examined PWs.1 to 3 and sent the dead body of the deceased to the Civil Assistant Surgeon, Community Health Centre, Piler, with a medical requisition for conducting Postmortem Examination to know the exact cause and time of death of the deceased. Later, PW.14 inspected the scene of offence, prepared the rough sketch of the scene and drafted scene observation mahazar in the presence of PW.12 and PW.13. At 02-15 p.m., he seized one plastic toy (cooker), taken photographs of the scene with the assistance of LW.14, a local photographer. Later, PW.14 examined LWs.4 to 11 and recorded their statements. During the course of investigation, on 15.06.2008 at about 1-00 p.m., PW.14 has arrested the accused at Bus stand of Rompicherla, and forwarded them to judicial remand along with Remand report.

5. PW.13-Dr M.Nagaveni, Medical Officer, Community Health Centre, Pileru, who conducted autopsy over the dead body of the deceased, has opined that the deceased would appear to have died of Asphyxia due to pressure over air passages.

6. PW.14, Inspector of Police, Rompicherla, accordingly filed charge sheet under Section 302 IPC against both the accused and produced before the concerned Magistrate who

committed to Sessions Division, Chittoor. After appearance of the accused, Sessions Court framed charges under Section 302 IPC. They pleaded not guilty and claimed to be tried.

7. To prove its case, the prosecution examined PWs.1 to 14 and marked Exs.P1 to P9 and MO.1. The evidence of LWs.10, 11 and 13 was given up by the Additional Public Prosecutor. Thereafter, the accused were examined under Section 313 Cr.P.C., and explained the incriminating material against them for which they denied and their statements were recorded. No defence witness is examined on behalf of the accused.

8. Learned counsel appearing on behalf of the appellant has argued that there is no direct evidence placed by the prosecution with regard to the involvement of the accused in causing death of the deceased, despite, the learned trial Court has convicted A1-appellant and acquitted A-2 on the same evidences produced by the prosecution. The prosecution has relied upon the last seen theory of the deceased along with A-1. PW.5 is the person who is said to have seen the deceased along with A.1 at about 6-30 or 6-45 p.m. There is no consistency in the version of the prosecution with regard to seeing of the deceased along with A-1. All the witnesses examined by the prosecution are interrelated and belong to the same village. The mediator-PW.9, who was present at the time of inquest and observing of scene of occurrence, is interested witness. As PW.9 was not supported by the

accused in the elections and due to that grudge, he deposed against the accused. There is no evidence placed by the prosecution to show that A-1 and A-2 carrying the deceased to the electric pole and there the child was killed. The medical evidence is also not consistent. There are bite marks found on the body of the deceased. The evidence of doctor that the bite marks are human marks is not supported by the certificate issued by her under Ex.P7. Except the injuries mentioned in Ex.P7, she did not observe any other injuries. She does not remember whether the bite marks observed on the scrotum are also similar bite marks. The abrasion injury on the dead body is possible due to fall on rough surface. The medical evidence is also not consistent with regard to the cause of death of the deceased. When the case is resting on the circumstantial evidence, it is the duty of the prosecution to place all the circumstances leading to the conclusion that the accused is responsible for causing death of the deceased. There is no such evidence placed by the prosecution before the Court. The evidence placed by the prosecution is not at all sufficient to find A-1 guilty for the offence under Section 302 IPC.

9. Learned counsel appearing on behalf of the appellant further submitted that the prosecution is relying upon the alleged threat of accused that “YEGATI PADUTHUNDO”, but they failed to prove the motive. PWs.2 and 3 stated that the galata has taken place two days prior to the incident. If

galata had really happened then why the parents allowed the boy to play in front of the accused house. PW.2, father of the deceased, told his wife that he saw the boy playing in the sand at 6-00 to 6-30 p.m., and after that he went to call coolies for the construction work next day. PW.3 also stated that the boy was playing there. If galata had really happened, they would have definitely picked up the child and taken care of him. In addition to that, the village of the accused and the complainant is a small area and if any galata had taken place, all the people would come to know about that. If really PW.5 had seen the boy playing with the accused at 6-30 p.m to 6-45 pm., she definitely would have picked up the boy and handed him over to the deceased's mother. All the witnesses examined by the prosecution are interested being related to PWs.2 and 3. He further argued, PW.2 admitted in his cross-examination that Gali Nagarani, PW.5, is the wife of his junior paternal uncle. Gali Venkatesh is his paternal uncle. Gali Subrahmanyam is also his junior paternal uncle. PW.11 is also his junior paternal aunt. Gali Nagaiah, PW.4, Village servant, is also his junior paternal uncle. LWs. 3 to 5, 8, 9 and 11 are also relatives. Daara Bhaskar, LW.7 is also closely related to him. LW.10- Suddulamma, also belongs to his caste. PWs.7 and 9 stated that they saw the accused is coming from opposite direction. These witnesses are not reliable because PW.9 was not supported by the accused in the elections. In addition to above, the body was found in the

fields of Nagi Reddy. There are poisonous creatures, such as snakes and scorpions, in the fields. So, it proves that the boy died due to bite marks of any of the poisonous creatures in the fields, which affected the heart and lungs and which resulted in the boy's death. Thus, the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt. However, the learned trial Court has ignored the aforesaid facts and convicted the appellant. Accordingly, the appellant is entitled for benefit of doubt.

10. To strengthen her case, the learned counsel appearing on behalf of the appellant has relied upon case of **State of Uttar Pradesh Versus Satveer and others**¹ whereby the Hon'ble Supreme Court observed that in the case of the last seen theory, the Court has to see the proximity of time and the incident taken place. If proximity of time is not matching with the offence taken place, then benefit of the same should be given to the accused. In the present case, the galata had taken place two days before the incident about fire wood sticks. Thus there is no so strong motive to believe that due to stealing of petty fire wood, some one would commit the murder. Thus, the appellant deserves to be acquitted.

11. We have heard the learned counsel for the parties and perused the record.

1 (2015) 9 Supreme Court Cases 44

12. In view of the witnesses examined by the trial Court, it is established that on 10.06.2008 evening both the accused and PWs.1 and 2 quarrelled with each other on the ground that PWs.2 and 3 took the firewood of accused, for which, PWs.2 and 3 refused. However, the accused challenged with PWs.2 and 3 stating that they would see within 2 or 3 days, what would happen to their children. On 11.06.2008 evening, A-1 was seen by PW.5 playing with the deceased and there afterwards the deceased was not found. When PWs.2 and 3 searched for the deceased the dead body was traced at about 2-00 a.m., during the same night. A-1 was seen by PW.5 while he was playing with the deceased. PWs.6, 7 and 10 saw A-1 coming from the side of the land of Nagi Reddy while they were searching for the child.

13. Suspicion was against A-1 and A-2. A-1 and A-2 were not found in the house and it was locked when PWs.2, 3 and 5 went to the house of the accused. The report was given by PW.1-Village Revenue Officer of the village with regard to the incident. The information to the V.R.O was given by the village servant who is PW.4. PW.1 received telephone call on 12.06.2008 at about 5-00 a.m. that the dead body was brought and kept at Motumallela Harijanawada accordingly he went and saw the dead body of Gali Tharun, Son of PW.2 at his house. PW.2 stated that he has got suspicion against A-1 as earlier himself and A-1 quarrelled with each other. He went to Rompicherla police station and presented report.

14. PW.1 was cross-examined to elicit that while going to Nagari Harijanawada, he has to cross Rompicherla Police Station. He did not record the statement of PW.2 before giving report. It is also elicited that there is possibility of snakes, scorpions and poisonous creatures in the agricultural lands surrounding village. However, nothing is suggested to PW.1 for giving false report against the accused. It is proved from the report of PW.1, which is marked as Ex.P1 that the injuries were below the temporal region and on lips. On enquiry, the parents of the deceased have expressed suspicion against A-1 due to previous grudges.

15. PW.1 is the Village Revenue Officer and he is not interested witness who discharged his official duty of going to village on receipt of telephone call from PW.4, seeing the dead body, making enquiries and thereafter, he went to police station and gave report. If PWs.2 and 3, the parents of the deceased did not support the case of the prosecution or version of PW.1, attributions can be made against PW.1 that he gave false report. PWs.2 and 3 supported the version of PW.1

16. PWs.2 and 3 are the father and mother of the deceased respectively. As per the evidence of PW.2, at about 2 years back, his son was died. About 4 months prior to the death of his son, persons of Chinnagottigallu purchased plot near to their village and the owners removed the bushes and those sticks were brought by themselves and also accused

and kept them in front of their respective houses. The evidence of PWs.2 and 3 is consistent with regard to the collection of firewood from the land. The accused also did not dispute with regard to collection of those sticks. As per the evidence of PW.2 about one week prior to the death of his son, accused abused them that the sticks stored in front of their house were taken by them and he told to the accused that they also collected the sticks from the same land and stored at their house and they did not take their sticks. Two days prior to the death of their son the accused came to the house of PW.2 and made galata and asked to swear on his children that they did not bring their sticks to their house. However, they did not accept. On that, the accused challenged him that he will see about the future of his children.

17. PW.3, who is wife of PW.2, stated that, 3 ½ months thereafter, the sticks stored by the accused were finished and their sticks were intact. On that, the accused came on them quarrelling that they took away their sticks. While quarrelling, the accused insisted for swearing on their children that they did not take their sticks, however, they refused. The accused proclaimed that they will see what will happen to their children. The evidence of PWs.2 and 3 is consistent with regard to the quarrel in between the accused and the PWs.2 and 3 prior to the death of the deceased and accused challenged with PWs.2 and 3.

18. PW.2 deposed that on the next day, he attended the construction work of his house till 5-00 p.m., and went to get back his sheep, which were taken by his daughter Sravani and returned with the sheep at about 6-00 p.m., kept the sheep into sheep cote and went to collect coolies for the next day work. At that time, his son was playing in front of their house near to the school in the sand. His son was having a toy in his hand at that time. He returned at 7-00 pm., and he did not find his son. His wife was cooking food inside the house. PW.3 stated that on the next day evening her husband got back the sheep to their house and kept the same in the sheep cote and went outside to get coolies for construction of house. While going her husband informed that her son is left in the sand and to take care of the child and she was cooking the food inside the house. While she was cooking the food, Nagarani-PW.5 came to her and handed over the ration card and went away. PW.5 stated that on 11.06.2008 at about 6-30 p.m or 6-45 p.m., she went to the house of PW.3 to return the rice ration card, which was brought by her earlier. She handed over the ration card to PW.3. While returning from the house of PW.3, she observed A-1 carrying the son of PW.3 by name Tharun. The sand is near to the house of A-1. The house of A-1 is opposite to the house of PWs.2 and 3. At about 7-00 p.m. or 7-30 p.m. PW.3 came to her and enquired stating that her son is not found. She informed to PW.3 that A-1 was carrying his son at the

sand. Then PW.3 went to the house of A-1 and she also followed her. By that time, the house of A-1 was locked.

19. If the evidence of PWs.2, 3 and 5 is taken into consideration PW.2 went out for collecting coolies for construction of his house and PW.3 was inside the house. At that time, PW.5 came to the house of PWs.2 and 3 and saw A-1 carrying the deceased. In cross-examination, there is no specific allegation made against PW.5 for speaking falsehood. With the evidence of PWs.2, 3 and 5 the trial Court opined that it is established by the prosecution that in between 6-30 and 7-00 p.m., the child of PWs.2 and 3 was playing outside of their house and A-1 was carrying the child. It is also stated by PWs.2 and 3 that a toy MO.1 was with the child while he was playing outside of the house.

20. As per evidence available on record, from 7-00 pm onwards the deceased was not found and PWs.2, 3 and other villagers started searching for the child. They could trace the dead body of child on the same day night in the land of Nagi Reddy near electric pole at about 2-00 a.m., which is consistent. The child was brought to the house by PW.2 and kept there. On the next day morning PW.1- V.R.O came there and after enquiry, went to the police station and gave report. The evidence of PWs.2 and 3 is consistent with regard to the search for the child during the night and finding of the child at about 2-00 a.m in the land of Nagi Reddy near to electric

pole in the bushes. PW.5 heard the cries and came to the house of PWs.2 and 3 and found the dead body in front of their house. She also searched for the child till 10-00 p.m.

21. PW.4 is the Village servant (then) also searched for the child till 11-00 p.m. and at about 2-00 or 2-30 a.m., during the same night, he heard galata stating that A-1 killed the child and thrown the body near the current pole at a distance of 1 (one) furlong from the village. The evidence of PW.4 is also to the same effect that the child was missing and there was a search for the child and child was found at about 2-00 a.m., in the land of Nagi Reddy near the electric pole. PWs.4 and 5 did not search throughout night. PW.5 was there till 10-00 p.m., and PW.4 was also there till 11-00 p.m.

22. Pws.6 to 8 and 10 are the persons who searched for the child during the night time and observed A-1 coming in opposite side to them from the field where the dead body of the deceased was found. PW.9 is the Inquest Panchayatdar, who supported the prosecution case about his presence and opinion expressed at the time of inquest. The Medical Officer, who conducted Postmortem examination, also opined that the death was due to Asphyxia.

23. The evidence placed by the prosecution as discussed above clearly leads to the conclusion that A-1 killed the deceased and thrown the dead body near the electric pole. The evidence of PWs. 2, 3, 8 and 10 is consistent with regard

to the bringing the dead body from the land of Nagi Reddy and evidence of Pws.6, 7 and 10 is consistent with regard to the seeing of appellant/A-1 coming from the side of land of Nagi Reddy. The appellant/A-1 was with child in between 6-30 and 7-00 p.m. and it was witnessed by PW.5. From then onwards, the child is not found. The dead body was recovered from the land of Nagi Reddy near electric pole. The appellant/A-1 was seen coming from the land of Nagi Reddy by PWs.6, 7 and 10.

24. All the aforesaid mentioned circumstances established that A-1 is the last person who was in company of the deceased and he was seen coming from the place where the dead body was recovered and it is for appellant/A-1 to explain about his presence near the place where the dead body was found. The consistent evidence produced by the prosecution clearly established that there were disputes in between the accused and PWs.2 and 3 with regard to the fire wood and accused also proclaimed to PWs.2 and 3 that they will see what will happen to their children within 3 or 4 days. After that incident, appellant/A-1 was found in company of the deceased. The deceased was a small child aged 1 ½ years playing with him. There afterwards the child was not seen in the village, however, the dead body was recovered.

25. In addition to above, bite marks were also found on dead body of the deceased. As per the evidence of Doctor, the

death was due to Asphyxia due to pressure over air passages within 24 hours prior to the Postmortem examination. Heart was empty, because the death occurred immediately after systole. Air pipe from nostrils to lungs was clear. After cut section, there was oozing of blood from the lung tissue and kidney tissue, which is noted as congested. Whenever there is decrease in oxygenation to the viscera the congestion will be occurred. A-1 was found in the company of child. But A-1 has not given explanation for his presence with the child. Moreover, both accused were not found in the village when the villagers searched for the child. They were arrested 3 days after the incident.

26. It has to be noted that except pleading innocence the appellant did not give any explanation and no evidence has placed by him for foisting the case against them by PWs.2 and 3. The consistent evidence placed by the prosecution has very much established the guilt of appellant/A-1 for causing the death of the deceased Tharun.

27. It is argued that motive pleaded by the prosecution is a very weak one, as no man would kill a child of opposite party on a petty quarrel regarding stealing of firewood. The argument apparently looks sound but logically not correct. Sometimes a small issue may enrage people to commit grave offences. We have been seeing that people commit murders

for small amount. It all depends on the mental constitution and feeling of individuals.

28. Keeping in view the evidence on record and MOs marked by the prosecution, the learned trial Court has fairly acquitted A-2, however convicted appellant/A-1 for the offence under Section 302 IPC.

29. In view of the above, we found no illegality or perversity in the judgment dated 20.01.2011, therefore we hereby confirm the same.

30. Since the appellant was released on bail vide order dated 27.12.2016 passed in Crl.A.M.P No.2233 of 2016 therefore the appellant is directed to surrender before the trial Court within one week and on such surrender the trial Court shall commit him to jail for serving remaining sentence.

31. Accordingly, the appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SURESH KUMAR KAIT,J.

U. DURGA PRASAD RAO,J.

Date : -12 -2017
Gvl