

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.626 of 2012

JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

This appeal is filed by accused against the judgment dated 16.05.2012 in S.C.No.20 of 2012 on the file of Special Sessions Judge for trial of cases under SCs. and STs. (POA) Act-cum-Additional Sessions Judge, Khammam whereby and whereunder the learned Judge found them guilty of the charges under Sections 302, 364, 394, 506 r/w 34 of Indian Penal Code and sentenced them to suffer imprisonment for LIFE and other sentences as mentioned in the judgment. All the substantive sentences are directed to run concurrently.

2) The case of prosecution in brief is as under:

a) Originally, Inumarthi Shiva Prasad—complainant, auto driver is the native of Kandikuppa village, Katrenikona Mandal, East Godavari District and presently residing at Jubileepura, Khammam; about two months back he brought his lover—Durga Malleswari to Khammam and with the help of A1 he married the girl at Bhadrachalam and started living at Jubileepura, Khammam; while so, on 21.11.2010 at 5.00 PM, when he went to Naidupeta village to pick up passengers, A1 and his friend A2—Dasari Upender boarded his auto and asked him money for consumption of liquor; he gave Rs.20/- and they consumed liquor at

Jalagam Nagar, Khammam and A1 asked him to proceed to Pumping Well road to drop A2; when the auto was proceeding, A2 stopped the auto near a coconut shop, brought a knife and concealed the same on the top of the auto; later when the auto was proceeding to Pumping Well road and reached PSR road, Khammam, they found an unknown person proceeding to Pumping Well road on foot with a cover bag; A2 asked him to stop the auto and when he stopped, both the accused forcibly dragged that unknown person into auto and made him to sit in between them and asked him to move the auto; on the way, accused beat that unknown person indiscriminately on chest and face and also demanded money; when the unknown person refused to pay money, both the accused caught hold his head and hit to the iron rod of the auto forcibly; on hearing the sound, he turned back and saw the unknown person fell down in the auto oozing blood; immediately he stopped the auto due to fear; the accused threatened and took him to bye pass road and on reaching Relish Dhaba of Gopalapuram village, they have thrown away the dead body of the deceased by the side of the road after taking money from his pocket; later they stopped the auto nearby toddy shop at Kaluvavoddu and left the place and threatened him with dire consequences, if he revealed the incident to any one; out of fear he could not move from the house for some time, but later he went to police station and gave the complaint on that night.

b) On receipt of complaint, the S.I. of police, Khammam III Town PS registered a case in Crime No.192 of 2010 under Sections 363, 302,

506 r/w 34 IPC and issued FIR to all concerned and handed over the case to PW13—Inspector of Police, Khammam I Town PS, who in turn took up investigation and examined the witnesses. During the course of investigation, he arrested the accused. Thereafter, the Inspector of police, III Town PS, Khammam filed charge sheet before the Additional Judicial First Class Magistrate, Khammam. The learned Magistrate after following the procedure committed the case to Court of Sessions. Learned Special Sessions Judge, Khammam conducted trial. Accused were charged for the offences under Sections 302, 364, 394 and 506 r/w 34 IPC.

c) On behalf of the prosecution, PWs.1 to 13 were examined, Exs.P1 to P21 were marked and MOs. 1 to 7 were exhibited. No witnesses were examined on defence side.

d) The trial Court after full-fledged trial found the accused guilty of the offences under Sections 302, 364, 394 and 506 r/w 34 IPC and accordingly convicted and sentenced them. Questioning the conviction and sentence accused is before us in this appeal.

3) Heard arguments of Sri Pulla Rao Yellanki, learned counsel for appellants and learned Public Prosecutor for the State (Telangana).

4) The points for determination in this appeal are:

1. *Whether the deceased met with homicidal death on the evening of 21.11.2010 on PSR Road, Khammam?*

2. *If point No.1 is held in affirmative, whether the accused are responsible for his murder and whether the prosecution could establish their guilt beyond all reasonable doubt?*

5) **Point No.1:** The death of the deceased is amply established by prosecution and this fact is not much disputed by defence side. Apart from examining PW1—eyewitness, the prosecution examined PW12—doctor, who conducted post-mortem examination on the dead body and also PW9—inquest witness.

a) PW12 conducted post-mortem on the dead body of deceased—S.Venkatanarasaiah Chary on 22.11.2010 at about 3.15 PM and found the following ante-mortem injuries over the dead body.

- 1) *A laceration 2 x 1 x ½ inch below right eye besides nose.*
- 2) *An abrasion 2 x 1 besides left eye.*
- 3) *A contusion 5 x 5 over right temporal and right frontal region of scalp.*
- 4) *A contusion 2 x 2 over right cheeks*
- 5) *A defuse haemorrhage under the scalp.*
- 6) *Fracture 1 x 1 x ½ right frontal region of the skull*
- 7) *Haematoma 3 x 3 right frontal region of brain.*

The doctor opined that death was due to craniocerebral injury and time of death was 24 hours prior to her examination. Accordingly she issued

Ex.P17—post-mortem report. The aforesaid injuries, particularly, fracture of right frontal region and contusion of right temporal and frontal region etc. would suggest that death was unnatural one. The defence side did not examine the post-mortem doctor to suggest that death might be due to accident or any other reason.

b) Then, we have the evidence of PW9 who deposed that police have conducted inquest in the hospital for which himself and LW11—Pati Samba Reddy acted as Panchas. Ex.P4 is the inquest panchanama on which he signed. In Ex.P4 the witness opined that death was a murder. Therefore, the evidence on record clearly shows that the death of deceased was a homicidal one.

Now, it has to be seen whether the accused are responsible for such murder and prosecution could establish their guilt in the point infra.

6) **POINT No.2:** It is the case of prosecution that on the evening of 21.11.2010 both the accused while travelling in the auto of PW1 towards Pumping Well road, found the deceased—S.Venkatanarasaiah Chary going on that way and forcibly dragged him into the auto and thereby, abducted and demanded him to handover the money available with him and when he refused, fisted him and also hit him to the auto rod and thereby killed him. Admittedly, in this case, PW1 is the star witness as he is the lone eyewitness-cum-complainant. Therefore, it is needless to emphasise that entire case of the prosecution hinges on the

evidence of PW1. The trial Court having relied upon prosecution case basing upon the evidence of PW1 convicted the accused.

7) It is argued by learned counsel for appellants that the trial Court committed a grave error in placing implicit reliance on the sole and uncorroborated evidence of PW1 to record the conviction. There are number of inconsistencies and discrepancies in his evidence and the facts projected through his evidence would create a clear doubt that he might be the actual culprit and created a false story against the accused due to previous disputes with them. Learned counsel vehemently contended that such a possibility cannot be obviated.

8) Per contra, learned Public Prosecutor argued that the evidence of PW1 was clear, cogent and believable because no discrepancy or contradiction was extracted during his cross-examination and on the other hand, the evidence of other witnesses has established the veracity of his statement and the trial Court rightly placed reliance on his evidence and convicted the accused.

9) In the light of rival arguments, we gave our anxious consideration to the prosecution case and scrutinized the testimony of PW1.

10a) PW1 deposed that originally he is a native of Kandikuppa village of East Godavari District and presently residing at Jubileepura, Khammam; he came down to Khammam on 29.01.2009 and residing in Gandhinagar, Khammam; he loved a girl—Durga Malleswari and brought her to Khammam to marry; he got acquaintance with A1 and

with his help he married Durga Malleswari at Bhadrachalam and put up family at Jubileepura, Khammam. Detailing the incident, he deposed, on 21.11.2010 at 5.00 PM, he went to Naidupeta village to take passengers; then, A1 and A2 boarded his auto and asked Rs.20/- to consume liquor; he gave money and they consumed liquor at Jalagam Nagar, Khammam and they asked him to drop at Kaluvavoddu, Khammam in his auto and A1 further asked him to drop A2 at Pumping Well road; while they were proceeding and on the way reached coconut shop, A2 went to coconut shop and brought a knife and kept on the top of the auto and when they reached PSR road, Khammam, he was asked to take the auto towards Trunk road; A2 asked one women about a person and when she answered negative, he again boarded auto; on the way, they saw a person who was proceeding towards Pumping Well road with a bag; accused asked PW1 to stop the auto near that person; they forcibly made that person to sit in the auto and asked PW1 to move the auto; the accused demanded money from that unknown person, when he did not pay, the accused beat him; the said unknown person received injuries on the chest and face; then, PW1 stopped the auto and enquired as to why they were beating the person; then they threatened him with knife and asked to move the auto towards bypass road to Relish Dhaba; there they found police party checking the vehicles; the unknown person died in the auto; the accused had thrown away the dead body on the lane leading to gas godown and asked to take them to Kaluvavoddu; they threatened to kill him, if he revealed the incident to any one; they got down near Kaluvavoddu and went to toddy shop; then, PW1 went to his

house at 7.30 PM; he was scared and thereafter he went to police station and gave Ex.P1—complaint to the police.

b) In the cross-examination he stated that he himself went to the police station at about 12 'O' clock in the night by walk by keeping the auto at his house; the complaint was drafted at police station; there were about 3 to 4 police persons in the police station; at first he informed them orally and they asked him to give a written complaint; the police enquired him about details; he further stated that after crossing stream, there was a turning towards Naidupeta and proceeding further, they reached Jalagam Nagar; he stopped auto on main road; the accused went inside the arrack shop and returned after 15 or 20 minutes; thereafter they went to Kaluvavoddu and went to Pumping Well road via PSR road; the accused called the unknown person as Babai picked him up at PSR road. He denied the suggestion that he himself committed the offence and falsely implicated the accused; he also denied the suggestion that there were several contradictions in 164 Cr.P.C. statement, complaint and 161 Cr.P.C. statement; he further denied accused did not commit any offence. This is the evidence of PW1 regarding the offence committed by the accused and about his giving report to the police.

11) On a threadbare analysis of his evidence, it must be stated, except giving a suggestion that he himself has committed the offence and implicated the accused nothing useful was extracted to impeach the credibility of his evidence. As rightly observed by the trial Court, it was

not even suggested in the cross-examination that PW1 had any disputes or differences with accused so as to implicate them in the case. Therefore, such an implication of the accused cannot be believed. We have given our anxious consideration to the suggestion of defence side that PW1 himself might have committed the offence and implicated the accused, though disputes between them was neither suggested nor established. Assuming PW1 was the culprit, it would be highly improbable that he himself would go to police station and give report and lead the police to dead body. That would be a suicidal act and hence defy the logic in the normal course of events. Therefore, we cannot give any importance to the suggestion that PW1 himself had committed offence and implicated the accused. Further, in the evidence of PW1 we will find that it was A1 who helped PW1 to marry his lover—Durga Malleswari and to set up family in Khammam town. In such an event, it is improbable that PW1 would implicate the accused in a false case and hence such a possibility can be ignored. On the other hand, the evidence of PW1 is corroborated by the other evidence and circumstances.

12a) As per PW9, the police have seized MO1—pant, MO2—shirt, MO3—controlled earth, MO4—blood stained earth, MO5—blood stained rexine piece, MO6—rexine piece collected from auto. They were sent to RFSL for examination. The RFSL report dated 10.01.2011 would show that human blood of ‘AB’ group was detected on items 1, 2, 3 and 6. It indicates that the blood group on the clothes of the dead body and the blood on the rexine seat cover in the auto was one and the same

which indicates that the deceased was beaten to death in the auto of PW1. Further, the evidence of PWs.2, 5 and 6 who are the children of the deceased, would show that on the evening of incident i.e. on 21.11.2010 deceased proceeded to Pumping Well road to hand over mutton to his daughter—PW6 who is residing in Pumping Well road, Khammam. They identified his dead body also. Therefore, their evidence corroborates the version of PW1 to the extent that when the deceased was proceeding towards Pumping Well road he was forcibly abducted by accused.

b) Added to above, the incident was occurred around 6.30 PM on 21.11.2010 and PW1 reached home about 7.30 PM and thereafter, he decided to lodge report and promptly reported to the police at 1.00 AM on 21/22-11/2010. The FIR reached the Court at 4.30 AM on 22.11.2010. All these would suggest that complaint was lodged with the police without any delay and the same was sent to the Court promptly. This would suggest that there was no inordinate delay in lodging FIR so as to fabricate a false case. Ofcourse, the witnesses-PWs.10 and 11—confession panchas did not support the prosecution case but, however, on that count, in our considered view, prosecution case cannot be discarded.

13) So, on a conspectus of the entire facts and material on record, the evidence of PW1 is wholly reliable one which clinches the issue and establishes the guilt of the accused. The trial Court rightly recorded the

conviction against the accused for the offences under Sections 302, 364, 394 and 506 r/w 34 IPC.

14) We find no merits in the appeal and accordingly this Criminal Appeal is dismissed by confirming the judgment of the Trial Court.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

A. RAMALINGESWARA RAO , J

U. DURGA PRASAD RAO, J

Date: 02.12.2017
Murthy

