

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

CRIMINAL APPEAL No.129 of 2011

DATED:- 08-09-2017

Between:

Dayanidhi Nagaraju and another

..... APPELLANTS

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

COUNSEL FOR THE APPELLANTS : Sri SURESH KUMAR REDDY KALAVA

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (AP)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.129 of 2011

JUDGMENT: (delivered by Hon'ble Division Bench)

This criminal appeal is filed by Accused Nos.2 & 3 against judgment dated 03.02.2011 in Sessions Case No.273 of 2007 on the file of the I Additional Sessions Judge, Chittoor, by and under which, the learned Sessions Judge has passed the judgment and sentence as under:

- i) The case against Accused No.1 abated since he died while in judicial custody.
- ii) Accused Nos.2 & 3 were found not guilty of the offence under Section 201 IPC and Accused No.3 was found not guilty of the offence under Section 204 IPC and they were accordingly acquitted for the said offences.
- iii) Accused Nos.2 & 3 were found guilty of the offences under Section 120-B read with Section 364-A IPC and were sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each, in default to suffer rigorous imprisonment for two months each.
- iv) Accused Nos.2 & 3 were also found guilty of the offence under Section 364-A IPC and were sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each, in default to suffer rigorous imprisonment for two months each.
- v) Accused Nos.2 & 3 were further found guilty of the offence under Section 302 IPC and were sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- each, in default to suffer rigorous imprisonment for two months each.

2. This is a case of death of a boy, aged 11 years, by name Y.Bharath Kumar Reddy @ Banni, son of PWs 1 & 4 (hereinafter referred to as "the

deceased"). It is alleged that the deceased was kidnapped for a ransom and killed by the accused. According to the prosecution, the deceased was studying 6th class in Indian School, John Garden Chittoor, and as usual, on 02.03.2006 at 9 a.m., he went to school on his bicycle, but did not return for lunch as was the practice. PW 1, the mother of the boy, went to the school and enquired about her son and she came to know that her son did not attend the school that day. She made further enquiries from the friends and her family friends but did not find her son. Then she informed the same to PW 4, her husband, who was away in Hyderabad, and lodged a complaint with the Chittoor II Town Police Station, which was registered as Cr.No.24 of 2006 under "boy missing" and PW 17 took up investigation.

3. According to PW 4, he used to utilize the services of Accused No.1 as driver for his Mahendra Jeep once in two months, and that Accused Nos.2 and 3 used to come for Accused No.1.

4. On 02.03.2006 at 10.05 p.m (night) PW 4 received a phone call from Mobile No.9949100237 informing him that his son was kept in their (the callers') custody and they will call him on the next day, but PW 4 did not receive any call on the next day. PW 4 informed the same to the police and PW 17 altered the FIR from "boy missing" to one under Section 366 IPC.

5. Meanwhile, Kallur Police found an unidentified dead body of a boy on 07.03.2006 and registered a case in Cr.No.14/2006 under Section 174 Cr.P.C. PW 4 identified the dead body as that of his missing son. Based on medical report, the Inspector of Police, clubbed Cr.No.24/2006 of Chittoor II Town police station and Cr.No.14/2006 of Kallur police station and altered the section of law to one under Section 302 IPC and took up investigation.

6. During the course of investigation, the Investigating Officer got the information from different telephone service providers, and arrested the

accused on 15.03.2006 in the presence of mediators and seized some material objects from their possession. According to the confessional statements of the accused, prior to 02.03.2006 all of them joined together and hatched a plan to kidnap the deceased boy to earn easy money, and accordingly, kidnapped the deceased boy and made a call from the mobile phone of Accused No.3, having IMEI No.353377008632098, later identified as belonging to the said Accused. Accused confessed that they kidnapped the deceased boy and killed him. After completion of all the procedural formalities and completion of the investigation, the Inspector of Police filed a preliminary charge sheet.

7. As the plea of the accused is one of denial, they were subjected to trial.

8. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 20 and marked Exs.P1 to P37 and M.Os.1 to 19. On behalf of the accused, no oral evidence was adduced, but Exs.D1 and D2 were marked. Based on the oral and documentary evidence, the learned Sessions Judge convicted the appellants and sentenced them, as stated supra.

9. The learned counsel for the appellants submitted that since the case is based on circumstantial evidence, the crucial question is as to whether the dead body is that of the deceased, and that the evidence on this aspect is wholly unsatisfactory as the dead body was not identifiable due to total decomposition and the parts of the dead body of the deceased having been eaten away by the wild animals. The learned counsel further submitted that the evidence in so far as the identity of the dead body of the deceased is concerned is not sufficient for holding that it is that of Master Bharath Kumar Reddy, the son of PWs 1 and 4.

10. The learned counsel further submitted that as per the proceedings of the investigation, the dead body was that of a person, aged about 15 to 20 years, whereas the deceased was only 11 years (the date of birth of the deceased was said to be 28.01.1995). According to the complainant, who is the mother of the deceased, when the deceased boy went to the school, he was wearing brown colour pant and white and brown lines full shirt, whereas the shirt found on the dead body was a stripped yellow colour half shirt. The learned counsel further submitted that if the entire evidence of the panch witnesses for the inquest, the scene of offence panchnama and that of the investigating officer is carefully analyzed, it is manifest that the material objects said to belong to the deceased were planted so as to suit the case of the prosecution. He has further submitted that according to the Medical Officer PW 15, 24 hours after the death of a human being, the dead body becomes bloated, clothes would be torn and damaged due to maggots, and that the shirt-MO.2 produced did not bear any bloodstains, and it was neither torn nor in a damaged condition.

11. The learned counsel further submitted that initially the investigating officer filed a preliminary charge sheet awaiting the report of the Chemical Examiner and DNA results. As per the documents produced by the prosecution, the viscera, hair and bones of the deceased have been sent to the Director, Forensic Science Laboratory for conducting DNA test, for comparison with the blood samples of PWs 1 and 4, but subsequently, even though the said reports have been received and made part of the record, the same have not been exhibited by the prosecution, obviously for the reason that they do not support its case.

12. The learned counsel further submitted that the evidence with regard to the telephonic communication in between the accused and PW 4 is

also not satisfactory and the prosecution failed to connect the same with the Accused.

13. The learned counsel further submitted that the prosecution also relied upon the confessional statement said to have been made by the accused before the investigating officer and the panch witnesses, and also the evidence of PWs 7, 8 and 12, who claimed to have seen the deceased in the company of the accused on the date when the deceased was killed, and that however, the evidence on record does not inspire the confidence of the court for holding that they are the persons who have seen the deceased boy in the company of the accused on 02.03.2006, as alleged. That the nature of the testimony of PWs 8 and 12 is such that it leaves no room for doubt that they are planted witnesses who have identified the accused for the first time in the court without they being subjected to test identification proceedings. That the prosecution has also failed to produce the witnesses to prove that Accused No.3 has taken cell phone by manipulating the records, as alleged, that the evidence on record has not been properly appreciated by the Court below and that therefore, the conviction of the appellants cannot be sustained.

14. Opposing the above submissions, the learned Public Prosecutor submitted that the nature of the crime is such that the court had to rely upon the circumstances which established that the deceased boy was kidnapped for a ransom and that he was brutally killed and thrown in the hillocks in between boulders which was discovered 5 days after he disappeared. That the electronic evidence proves that it is the accused who spoke to PW 1 and made the demand for a ransom. That the trial Court has minutely considered the evidence on record and held Accused Nos.2 and 3 guilty of the charges, as stated supra, which do not warrant any interference.

15. Having regard to the rival submissions of the learned counsel for the parties, the point for consideration is whether the prosecution proved its case against the appellants beyond reasonable doubt so as to sustain the conviction and sentence recorded against them?

16. We have carefully considered the respective submissions of the learned counsel for both parties and perused the record.

17. The following are material aspects which make it difficult to believe the case of the prosecution in establishing the guilt of the accused beyond reasonable doubt:

The deceased, aged 11 years, has the son of PWs 1 and 4. On 02.03.2006 at 9 a.m. as usual, the boy went to the school, but never returned. His dead body is said to have been found on 07.03.2006. According to the prosecution, Accused No.1, who died during the trial, was known to the family of the deceased, inasmuch as being a driver, he used to be engaged by PW 4 to drive his vehicle now and then, and Accused Nos.2 and 3 are said to be his friends. Being aware of the financial background of the parents of the deceased, all the Accused allegedly conspired to kidnap the deceased for a ransom. In pursuance to the said conspiracy, on 02.03.2006 at 9 a.m when the deceased went to school, he was kidnapped by the accused and since the boy did not return home either for lunch at 12 noon which was the usual practice, nor at the end of the school hours, PW 1, the mother, went to the school and enquired about the deceased and the authorities of the school informed her that the deceased did not at all come to the school on that day. Thereafter, futile search was made by PW 1 and she also informed her husband, PW 4, who was on that day at Hyderabad. On 02.03.2006 itself at about 7 p.m PW 1 is said to have lodged complaint after getting it scribed by PW 2. On being informed about the missing of the

deceased, PW 4 was returning home and between about 10.05 p.m and 10.07 p.m he claimed to have received a phone call from mobile Phone No.9949100237 informing that the deceased is in their custody and that he will be released on satisfying their demand which they would be informing PW 4 on the next day by about 11 a.m. PW 4 returned home, but however, he did not receive any further call from the persons holding his son hostage. On 03.03.2006 PW 4 is also said to have gone to the jurisdictional police and informed them as to what happened.

18. None of the witnesses spoke as to what developments took place in between 03.03.2006 and 07.03.2006. On 07.03.2006 at 7 a.m. the dead body of an unknown person was found lying at Tenkayala gutta and the same was informed to Kallur Police Station within whose limits that area falls. The Asst.Sub-Inspector of Police, Kallur Police Station visited the spot and conducted investigation by registering a separate crime on the ground that the body of a person lying dead under suspicious circumstances was found. Scene of offence panchnama, inquest panchnama and postmortem examination were conducted at the spot, and according to the prosecution, PW 4 identified the dead body as that of his son and the dead body was buried at the spot, since it was in a highly decomposed and damaged condition.

19. Nothing significant appears to have happened in between 07.03.2006 to 15.03.2006. On 15.03.2006 the accused were apprehended and they are said to have confessed having committed the crime which led to the recovery of the motorcycle, which was allegedly used by the accused for kidnapping the boy, the bicycle, which was being used by the deceased, and some other articles.

20. It is significant to note that in almost all the proceedings of the police, more particularly, the inquest panchnama, scene of offence panchnama etc., it is recorded more than once that the dead body belonged to a person, aged between 15 and 20 years, whereas the deceased was a boy, aged 11 years and 2 months. This difference in the age of the missing boy and the corpse recovered is significant for the reason that the appearance of a person, aged about 11 years and the one aged more than 15 years will certainly be conspicuous and glaring. There will be several features which clearly show as to whether the dead body is that of a person, aged about 11 years or that of a person, aged between 15 and 20 years. Therefore, when it was consistently recorded that the dead body found on hillocks was that of a person, aged between 15 and 20 years, it cannot be said that the prosecution was able to establish beyond reasonable doubt that it was that of the missing boy who was aged about 11 years.

21. According to the prosecution, the dead body was first seen by Sarpanch Munneppa (PW 10), who in turn at about 8 a.m informed the Panchayat Secretary Chandraiah, who lodged a police report Ex.P24 at 9 a.m. on 07.03.2006. In Ex.P24 it is mentioned that there is a dead body of a person, aged 15-20 years and it appears that the death might have taken place more than 10 days prior to 07.03.2006. If that be so, the corpse could not be that of the missing boy who was alive till the night of 02.03.2006.

22. It is in the evidence of the prosecution witnesses that PWs 1 and 4 had a daughter, by name, Bhavya and the son who was found missing. Bhavya was studying IX class in the same school, whereas her brother was studying VI class. None of the witnesses even whispered as to whether on the date when the deceased was kidnapped from the school gate, his elder sister, who was studying in the same school, witnessed the incident. Nothing

is spoken to by either PW 1 or PW 4 about the presence or absence of their daughter who by then was sufficiently grown up, since she was studying IX class at that time.

23. It is also in the evidence of the prosecution that the school was situated in a busy locality and the alleged kidnap is said to have taken place at 9 a.m. from the gate of the school. The prosecution has alleged that when the deceased was going on a bicycle, he was kidnapped on a two-wheeler by three persons. The bicycle was seized by the police on 15.03.2006 from the house of Accused No.2. Even though Accused No.1 and the deceased were having prior acquaintance, the three accused taking the deceased along with the bicycle on a two-wheeler without the latter's resistance and attracting the attention of many people who may have been present around the gate of the school cannot be believed.

24. Admittedly, when the deceased was alleged to have been kidnapped at 9 a.m on 02.03.2006, PW 4, the father of the deceased was in Hyderabad and PW 1, the mother, informed him over telephone. A complaint was lodged at 7 p.m. by PW 1. At about 10.05 or 10.07 p.m in the night, PW 4 claimed to have received a phone call informing about the kidnap of the deceased boy and at that time nothing was demanded from PW 4 and the caller disconnected the phone after telling PW 4 that their demand will be made known to him on the next day by about 11 a.m., i.e. on 03.03.2006. There is no evidence on record to show that after having received such a phone call from a mobile phone, PW 4 tried to call back to that number immediately.

25. Equally, the evidence with regard to the identification of the dead body is not above suspicion. According to PW 1, when the deceased went to the school on 02.03.2006, he was wearing brown coloured pant and white

and brown coloured lines full shirt. The shirt that was found on the dead body and shown to PW 1 and marked as MO.2 is admittedly dark coffee coloured half shirt having gold coloured stripes. There is lot of difference between dark coffee coloured full shirt with gold coloured stripes MO.2 and white and brown coloured lines half shirt, as spoken to by PW 1.

26. As per the evidence of PW 1, the deceased was wearing a brown coloured pant. M.O.15 is the pant, snuff in colour, said to have been seized from the dead body. M.O.15 was not shown to PW 1 for identification. When the dead body was found, its two hands and one leg were eaten away by wild animals (Ex.P6). If that be the case, the pant could not have remained as a complete trouser without getting tattered into pieces.

27. According to PW 1, on 02.03.2006 itself she went to II Town Police Station, Chittoor at 7 p.m and lodged a written complaint which is Ex.P1. However, Ex.P1 shows that it was received by the police at 10 p.m on 02.03.2006, but not at 7 p.m, as claimed by PW 1.

28. According to PW 4, the father of the deceased, on 02.03.2006 at about 10.05 p.m when he was returning to Chittoor from Hyderabad in a bus, he received phone call from mobile phone No.9949100237 to his cell phone No.9440623265. He further deposed that the caller firstly enquired from him as to whether his son is missing and thereafter, he informed that the boy is safe with him and that he will let PW 4 know the details on the next day morning. However, no call was received by PW 4 on 03.03.2006. But the cell phone that was seized from Accused No.3 is bearing No.9866438075. According to the prosecution witnesses, Accused No.2 was having a cell phone and according to PW 5, the number of cell phone of Accused No.2 was 9346201077. PW 4 has not received the phone call in the night at 10 p.m as

claimed by him from any of the cell phone numbers belonging to Accused No.2 or Accused No.3.

29. The evidence with regard to the accused obtaining a cell phone by producing fictitious and manipulated documents is not established, since none of the witnesses connected therewith, namely, Balaji Studio and Sai Watch and Mobile Company, were examined to show that Accused No.3 obtained a cell phone with fabricated documents.

30. The main link connecting the demand for a ransom has come from the cell phone number, as mentioned above, which does not belong to either of the three accused persons. IMEI number of the instrument used also does not tally. According to the investigating officer, the cell phone bearing No.9949100237 from which a call was made to PW 4 belongs to the father of Accused No.3 and the IMEI number is 353377008632090. However, according to the investigating officer, the SIM card bearing No.9866438075 was being used in the IMEI instrument bearing No.353377008632098.

31. According to PW 4, on 07.03.2006 at about 3 p.m he received a phone call from Kallur Police Station, informing that a dead body of an unknown boy was found and he was asked to go over there. Tenkayala gutta, where the dead body was found is about 15 kilometers from Chittoor. PW 4, his brother PW 2 and others went to Kalluru Police Station and in the police station they were shown the clothes of the deceased and silver waist thread, one Saibaba gold dollar, tie etc. PW 4 claimed to have identified those articles as belonging to the deceased. Thereafter, PW 4 was taken to the hills and the dead body was shown which was identified as that of his son. Thereafter, PW 4 returned to the house and informed the same to PW-1.

32. Conspicuously, neither PW 4 nor PW 1 spoke anything as to what happened after the dead body was seen and identified by PW 4 as that of their son. The next part of the evidence of PW 4 is about the events that took place on 16.03.2006 on which day he claimed to have seen the newspaper about the apprehension of the accused and they having been found to be responsible for kidnap and death of the deceased.

33. The Investigating Officer is examined as PW 18. It is in his evidence that on 07.03.2006 he was informed about the dead body of an unknown person, aged between 15 to 20 years, lying at Tenkayala gutta, he registered the same as crime under Sec.174 Cr.P.C and proceeded to the spot and took steps for the postmortem examination. He also spoke about Ex.P6 inquest panchanama being conducted, and the seizure of M.O.3-one Bata shoe of left leg, M.O.4-two white colour socks, M.O.14-striped yellow coloured half shirt, M.O.15-one snuff coloured pant, M.O.16-banlian, M.O.8-waist silver thread, and M.O.7-Saibaba dollar. PW 18 further deposed that he also seized from the scene of offence M.O.9-another shoe of right leg, M.O.5-spectacles and M.O.6-two bones, electronic wrist watch and hair. The witness further claimed that he got the clothes on the dead body washed and then came to know that they are school uniform. This is neither practicable nor permissible as the clothes on the dead body are supposed to be preserved in as is where is condition.

34. According to the Investigating Officer, when the dead body was traced, a police constable (P.C.No.3088) gave one photograph of a boy and informed him that PW 4 came and gave that photograph at Kalluru Police Station, stating that the said boy was missing and on the reverse of the photograph, the cell phone number of PW 4 was noted. PW 18 claimed that he contacted PW 4 on the cell phone of PW 4 bearing No.9440623265 and

informed him about the unknown dead body being found and asked him to come and verify as to whether it belongs to his deceased son. Contrary to that, it is the claim of PW 4 that on 07.03.2006 he received the phone call from the police station to his land phone, but not to his cell phone. According to PW 18, PW 4 and his brother came to the scene of offence and after seeing the dead body and the articles, they identified the dead body as that of the son of PW 4.

35. PW 4 does not speak anything about the dead body being either brought to the house after being identified nor claimed to have participated in the funeral rites, such as burial etc. PW 4 admitted burial of dead body at the place where it was found. PW 18-S.I. of Police, Kallur P.S deposed that dead body was handed over to PW 4. However, in Col.No.13 of Ex.P6-Inquest Panchanama, it was mentioned that as the dead body was not identified and blood relations could not be traced, the dead body was ordered to be cremated at the scene of offence according to Hindu rites. From this evidence on record, it is clear that the evidence of the Investigating Officer and the proceedings of the police are altogether different.

36. Ex.P6 is the inquest panchnama which was conducted on the dead body on 07.03.2006 between 10.30 a.m. to 12.30 afternoon of a person, aged between 15 and 20 years. The dead body could not be identified as it was in a highly decomposed state, no skin is available on the dead body, nose, ears and eyes were eaten away by worms, that the hair on the head was found on earth, that the mouth of the dead body was open and teeth are visible, the two hands and left legs were eaten away by wild animals and the bones are visible. Column No.VII of Ex.P6 described the clothes and other things on the dead body as black coloured half shirt with straight stripes with no marks available on the shirt, snuff coloured pant without any marks, white

coloured cut banian, silver waist thread, and Saibaba dollar tied with a black thread on neck.

37. In column No.XV of Ex.P6 inquest panchanama, it was recorded that the dead body appears to be of an unknown person who might have been killed and thrown there or that the deceased would have come there and committed suicide himself.

38. Column No.XIII of Ex.P6 inquest panchanama belies the claim of PW 4 about his going to the scene and identifying the dead body. It is mentioned therein that the dead body cannot be shifted, that the Government Doctor came to the spot and conducted postmortem examination, and that since the dead body was not identified and the blood relations could not be traced, it was ordered to be cremated at the scene of offence, in accordance with Hindu rites.

39. According to PW 4, after the postmortem examination on the dead body was conducted, the dead body was buried at the same place by about 7.30 or 8 p.m. PW 1, being the mother of the deceased, does not know anything about it and she is conspicuously silent on that aspect, which is wholly unnatural. When PW 4 reached the spot and identified the dead body, there is no question of it being directed to be buried/cremated as that of an unknown and unidentifiable person as noted in Col.No.3 of ExP6. On the contrary, after postmortem examination, the body would have been handed over to PW 4. As discussed above, PW 18, the investigating officer, admitted that as per the inquest panchanama-Ex.P6, the dead body was buried at the scene of offence itself.

40. It is also in the evidence of PW 18 that as per the inquest panchanama-Ex.P6, the shirt on the dead body was of black in colour. He also admitted that in the inquest panchanama it was mentioned that the dead

body is that of a major person and not as that of a boy. This witness also denied that PW 4 identified any material objects at the police station, as claimed by the latter.

41. The Investigating Officer has filed the chargesheet describing it as preliminary chargesheet because the report of the Chemical Examiner and DNA results were awaited. The viscera preserved by the Medical Officer at the time of post-mortem examination has been sent to the RFSL, Tirupati, as per Exs.P.33 and P.34. Subsequently, the hair and bones said to have been seized near the dead body have been sent to the Director, FSL, for conducting DNA finger printing and comparison with the blood of the parents of the deceased as per Ex.P.35/letter of advice and Ex.P.36/letter. After receiving the FSL report regarding the viscera and the report from the Director of FSL relating to DNA Test, the committal Court forwarded the same to the trial Court along with committal records. However, the prosecution has not chosen to mark the report sent by the FSL and the report sent by the Director of FSL. This failure of the prosecution creates any amount of doubt on its claim that the dead body found on 07.03.2006 is that of the son of PWs 1 and 4.

42. Ex.D1 is the portion of the 161 Cr.P.C statement of PW 4 and recorded by PW 18, the investigating officer. As per Ex.D1, PW 4 stated that on 03.03.2006 when he returned from Hyderabad, his wife informed that on 02.03.2006 morning their son went to the school and did not return, that the boy was searched here and there on 02.03.2006, that a complaint was lodged to the police at 10 p.m on 02.03.2006, and when himself and his friends were searching for his son, on the same night at 10.05 p.m. he received a phone call from cell phone No.9949100237 to his cell phone No.9440623265.

43. The electronic evidence, viz., the communication in between the cell phones of the accused and PW 4 is not established by the prosecution.

44. Since Ex.P19 shows that there was a call from cell phone No.9949100237 to cell phone No.9440623265 of PW 4 at 10.05 p.m and 10.07 p.m on 02.03.2006 from IMEI No.353377008632090, the burden lies on the prosecution to establish that the said telephone number and the instrument were used by any of the accused on 02.03.2006. The prosecution failed to discharge this burden.

45. A perusal of Ex.D1 shows that PW 4 was not aware of the disappearance of his son for well over 24 hours till he reached Chittoor. In contrast, he deposed that he received a telephonic call for ransom on 02.03.2006 at 10.05 p.m. But as per Ex.D1, the said call was received by him on 03.03.2006, i.e., after he reached Chittoor.

46. The photographs that were taken at the scene of offence have not been filed into the court, even though PW 18 claimed that a photographer came to the scene and photographs were taken.

47. The medical evidence creates any amount of doubt about the dead body being that of the missing boy.

48. The postmortem was conducted at 12.30 afternoon on 07.03.2006. The body was said to be that of a male person, aged about 16 years. According to the medical officer, PW 15, and the postmortem report-Ex.P16, the death took place more than 5 days prior to the postmortem examination.

49. It may be recalled that the deceased boy was kidnapped at 9 a.m. on 02.03.2006. On the same day night at about 10 p.m there was allegedly

a call to PW 4 informing about the kidnap and informing that the boy was in the custody of the kidnappers and that their demand will be made known on the next day i.e., on 03.03.2006. Therefore, at least till 10 p.m on 02.03.2006 the deceased boy was alive. As per the medical evidence, the time of the death of the dead body which was subjected to postmortem is prior to 12.30 afternoon on 02.03.2006. The evidence on record shows that till the evening hours of 02.03.2006, the deceased was found alive as per PW 12 when he was being taken on the motorcycle. Even in the earliest report Ex.P24 given by village officials, it is stated that the body of the person may be of a man died about 10 days prior to 07.03.2006. Thus, the medical and other evidence belies the theory of the prosecution that the recovered body was that of the missing boy.

50. The prosecution case regarding the last seen theory is also not satisfactory. The prosecution relied upon the evidence of PWs 7, 8 and 12 on this aspect. According to the prosecution, when the accused were taking away the deceased on their motorcycle, they have purchased petrol and since one of the wheels of the motorcycle was punctured, the same was repaired by PW 12, and therefore, they are the persons who are said to have seen the deceased in the company of the deceased on the date when he was killed.

51. PW 7 turned hostile and did not support the case of the prosecution. He denied having stated before the police as in Ex.P2.

52. PW 8 is the person from whom the accused have allegedly purchased the petrol. He also turned hostile and denied that he identified Accused No.2 on 16.03.2006 as the person who purchased the petrol from him. He denied having stated before the police as in Ex.P3.

53. PW 12 is the person who is said to have repaired the deflated tyre of the motorcycle of the accused. It is in his evidence that on 02.03.2006 at

about 2 p.m when he was in the puncture shop, two persons came on a motorcycle along with a boy in school uniform, that two males persons informed that there was puncture to the tyre of the motorcycle and asked him to repair, that he repaired the tyre within 30 minutes and thereafter, those people went away. He identified Accused No.2 and Accused No.3 standing in the court as the persons, who came to his shop on 02.03.2006. He further deposed that two weeks thereafter, a TATA Sumo came to his shop and in that C.I.of police is present along with Accused No.2 and C.I.of Police enquired him as to whether Accused No.2 came to his shop previously and on that he informed the C.I.of Police that Accused No.2 came to his shop for repairing the puncture tyre.

54. The alleged identification made by PW 12 is 4 years after he has seen the strangers, viz., Accused No.2 and Accused No.3 which cannot be believed for the reason that according to him he has last seen Accused Nos.2 & 3 on 02.03.2006. Therefore, the capacity of PW 12 to identify the strangers, without being subjected to test identification proceedings after such a long gap is unnatural and hence cannot be believed.

55. PW 12 also admitted that he has seen Accused No.2 and another on 02.03.2006, and Accused No.2 on 16.03.2006 and thereafter only in court on 18.02.2010. PW 12 has not produced any other evidence to show that he is having a puncture repairing shop at the place as claimed by him. He could not even give the door number of the premises where he was carrying on business, even though the said premises said to belong to one Gopal Naidu is having RCC roof.

56. PW 12 further admitted that he has identified Accused No.2 on 18.02.2010 in the court, since he was shown the said accused by the police on 16.03.2006. He further deposed that his puncture shop is on highway and

everyday about 30 vehicles used to come to his shop for repairing the punctures. These circumstances make it difficult to believe the theory of the prosecution that PW 12 has seen the deceased in the company of Accused Nos.2 & 3 at about 2 p.m on 02.03.2006.

57. A holistic analysis of the evidence on record discloses several improbabilities apart from discrepancies between the evidence of the Investigating Officer-PW 18 and the investigation conducted.

58. In view of the above, we have no hesitation in holding that the prosecution could not prove the guilt of the accused for the charges leveled against them beyond all reasonable doubt and therefore, the appellants/Accused Nos.2 & 3 are entitled to an acquittal.

59. In the result, the Criminal Appeal is allowed. The conviction and sentences recorded against the appellants/Accused Nos.2 & 3 by the judgment, dated 03.02.2011 in Sessions Case No.273 of 2007 on the file of the learned I Additional Sessions Judge, Chittoor, for the charges leveled against them, are set aside. Consequently, the appellants/accused Nos.2 & 3 shall be released forthwith, if they are not required in any other case or crime. The fine amount, if any, paid by the appellants/accused Nos.2 & 3 shall be refunded to them.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 08.09.2017
Dsr