

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

CRIMINAL APPEAL No.1630 OF 2010

JUDGMENT: *(Per the Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellant-State has challenged the judgment dated 02.12.2008 passed in S.C No.265 of 2007 by the VIII Additional District & Sessions Judge (FTC), Guntur, whereby the accused/respondents found not guilty, accordingly, acquitted from the charges framed against him for the offence punishable under Section 302 read with 34 of IPC.

2) In Crime No.69/2006 of Kollur P.S, the prosecution case was that the deceased and A.1 were drivers of the autos belonging to PW.4 and PW.6 and A.2 used to collect rents of the autos and pay to PW.6. The deceased and A.1 used to compete with each other in running the auto of PW.6 and sharing the rents and on several occasions A.1 beat the deceased and threatened him with dire consequences. A.2 also threatened the deceased for not paying the auto rent properly. The deceased complained to his brother i.e, PW.2 against A.1 and A.2 and he admonished them. The accused bore grudge against deceased in view of the above incidents and decided to kill him. The further case of prosecution is that on 22.06.2006, at about 8:00am, the deceased went to PW.6 and took auto bearing No.AP 7 X 8282 on rent for the day. A.1 met deceased at village

centre and enquired him as to who gave the auto to him and in that regard, some verbal altercation broke out between them and deceased abused A.1 in filthy language. On that count also, A.1 wanted to do away with deceased. On that day at about 5:00pm, A.1 met deceased at Ratna Talkies centre and moved along with him in the auto till 8:30pm. Then they went to Alankar Bar, Tenali and consumed alcohol. Then they proceeded to Gadibavi centre, Tenali and A.1 purchased a cotton rope and kept it in the rear seat and then they went to B.C Colony in Burripalem road and stopped at Beedi bunk of PW.3—the sister of deceased at about 9:00pm and they purchased cigarettes and when she questioned as to where they were going in the odd hour, the deceased replied they were proceeding towards Kollur. The further case of prosecution is that on the way the accused picked up quarrel with deceased as to why he was carrying false tales against them to PW.6 and beat him. Then they proceeded to Chilumuru Karakatta and from there to Kollur along with Krishna River Karakatta and stopped the auto after passing Ipuru. The deceased gone into the sleep and taking advantage of it, A.1 strangled him with the rope and both the accused threw the dead body into the bushes and escaped along with auto. When they reached near Pedakonduru, oil was exhausted and so they pushed the auto into the bushes and went away to Vijayawada in another auto. Hence, the charge sheet.

3) The trial Court after full-fledged trial, acquitted the accused holding that the prosecution could not prove the suspicious circumstances alleged against them.

4) Heard arguments of learned Public Prosecutor for the State and Sri Challa Ajay Kumar, learned counsel for respondents/accused.

5) Learned Public Prosecutor submits that the prosecution could establish all the suspicious circumstances by cogent evidence and they proved the guilt of the accused but the trial Court on a wrong appreciation of evidence on record acquitted the accused. Expatiating the same, he would argue that the evidence of PWs.1 to 3 would clearly establish the motive aspect. He submitted that evidence of PWs.1 and 2 supported the case of the prosecution as PW.1 stated that about one month prior to the incident, the deceased had complained twice that he had been beaten by the accused with regard to payment of auto rents and dues. It is specifically stated that the deceased had no enmity with any other person. PW.1 further stated that about two and half hours before the incident at about 7.00 a.m. A1 and A2 came to their house and called the deceased to go with them along with Auto for hire. Accordingly, the deceased informed him that he would come sometime later and would take him to the hospital for eye-treatment and went along with accused. On that day, he had not returned. On the next day, they started searching for him. On the fifth day,

Kollur police came to their village and informed them that his son was in the police station and took them to Kollur. In the police station they had shown pair of chappals, dress (pant and shirt), a kerchief and one thread. PW.1 identified them as belongings of his son. PW.2, the brother of the deceased also supported the version of PW.1. He admitted the dispute between the deceased, A1 and A2 and his deceased brother had complained to the auto owner against the accused. Therefore, the learned Public Prosecutor would argue, the accused bore grudge against the deceased and thus decided to eliminate him. Accordingly, they succeeded in their plan. He argued, however, those facts have been ignored by the Court below and acquitted the accused.

6 a) Per contra, learned counsel for respondents/accused would argue that the prosecution case mainly pivots on circumstantial evidence and more specifically it hinges on a slender thread of last scene theory which could not be substantiated by the cogent evidence. In expatiation, learned defence counsel would argue that as per prosecution, the deceased and A.1 used to take on hire the auto of PW.6 on turn basis. In the matter of running of her auto and sharing proceeds there arose disputes as the deceased used to complain against A.1 and A.2 to PW.6 and in fact two months prior to the incident, the accused beat deceased and knowing this, PW.1—the father of deceased asked PWs.2 and 3, who are the brother and sister of the deceased to enquire into the matter and

accordingly, PWs.2 and 3 allegedly admonished the accused and so keeping all these prior incidents, the accused bore grudge against the deceased and decided to eliminate him. Learned counsel vehemently argued that to believe the aforesaid version of the prosecution, it must be established that the deceased and accused worked under PW.6 i.e, they used to hire auto bearing No.AP 7 X 8282 and disputes arose between them in the matter of hiring the auto on turns and sharing the auto collections. However, the prosecution miserably failed to prove the fundamental fact that the deceased and accused working under PW.6 for, PW.6 and her son PW.4 have strongly denied that the deceased and accused worked under them. Though they were declared hostile by the prosecution and cross-examined, nothing useful could be extracted to establish the factum of accused and deceased hiring the auto of PW.6. That being so, the theory of prosecution that there were disputes between the deceased and accused and they beat him and PWs.2 and 3 admonished them and thereby they bore grudge against the deceased would also fall to ground. Consequently, the vital link in the chain i.e, motive aspect would also fall to ground.

b) Secondly, he argued that the prosecution tried to connect the accused to the offence through another link i.e, last scene theory through the evidence of PWs.1 and 3. In this regard also due to several discrepancies, omissions and inconsistencies in their evidence, it failed to establish the said fact.

c) Thirdly, he argued that the recovery of crime auto bearing No.AP 7 X 8282 at the instance of the accused also proved to be a myth in view of the categorical evidence of PWs.4 and 6 who stated that the police have seized the auto for overloading and produced before the Court. He thus argued that the prosecution failed to prove none of the alleged suspicious circumstances against the accused and therefore, the trial Court rightly acquitted them and there are no merits in the appeal and hence the appeal may be dismissed.

7) In the light of above rival arguments, the point for determination is:

“Whether the judgment of the trial Court is factually and legally sustainable?”

8) **POINT**: This is a case based on circumstantial evidence. As per prosecution, the deceased and A.1 were drivers and A.2 was maintaining autos belonging to PW.6. While-so, the deceased and A.1 used to compete with each other in running the autos of PW.6. On several occasions, A.1 beat the deceased and threatened him with dire consequences. A.2 also threatened the deceased for not paying the auto rent properly. This was complained by the deceased to his brother i.e, PW.2 who admonished A.1 and A.2. Hence, the accused decided to eliminate the deceased. While-so, on 22.06.2006 at about 8:00am, the deceased went to PW.6 and took the auto bearing No.AP 7 X 8282 on rent for the day. A.1 met the deceased at

the village centre and enquired as to who gave him auto. Thereby the wordy duel ensued between them and deceased abused A.1 in filthy language in the presence of others. Hence, A.1 bore grudge against him. While-so, on the same day at about 5:00pm, A.1 met the deceased at Ratna Talkies centre and moved along with him in the auto till 8:30pm, and then they went to Alankar bar, Tenali and consumed alcohol. The deceased then asked A.1 to drive auto and sat in the rear side of the seat. Then A.1 took him to Gadibavi centre in Tenali and purchased cotton rope and kept it in the rear side of the auto and went to BC colony in Burripalem road and stopped the auto at Beedi bunk of the sister of deceased at about 9:00pm. When she questioned the deceased as to where they were going, the deceased replied that they were going to nearby place and thus PW.3 saw the deceased in company of A.1 and A.2 going in the auto towards Kollur. The further case of prosecution was that after reaching the spot, A.2 picked up quarrel with the deceased and questioned that he was carrying tales against them to the auto owner and beat him. Thereafter they went to Chilumuru Karakkatta and from there to Kollur along with Krishna River Karakatta and stopped the auto after passing Ipuru. There, seeing the deceased gone into sleep, A.1 took the rope and strangulated the deceased and threw the dead body into bushes and escaped along with auto. When the accused reached Pedakonduru, the oil in the auto was exhausted and hence they pushed the auto into bushes and went to Vijayawada in another

auto. Hence, the charge sheet. On appearance of accused, a charge under Sec.302 r/w 34 IPC was framed and trial was conducted. The prosecution examined PWs.1 to 13 and Exs.P1 to P16 and MOs.1 to 7 were marked. Ex.D1 was marked on behalf of accused. PW.1 is the father; PW.2 is the brother and PW.3 is the sister of the deceased; PW.6 is the owner of autos and PW.4 is her son; PWs.5 and 9 are auto drivers; PWs.7 and 8 are the witnesses for inquest and scene of offence; PW.10 is the photographer; PW.12 is the S.I of Police, who registered FIR and assisted the Inspector of Police, who conducted investigation; and PW.13 is the Doctor who conducted post-mortem of the dead body.

9) As observed supra, this is a case based on circumstantial evidence. The golden rule in a case of this nature is that the prosecution must establish by cogent and plausible evidence all the suspicious circumstances against accused which must form into a chain without any missing links and the said chain shall invariably establish the guilt but not the innocence of the accused. Keeping in view of the said rule, the suspicious circumstances projected by the prosecution and the evidence let in have to be analysed.

10) In a case of this nature, the motive plays a key role. The motive as per prosecution was that the deceased and A.1 were competing in the matter of sharing the auto of PW.6 on hire and appropriating the amounts and in that connection, the deceased

used to complain against the accused to PW.6 and therefore, some months prior to his death, the accused beat him and when the deceased informed this fact to his family members, PW.1 asked PWs.2 and 3 to enquire the accused and accordingly they admonished the accused. On 22.06.2006 also it appears there was a wrangle between the deceased and A.1 in taking the auto from PW.6 and deceased abused the A.1 in filthy language and therefore, the accused wanted to eliminate him. PWs.6 and 4 are the mother and son respectively and they are admittedly the owners of autos bearing Nos.AP 7 X 8282 and AP 7 X 7373. As per prosecution, the deceased was running the auto bearing No.AP 7 X 8282 on hire. However, in the evidence of PWs.4 and 6, this fact was not established. PW.4 deposed that they are the owners of autos bearing Nos.AP 7 X 8282 and AP 7 X 7373 which were purchased in the name of PW.6. He further stated that one Srinu used to drive auto bearing No.AP 7 X 8282 and one Rajesh was the second driver of the auto. He specifically stated that the deceased was not the driver of their auto bearing No.AP 7 X 8282 and A.1 was also not the auto driver. He further stated that he does not know the accused. He further stated that in June, 2006 Kollur Police seized their auto No.AP 7 X 8282 at Kollur centre on the ground that it was overloaded and at that time one Srinivas Rao was the driver. Thus, his evidence was specific to the effect that the accused and deceased were not the auto drivers. This witness was declared hostile and cross-examined by the learned Public

Prosecutor before the Court below. In the said cross-examination also, this witness stuck to his version and stated that he does not know, who the deceased was. He further stated that he has not identified the deceased by showing his photos. Then PW.6 also deposed in similar lines. She stated that she owns two autos, one of which is AP 7 X 8282 and PW4 was looking after the auto business. She specifically stated that she does not know the accused and the deceased. She too was declared hostile and cross-examined by learned P.P. Thus, it is obvious that nothing useful could be extracted by the prosecution from the evidence of PWs.4 and 6 to establish the motive. Then PW.1 is concerned, he deposed that the deceased was his younger son and he was the auto driver and he knows the accused Rama Krishna and Koti. This witness stated that he does not know who was the owner of the auto driven by his son. He further stated that about one month prior to the incident, the deceased complained him twice that he was beaten by the accused with regard to the payment of the auto rents and dues and in that connection, this witness asked PWs.2 and 3 to admonish the accused. PW.2, who is the son of PW.1 deposed in corroboration with the version of PW.1 and stated that sometime prior to the incident, there was a quarrel between the deceased and the accused in sharing the auto on turn basis and the deceased complained to his parents that he was beaten by the accused and thereby on the instructions of his father, this witness admonished the accused prior to the incident. PW.3 is

concerned, though she stated that 2 or 3 months prior to the incident, there was a quarrel between the accused with regard to the payment of the auto rents and she did not further state that she admonished the accused. Therefore, the prosecution through the evidence of PWs.1 to 3 tried to establish that there were disputes between the deceased on one hand and the accused on the other in the matter of sharing auto and other related aspects and thereby the accused bore grudge against them. However, the question is how far the evidence of PWs.1 to 3, who are none other than the own kith and kin of the deceased and interested witnesses, is believable. PW.12—the Sub-Inspector of Police in his cross-examination has admitted that the witnesses examined by the Inspector had not revealed that A.1 beat the deceased prior to the incident. He further admitted that PW.1 has not stated before the Inspector that he asked PWs.2 and 3 to admonish the accused for beating the deceased prior to the incident. He also admitted that PW.2 has not stated before the Inspector that on the instructions of his father, he admonished the accused for beating the deceased. The witness further admitted that PW.3 has not stated before the Inspector that two months prior to the incident, the accused and deceased quarreled with regard to the payment of auto rent. The aforesaid admission of PW.12 would suggest that PWs.1 to 3 omitted to state a crucial fact in their 161 Cr.P.C statements but they stated about the said fact only in the trial for the first time. Since it being a material omission, it assumes the

character of contradiction. Had the said fact been true, they would not have omitted to state before the police during their enquiry. Hence, their version in the evidence regarding the alleged disputes between the deceased and accused which formed into the motive to kill the deceased cannot be believed. So far as PW.4 and PW.6 are concerned, their evidence is also not helpful to the prosecution. So motive is concerned, it must be said that the prosecution miserably failed to establish.

11) Then the next link in the chain is the last scene theory. PWs.1 and 3 claimed to have seen the deceased in the company of accused for the last time before he was found missing. As rightly observed by the trial Court, PW.3 cannot claim to have seen the deceased for the last time. It is because, according to her 2 ½ years prior to her evidence, the incident had happened and she had seen the deceased one day prior to his leaving the house. She narrated that on that night at about 9:00pm, the deceased came to her tea stall along with A.1 and A.2 and purchased cigarettes and when she enquired the deceased where he was going at that odd hour, he informed her that he was going towards Kollur on some work and accordingly they went towards Burripalem village. This circumstance even if accepted as true, cannot be considered as useful for proving the last scene theory because, subsequent to this incident, as per version of PW.1, on the morning of the day of missing of the deceased, the accused came to their house and picked up the deceased from their house along with the auto. Therefore, even

if PW.3's evidence is believed, she had only seen the deceased one day prior to the incident of disappearance. However, on the next day morning, deceased was at their house and the accused came and took him along with auto as per the version of PW.1. Hence, PW.3's evidence is of no use to establish the last scene theory. Moreover, her version that the deceased and accused came to her shop in the night at 9:00pm prior to the date of disappearance of deceased is also not reliable because PW.2 did not corroborate her version. According to PW.2, who is the brother of PW.3, he enquired in the house of their relations about the missing of deceased. In that course, he also went to the house of PW.3, who is his sister. He went to her house on 24.06.2006 and enquired, she informed him that the accused did not come to their house. Thus the version of PW.2 militates against the version of PW.3. If really, the deceased and accused came to her shop on the previous night of his disappearance, she must have informed this fact to PW.2. Thus the evidence of PW.3 on the last scene theory aspect cannot be believed. Then coming to PW.1, he deposed that about 2 ½ years prior to the incident, on one day at about 7:00am, A.1 and A.2 came to their house and called the deceased to go with them with auto for hire and the deceased informed him (PW.1) that he would come sometime later and take him to the hospital for eye test and went away along with the accused but did not return. Thus he claims to have seen the deceased in the company of accused for the last time before his disappearance. However, this crucial

fact was not stated by PW.1 before the Inspector during his enquiry. PW.12 in his cross-examination admitted that PW.1 has not stated before the Inspector that the accused had taken away the deceased from their house along with auto at about 7:00am and the deceased left his house informing that he would take his father to the hospital after returning to the house. This omission being a crucial one, it should be treated as a contradiction. Since the last scene theory was put-forth by PW.1 only during his evidence for the first time, it is not safe to rely. So it must be said that the prosecution failed to establish that the deceased was found in the company of accused for the last time.

12) Then the next suspicious circumstance put-forth by the prosecution is the recovery of auto bearing No.AP 7 X 8282 at the instance of the accused. PW.9 was the witness for the arrest of the accused and recovery of auto on their revelation. He deposed that himself and one Tenali Yesu (LW.13) acted as mediators, in whose presence the police arrested the accused at Tenali bus stop and later on the confession of the accused Ex.P.7—panchanama was drafted and the accused lead the police to Pedakonduru Karakatta and showed the auto bearing No.AP 7X 8282 (MO2) in the thorny bushes and accordingly the police seized the auto and also other MOs. However, the evidence of PW.9 gets scuttled by PW.4, who deposed that in June, 2006 Kollur police seized their auto bearing No.AP 7 X 8282 in Kollur centre and later produced before the Court

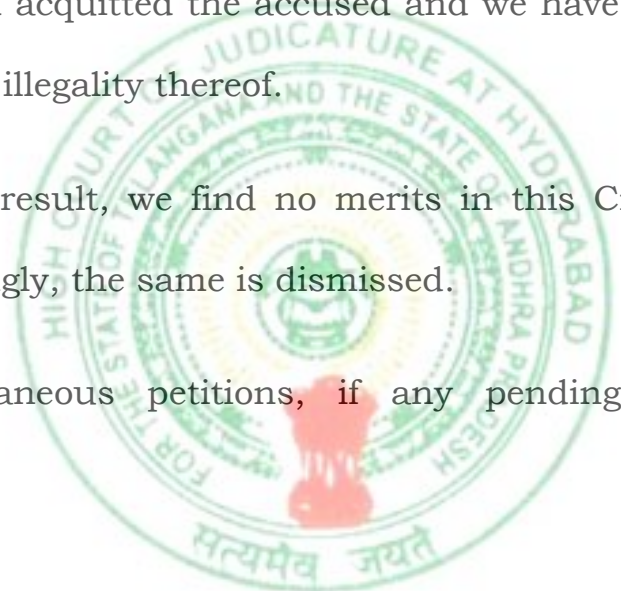
stating that it was overloaded. In that view of the matter, the recovery of auto at the instance of accused is highly doubtful.

13) So on a conspectus of entire evidence on record, it must be said that the prosecution failed to establish the vital links so as to connect the accused to the offence. No doubt there is some suspicion against the accused but however grave the suspicion may be, it will not substitute the proof.

14) The trial Court has meticulously analysed the facts and evidence and acquitted the accused and we have not found any perversity or illegality thereof.

15) In the result, we find no merits in this Criminal Appeal and accordingly, the same is dismissed.

Miscellaneous petitions, if any pending, shall stand dismissed.



JUSTICE SURESH KUMAR KAIT

JUSTICE U. DURGA PRASAD RAO

Date : 20-02-2017

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