

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE Ms.JUSTICE J.UMA DEVI**

CRIMINAL APPEAL No.1279 of 2012

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

The sole accused in S.C.No.8 of 2011, on the file of the IV Additional District and Sessions Judge (FTC), Tanuku, is the appellant. He was tried for the following offences:

- (i) Section 366 (A) IPC for procurement of minor girl;
- (ii) Section 376(2) IPC – Rape;
- (iii) Section 379 IPC – Theft OR Dishonestly receiving stolen property, knowing it to be stolen, punishable under Section 411 IPC;
- (iv) Section 302 IPC – Murder, punishable under Section 303 IPC;
- (v) Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any personal legally entitled to it; punishable under Section 404 IPC.
- (vi) Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offences punishable under Section 201 IPC.

Vide judgment dated 15.06.2011, learned Sessions Judge convicted the accused and sentenced him to suffer rigorous imprisonment for life for the offence punishable under Section 302 IPC and pay fine of Rs.1,000/- in default to undergo six months Simple Imprisonment, to suffer RI for seven years for the offence under Section 366 (A) IPC and pay fine of Rs.100/- in default to undergo SI for two months, 5 years of RI for the offence punishable under Section 354 IPC and pay fine of Rs.100/- in default to undergo SI for two months. He is also sentenced to undergo 5 years of Rigorous Imprisonment for the offence punishable under Section 201 of IPC. All the sentences were directed to run concurrently.

2. The substance of the charge against the accused is that on 17.10.2009 at about 07.00 p.m. at Kommara Village, Attili Mandal, the accused is alleged to have kidnapped the deceased, who was aged about 8 years. He is alleged to have abducted the deceased from her mother, committed rape on her and killed her by smothering and throttling her. Further charge against the accused is that during the said process, he committed theft of cash of Rs.200/- from the table drawer in the house of Chinnam Sarada and after killing the deceased, he committed theft of pair of silver anklets and made an attempt to remove the gold ear studs from the deceased.

3. The facts as culled out from the evidence of prosecution witnesses are as under:

(i) PW1 is the wife of PW2 and the deceased Chinnam Durgam was their daughter. PWs.3 and 4 are the two persons who were working in the land of PW2. PW5 is the person who leased out his land to PW2. All other witnesses are official witnesses.

(ii) PW2 has been living with another lady by name Jyothi at Mentevarithota at Bhimavaram. The husband of PW1 i.e., PW2 used to live for three days in a week with PW1 and rest of the days with said Jyothi. PWs.1 and 2 took Acs.2.00 cents of land for running a brick kiln situated between Attili and Mupparthipadu. PW3 was working as labour in the brick kiln, whereas PW4 was a tractor driver. On 15.10.2009, PW4 introduced the accused to PW2 and requested him to provide some work, for which, PW2 agreed to give employment on certain terms and conditions. He asked his wife to give him wages apart from meals and breakfast and also a room in the shed situated at a distance of 150 yards away from the house of PW1. On 16.10.2009, PW2 returned to Kommara village, stayed there at night and on the next day morning entrusted the work to the labour and asked them to stop the work in the afternoon since it was the day of Deepavali. He then paid wages to the coolies and all of them expressed their intention to go to their houses for diwali. But, however, the accused told PW2 that he wanted to stay in Kommara village, since he had no relatives and requested PW2 to provide food. Accepting the same, PW2 gave Rs.100/- and left to Bhimavaram. The evidence on record further shows

that on the day of Deepavali, the accused took the daughter of PW1 to a nearby shop twice and requested PW1 to serve meal. At about 07.00 p.m., while the daughter of PW1 was watching T.V., PW1 served food to the accused, asked him to take care of her child and went for a bath. When she came out after completing her bath, found the accused and her daughter missing, while the TV programme was going on. She went inside the house and found her mobile missing and also cash of Rs.200/- from the table shelf. After searching for her missing daughter and mobile, PW1 contacted her husband PW2 and informed about missing of her daughter. PW2 returned home on the next day morning. Thereafter, PW1 along with others searched for her daughter, went to the shed where the accused was residing and found the cloth which was used to folding cot spread on the floor, noticed few flower petals on the floor. Thereafter, they searched the neighboring places and in the irrigation channel found the body of the deceased, which was identified as that of the daughter of PW1. Immediately the body was shifted to the house. They noticed ligature marks over the neck, burn injuries with cigarette over the body, bite marks over the lips and on the private parts of the deceased. They also noticed blood oozing out from the mouth and private parts of the body and swelling of the neck. As the ear ring was tight, he tried to remove it forcibly, which resulted in oozing of blood. Immediately, thereafter, PW1 along with PW2 approached the VRO, who is examined as PW6 and informed about the incident.

The same was reduced into writing, which was signed by PW1. Ex.P1 is the said report. On 18.10.2009, at about 09.30 a.m., PW1 lodged a report before PW12 the SI of Police, basing on which a case in crime No.72 of 2009 came to be registered for the offences punishable under Sections 366(A), 376(2)(F), 379 and 302 IPC. Ex.P13 is the FIR issued. Further investigation in this matter was taken up by PW15, the Inspector of Police. On receipt of a copy of FIR, he proceeded to the scene of offence, which is situated at the house of the informant. He prepared an observation report of the scene in the presence of PW6, which was situated in the tin sheet shed of PW1. He also got photographed the scene of offence and prepared a rough sketch. Ex.P2 is the scene observation report, Ex.P7 are photos, Ex.P17 is the rough sketch. Another scene observation report was prepared at a distance of 150 yards towards east to the first scene of offence. Ex.P3 is the second observation report, Ex.P18 is the rough sketch and Ex.P7 are the bunch of photographs. Under the cover of mediators report, MOs.5 to 13 were seized which are blue coloured torn bag, shirt and pant, empty cigar carton, match box, flower petals, grey coloured pant wetted with mud and one towel. Thereafter, he proceeded to the third scene of offence situated at irrigation channel which is situated at distance of 50 yards from the welling shed of PW1, inspected the scene of offence and found MO14, which is on the western side of the canal and MO15 the sample water bottle.

Ex.P7 is the photographs of scene of offence, Ex.P19 is another rough sketch.

Thereafter, he conducted inquest over the dead body in the presence of PW6. During inquest, he examined PWs.3, 4, 5 and 7 and recorded their statements. Ex.P5 is the inquest report. Thereafter, the body was sent for post mortem examination. PW10 conducted autopsy over the dead body and issued Ex.P9 the post mortem certificate. According to him, the cause of death was due to asphyxia due to smothering and throttling and there was a sexual assault on the deceased. PW15 continued with the investigation. On 07.03.2010 at about 04.30 a.m., on receipt of credible information about the movements of the accused at Jinnur Village Center of Poduru Mandal, PW15 secured the presence of PW8 and proceeded towards Jinnur Village Center. On observing the police party, the accused tried to abscond but on suspicion, he was detained. When enquired, he confessed about the commission of offence in the presence of mediators. Ex.P8 is the confession statement. Pursuant to the confession made, silver anklets (MO1) and nokia cell (MO17) were recovered. Thereafter, the accused was arrested and sent to Government Hospital, Tanuku for medical examination. On 07.03.2010, PW14 issued the examination report, Ex.P16. Basing on the requisition given by PW15, before the I Additional Junior Civil Judge, Tanuku, a test identification parade of the accused was conducted with PWs.1, 4 and one Kankipati Adam. Ex.P12 is the test identification proceedings. Thereafter on

04.04.2010, PW1 identified the property, which was seized from the possession of the accused. Ex.P6 is the property identification report.

(iii) After collecting necessary documents and completing investigation, a charge sheet came to be filed, which was taken on file as PRC No.34 of 2010, on the file of II Additional Judicial Magistrate of First Class, Tanuku. On committal to the Court of the IV Additional District and Sessions Judge, Tanuku, the same came to be numbered as S.C.No.8 of 2011.

(iv) On appearance, the aforementioned charges were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 15 and got marked Exs.P-1 to P-20 and M.Os.1 to 17. Ex.D1 – contradiction in 161 Cr.P.C. statement of PW5 was marked on behalf of the defence.

(vi) After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied.

(vii) Basing on the circumstances relied upon by the prosecution with regard to the accused last seen in the company of the deceased, absconding of the accused for nearly four months and recovery of a cell phone of the mother of the

deceased from the possession of the accused, silver anklet of the deceased, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form chain of events connecting the accused with the crime. It is his case that except the theory of last seen, there is no other evidence connecting the accused with the crime.

4. On the other hand, learned public prosecutor opposed the same contending that apart from the circumstance of the accused being last seen in the company of the accused, the conduct of the accused in leaving the village and absconding for a period of four months, throws any amount of doubt about his innocence in the crime. He further submits that the accused was earlier convicted for the offences of this nature and was sentenced to suffer imprisonment. Though the accused was sentenced life imprisonment, it is stated that he was released and after his release, he again indulged in an offence of similar nature. He took us through the judgment of the Sessions Court in support of his plea.

5. It is not in dispute that there are no eye witnesses to the incident and the case rests on circumstantial evidence.

6. The point that arises for consideration is whether the circumstances relied upon by the prosecution are sufficient to connect the accused with the crime?

7. The evidence of PWs.1 and 4 would show that few days prior to the date of incident, the accused joined as labour in the brick kiln of PW2, which was said to be in the land of PW5. PW4, who is the driver of PW2 brought the accused, introduced him to PW2 and provided him employment on certain conditions i.e., payment of Rs.100/-per day, providing meal and breakfast to the accused, etc. The evidence also shows that a day prior to the deepavali festival, all the workers left to their houses but the accused refused to go stating that he has no relatives. On the date of incident, PW2 is said to have given Rs.100/- to the accused and asked him to go to his house for meals. While giving money, PW2 left to the house of the second wife. The evidence of PW1 clearly shows that on that day, at about 07.00 p.m., the accused went to the house of PW1, while her daughter, who is aged about 8 years, was watching T.V. After providing food to the accused, PW1 asked the accused to take care of her daughter, as she was going for bath. After completing her bath, she came inside and noticed the accused and her daughter missing. Her evidence is to the effect that on earlier occasion also, the accused took her out twice, because of which, she thought that he must have taken her out. After searching for the missing child, PW1 contacted her husband, who arrived at his house on the next day morning at about

05.30 a.m. PW2 along with others went into the shed where the accused was residing, and found a cloth, used to a folding cot, spread on the floor with flower petals on it. They searched for the deceased at neighbouring places and finally found her body in an irrigation channel. After removing the body from the channel, they shifted the dead body to the house of PW1 and thereafter the law was set into motion.

8. The narration of the above facts are clearly reflected in the evidence of PWs.1,2,3 and 4 which is as under:

PW1 deposed as under:

“....My husband contacted me over phone that he is sending the accused to attend to work at the kiln and suggesting to provide two meals a day, tiffin in the morning to pay Rs.100/- per day as coolie. On the arrival of the accused I showed him the shed situated at a distance of 100 yards from my house for his residence. He slept on that night and attended to coolie work. On the next day morning. He came on our tractor along with Gnata Jaya, M.Santha Rao, and S.S.antha Rao carrying husk cinder. M.Santha Rao and S.Santha Rao carrying husk cinder. M.Santha Rao and S.Santha Rao are living at a distance of 2 Km. from my house. My house is asbestos sheet shed covered with coconut leaves. There are three such sheds in that land. In the other two sheds the workers who are attending in the kiln work will reside but I cannot say specifically since the change everyday. He worked for one and half days. After one and half day due to Deepavali festival the other workers went away to their houses but the accused did not by representing that he stay there only as he has no relations and treating me as his daughter. He took my daughter to the nearby the shop twice and requested me to serve meal at about 07.00 p.m., my daughter aged 8 years was

watching T.V.programs and I went to nearby tree situated behind my house for bathing after serving food to the accused. I asked the accused to take care of my daughter. After completing bath I returned and found missing of the accused and also my daughter where as the programs in the T.V. are still on. I went inside the house and found missing of my mobile make Nokia or something else and also and Rs.200/- cash from table shelf. I searched here and there and contacted my husband on that he consoled me that my daughter will be there only and that he will be returning with in no time. He came at 05.30 a.m. on the next day morning. Then I along my husband, M.Santarao, S.Santarao and G.Jaya went outside in search of my daughter. We went into the shed where the accused was residing. We found the cloth which was used to folding cot was spread on the floor, thereon we found the petals of Chrysanthemum (Chamanthi flower), we came out and searched the neighboring places and found a irrigation channel and found a hand out of that channel. We removed the body and identified as my daughter. The dead body was shifted to my house”.

PW2 deposed as under:

“.... I told the accused that he has to attend to the kiln work at Kommara. I told him the terms and conditions and to give him to meals a day, breakfast, and Rs.100/- per day towards wages. He agreed for the same and I told him to go along with the tractor filled with husk cinder. Manda Santha Rao, G.Jaya also accompanied the tractor, I contacted my wife to give him wages apart from meals and breakfast as above and also a room for a stay in a shed which is situated at 150 yards away from the house of PW1. By 09.00 p.m., the accused went to Kommara village. On 16.10.2009 I returned to Kommara village and stayed there in that night and on the early morning I entrusted the work to the labour and asked them to stop the work in the afternoon since 17.10.2009 happened to be Deepavali. I paid the wages to the other coolies and asked the accused, on that he told me that he will stay at Kommara village

since he has no relatives and requested me to provide food by PW1. I gave him Rs.100/-. On the day at 04.00 p.m., I went to Bhimavaram. At 07.00 pm., I received a phone call from PW1 about missing of my daughter and also the missing of the accused. I enquired with her on that she told me that she went to bath requesting her daughter to watch TV programmes and requested the accused to look after my daughter. After return from bath the accused, her daughter, cell phone, Rs.200/- kept in that table shelf were also missing. I told her that out of sentiment that I will not come out of the house in that night and I promised her to be present in the early morning on the next day. Immediately, I contacted Manda Santha Rao, Sirra Santha Rao, and Jaya intimating about the missing of my daughter and the accused and requested them to go to Kommara village but they also came there on the next day morning after my arrival. Then I along with PW1 the above three persons went to the shed of accused and found the folding cot cloth spread on the floor on that the petal of Chrysanthemum (Chamanthi flower) were spread over the same. From there we went to irrigation bode situated near the shed of the accused. We found some petal of Chrysanthemum (Chamanthi flower) on the bund. M.Santharao found the hand of the human being. Immediately I made a hue and cry and rushed there, entered into the got of channel and lifted the dead body and identified as of her daughter. From there we shifted the dead body to our shed. We found blood from the mouth, burn injuries made of cigarette tip, ligature marks over the neck, bleeding was oozing from her private parts. We tried to approach Kommara VRO but he was not in the village. I returned to Kommara and along with my wife went to VRO Attili who is available at Attili MRO, Office and we came to know his presence through M.Subbaraju”.

PW3 deposed as under:

“...PW2 after talking with the accused suggested the terms and conditions of the work, similar to us on that the accused agreed to work by accepting two meals a day, breakfast and to pay Rs.100/- per day and also to provide shelter. He came

along with us on the tractor to Kommara village. We introduced him to PW1. Afterwords we disbursed for that day and again came on the next day morning, unloaded the husk cinder and attended our respective works. The accused was provided shelter in a shed situated at a distance to the house of PW1. On the next day happens to be Deepavali, we worked till 03.00 p.m., we received our full ay wages and disbursed to our respective house to celebrate Deepavali. Myself and PW2 asked the accused about his stay on that he opted to stay in the shed only and that he has no relatives. At about 07.00 p.m., PW2 contacted on phone stating that the deceased was missing. I could not come over to Kommara village due to Deepavali. On the next day morning at 05.00 a.m., I came to work place. I along with PWs.1 and 2, S.Santha Rao, Ganta Jaya searched nearby places, went into the shed of accused, there we found the folding cot cloth was spread on the floor and petal of Chrysanthemum (Chamanthi flower) were spread over the cloth, observing the same PW1 got anxiety that something was happened to her daughter. Then we went to irrigation channel bode nearby and also found the same petals at the bond of the channel. We found one hand on the bode (i.e. elbow). I raised hue and cry, called PW2 and lifted the body from out of the channel and shifted to the house”.

PW4 deposed as under:

“.....While I was standing at the tractor, PW3 and others were loading the husk cinder at Bhimavaram, the accused approached me to provide some work. In introduced the accused to PW2, on that PW2 enquired about his aprticulars and stated that he can provide two meals a day, breakfast and to give Rs.100/- per day on that the accused accepted and came along with us in the tractor to Kommara village. On reaching Kommara we introduced the accused to PW1 and stated to her what was stated by PW2 to be provided to the accused. We stationed the tractor at the work place and left there. The accused was remained there, in the shed situated at a distance of 100 yards from the house of PW1. We returned to our work

on the next day morning at 05.30 a.m., to 05.45 a.m. PW3 and G.Jaya came along with me and accused also joined with us to work in the brick kiln. We worked on the whole day but on the next day we worked upto 2.30 to 03.00 p.m., since it was Deepavali festival day. PW2 gave out day wages. Accused also received his wages. We disbursed to our houses where as accused was chosen to remain in the shed since he had no relatives. I went to my relatives house for the festival. I received a phone call from PW2 and told missing of his daughter and also the accused and that PW1 was anxious. I did not go in that night but went there at 05.00 a.m., on the next day. I along with PWs.1 to 3 searched for the daughter, went to the shed of the accused, on the folding cot cloth was spread on the floor and Chrysanthemum (Chemanthi flower) petals were spread over the cloth, from there we started searching along with water channel and finally we found similar petals at the bund of the channel. PW3 found the elbow of a person in the channel, he called PW2 and others, lifted the dead body and identified as the daughter of PWs.1 and 2. The dead body was shifted to the house of PW1”.

9. Though PWs.1 to 4 were cross examined at length, nothing useful was elicited to discredit their evidence. It was suggested that there were other persons present in the shed at the time of incident, and the possibility of they committing the offence cannot be ruled out. When such a suggestion was given to all the witnesses, it was admitted that on the day of incident, none of them were present in the shed. On the other hand, the evidence of all the four witnesses would show that after collecting wages, all the workers left to their houses on account of deepavali festival, except the accused, who refused to go, stating that he has no relatives. Therefore, the argument of the learned counsel for the petitioner that possibility of death in the

hands of third person stands disproved. As stated above, the first circumstance relied upon by the prosecution was the accused being last seen in the company of the deceased. From the evidence of PWs.1 and 2, it is clear that on that day at about 07.00 p.m., the accused came to the house of PW1 for meals. After giving meals, PW1 went behind the house to take bath. At that time, when she came back, she found her daughter was missing. Though PW1 was cross examined at length, nothing useful was elicited to prove that she did not either served meals or that the accused never visited the house of PW1. In fact, it was not even suggested to PW1 that the accused never visited the house on that day. Though it was put to her that she did not state in her earlier statements about missing of cell phone and cash of Rs.200/- and also about the request made by her to the accused to take care of her till she come back after her bath, the same was denied by PW1. But the suggestion, in our view, do not anywhere establish the absence of the accused in the house on that day. These circumstances do not anywhere establish that the accused never visited the house of PW1 on that day. Apart from that, it is to be noted that immediately after the incident, she informed PW2 about the missing of the girl to which PW2 informed that he would come within no time. The fact that the accused was working with PW1 and that the accused was staying alone on that day stands established through the evidence of PW4.

10. Therefore, the theory of the accused being last seen in the company of the deceased stands established. The evidence of investigating officer further shows that on 07.03.2010 at about 04.30 a.m., on receipt of credible information about the movements of the accused at Jinnur village center of Poduru Mandal, the police party noticed a suspicious person and on seeing the police, the accused tried to escape, but the police caught hold of him. When enquired, the accused confessed about the commission of offence, pursuant to which MO1 – small silver anklets and MO17 mobile phone belonging to PW1 were recovered. Even if the alleged recoveries are not proved since PW1 did not state about missing of her mobile phone, but the conduct of the accused in absconding from the place of incident for nearly four months throws any amount of doubt. If really the accused was innocent, he would have not left the village, moreso, when he was working under PW2. No explanation is forthcoming from the accused, either in his examination under Section 313 of Cr.P.C. or in the suggestions put to PW2, as to why he left the job with PW2, within a couple of days after the incident. Therefore, this conduct of the accused though by itself may not be a ground to place reliance, coupled with the circumstance of he being seen last in the company of the deceased, definitely would be made a basis to connect him with the crime. At this stage, learned counsel for the appellant also fairly state that on earlier occasion the very same accused was tried for the offences of rape and murder in

S.C.No.64 of 1991. By its judgment dated 19.03.1992, the trial Court found the accused guilty and sentenced him to suffer imprisonment for life. It is stated that basing on certain GOs., he was released and he has again involved in the offence of similar nature. It was also a case where a girl of 10 years old was raped and murdered.

11. In view of the above circumstances, we feel that the findings and conviction recorded by the trial Court warrants no interference.

12. Accordingly, the appeal is dismissed confirming the conviction and sentence dated 15.06.2011, passed in Sessions Case No.8 of 2011 on the file of the IV Additional District and Sessions Judge, Tanuku.

13. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

07.02.2018
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