

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.177 of 2013

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

A1 to A4 in Sessions Case No. 369 of 2010 on the file of the X Additional District and Sessions Judge, (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad are the appellants herein. They were tried for the offences punishable under Sections 120-B, 302, 364, 397 and 398 IPC read with Section 34 IPC. By its judgment dated 19.02.2013, the learned Sessions Judge convicted the accused for all the offences alleged against them and sentenced them to various terms of imprisonment, which are as under:

- (1) imprisonment for life for the offence punishable under Section 302 read with Section 120-B and to pay fine of Rs.1,000/- each, in case of default to undergo simple imprisonment for one month;
- (2) imprisonment for a period of seven years for the offence punishable under Section 364 IPC and to pay fine of Rs.1,000/- each, in default to undergo simple imprisonment for one month;
- (3) imprisonment for a period of ten years for the offences punishable under Section 392 read with Sections 397 and 398 IPC, and to pay fine of Rs.1,000/- each in default to undergo simple imprisonment for one month.

All the sentences were directed to run concurrently.

2. The gravamen of the charge against the accused is that on 12.09.2009 at about 5.30 p.m., the accused abducted one Balduri Srinivas and in pursuance of a criminal conspiracy, caused the death of the said Srinivas by strangling his neck, hitting him on the head with an iron rod and thereafter throwing boulders at him at about 11.30 p.m., in the outskirts of Mannanur village, Jiligaya Gutta, Amrabad Mandal, Mahabubnagar District.

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

PW4 claims to be owner of an Innova car bearing registration No. AP-29 B.E-6344. The deceased-Srinivas was working as a driver under PW4 for the said car. The car was registered in the name of the sister-in-law of PW4 Smt. Bhavani. PW1 and the deceased were working as drivers in the travels owned by PW3. In the year 2009, on one day in the afternoon at about 2.30 p.m., one customer by name Narsimha Reddy made a phone call to PW1 and booked one Innova vehicle for him so as to proceed towards Srisailam. PW1 asked Srinivas (deceased) as to whether he was willing to go to Srisailam, for which the deceased expressed his willingness. The customer agreed to pay charges @ Rs.10 per km., pursuant to which PW1 gave the cell phone number given by the customer to the deceased and asked him to proceed to Kamineni Hospital junction in the said Innova car, enabling the customer to board the vehicle. At about 4.30 or 5 p.m., on the same day, the deceased telephoned to PW1, stating that he was proceeding to Nagole

junction to pick up the customer. The evidence on record further shows that at about 5 p.m., the deceased telephoned to PW4-the owner of the Innova car, enquiring as to whether he had any work with the said car. When PW4 told him that he does not require the car, the deceased informed him that he was intending to take the car to Srisailam. At about 9 p.m., PW4 made a call to the deceased, who told him that he took meals at a dhaba on the way and that the customers, who engaged the vehicle, were also taking their meals. On the next day, at about 1 p.m, PW4 received a phone call from Vanasthalipuram Police Station, stating that the Innova car was seized by them while the same was being sold at Vanasthalipuram and that the driver of the said car was murdered while he was on his way to Srisailam. Similarly, PW1 also received a telephone call at 3.30 p.m. from Vanasthalipuram Police Station, stating that the driver of the Innova car was murdered, and that the Innova vehicle was stolen by some culprits.

4. Basing on the above information, PW1 gave a report before PW17-the Inspector of Police, on 13.09.2009, which came to be registered as Crime No. 545 of 2009 as 'man missing', vide Ex.P13. He then sent notices to all the police stations, with details of the missing man, examined PWs 1 to 4 and recorded their statements. He also claims to have examined the wife of the deceased, i.e., PW5 and recorded her statement.

5. On 13.09.2009, at about 4 p.m., PW6, who is the paternal uncle of the deceased, received a call from the younger brother of

the deceased by name Gopal informing about the death of the deceased and also about the dead body being kept in a mortuary at Government Hospital, Atchampet. Accordingly, he went to the hospital and identified the dead body as that of the deceased. His information was to the effect that the deceased was murdered by some miscreants who hired the car. Similar is the version of PW7, who is also a relative of the deceased.

6. The material on record discloses that at about 3 to 4 p.m. on 13.09.2009, the police from Amrabad Police Station took PW11, who is a resident of Vatverlapally village to Jeligayagutta in the outskirts of Amrabad and observed the said place in his presence and also held inquest over the dead body of one male person. Ex.P4 is the crime details form prepared by the police at the scene and Ex.P5 is the rough sketch prepared by the police. The police are said to have seized two blood stained stones from the scene of offence.

7. On 13.09.2009, on a request from the Station House Officer, Amrabad Police Station, PW9-the Civil Assistant Surgeon, Government Civil Hospital, Achampet conducted autopsy over the dead body from 4.30 p.m. onwards and issued Ex.P8-post mortem report. According to him, the cause of death was due to injuries on the body of the deceased.

8. On 24.09.2009, on credible information, PW17 secured the presence of PW14 and another and was checking the vehicles at Upasanakendram, Guramguda on Sagar Road. He is said to have

intercepted an Innova car without registration and found A1 to A4 in the said car. As they did not give any satisfactory explanation, took them into custody and interrogated them in the presence of PWs 12 and 13, wherein they are alleged to have confessed about the kidnap and murder of the car driver (deceased), which was reduced into writing under Ex.P4 to P9. Pursuant to the same, PW17 seized the said car and also two mobile phones, one handkerchief, Rs.3,000/- from A3 and two daggers from A4. Pursuant to the confession made, the accused led PW17 to Mannenoor village of Mahabubnagar district, from where he produced blood stained iron rod, blood stained full sleeves shirt of deceased, broken number plate and a pair of chappals of the deceased etc. The accused also led them to Champapet village, where they seized a motorbike from the house of A2 and also seized Innova car pertaining to another crime from the house of A3. Thereafter, the accused were remanded to custody.

9. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.7 of 2000 on the file of VII Metropolitan Magistrate, Hayathnagar. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 369 of 2010 on the file of Court of the the X Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad. Basing on the material on record, charges for the offences punishable under Sections 120B, 302, 364, 397 and 398 read with 34 of IPC were framed, read over and

explained to the accused, to which they denied and claimed to be tried.

10. To substantiate their case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P14 and M.Os.1 to 7. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on behalf of the accused in support of their defence.

11. Basing on the evidence adduced by the prosecution, the trial Court convicted the accused for the offences punishable under Sections 302 read with 120B, 364 and 392 read with Sections 397 and 398 IPC and sentenced them to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

12. The learned counsel for the appellants mainly submits that there is absolutely no legal evidence to connect the accused with the crime. He took us through the evidence of the witnesses to show the discrepancy and improbability of the accused participating in the commission of the offence.

13. On the other hand, the Public Prosecutor would contend that the evidence on record clinchingly establish the involvement of the accused in the commission of the offence, more so, when they were apprehended while they were driving the crime vehicle. In the absence of any explanation given by them as to how they came

into possession of the said vehicle, he would submit that the conviction of the trial court requires no interference.

14. The point for consideration is: whether the accused are responsible for the acts alleged against them.

15. It is to be noted here that there are no eye witnesses to the incident and the case rests on circumstantial evidence. The question is whether the circumstances relied upon by the prosecution are proved, and if proved, whether they connect the accused with the crime. PW4 is said to be the owner of the crime vehicle. In his evidence, he deposed that on 12.09.2009, at about 5 p.m., the deceased made a call to him and enquired him as to whether he had any work with the crime vehicle. When PW4 told him that he does not require the same, the deceased, who is the driver of the said vehicle, informed that he intends to take the car to Srisailam, as one of the customer had booked the said vehicle.

16. PW1, who also works as a driver for PW4, deposed that on 12.09.2009, at about 2.30 p.m., one customer by name Narsimha Reddy made a call and booked one Innova car to go to Srisailam. He asked the deceased as to whether he was willing to go to Srisailam. When the deceased expressed his willingness, PW1 informed the same to the customer, who agreed to pay usual charges. At about 4.30 or 5 p.m., the deceased made a call to PW1 stating that he was proceeding to Nagole junction to pick up the customer.

17. From the evidence of the two witnesses referred to above, it is clear that one Narsimha Reddy, who was not examined, hired the vehicle to go to Srisailam and he was picked up at about 4.30 or 5 p.m., on 12.09.2009. On the same day, at about 9 p.m., PW4 received a call from the deceased, stating that he took meals on the way and that the customers who engaged the vehicle, were taking their meals. From the evidence of PW4, it is clear that till 9 p.m., everything was fine and that the customer who engaged the vehicle was also present along with the deceased. However, on the next day, in the afternoon at about 1 p.m., he received a call from the Vanasthalipuram Police Station, stating that the car was seized by them, while the same was being sold at Vanasthalipuram, and that the driver was found murdered while he was on his way to Srisailam.

18. It would be useful to extract the relevant portion in the evidence of PW4, which is as under:

“On the next day at about 1 p.m., in the afternoon, I received a phone call from Vanasthalipuram P.S that my Innova car was seized by them while the same was being sold at Vanasthalipuram and that my driver Srinivas was found murdered on the way to Srisailam. I went to P.S and saw my vehicle.”

19. Similar is the version of PW1, who deposed as under:

“On the next day in the afternoon at about 3.30 p.m., the police from Vanasthalipuram P.S told

me that the driver Srinivas was murdered on the ghat road leading to Srisailam and that his innova vehicle was stolen by some culprits.”

20. From this portion of the evidence, it is clear that the crime vehicle was available in the Vanasthalipuram police station by the afternoon of 13.09.2009. The evidence of the other witnesses, which may not be relevant here, shows that the incident in question appears to have place on the Srisailam ghat road, and thereafter, the dead body was shifted to Government Hospital at Atchampet, where the same was identified by PWs 5 and 6 as that of the deceased, and inquest proceedings were held in that hospital.

21. At this stage, it would be relevant to refer to the evidence of PW8, who has been working as Forest Beat Officer in the forest check post at Mannanur village of Amrabad Mandal in Mahabubnagar district, which is as under. According to him, on 12.09.2009, one innova car bearing registration No.AP 29 BE-6344 proceeding towards Srisailam from Hyderabad came to the check post at 8.45 a.m., and the same was entered in the check post register. He deposed that the driver of the car put his signature in the register.

22. When the evidence of PWs 1 and 4 show that the vehicle left Hyderabad after picking up the customer by name Narsimha Reddy on 12.09.2009 at 4.30 or 5 p.m., it is strange as to how the said vehicle could have crossed the check post on 12.09.2009 at 8.45

a.m. Hence, a doubt arises as to the version in the prosecution case.

23. Apart from that, one other circumstance which goes to the root of the matter is that after registering the crime on 13.09.2009, PW17, in his evidence, states that on 24.09.2009, on receipt of credible information, he intercepted the innova vehicle (crime vehicle) near Guramguda, as it was being used without a registration number. In the said vehicle, A1 to A4 were present, and on suspicion, they were taken into custody. When questioned in the presence of PWs 12 and 13, all the four accused are said to have confessed about the commission of the offence, which led to the recovery of vehicles which were alleged to have been used in the commission of other crimes, two mobile phones, two daggers and also an amount of Rs.,3000/- . The version of PW17 with regard to intercepting the vehicle on 24.09.2009 is supported by PW14-the Head Constable who was present along with PW17 on that day. The evidence of these two witnesses would indicate that the innova vehicle was intercepted on 24.09.2009 and A1 to A4 were said to be present in the vehicle on that day.

24. On the other hand, the evidence of PW4 shows that on 13.09.2009, at about 1 p.m., he received a phone call from Vanasthalipuram Police Station, stating that his innova car was seized by them while the same was being sold at Vanasthalipuram, and basing on the said information, he proceeded to the police station and identified the vehicle as belonging to him. Smilar is

the version of PW1, who, in his evidence, states that at about 3.30 p.m., he received a phone call from Vanasthalipuram Police Station informing about the murder of the deceased in the ghat road to Srisailam and seizure of the vehicle.

25. From the evidence of PWs 4 and 1, it is clear that by next day afternoon, the vehicle was in the police station. When the vehicle was in the police station at 1 p.m. on 13.09.2009, it is strange as to how the police could have intercepted the vehicle on 24.09.2009 along with A1 to A4. Hence, a doubt arises as to the interception of the vehicle on 24.09.2009, arrest of the accused on the said date and recoveries made pursuant to their confession.

26. Further, we feel that it is a case where the prosecution has not adduced any legal evidence to connect the accused with the crime, more so, when they have failed to examine the person by name Narsimha Reddy, who is said to have hired the vehicle. He would have been the best person to narrate the sequence of events, and through him, the prosecution could have established the identity of the culprit as well. His non examination is fatal to the prosecution case. Having regard to all the above, we feel that the circumstances relied upon by the prosecution to establish the guilt of the accused are not proved by any legal evidence, and accordingly, the conviction of the accused under all sections are liable to be set aside.

27. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in the judgment dated 19.02.2013, in Sessions Case No.369 of 2010, on the file of the X Additional District and Sessions Judge, (FTC), Panga Reddy at L.B.Nagar, Hyderabad for the offences punishable under Sections 302, read with 120B, 364 and 392 read with 397, 398 I.P.C. is set aside and they are acquitted for the said offences. Consequently, the appellants/accused shall be set at liberty forthwith, if not required in any other case.

07.02.2018
DMG



JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI