

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.824 of 2011

JUDGMENT: (*per the Hon'ble Smt Justice T. Rajani*)

The judgment of the I Additional Sessions Judge, Srikakulam in SC.No.92 of 2010 dated 03.01.2011 is brought to question by way of this appeal. The I Additional Sessions Judge found the accused guilty for the offence under Section 302 of the Indian Penal code and convicted him for the same and sentenced him to undergo life imprisonment and also to pay fine of Rs.3,000/- in default of payment of fine, to undergo simple imprisonment for a period of three months and also found the accused guilty for the offence under Section 364 IPC and convicted him for the same and sentenced him to undergo simple imprisonment for a period of ten years and also to pay fine of Rs.3,000/- in default of payment of fine, to undergo simple imprisonment for a period of three months.

2. The triviality of the gain, that led the accused to commit the murder of two children, shocks our conscience. The accused is no other than the junior paternal uncle of the two children, who were murdered.

3. The facts of the case, briefly, as reflected in the charge sheet, are as follows:

On the morning of 14.02.2010, the accused took the two deceased children on his TVS XL Moped and roamed in the village for some time. Later, he took them to Pedduru village, stopped his motor

cycle, took the children to nearby stone, made D2, who is one of the children to sit on a boulder and took D1, who is the other child, to a nearby field and strangled him to death with a rope, which he used to use to tie to his cloth bundles to his moped; later he pressed D2 to a boulder and strangled the boy with the same rope. The parents of the children having not found the children for long, searched for them in and around the Dosari village and then gave a report to the police. The accused made an extra-judicial confession before the Village Revenue Officer of Aguru and later on, recoveries were made at his instance.

4. After concluding the investigation by recording the statements of the witnesses, among whom, those who saw the accused and the deceased together lastly were also present; the charge sheet was laid for the offence punishable under Sections 364 and 302 of the Indian Penal Code. The Judicial Magistrate of First Class, Palakonda, after taking cognizance of the case committed the case to the Sessions Division, Srikakulam. The Sessions Judge, in turn, made over the case to the I Additional Sessions Judge, Srikakulam for trial and disposal as per law. The learned Judge, after framing the charges for the offence under Sections 302 and 264 IPC, conducted trial of the case, during which P.Ws.1 to 17 were examined and Exs.P1 to P26 and M.Os.1 to 5 marked. None were examined on behalf of accused. The accused was questioned on the incriminating circumstances appearing in the prosecution evidence, which he denied and stated that he did not commit any offence and that he was falsely implicated in the case and that one Ajjada Ramana is behind his false implication.

5. After hearing the arguments of both sides and considering the evidence, the I Additional Sessions Judge, Srikakulam passed the impugned judgment.

6. Aggrieved by the said judgment, this appeal is preferred on the following grounds:

The Court below ought to have seen that there is no direct evidence to prove the guilt of the accused and the prosecution failed to prove the motive of the accused to commit the alleged offence. It ought to have seen that the motive is important when the case is based on circumstantial evidence. The Court below erred in coming to the conclusion that the appellant's so-called extra-judicial confession recorded by P.W.15 is true and failed to notice that if any statement is made at the instance of the police, the said statements are not according to law. The Court below failed to notice that the case was foisted at the instance of Ajjada Ramana, who is a politician in the locality. The Court below failed to notice that no name was mentioned, suspecting the alleged offence, either in the complaint or in the report given by P.W.5. The Court below failed to notice that when the prosecution is based on circumstantial evidence, four tests have to be satisfied, which are (1) the circumstances from which conclusion of guilt is to be drawn have been fully established (2) All the facts so established are consistent only with the hypothesis of the guilt of the accused and did not exclude any hypothesis except the one sought to be proved (3) Circumstances on which reliance are placed are conclusive in nature. (4) The chain of events is such that there is no scope for any reasonable ground for a conclusion consistent with the

innocence of the accused. The Court below ought to have considered that the seizure of M.Os.1 to 4 is not in accordance with the procedure. The Court below ignored the contradictions in the evidence.

7 Heard Ms. C. Vasundhara Reddy, counsel for the appellant and the learned Public Prosecutor appearing for the respondent.

8. The counsel for the appellant submits that the case is based on the evidence of the witnesses, who last saw the accused and the deceased together, which is a very weak piece of evidence, more so, when the witnesses are belated witnesses. She contends that the fact of the missing of the deceased children came to light on the very next day of their missing and if they had really seen the accused and the deceased together, they would have informed about the same to P.W.1, who is the father of the deceased children and suspicion would have been entertained against the accused immediately.

9. The Public Prosecutor, on the other hand, contends that the extra-judicial confession made by the accused before P.W.15 would brush aside all the contentions raised by the appellant's counsel, as absolutely there is no reason to disbelieve the said confession. He also submits that the fact that the rope was recovered at the instance of the accused would get strongly linked to the circumstance of 'last seen' and would form a strong chain of circumstances, pointing to the guilt of the accused alone. The failure of the accused to explain as to what happened to the children, who were seen along with him, would also add strength to the above circumstances. He contends that there is absolutely no reason to interfere with the impugned judgment,

as it has well considered the facts of the case in the background of law.

10. Based on the arguments of the counsel and the material on record, we frame the following points for determination:

1. Whether the evidence of the witnesses, who have seen the deceased and the accused together, prior to the missing of the deceased, is credible and reliable.
2. Whether the extra-judicial confession made by the accused before P.W.15 inspires confidence.
3. Whether the judgment of the Court below needs any interference.
4. To what result.

POINT No.1:

11. The fact that the accused is closely related to P.W.1 has to be borne in mind while appreciating the evidence of the concerned witnesses and also the reason for their not reporting about the same to P.W.1. The accused is no other than the co-son-in-law of P.W.1, the children were seen with the accused, going on his Moped with all faith in him that he developed by virtue of being their uncle. Nothing strange would be perceived by the people to see them together and certainly, first doubt would not go against the accused. Seeing the accused and the deceased together might have been considered as a usual affair, by the witnesses concerned and that might be the reason for which they did not report the same to P.W.1 or anyone. It requires an amount of courage for the witnesses to inform about the same to P.W.1 or his family members, as the same would sound like they are

suspecting the accused, who is also their family member. Since the relation between the accused and the family of P.W.1 being normal, the witnesses might not have ventured to put forth any opinion carrying their suspension. Hence, the lapse on the part of the witnesses in not informing the about their seeing the accused and the deceased together, to P.W.1 and his family members gets explained by the above reasoning.

12. There is certainly some delay in recording the statements of the witnesses. The accused was apprehended on 25.02.2010 when he was taken to the police by P.W.15, to whom he went for making confession. But the statements of the witnesses were recorded on 27.02.2010 as can be gathered from the evidence of P.W.16, who stated that he was examined by the police on 27.02.2010. It appears that until the extra-judicial confession was made by the accused, no suspicion was entertained by any of the family members of the deceased.

13. The triviality of the gain can be gathered from the evidence of P.W.4, who is the father-in-law of P.W.1 and the accused. The motive was spoken to by P.W.4, by stating that the accused used to quarrel with him for the properties; he has given one acre of wet land and one acre of dry land and a house, to the accused, at the time of marriage and did not give any dowry. The accused is his nephew, being his sister's son. He could not give any reason for the accused killing the children, as he had already given the properties and did not suspect that the accused would kill the children.

In the cross-examination, he further clarifies that there are no big disputes between himself and the accused and the accused only now and then used to ask him for the properties. He has not given land to P.W.1 and only demarked the land to P.W.1. They went to work in his land on the date of the incident. P.W.1 also seems to have not considered the dispute with the accused, serious. He states that the accused had one son and on the date of killing the children of P.W.1, another son was born to him. He states that the accused killed the sons of P.W.1 under the impression that his father-in-law might give two acres of land to the sons of P.W.1 by adopting them. He also speaks about his father-in-law giving one acre each to his daughters.

14. The evidence of P.W.1 also shows that the accused also made searches for the children, along with them and he was also present at the time of the funeral of the deceased. Hence, in the above circumstances, there would not be any reason, for either P.W.1 or anyone else, to suspect the accused. As already observed, in the background of the accused moving with P.W.1 even after the death of the children and P.W.1 and his family members not expressing any suspicion against the accused, the witnesses, who saw the accused and the deceased together, might not have felt it proper to report to them the said fact, which would imply an expression of suspicion.

15. When we understand the reasons for the witnesses not revealing their seeing the accused and the deceased together, in the above manner, their evidence would become wholly reliable.

16. P.W.1 speaks about the missing of his children and their searching for them and about the presence of the accused and their identifying the same near Pedduru. Ligature mark was found on the neck of his elder son and the younger son's face was completely blood-stained and he was on a rock.

17. P.W.2 is a witness, who went to raise cattle through Dhonubai road of Pedduru village and came across the dead bodies of the two children and he, in turn, informed to L.W.4, Raju, who also came and saw the dead bodies and informed the same to L.W.5, who is a teacher and they took L.W.5 also to the spot, L.W.5, in turn, informed the same to the police.

18. P.W.3 is also a similar witness. P.W.4, as already discussed, is the father-in-law of the accused and P.W.1, also participated in the search made for the children. According to him, Rajam police informed him about the presence of the bodies near Pedduru village. P.W.5 is the father of P.W.1. His evidence is not material as he also speaks about the missing of the children and recovery of their dead bodies. P.W.6 is one of the witnesses, who saw the accused on 14.02.2010, at about 4 PM at Mudidam village, a motor cycle was kept by his side and he was standing. When he talked to the accused, he told them that he went to Mudadam village and came back and then he left the place. He further specified the place where the accused was standing is a tank bund.

19. P.W.7 is a child witness, aged 13 years. He is one of the witnesses, who saw the deceased and the accused together on TVS XL

Moped, which was being driven by the accused at that time. He saw them at about 11 AM on 14.02.2010. He was sitting under a Tamarind tree along with L.W.15 Vandana Vasudevarao. The accused was going on the road leading to Aguru village. He clearly stated that Naveen was sitting in front of the accused, while Nitin was sitting behind the accused.

The cross-examination of P.W.7 would answer the improbability pointed out by the counsel for the appellant, with regard to his moving with L.W.15, who is aged 23 years. He stated that he stopped his education after the death of his father and was doing mechanic work. It is a usual view in the villages, that children of the age of P.W.7, who give up education and do some work, would move with people of all ages.

20. P.W.8 is another witness, who saw the accused and the deceased together at about the same time as stated by P.W.7. The accused was seen going on a motor cycle along with two children towards Aguru road. When he questioned the accused as to where he was going, he gave an evasive reply that 'YETULEDULE', later he came to know that the children were missing.

In the cross-examination, when he was questioned about the vehicle number, he stated that he did not remember the number, but he stated that it is a TVS XL Blue colour Moped. He further explained that cloth business people used to maintain TVS XL Moped's and he also does the same business. He saw the accused searching for the children in the village. He stated that he did not tell the parents of

the deceased that he saw the accused along with the deceased, but he did not, however, give any reason.

21. P.W.16 is another witness, who saw the accused and the deceased together. He also saw them at about 11 AM on 14.02.2010. He stated that the accused replied in the same manner, as he replied to P.W.8. He also stated that till he was examined by P.W.1, he did not state to P.W.1 or any other witness that he saw the accused along with the children.

22. The above witnesses have categorically stated that they saw the accused taking the children on his TVS XL Moped. There was nothing that was elicited from the cross-examination of the witnesses, which would make their evidence incredible. The recovery of motor cycle was made from the accused. The registration certificate is marked as Ex.P26, which shows that the vehicle, which is TVS XL HD, stands in the name of the accused. Hence, the said exhibit would support the evidence of the above witnesses, that the accused took the children on TVS XL Moped. The colour of the motor cycles also stands to be blue, as stated by P.W.8. Hence, we opine that the evidence of P.Ws.4, 7, 8 and 16 is trustworthy and can very well be relied upon.

The point is answered accordingly.

POINT Nos.2 & 3:

23. The extra-judicial confession that the accused made before P.W.15 does not suffer from any doubt. The contention of the counsel for the appellant that the accused had no reason to confide in P.W.15

to make the confession, as he is the VRO of Aguru village, which is not the village of the accused, gets marginalized by the evidence of P.W.15 himself wherein he states that Dosari village is also included in his jurisdiction and that Aguru panchayat and Dosari panchayat are one cluster, for which he is the VRO. He also stated that the accused is a resident of Dosari village, hence, P.W.15, being a Government servant, might have been chosen by the accused, as a proper person to confide in and to make the extra-judicial confession.

24. The confession made before P.W.15 also become reliable due to the fact that it was drafted by P.W.15, in the absence of police and the signature of the accused was also obtained on the same. The VRO asked him to surrender before the police and therefore, he came to the police station. The evidence of P.W.17, who is the Investigating Officer, corroborates with the evidence of P.W.15, to the extent of P.W.15 taking the accused to the police station. Thereafter, the confession of the accused was recorded by P.W.17 in the presence of two other witnesses and recoveries were made. The accused took them and showed M.Os.1 to 3, which are clothes and M.O.4, which is a rope, used for committing the offence. He later took them to his house from where TVS Moped was recovered.

25. The recoveries made, at the instance of the accused, do not suffer from any doubt. The failure of the accused to explain as to what happened to the deceased after they were taken by him, would also form one of the strong links in the chain of circumstances. Hence, the decision relied upon the counsel for the appellant in

KANHAIYA LAL v. STATE OF RAJASTHAN¹ does not help the appellant, as we do not base our judgment simply on the last seen theory but also on the other circumstances, which lend support to the judgment. The Supreme Court also observed the same, by stating that there must be something more than evidence of last seen together for establishing the connection between the accused and the crime. Though the Supreme Court held that mere non-explanation of the accused being last seen together with the deceased person by itself cannot lead to proof of guilt against him, the Supreme Court did not exclude the said fact from the arena of consideration, which can be understood from the observation made by it, that it by itself cannot lead to proof of guilt. What follows is, that it can lead to proof of guilt, if it is supported by other circumstances and evidence.

26. The Public Prosecutor, on the other hand, relies on a decision of the Supreme Court in MUNISH MUBAR v. STATE OF HARYANA² wherein it was held that it is obligatory on the part of the accused, while being examined under Section 313 Cr.P.C to furnish some explanation with respect to the incriminating circumstances associated with him and the Court must take note of such explanation even in case of circumstantial evidence, so as to decide whether chain of circumstances is complete. Hence, it has to be understood that the facts and circumstances of the case are relevant to appreciate the silence of the accused.

¹ (2014) 4 SCC 715

² (2012) 10 SCC 464

27. The Public Prosecutor, on the aspect of delay in recording the statement of the witnesses, relies on a decision of the Supreme Court in ANJAN DASGUPTA v. STATE OF WEST BENGAL³ wherein, it was held that statements of witnesses cannot be discarded merely on the ground of delay, more so, when no explanation was sought from the Investigating Officer regarding delay. In this case also, it can be seen that no explanation was sought for from the Investigating Officer with regard to the said delay.

28. On the aspect of motive, the counsel for the appellant relies on the decision of this Court in PANCHIKATLA SREENIVASULU v. STATE OF AP⁴ wherein it was held that in a case of circumstantial evidence, motive plays predominant role.

Motive, in this case is well proved. Whether it is sufficient enough to drive the accused to commit such a heinous offence or not, is a question, the answer for which is lodged in the mind of the accused. When the circumstances, proving the guilt of the accused are so cogent, pointing unerringly to the guilt of the accused, brushing aside all those circumstances, on the mere ground of inadequacy of motive, would not be in the interest of justice. We are left without any demur, in finding the accused guilty of the charged offence and consequently, do not feel the necessity of any interference with the impugned judgment.

³ (2017) 11 SCC 222

⁴ 2018 (1) ALT (CRL.) 304 (DB) (AP)

POINT No.4:

In the result, the criminal appeal is dismissed upholding the conviction and sentence passed by the I Additional Sessions Judge, Srikakulam in SC.No.92 of 2010 dated 03.01.2011. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

SURESH KUMAR KAIT, J

T. RAJANI, J

April 4s, 2018
DSK

