

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL Nos.726 and 949 of 2011

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

1) Both these appeals are filed against the judgment dated 29.06.2011, passed in S.C.No.175 of 2008 on the file of the VI Additional District and Sessions Judge (FTC), Tirupati. Criminal Appeal No.949 of 2011 is filed by accused No.1 while Criminal Appeal No.726 of 2011 is filed by accused No.2.

2) Originally, charges came to be framed against five accused for the offences punishable under Sections 364, 302, 201 read with 34 IPC and 120 (B) IPC, for kidnapping one Nainaru Guru Sreenu @ Sanni (hereinafter referred to as "the deceased"), aged about 8 years from Bharatiya Vidya Bhavan, Tirupati and thereafter killed him. Pending trial accused Nos.3 and 4 died. Vide judgment dated 29.06.2011, the learned Sessions Judge, while acquitting accused No.5 of all charges, convicted accused Nos.1 and 2 and sentenced them, as under:

U/ s. 364 IPC	To suffer rigorous imprisonment for seven years and to pay fine of Rs.1,000/- each, in default to undergo simple imprisonment for a period of three months
U/ s. 302 r/ w 34 IPC	To suffer Imprisonment for Life each and to pay fine of Rs.2000/- each in default to suffer simple imprisonment for a period of six months each

u/ s. 201 IPC	To suffer rigorous imprisonment for a period of seven years and to pay fine of Rs.500/- each, in default to suffer simple imprisonment for a period of two months
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All the sentences of imprisonments imposed on accused Nos.1 and 2 were directed to run concurrently.

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

i) PW.1 is the father of the deceased, while PW.2 is the brother of PW.1. PW.4 is an employee working in the shop of PW.1. Accused No.1 is the son of the younger sister of the mother of PW.1 by name Chengamma. As the financial position of accused No.1 was very weak, PWs.1 and 2 brought the family of accused No.1 along with his mother Chengamma, to Tirupati and both of them were working in the bangle shop of PW.1. The husband of Chengamma by name Boyasetty and the sister of accused No.1 by name Renuka were working in Bhimas Hotel at Tirupati. At that time accused No.1 was studying B.A. first year in S.V.Arts College, Tirupati. It is said that accused No.1 and his father used to raise a dispute with PW.1 and his family members with regard to land at Jangalapally, but the said issue was not taken serious note by the family members of PW.1. It is also brought on record that as accused No.1 was misbehaving with ladies, after consumption of alcohol, PW.1 reprimanded him on couple of occasions. PW.1 had a son by name Guru Srinivas (deceased), aged about 8 years and one daughter by name Sameeksha aged about 4 years. Both of

them were studying 3rd class and U.K.G. respectively at the time of the incident. Both of them used to go to school in the auto of PW.6. On the date of incident ie. 13.11.2007 at about 8.00 a.m. as usual the children of PW.1 were sent to the school in the auto of PW.6. At about 1.30 or 2.00 p.m. PW.2 received a telephone call from the school stating that while baggage and carriage of the deceased is in the school, his whereabouts are not found in the school. Immediately, PWs.1, 2 and others went to school and searched for the boy. Their enquiries in the school revealed that at about 9.30 a.m., two persons aged about 20 to 22 years, came and informed the deceased boy that his mother is un-well and asked him to accompany them. They searched around the vicinity but could not trace the deceased. At about 4.00 p.m. the elder brother of PW.2 lodged a report with the police. After lodging of the report, a phone call was received to the cell phone of PW.4, who inturn asked PW.4 to give the cell to PW.1. When PW.1 picked up the call, a middle aged person informed him that he has kidnapped his son and demanded Rs.5.00 lakhs to be kept at the 11th tree from BTR Puram Board on Mangalam road. Accordingly, PW.1 kept the money as per the directions of the caller. Two more calls were received at 7.00 p.m. and 10.00 p.m. threatening that their person is moving with PW.1 and others and if any information is given to the police they would kill the son of PW.1. At that point of time, they suspected accused No.1 and informed the same to the police.

ii) A report came to be lodged at 4.00 p.m. before PW.30-the Sub-Inspector of Police, Alipiri, by PW.2, which is placed on record as Ex.P1. Basing on the same, a case in crime No.247 of 2007 came to be registered for the offence punishable under Section 365 IPC. After registering the crime, PW.30 visited the scene of offence-school, secured the presence of PWs. 1,4,5,6,7 and others and recorded their statements. During his investigation, an un-known person called PW.4 and PW.1 demanding ransom of Rs.5.00 lakhs. Accordingly, searches came to be made by deputing special parties. On 14.11.2007 at about 9.00 p.m., on credible information given by PW.1 suspecting accused No.1, he along with his staff and PW25-mediator, proceeded in a jeep, surrounded the house of accused No.1 and questioned accused No.1 in the presence of mediator. Accused No.1 is said to have confessed about the commission of offence and also explained the circumstances under which he kidnapped and murdered the boy with the help of his friends. PW.30 effected the arrest of accused No.1. The relevant portion of confessional statement of accused No.1 containing the signature of accused No.1 is placed on record as Ex.P5. Along with accused No.1 they proceeded to the police station, where the section of law was altered to one under Sections 364, 302 and 201 IPC. Further investigation was taken up by PW.31, the Inspector of Police. PW.31 enquired accused No.1, who confessed on the same lines as made earlier before PW.30. He further told him that he will show the place where the other accused are taking shelter, which is at BTR Puram. Accordingly,

PW.31 along with PW.25 and others proceeded to Door No.117 of BTR Puram, where accused No.1 knocked the door and called the other accused by names, when the door was opened, the police found four persons inside the house. On seeing the police, the said four persons tried to escape, but they were surrounded. Accused No.1 informed that he along with the said four persons killed the deceased. Accused Nos.2 to 5 were interrogated separately and their confessional statements were recorded. The accused showed them two motor bikes said to have been used in the commission of offence. They also confessed that blood stained dresses were washed and dried. They showed two cell phones which were used in the commission of offence. PW.31 affected their arrest in the presence of PW.25 under Exs.P5 and P6. Accused No.2 further confessed that he has committed theft of Yamaha motor cycle, changed the colour from black to meroon and used the same in the commission of offence. Further the accused confessed to show the place where they killed and threw the dead body, ie Vinayakasagar tank and led them to the said tank. It was further stated that when the boy was swimming, they have threw stones on his head, which lead to the drowning of the boy.

iii) At that time, PW.3-the swimmer was summoned from his house and was asked to bring out the boy from Vinayaka Sagar tank located at Akkarampalli. PW.3 along with one Subramanyam searched the tank with the help of light. The tank was very slippery and there were roots of water plants in the tank. The body of the deceased was struck to the roots of the water plants

and they could detect the body at about 4.00 a.m. and the same was brought out from the tank. They noticed the body wearing school uniform with injuries on stomach and neck. PW.1 and other family members identified the body as that of the deceased and thereafter a mahazar was prepared in the presence of PW.5 and others. Ex.P7 is the panchanama prepared after the body was removed from the tank. As it was dark, PW.31 posted a guard at the dead body and went to the police station along with the accused. On the next day morning he went to the spot and held inquest over the dead body of the deceased in the presence of PW.23 and others. Ex.P2 is the inquest report. The panchas opined that the deceased might have died due to stab injuries and injuries on head caused due to stones which must have lead to his drowning. After conducting inquest, he prepared rough sketch of the scene, which is placed on record as Ex.P17. Thereafter, the body was sent for postmortem examination.

iv) PW.26-the Assistant Professor in the Department of Forensic Medicine, S.V.Medical College, Tirupati, conducted autopsy over the dead body and issued Ex.P8-the postmortem certificate. According to him, the death of the deceased was due to hemorrhagic shock as a result of wound Nos.8 and 9 associated with head injury wound No.1.

v) PW.31, who continued with the investigation, proceeded to Bharatiya Vidya Bhavan School and recorded the statements of PWs. 4 to 7. He also proceeded to Door No.162, Chinna Bazar

Street, Tirupati and recorded the statement of PW.13, the owner of MO.12 the motor cycle. He then proceeded to G.N.Mada Street and enquired about the recorded message in the cell phone but PW.2 disclosed that the cell phone was given for downloading and that C.D. will be given as soon as it was received by him. On 19.11.2007, PW.31 filed a requisition before the I Additional Junior Civil Judge, Tirupati, for conducting test identification parade, which was held on 24.11.2007. Meanwhile, on 20.11.2007 PW.2 came to the police station and handed over the C.D. M.O.2 is the C.D. which was received under Ex.P18. Thereafter, PW.31 proceeded to Neo Systems, Tirupati, where he examined and recorded the statements of PW.22 and others. Later, he forwarded M.Os. 4, 7, 10 and 11 to the Court under a letter of advise to be forwarded to R.F.S.L., Tirupati.

vi) PW.28-the I Additional Junior Civil Judge, Tirupati, who conducted the test identification parade, deposed that while PW.5 has not identified any of the suspects or non-suspects. PW.8 has identified accused No.3 as the person, who came to the school and took the deceased on that day. PW.9 identified accused No.2. PW.10 identified accused Nos.1 and 2. PW.11 and 12 identified accused Nos.2 and 3, while one Shaik Gulzhar (LW.22) identified accused Nos.3 and 4. The proceedings came to be concluded on 24.11.2007 at 3.15 p.m., and thereafter the statements of the accused were recorded. Ex.P11 is the test identification proceedings.

vii) The investigation done by PW.31 further show that all the accused confessed that they will show the place where they have purchased Pepsi which was given to the deceased by mixing some drink so as to make him sleep. They also showed the place where accused No.2 got the motor bike repainted and also the place where he made efforts to get the SIM card with false ID proof. The accused lead the panch witnesses and police to Door No.117 at BTR Puram, from where accused No.2 took out M.O.5 which are empty bottles and the same were seized under Ex.P4. Accused Nos.2 and 3 have shown the coin collecting box at Leela Mahal Centre, from where they made calls demanding the amount. Accused No.2 further lead the raid party to Kummeramitta, where he has shown PW.18, the person from whose possession he has committed theft of ID proof, for obtaining a fake SIM card from PW.19. After remand of the accused, PW.31 collected the extracts of telephone calls from BSNL, Hutch and Airtel and ascertained the calls which emanated from the respective cell numbers, in connection with their respective confessions. Ex.P20 is the extract issued by BSNL in respect of numbers 2281619 and 2231814. Ex.P21 is the extract issued by Airtel in respect of phone No.9966603312. PW.21 is the owner of coin collecting box at Mangalam, whose statement was recorded after collecting the call data from Airtel and BSNL. After collecting all the material, PW.31 filed a charge sheet before the Court of the Judicial Magistrate of First Class, Tirupati, who inturn committed the case to Sessions

Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.175 of 2008.

4) On appearance, charges under Sections 364, 302 read with 34 IPC, 201 and 120 (B) IPC were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 31 and got marked Exs.P1 to P23 and MOs.1 to 12. 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.

6) After considering the oral and documentary evidence on record, the learned Sessions Judge convicted accused Nos.1 and 2 for the offences under Sections 364, 302 read with 34 and 201 IPC and sentenced them as stated supra. Challenging the same, the present appeals came to be filed.

7) Learned counsel for the appellants mainly contend that there are no eye witnesses to the incident and the entire case rests on the circumstantial evidence. According to him, the circumstances which are relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. He would further submit that having given benefit of doubt to accused No.5 and when the accused is acquitted of the charge

of conspiracy, the same benefit should have been extended to the other accused as well. He would further contend that since the entire evidence relating to kidnap is against accused No.3 (died), and in the absence of any charge of conspiracy, and when accused Nos.1 and 2 had no role to play in the act of kidnapping the deceased, they cannot be convicted for any of the charges. He would also submit that the version of the prosecution that the accused have confessed about the commission of offence leading to recovery of body from Vinayaka Sagar Tank, is absolutely false since there is material on record to show that even prior to the confession, the local TV channels have published the presence of a body of a child in Vinayaka Sagar tank. Therefore, the circumstances of accused making confession which lead to recovery of dead body is absolutely false and incorrect.

8) Insofar as the participation of accused No.1 is concerned, learned counsel for the accused No.1 would contend that except the evidence of PWs.9 and 10 to the effect that accused No.1 is alleged to have gone in search of the house for accused No.2, there is no other evidence to connect him with the crime. It is stated that none of the witnesses speak about accused No.1 being in the company of the deceased and as such a doubt arises as to whether really accused No.1 had any role in the commission of offence. He would further submit that when the recovery of the body at the instance of the accused becomes doubtful, there is no other material to connect him with the crime. The arguments advanced by accused No.1 was adopted by the

counsel appearing for accused No.2 stating that the case of accused No.2 stand on a better footing than accused No.1.

9) On the other hand, learned Public Prosecutor would submit that though there are no eye witnesses to the incident but the circumstances relied upon by the prosecution are sufficient to base a conviction. According to him, accused No.1, who is a very close relative of PW.1, and who accompanied PW.1 during the search of deceased, was informing the co-accused about the actions initiated by PWs.1 and 2 to trace the culprit. The fact that accused No.1 was communicating with others is evident from the call diary and also the two calls which were received at 7.30 and 10.00 p.m. from a stranger, stating that their man is in the company of PW.1 and if any report is given they would kill the boy. Insofar as the recovery of the body is concerned, learned Public Prosecutor would contend that though the witnesses have not stated in very clear terms as to the date on which they have seen on the TV about the body being traced from Vinayaka Sagar Tank, but if the case as a whole is seen it would be show that they could have seen the news item only on 15th. Even otherwise, he would submit that the said discrepancy being minor in nature should not go to the root of the matter, more so, in a case of this nature where accused No.1 had motive to take revenge against the family members of PW.1. In view of the voluminous evidence adduced by the prosecution, he would submit that the judgment under challenge warrants no interference.

10) The point that arises for consideration is whether the accused are responsible for the death of the deceased.

11) Admittedly, accused No.5 was acquitted of all the charges while accused Nos.1 and 2 were acquitted of the charge under Section 120-B IPC. Accused Nos.3 and 4 died pending trial. It is true that there are no eye witnesses to the incident and the entire case is based on the circumstantial evidence. The question now is whether the circumstances relied upon by the prosecution stand established, and if established whether they form a chain of events connecting the accused with the crime.

12) The fact that the deceased died homicidal death is not in dispute in view of the evidence of PW.26-the doctor, who conducted the postmortem examination. According to him, he noticed 11 injuries on the body of the deceased. He categorically deposed that the death was homicidal death. The fact that it is a case of homicidal death was never disputed and nothing was suggested to PW.26 to contradict the same. Hence, the prosecution was able to prove beyond reasonable doubt that it is a case of homicidal death.

13) The evidence of PWs.1 and 2 and PW.4, goes to show that the family of the accused and PW.1 are very close relatives and accused No.1 and his mother by name Chengamma were working in the bangle shop of PW.1 in Tirupati. It is also not in dispute that at the time of incident accused No.1 was studying B.A. in S.V.Arts College. The evidence of PWs.1, 2 and 4 and also the

evidence of investigating officer, would show that there were some disputes between the family of accused No.1 and PW.1 with regard to land in Jangalapalli village. The evidence of PWs.1, 2 and 4 also show that when accused No.1 was teasing the girl students of Narayana and Chaitanya colleges, along with his friends, PWs.1 and 2 admonished and warned him. At this stage, we intend to refer to the evidence of PWs.1, 2, 4 and 5 in the words spoken to by them with regard to incident in proper and also the motive.

14) PW.1 deposed as under:

“On 13.11.2007 at about 8.00 a.m. as usual my children were sent to school in the auto of Raju. At about 1.30 to 2.00 p.m. my elder brother received a telephone call from the school that my son's bag and carriage were in the school and he was not appearing in the school. Immediately, we all went to the school and searched and we were told by the friends of my son that about 9.30 a.m. two persons aged 20 to 22 years old came and informed that he was called by his mother and taken by them. On such information we searched around the vicinity but could not find him. At about 4.00 p.m. we went to police station and lodged the report. My elder brother Srinivas lodged the complaint. Police examined me. Accused No.1 is the son of the younger sister of my mother Chengamma and her husband Boyasetty. A1 has got two sisters. As the financial position of my aunt Chengamma is not good, we have brought her family to Tirupati. My aunt Chengamma and A1 were working in our bangle shop. My uncle Boyasetty and sister Renuka were working in Bhimas. At the time A1 was studying BA 1st year in SV Arts college, Tirupati.

A1 and his father used to dispute with my father in connection with land at Jangalapalli but I never taken it in to note. I got information from the neighbours that A1 was misbehaving with ladies by bringing his friends and consuming alcohol, on that issue I reprimanded him on 2 or 3 occasions.”

“A1 killed my son boring grudge against me and my family as I reprimanded him for his misdeeds.”

15) PW.2 deposed as under:

“On 13.11.2007 the son and daughter of PW.1 have gone to school in their regular auto of Raju at about 8.30 a.m. At about 1.30 p.m. when I came to lunch a phone call was received from the school from a madam that the son of PW.1 was not appearing in the school and school bag and lunch box were in the school. Myself, PW.1 and other relatives went to the school. On enquiry of the students we were told that one person of 20 to 22 years old by informing Sunny that his mother is calling him has taken him at about 9.30 a.m. We all searched in the vicinity and at about 4.00 p.m. we went to the Alipiri police station and I lodged the complaint. Ex.P1 is complaint lodged by me.

Accused No.1 is the son of my junior maternal aunt Chengamma. As the financial position of my aunt's family was not well we brought their family to Tirupati. A1 and his mother were working in our shop and my uncle and his daughter were working in Bhimas. A1 was also studying BA 1st year in SV Arts college, Tirupati.”

“PW.1 reprimanded A1 when he had complaints from the neighbours that A1 and his friends were causing nuisance and teasing the girls by taking alcohol.”

“A1 bore grudge as PW.1 scolded and reprimanded him to mend his ways.”

16) PW.4 in his evidence deposed as under:

“On 13.11.2007 as usual the son and daughter of PW.1 went to school in the auto of Raju at about 8.30 a.m. At about 1.30 pm., PW.2 received a phone call from the school that at 9.30 a.m. a person aged about 20 or 22 years old has taken Gurusreenu saying that his mother was calling him and the school bag and lunch box were in class room. Then myself, PWs. 1 and 2 and other relatives went to the school and enquired the students and they said that a person aged about 20 to 22 years has taken Gurusreenu. We all searched the body in the vicinity. At 4.00 p.m. we all went to Alipiri police station and PW.2 lodged the complaint. The Sub-Inspector recorded our statements. At about 4.30 or 4.35 p.m., a phone call was received to my number 9866745881 and that male person asked me to give the phone to Gurunadham ie. PW.1 and PW.1 talked to him. PW.1 after talking to him informed us that the person on phone informed him that he kidnapped the son of PW.1 and demanded for Rs.5,00,000/- and threatened to kill the boy if the information is passed to the police and further informed to call again at 7.30 p.m. to tell about the spot where the money is to be kept. Again at 7.00 or 7.30 p.m. another call was received to my cell number and PW.1 talked to him and told us that the culprit directed him to keep the money at the 11th tree from BTR puram board located in Mangalam road. This

conversation was recorded in my cell phone. At 10.00 a.m. another call was received to my number and PW.1 talked to that person and informed us that the person threatened to kill the boy as the information was already passed to the police and that their persons were moving with us and disconnected the phone. This conversation was also recorded in my cell phone. On 14.11.2007 we suspected A1 and PW.1 informed the same to the SI and the SI has taken A1 from the bangle shop. We also suspected the friends of A.1. A1 and his four friends, S.I., C.I., myself, PWs.1 and 2 and other relatives went to Vinayaka Sagar tank the police called two expert swimmers and the swimmers searched for the dead body to bring out of the tank which was struck off in the middle of roots of water plants. On the early hours of 15.11.2007, the body was brought. There were stab injuries on stomach, neck and face and we have seen the body and we thought that the boy was brutally stabbed and was killed and thrown the dead body in the tank.”

17) PW.5, who is the watchman of the school, in his evidence deposed as under:

“On the date of incident he was guarding on the southern side of the gate. The children will come through both the gates. At about 9.00 or 9.30 a.m. a person aged about 20 or 22 years was taking a boy by name Gurusreenu who was studying in 3rd class through the southern side gate. I questioned that person why he was taking the body and he informed that the mother of the boy was unwell and that therefore he was taking the boy. I did not object as that person was relative of the boy.”

18) Though PWs.1, 2, 4 and 5 were cross-examined at length, nothing much came to be elicited in their cross-examination except the admissions in the evidence of PW.4, wherein he is stated that he is not aware about the real issue of the land dispute but however it has been elicited that he heard galata regarding land dispute between the family of PW.1 and accused No.1. To a suggestion that he is not working in the bangle shop of PWs.1 and 2 was denied by him.

19) Coming to the incident proper, as seen from the evidence of PWs.1,2, 4 and 5 the deceased left the house on 13.11.2007 at 8.00 a.m., in the auto of PW.6. According to the evidence of PW.6, everyday he would drop and collect eight children from Bharatiya Vidya Bhavan. As usual on 13.11.2007 he dropped the students at the gate located near SVIMS by 9.00 a.m. PW.5, who is the watchman of the school, in his evidence deposed that on the date of incident, he was guarding the gate situated on the southern side of the school and the children will come through both the gates. PWs.7 and 8 are two students studying in the school along with the deceased. After being satisfied with their mental capability of their understanding, the Court recorded their evidence. In his evidence, PW.7 deposed that on 13.11.2007 he went to his class after the prayer and while they were in the class, one person aged about 20 years called the deceased Gurusreenu with his pet name Sunny and told him that he is being called by his mother, as she is un-well. Accordingly, he took Gurusreenu along with him, leaving the school bag and lunch box in the class.

Thereafter, he did not return back to the school. In the evidence, he states that the person who took the deceased from the school is not present in the court hall on the date of his giving evidence.

20) Similar is the version of PW.8. According to him, on the date of incident at about 9.00 a.m. a person, who is black in complexion took Sunny stating that his mother was calling him and taken him along with him. Accordingly, Sunny left the school leaving the bag and lunch box. At about 2.00 p.m. the parents of Gurusreenu came to the school and searched for him. On the next day they came to know that the deceased died and somebody killed him. He further states that the person, who took the child from the school, is not present in the Court on the date of giving evidence.

21) In the test identification parade conducted by PW.28 on 24.11.2007, PW.5 failed to identify any of the suspects. On the other hand, PW.8, the child, who was present along with the deceased in the classroom, identified accused No.3 as the person, who came to the school and took the deceased on that day. From the evidence of these three witnesses, it is clear that on that day at about 9.00 or 9.30 p.m., accused No.3 came to the school and took away the child stating that his mother is un-well. (accused No.3 died and he is not the appellant herein).

22) The next set of witnesses are PWs.9 to 12. In his evidence PW.9 deposed that on 11.11.2007 at about 12.00 noon, two persons came to him on Scooter, stating that they are in need

of a rented house. Out of two persons, one person was dark in complexion and other person was moderately fair in complexion. They disclosed their names as Kishore (accused No.2) and Yugandhar (accused No.1). On enquiry, accused No.2 stated that he is working in a steel shop, staying in Erramitta and as he is facing an electric problem in the said house wants to shift his house. PW.9 disclosed to them that there is a house owned by one P.Krishnaiah (PW.10) and that the said person is not available at that time and accordingly asked them to come in the evening. At about 5.00 p.m., accused Nos.1 and 2 again came on the same scooter, leaving accused No.1 at his shop, PW.9 and accused No.2 went to Tirumala Nagar, where PW.9 introduced accused No.2 to PW.10 and informed him about their requirement. PW.10 enquired with accused No.2 and thereafter they returned back to the shop. Accused Nos.1 and 2 went to PW.10 and half an hour later all three came to the shop of PW.9 informing him that the rent was fixed at Rs.550/- per month and accused No.2 paid one month advance. The said persons stated that they will come two days later and left. In the test identification parade conducted, PW.9 identified accused No.2 as one of the persons, who came to his shop. However, in the Court he identified both of them, as the persons who came to his shop. To a suggestion that accused Nos.1 and 2 never approached him was totally denied by him. To a suggestion that the photographs of accused Nos.1 and 2 were shown to him before conducting test identification parade was also denied by him.

23) PW.10 is the owner of the house, which was taken on rent by accused No.2. He identified both of them in the test identification parade conducted on 24.11.2007 and also in the Court. Though PW.10 was cross-examined at length, nothing useful was elicited to discredit their testimony.

24) From the evidence of PWs.9 and 10, it is clear that the house belonging to PW.10 was taken on rent by accused No.2, who came in search of the house along with accused No.1, which makes it clear that both accused Nos.1 and 2 are known persons. Otherwise, there was no need for accused No.1 to accompany accused No.2 in search of a house for him. At this stage, we intend to refer to the evidence of PW.11, who is a resident of Door No.7/115, B.T.R.Puram ie. the house which is next to the house, which was given on rent to accused No.2. According to him on 13.11.2007 at about 11.00 a.m., he noticed four persons occupying the said premises and those persons were aged about 20 to 22 years. According to him, at about 1.30 p.m. he noticed a person with dark complexion driving a two wheeler and another person with medium complexion sitting on the pillion seat. A boy aged about 8 years was sitting in front of the driver in school uniform. Thinking that the child is their boy, he kept quiet. On the same day at about 7.00 or 7.30 p.m., he noticed the boy sitting on the southern side compound wall and those two persons were sitting on either side of the boy and making him eat something. He noticed the boy with the help of street light which was located in front of the house. In the test identification parade, he identified accused

Nos.2 and 3 as the persons, who were present along with the boy. Similarly, PW.12 also deposed about the same. It would be apt to extract the evidence of PWs.11 and 12 with regard to their version in seeing accused Nos.2 and 3 along with the deceased and also about the information they received about the body being found in Vinayaka Sagar Tank.

25) PW.11 deposed as under:

“On 13.11.2007 at 11.00 a.m. I observed four persons occupied and moving in the house of PW.9 and I thought that tenants have joined. Those persons will be aged about 20 to 22 years old, at about 1.30 pm., I observed while a person with dark complexion driving a two wheeler and another person with medium complexion was sitting on the pillion seat and a boy about 8 years old was sitting in front of the driver in school uniform. I thought that the boy was their boy and I kept quiet. They have taken that boy in red colour bike towards northern side. At about 7.00 or 7.30 p.m., I observed while the boy was sitting on the southern side compound wall and those two persons were sitting on either side of the boy and the boy was eating something. At that time I was giving food to my grand daughter. I observed them in the street lighting which was located in front of the house of PW.9. I can identify the red colour bike if it is shown to me. It is M.O.1. On the next day morning it was shown in the TV that the boy was killed and thrown in Akkarampalli tank. Police examined me and record my statement on 16.11.2007. As one of the person who has taken the boy on that day and whom I have seen at 7.30 p.m. on that night.”

26) PW.12 deposed as under:

“On 13.11.2007 we observed four persons aged about 20 to 22 years while moving in the house of PW.10 at 11.00 a.m., thereafter they have locked the house and went. At about 1.30 p.m., two persons among them came on a scooter with a boy 8 years old in school uniform and they have gone into house. At about 7.30 p.m., I observed a person in dark complexion and another person was medium complexion were sitting on either side of the boy on the compound wall located on my northern side. The boy was eating something. On the next day it was murmured in the locality that the boy was killed and the body was thrown in Vinayakasagar tank.”

27) From the evidence of these two witnesses, it is clear that accused Nos.2 and 3 were present in the house of PW.10 which was taken on rent by accused No.2 along with accused No.1 on 11.11.2007 on payment of Rs.550/- per month. Therefore, the argument of the learned counsel for the appellants that accused No.1 has nothing to do with accused Nos.2 and 3 and that all of them are strangers to each other cannot be accepted. As stated earlier, if really, accused No.1 had nothing to do with accused Nos.2 and 3, there is no reason for him to go along with accused No.2 in search of a house. Apart from the fact that accused No.2 was seen last in the company of the deceased, the evidence of investigating officer also refers to the recovery of motor cycle, which accused No.2 is said to have committed theft and changed its colour; taking the SIM card by producing the documents belonging to PW.19; and recovery of blood stained dresses,

stainless steel knife and cell phones used in the commission of offence, coupled with the call data which was obtained from BSNL, Hutch and Airtel etc., amply established the involvement of accused No.2 in the commission of offence. In the absence of any explanation given by accused No.2 as to how the said boy aged about 8 years wearing a school uniform was with him, it can be said that the circumstances referred to above seen as a whole form a chain of events establishing the involvement of accused No.2 in the commission of offence.

28) Insofar as accused No.1 is concerned, learned counsel for the appellant mainly submits that except the confession, there is no other evidence connecting accused No.1 with the crime. It is his case that when the evidence of PWs.11 and 12 show that they heard about a body being traced in Vinayaka Sagar Tank much prior to the confession of accused No.1, the recovery alleged to have been made pursuant to the confession of accused No.1 is only a make believe recovery and the same cannot be termed as a discovery under Section 27 of the Evidence Act. At first blush the argument advanced by the learned counsel for the appellant/ accused No.1 appear to be quite impressive but a perusal of the entire evidence on record proved it to be otherwise.

29) As seen from the record, the incident in question is said to have taken place on 13.11.2007. On that day at about 8.00 a.m. the boy left the house and he was kidnapped from the school at 9.00 or 9.30 a.m. At about 7.30 p.m. PWs.12 and 13 saw the

deceased boy along with accused Nos.2 and 3 in the house in which accused No.2 has taken it on rent from PW.10. The evidence of PWs.1,2, and 4 and also the evidence of panch witnesses more particularly PW.25 show that PWs.1 and 2 expressed suspicion against accused No.1 on 13.11.2007 night, since the caller while demanding ransom from PWs.1 and 2 told them that their person is moving with PWs.1 and 2, which lead to a suspicion against accused No.1 since it was he , who was having some grouse against the family of PWs.1 and 2. The same was intimated to the police on 14.11.2007 at 9.00 p.m. and immediately thereafter PW.30-the Inspector of Police along with PW.25 proceeded to the house of accused No.1 and arrested him at 11.30 p.m. Such being the position and when the incident of accused committing the murder of the deceased came to light on 14.11.2007 at 9.00 p.m., and when the body was traced from Vinayaka Sagar tank through PW.3-swimmer on the intervening night of 14/15.11.2007, it is very difficult to believe that there could have been a news item in the local channels about the tracing of a body on the early hours of 14.11.2007. In fact, suggestion was given to PWs.30 and 31 that only after recovery of the body, these people have been implicated in the case which was denied by them.

30) PW.3, who removed the body from Vinayaka Sagar Tank, in his evidence categorically deposed that at about 2.00 a.m., a person by name Eswaraiah, came to his house and asked him to bring out a body of boy from Vinayaka Sagar Tank located at Akkarampalli. It is his evidence that he traced the body and

brought it out from the tank at 4.00 a.m. It is also his evidence that the body was struck to the roots of the water plants. In the cross-examination it was not even suggested to PW.3 that he never recovered the body from the tank and that the body was already removed by the time he was called. A suggestion given to him that there were no stab injuries on the body was denied by him.

31) It is to be noted here that the evidence of PWs.11 and 12 clearly established that on 13.11.2007 at about 1.30 p.m., two persons came on a scooter with a boy aged about 8 years, who was in school uniform. At about 7.30 p.m. again they saw the two accused, who were identified as accused Nos.2 and 3, sitting on the southern side of the compound wall, on either side of the boy. At that time, the boy was eating something. The evidence of PW.12 indicates that there was murmur in the locality that a boy was killed and thrown in Vinayaka Sagar tank. It was also deposed by PW.12 that on the next day it was shown in the TV that the boy was killed and thrown in Vinayaka Sagar tank located at Akkarampalli. The version of PWs.11 and 12 coupled with the evidence on record if read together, would show that when PWs.11 and 12 have seen the boy at 7.30 p.m., in the night, it is very difficult to believe that by the next day morning it could have been telecasted in the local TV about the death of a boy and body being thrown in Vinayasagar tank. The information could not have spread so fast that too within a couple of hours. The word next day obviously would be on 15.11.2007 only and not 14.11.2007, more so, when these witnesses were examined by the police on

16.11.2007. This circumstance would definitely clinch the involvement of accused No.1 as well in the commission of offence, since it was he, who played an active role, in taking a house on rent along with accused No.2 and thereafter passing on the information about the movements of PWs.1 and 2 while being in their company. The information of the caller that one of their person is in the company of PWs.1 and 2, which is consistent in the evidence of PWs.1, 2 and 4, point out the involvement of accused No.1 in helping the other accused in kidnapping the child from the school and thereafter killing him. At this stage, it would be useful to refer to the evidence of the postmortem doctor. In his evidence, the doctor deposed that he conducted postmortem examination on 15.11.2007 between 10.45 a.m. and 12.15 p.m. According to him, the approximate time of death was about 24 to 48 hours prior to the postmortem examination. No cross-examination was done and no suggestions were given to the doctor to show that the death was not on the intervening night of 13/ 14.11.2007. In the absence of any suggestion being given to the doctor as to when the deceased was done to death and thrown in the water, the version which is now sought to be put up by the accused that only after tracing the body the accused have been implicated at later point of time cannot be accepted. Hence, we feel that the confession of accused No.1 leading to recovery of dead body of the deceased, which was struck to the roots of water plants at the bottom of the tank, amply prove the involvement of accused No.1 as well in the commission of offence. Hence, the

judgment of conviction and sentence imposed by the trial Court warrants no interference.

32) In the result, both the Criminal Appeals are dismissed confirming the conviction and sentence recorded against the appellants/ accused Nos.1 and 2 in the judgment, dated 29.06.2011 in S.C.No.175 of 2008 on the file of the VI Additional District and Sessions Judge (FTC), Tirupati.

33) Miscellaneous petitions, if any, pending shall stand closed.

25.01.2018
gkv



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

