

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL Nos.1327 of 2011 and 339 of 2012

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

1) Both these appeals are filed against the judgment dated 24.10.2011, passed in S.C.No.271 of 2010 on the file of the Sessions Judge, Mahila Court, Vijayawada. Criminal Appeal No.1327 of 2011 is filed by accused No.1 while Criminal Appeal No.339 of 2012 is filed by accused No.2. Both the accused were tried for the offences punishable under Sections 302, 380 read with 34 IPC. Vide judgment dated 24.10.2011, the learned Sessions Judge, convicted accused Nos.1 and 2 and sentenced them as under:

U/ s. 302 IPC	To suffer imprisonment for Life each and to pay fine of Rs.2,000/- each in default to suffer simple imprisonment for a period of three months.
U/ s. 380 IPC	To suffer rigorous imprisonment for a period of five years each and to pay fine of Rs.1,000/- each in default to suffer simple imprisonment for a period of three months.
U/ s. 201 read with 34 IPC	To suffer rigorous imprisonment for a period of three years each and to pay fine of Rs.500/- each, in default to suffer simple imprisonment for a period of one month

All the substantive sentences were directed to run concurrently.

2) The gravaman of the charges against the accused is that on 03.07.2009 at about 1.00 p.m. at Vijayawada, both the accused caused the death of Jujjavarapu Hepsiba, committed theft of gold chain with locket, gold rings, studs, gold colour wrist watch and cell phone from the body of the deceased; folded the hands of deceased, tied her legs with

rope and packed the body in a gunny bag and threw the same into a tank near Amaravathi road on 04.07.2009.

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

i) PWs.1 and 3 are the parents while PW.2 is the maternal uncle of the deceased. PW.6 is the classmate of the deceased. The deceased was studying B.Tech final year at Nova College, Ibrahimpatnam. The deceased used to attend college by taking a city bus and wear the prescribed uniform for her college. Every day, the deceased used to leave the house at 8.45 a.m. and return back by 5.00 p.m. On 03.07.2009 the deceased left the house at 8.45 a.m., to attend the collage, but she did not return back in the evening. When PW.1 enquired with PW.6, she stated that the deceased sent an SMS stating that she has some work and as such could not attend the college. PW.1 enquired PW.5, who is the owner of Meena Photostudio, who informed him that the deceased boarded the auto of accused No.1 and also informed that one lady along with one small child were also present in the auto. PW.1 also enquired the list of calls received by the deceased to her cell and found one unknown number. As such, PW.1 called the said number. The said call was answered by one lady, who informed him that she is a resident of Ramula Veedhi, Lambadipet. Basing on the said information, PW.1 went to Lambadipet on 04.07.2009 and at that time accused No.2 was present in the house. When enquired about the deceased, she replied that she does not know the deceased and that accused No.1 went outside. In the evening PW.1 again went to the said house and found the house locked. Therefore, he lodged a report before II Town Police, Vijayawada, suspecting accused No.1. Ex.P1 is the report.

ii) Basing on the report (Ex.P1), PW.22 registered a case in Crime No.233 of 2009 under the head "girl missing". Ex.P16 is the first information report. He examined PWs.1 and 2 and recorded their statements. PW.24-the Sub-Inspector of Police, took up investigation from PW.22, visited the house of the informant and recorded the statements of PWs.1 to 6.

iii) On 04.07.2009 at about 8.30 a.m., PW.17 noticed a gunny bag in Palem tank. He went near the gunny bag, placed his hands and felt soft touch to his hand. Suspecting something, he went to the village and informed the same to PW.16-Gram Naukar, who inturn informed the same to the V.R.O., through phone. Immediately, PW.16 along with others went to Palem Tank and observed the head of dead body covered with rose colour plastic polythene cover. Then the V.R.O. went to the police station and gave a report. On receipt of the information, the police personnel came to Palem Tank and seized the gunny bag, coconut thread and polythene cover, in the presence of PW.18 and others. PW.25 conducted the scene of offence panchanama in the presence of PW.18 and others. Ex.P11 is the scene observation report. He, then conducted inquest over the dead body of the deceased in the presence of PW.18. Ex.P9 is the inquest report. On 05.07.2009, PW.2 appeared before PW.25 and stated that he came to know through electronic media about the dead body and he is suspecting that the dead body might be that of his niece. PW.25, the S.I. of Police, Mangalagiri Rural and PW.2 went to the NRI hospital, wherein PW.2 identified the dead body as that of the deceased.

iii) As per the requisition given by PW.25, PW.20-the Civil Assistant Surgeon, Government Hospital, Mangalagiri, conducted autopsy over the dead body of the deceased. According to the doctor, the cause

of death was “hemorrhage due to head injury caused by blunt object” and the approximate time of death was 70 to 80 hours prior to the autopsy. On 06.07.2009, PW.1 went to the police station and gave another report about the death of the deceased. Basing on the same, he altered the section of law from girl missing to Sections 302, 201 and 380 read with 34 IPC. Ex.P19 is the altered F.I.R. On 21.07.2009, PW.26 found accused Nos.1 and 2 along with child at Tadepalli Railway station and on seeing them they tried to skulk away. He apprehended them and on interrogation they confessed about the commission of offence. After collecting all the material, PW.26 filed a charge sheet before the Court of the Chief Metropolitan Magistrate, Vijayawada, 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.271 of 2009.

4) On appearance, charges under Sections 302, 280 and 201 read with 34 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 26 and got marked Exs.P1 to P21 and MOs.1 to 25. 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) Accepting the circumstances put forth by the prosecution, more particularly with regard to the accused being last seen in the company of the deceased and the recovery of gold ornaments of the deceased from the possession of the accused, the trial Court convicted

the accused for the offences with which they are charged. Challenging the same, the present appeals came to be filed.

7) The main ground urged by the learned counsel for the appellants is that the circumstances which are sought to be relied upon by the prosecution are not established beyond reasonable doubt and even otherwise, the circumstances relied upon do not form a chain of events connecting the accused with the crime. He would further submit that PWs.4 and 5 being strangers, their identification of the accused in the Court for the first time, after two years is of no use. He would further contend that all the witnesses are planted to complete the chain of events and a new version is sought to be introduced to show that it was a case of murder for gain. He further submits that the prosecution has not come forward with true version of the incident in question. It is urged that if the offence as alleged by the prosecution is for gain, definitely the circumstances would have been totally different and there would have been no necessity for the deceased to go to temples along with accused Nos.1 and 2 and offer prasadam. Under those circumstances, learned counsel for the appellants would contend that if the evidence of PW.6 is read with the contents of Ex.P1, definitely a doubt arises about the involvement of the accused in the commission of offence.

8) On the other hand, learned Public Prosecutor would contend that the truth as to why the accused caused the death of the deceased has come out only during the course of investigation and it cannot be said that there was any variation in the version of the prosecution. It is his plea that there is no new version distorting the facts collected by the agency and the circumstances so relied upon namely, the theory of accused being last seen in the company of the

deceased, accused loading a gunny bag in the middle of the night in the auto, which was taken on lease by accused No.1, and the recovery of ornaments of the deceased from the custody of the accused, amply completes the chain, connecting the accused with the crime.

9) The point that arises for consideration is whether the circumstances relied upon by the prosecution do form a chain of events connecting the accused with the crime.

10) A reading of the entire record would *prima facie* indicate that initially the prosecution proceeded as if it was a murder for gain. Subsequently they changed their version, which is evident from the evidence of PWs.5 and 6, which we will discuss later. The prosecution mainly relied upon the theory of the deceased being last seen in the company of the accused, acquaintance of accused No.1, accused carrying a big gunny bag which was later traced in a tank containing the body of the deceased and the recovery of gold ornaments. In order to appreciate the same, it will be appropriate to refer the evidence adduced by the prosecution in support of its plea.

11) In the first information report which was given by PW.1, setting the law into motion, it has been stated that on 03.07.2009 at about 8.45 a.m., his daughter left the house to go to college and since then she did not return home. Her cell phone was switched off. He suspects accused No.1, since he was teasing his daughter at Lambadipet. Giving details and descriptive particulars of his daughter, PW.1 lodged a report on 03.07.2009 at 10.30 p.m. In the said report, he expressed suspicion against accused No.1, as the person, who was responsible for missing of the deceased since he was teasing his daughter. The evidence of PW.1 discloses that as the deceased did not return home they

enquired with the neighbours. Their enquiries revealed about the deceased boarding the auto of accused No.1 and driven by accused No.1. While he was enquiring about the calls received by his daughter, he found one unknown number in the call list. Accordingly, he called the said number, which was lifted by one lady, who informed that she is a resident of Ramula Veedhi, Lambadipet. Basing on the said information, they went to the Lambadipet and found accused No.2 in the said house. When enquired about the deceased, accused No.2 is said to have stated that she does not know the deceased. When PW.1 asked about accused No.1, she replied that he went outside. Again in the evening PW.1 and others went to the said house, but found it locked. Then he gave a report, basing on which a crime was registered.

12) On 05.07.2009, a news item was published in the newspaper, stating that a girl packed in a gunny bag was found in Palem tank. PW.1 sent PW.2 to the police station, from there the police along with PW.2 went to NRI hospital, for identification of the body. PW.2 identified the body as that of the daughter of PW.1. On hearing the same, PWs.1 and 3 went to NRI Hospital, identified the body as that of their daughter. At that time she was not in her college uniform and was in gold spot colour punjabi dress. They also noticed gold ornaments, which were normally worn by the deceased, missing. According to PW.1, the deceased used to wear gold colour wrist watch, gold rings three in number, gold chain with locket and gold ear hangings. It is his version that normally the deceased carries Nokia cell phone, which was also found missing. He informed these facts to police on 06.07.2009, which statement is placed on record as Ex.P2.

13) Though in the chief examination PW.1, who is the father of the deceased refers to the enquiry about the deceased with LW.7 and

also at Meena Photo Studio, but the same is absent in the statement recorded by the police under Section 161 Cr.P.C. PW.1 did not also mention before the police, about collecting list of phone calls received by the deceased on the date of the incident and getting a response from one of the numbers, pursuant to which they claimed to have gone to the said house to enquire about the deceased. His evidence in the cross-examination further indicate that the deceased is not having any habits of attending cinemas and picnics along with her friends and she had relation only with the classmates. This evidence of PW.1 is relevant only to the extent of deceased leaving the house in the morning and going to the college in the auto as the bus pass expired. The evidence with regard to enquiring at the photo studio in Panja Centre bus stop and also about collecting the call data and response from one of the numbers does not find place in the earlier statement.

14) PW.2, who is the brother-in-law of PW.1 in his evidence also deposed about the deceased going to college in the morning of 03.07.2009. According to him, she used to go to Panja Centre and from there to bus stand and then would go to college in an auto or bus. According to him, since the bus pass lapsed, she used to go to college in an auto. On coming to know about the missing of girl and that she has not attended the college, he along with PW.1 and another went to Panja Centre and enquired about the deceased in a book stall and a studio, who claims to have informed that the deceased boarded the auto and at that time one lady along with small child were also present in the back seat of the auto. When they enquired about the deceased by showing her photo, they claimed to have stated that she went in the auto of accused No.1, which is a hired one. It is the evidence of PW.2 that their enquires with other auto drivers revealed that she boarded the

Auto of accused No.1. His evidence is also to the effect that after collecting the address of accused No.1 they went to the house and found accused No.2 in the said house. When enquired, accused No.2 informed them that accused No.1 was not present in the house and he went out on some work. They also enquired about the deceased but she replied that she does not know her. Thereafter they returned back. Meanwhile they also claimed to have collected the call list received to the telephone of the deceased and found the last call was made by accused No.1. From the evidence of this witness, it is clear that they claimed to have gone to the house of accused No.1 after collecting information from the photo studio person at panja centre and then enquired about the deceased with accused No.2, who was present in the house. But P.W.2 neither identified accused No.2 nor was he asked to identify accused No.2. Be that as it may, the evidence of P.W.2 runs contra to the evidence of P.W.1, who in his evidence deposed that after collecting the call data, they called one of the numbers, found the address and then went to the said house. Apart from this, P.W.2 in his cross-examination, admits that he has not stated before the police about the list of 10 phone calls which are received from the telephone of the deceased, enquiries made with the drivers present at the Panja bus stop and also did not mention in his earlier statement about the deceased boarding the Auto of accused No.1. According to him, he came to know about the same through the neighbours of the locality. From the admissions made, it is clear that his version in chief, that they found the address of the house of accused No.1 from the other auto drivers who were present there, was not disclosed by him in the earlier statement. In fact his admission that he came to know that the deceased boarded Auto through neighbours of that locality, totally demolishes his version in chief with regard to

enquiry at the book stall and the photo studio. His evidence in the cross-examination further discloses that at the time of observing the dead body there was one yellow colour Mangalasutram thread on the body of the deceased. When the deceased was unmarried by the date of incident, it is strange as to how there was a Mangalasutram and two toe rings present on the body. Therefore, the version of P.W.1 with regard to the deceased and her habits runs contra to the admissions made by P.W.2. Anyway this circumstance by itself cannot throw out the entire prosecution but only creates a kind of suspicion or doubt over the evidence of P.Ws.1 and 2 and the life of the deceased.

15) P.W.3, who is the mother of the deceased, in her evidence in chief is identical to what P.Ws.1 and 2 have deposed. But, however, in the cross-examination she admits that she has no personal knowledge about the gold ornaments which the deceased was wearing at the time of the incident. She further admits that she came to know about the participation of accused No.1 only on suspicion. She did not state before police in her earlier statement, that her deceased daughter used to go to College in the Auto belonging to accused No.1.

16) From the evidence of these three witnesses, it is clear that none of them have seen the accused and deceased together. As stated earlier, their evidence only refers to deceased leaving the house, wearing a particular dress and certain type of gold ornaments. Their version in the Court with regard to enquiries made by them at the Panja centre with the auto drivers, and the photo studio person about the deceased and they informing about the deceased boarding the Auto of accused No.1, were neither found in the earlier statements of P.Ws.1 and 2. Therefore, as observed earlier their evidence may not be of any help to the prosecution in connecting the accused with the crime.

17) The prosecution pressed into service the evidence of P.Ws.4 and 5 to speak about the fact of accused being seen last in the company of the deceased. P.W.4 in his evidence in chief deposed as under:

“I am resident of Railway quarters and used to attend to my job and reached to panja centre in early hours. On 03.07.2009 as usual I came to panja centre bus stand at about 8.30 a.m. to 9.00 a.m. Myself and LW.6 were boarding for bus; and the deceased Hepsiba also living in same quarters and she also came to that bus stop and also waiting in bus stop along with us. Before we boarding our bus, one auto came to bus stop and she boarded the said auto. In that auto in back side one lady was sitting with small child and Hepsiba also boarded the same auto and the auto left from bus.”

18) In the cross-examination P.W.4 admits that he has not stated before the police that he has acquaintance with P.Ws.1 and 2 and the deceased. He further admits that he has not stated before the police about the descriptive particulars of the accused. But, however, he tries to say that he saw accused Nos.1 and 2 in the Auto on the date of incident and now in the Court. When confronted, he admits that he also saw their photos in the news paper subsequent to the incident. P.W.24-the Investigating Officer, who examined P.W.4, admits in his cross-examination that P.W.4 has not stated before him that he can identify accused No.1. Coming to the very presence of P.W.4 at the scene, he states that he is a resident of Railway quarters and there is a bus stop at railway quarters which is called railway quarters bus stop, Panja centre, the place where he claims to have seen the deceased boarding the Auto is at a distance of two furlongs on its western side. He further admits that railway quarters bus-stop is nearer to his quarters. That being the position, it is difficult to believe that he would

have gone to Panja centre to board a bus. It is not his case that the bus facilities are more if he goes to the bus stop at Panja centre. There is also discrepancy in the evidence of P.W.4 as to when the deceased arrived at the Panja Centre bus stop namely whether it was before the arrival of P.W.4 or after the arrival of P.W.4. Therefore, there is any amount of doubt with regard to P.W.4 being present at the Panja centre bus stop and witnessing the deceased, moreso, when he failed to mention before the police about identifying accused No.1. In the absence of any descriptive particulars being given, his identification in the court even if he is said to be present, cannot be accepted.

19) P.W.5 in his evidence his chief deposed as under:-

“On 03.07.2009 I observed that lady who is in photo boarded the auto where I found that one other lady with child sat on the back side of auto; at that time that lady present in photo was wearing her college uniform.”

20) In the cross-examination he admits that he has not stated about the descriptive particulars to the police nor did he state that he can identify the accused if he sees them. To a question as to whether he used to observe woman standing in the bus stand while attending to his work, his answer is that he will observe some and also attend his duties simultaneously. He further stated that the deceased is resident of railway colony. He further states that he observed her casually in his routine work. He categorically admits in the cross-examination that he never stated before the police that he knows the deceased previously, as she is resident of railway quarters. From the evidence of this witness, it is clear that he never stated before the police that he can identify accused Nos.1 and 2 if shown to him nor did he give the descriptive particulars of the accused to the police. It is also not his case that the

said Auto would be standing near his photo studio everyday thereby enabled him to identify accused No.1. On the other hand, he admits that he observed things casually while doing his routine work. That being the position and when the deceased is not known to him, it would be improper to believe his identification in the Court for the first time and his version that the deceased boarded the Auto which was driven by accused No.1 in which accused No.2 along with a child were sitting in the rear seat.

21) P.W.6 is the friend of the deceased. Her evidence only refers to the deceased not attending the college on that day. As the deceased did not attend the college, PW.6, who is her classmate, sent a message to which the deceased stating that she could not attend the college, as she has some work. PW.6 was subjected to lengthy cross-examination with regard to the habits of the deceased and sharing of secrets between the deceased and PW.6. She states that she and the deceased were not having the habit of dating and that they have not shared about the boys who follow them in the name of love. She admits that they maintain status for proposing their love with other male persons by considering all the factors. It is further elicited that the deceased never talked with male persons or went with them in their vehicles. However, she admits that she was traveling in the auto of accused No.1 as she developed acquaintance with him and the said fact came to her knowledge only through the deceased. The evidence of this witness shows that there was some acquaintance between accused No.1 and the deceased and due to acquaintance, she used to travel in the auto of accused No.1.

22) From the evidence of these witnesses, it is very difficult to say that they saw the accused and deceased together on 03.07.2009 at

8.45 or 9.00 a.m. The prosecution was not able to prove the circumstance of accused being last seen in the company of the deceased beyond reasonable doubt, which is required in a case based on circumstantial evidence.

23) PW.7 in his evidence deposed as under:

"I am tenant in Door No.4-23-25/ 1. The house is having four portions. My house is second one in the ground floor. I know the accused Nos.1 and 2 and they were my neighbours. Now they are not residing in said house. Accused stayed as tenants for a period of 9 or 10 months before the incident. In their house, A1 and A2 and a child were residing. A1 and A2 are husband and wife. A1 is a auto driver. On 04.07.2009, at bout 3.00 a.m., I came out my house and noticed A1 and A2 keeping gunny bag in their auto and they left the place with their baby in that auto. I thought that they were going to some other village. After dawn I noticed that A2 was present in the house."

24) The evidence of P.W.7 is to the effect that accused 1 and 2 are his tenants and on 04.07.2009 at about 3.00 a.m., he claims to have come out of the house and noticed accused Nos.1 and 2 keeping a gunny bag in their auto and leaving the place. But however, on the next day he saw accused No.1 present in the house. It is his version in the cross-examination that he came out of the house to attend calls of nature, as their bathroom is outside the house. According to him, the bathroom is situated on the western side of their house, on which side the house of the accused is situated. Therefore, from his evidence, it appears that he woke up in the middle of the night to go to the bathroom so as to attend the calls of nature, but his version before the police was different. He admits in cross-examination that he stated before the police that as he did not get good sleep, he came out of his portion. The

said contradiction is marked as Ex.D-2. From this circumstance, a doubt arises as to whether really he has come out of the house at 3.00 a.m., and witnessed accused Nos. 1 and 2 carrying gunny bag. The relevancy of this circumstance is that the dead body of the deceased was found, packed in a gunny bag and thrown in a tank. His evidence is silent as to the presence of the dead body in the gunny bag. The prosecution is now trying to connect the accused with the gunny bag through the evidence of P.W.13, who is doing business in gunny bags. In his evidence P.W.13 states that about 2 years back i.e., on 02.07.2009 two persons came to his shop to purchase gunny bags. He claims to have identified accused No.1 as a person who came to the shop for the first time in the court. In the cross-examination he admits that he has a small shop and daily 4 to 5 customers would be coming to purchase bags. In a span of two years, he says that number of persons purchased gunny bags from his shop and it is difficult to remember them due to lapse of time. He stated that two unknown persons came to his shop to purchase gunny bag. He claims to have identified accused No.1 in Court by recollecting the memory. It would be useful to extract the admission, which is as under:

“It is true it is difficult to remember, due to lapse of time, who purchased bags and for whom I sold the bags. Even in my chief examination I stated that two unknown persons came to my shop to purchase bags. It is true that on the date of incident I saw the accused No.1 and subsequently when I saw accused No.1 in Court, I recollected my memory and identified accused No.1 in Court.”

25) From the admissions made by P.W.13, it is clear that he claims to have identified accused No.1 as the person who purchased the gunny bag, which in our view appears to be doubtful, in view of his admissions in the cross-examination. When he himself admits that it is

difficult to remember due to lapse of time, his identifying accused No.1 in the court, cannot be accepted at its face value, more so in the absence of any test identification parade. Further, the prosecution failed to subject P.W.13 to identify the gunny bag M.O.13 which was alleged to have been used by the accused in the commission of the offence as the one that was purchased from his shop. Therefore, the evidence of P.W.13 that it was A-1, who purchased M.O.13 from his shop is not proved beyond doubt.

26) The next circumstance is in relation to getting an iron rod used in the commission of the offence. P.W.12 was examined to prove that the accused has purchased "Palugu" (iron rod) sharp edged, but he did not support the prosecution case and he was declared hostile by the prosecution. P.W.14 was examined to prove that the accused came to his shop with an iron rod for making a lorry jockey. He is said to have identified accused No.1 as one of the person who came to his shop for making a jockey. However, in the cross-examination he admits that it is very difficult to identify the persons who come to his shop regularly since about 15 to 20 persons come to his shop for welding purpose. He further says that he cannot say the persons, who come to his shop for welding purpose, nor he can identify them at this length of time. Therefore, the circumstance which is sought to be relied upon by the prosecution that accused No.1 got purchased iron rod so as to kill the deceased through the evidence of P.Ws. 12 and 14 stands unproved.

27) Coming to the evidence of P.Ws.8,9, and 10.

28) PW.8 in his evidence deposed as under:

"On 03.07.2009 one college girl in college dress with college bag came along with accused No.1 in auto to the

house and the baby is with them. The wife of A1 came to my house and gave prasadm and stated that they went to Panakalaswamy temple. On 04.07.2009 in evening two persons came to his house and enquired about whereabouts of them as their house was locked."

29) PW.9 in her evidence deposed as under:

"While we were residing at Pamula Street, A1 and his wife are staying opposite to my house. Lingareddy and his wife and one college girl came to the house two years back and all are went into their house. Thereafter the wife of A1 brought prasadam ie. Panakam saying that they went to Panakalaswamy temple. On next day, two persons came in evening time and shown me one photo and asked me whether I saw the person shown in photo by saying that the said girl was going in auto of Lingareddy and that girl did not return back to house as such they were enquiring. I stayed that I saw her on previous day who came along with A1 and A2 in the auto."

30) PW.10, who is an auto driver, deposed as under:

"I am residing at I Town area, Vijayawada. Now I am working as an auto driver. I am residing in D.No.9-40-1, Pothinadi street, I Town, Vijayawada. My auto No.AP TX 8271. I used to give my auto for hire in the year 2009. I gave my auto to Linga Reddy. On 02.07.2009 he took my auto for hire in evening time and requested me to give the auto for next day and night also. He handed over the auto to me on 04.07.2009 in morning at about 8.00 a.m. at Bejjalameda, I Town, Vijayawada."

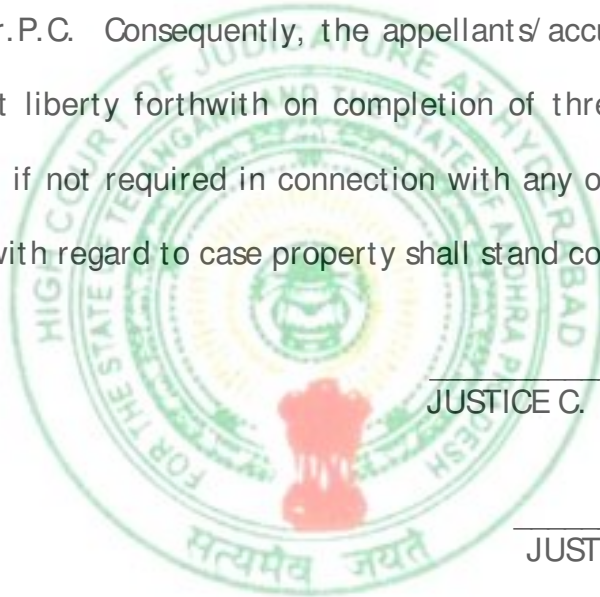
31) Their evidence is to the effect that on 03.07.2001 one college girl with college uniform came along with accused to the house and a baby was with them. The wife of accused No.1 came to his house and gave prasadam and stated that they went to Panakala Swamy temple

and thereafter on 04.07.2009, two persons came and enquired about accused No.1, as their house was locked. They also claimed to have shown the photograph of the deceased. He claims to have identified the girl who came along with accused Nos.1 and 2 in the morning. In the cross-examination he admits that PW.8 stated before the police that the deceased went into the house of A-1. The cross-examination of P.W.8 was with regard to presence of P.W.8 at his house on that day, as he works as a supervisor in a milk project at Vijayawada. His evidence is to the effect that he went to the office at 4.00 a.m., on 3.07.2009 and returned back at 9.30 a.m., approximately. His evidence is silent as to when accused No.1 and deceased were together near his house distributing prasadam, since no time was mentioned by him either in the chief examination or in the cross.

32) Therefore, the evidence of these witnesses in chief-examination though claim to have seen accused Nos.1 and 2 and deceased together distributing prasadam in their locality, throws any amount of doubt in seeing all three together. Even assuming that all three were together, that was on 03.07.2009 and the dead body was traced on 05.07.2009. One does not know what happened during the interregnum. Even otherwise it is to be noted here that the theory of accused killing the deceased for gain is falsified through the evidence of these three witnesses. If really that was so, definitely she could not have been moving so closely with A-1 and A-2, in distributing prasadam. This circumstance coupled with P.W.2 noticing Mangalasutram and two toe rings on the body of the deceased creates any amount of suspicion with regard to the manner in which the prosecution projected their case.

33) The only other circumstance is the recovery of gold ornaments and cell phone of the deceased from the possession of the accused. The evidence of PW.26 would show that on 21.07.2009 on reliable information, he along with his staff proceeded to Tadepally railway station and found accused Nos.1 and 2 along with the child, who tried to skulk away on seeing the police. He surrounded them and questioned their identity. He separated both the accused and recorded their confessional statement. Accused No.1 confessed about the commission of offence. When questioned about gold ornaments, wrist watch and cell phone of the deceased, accused No.1 took out two nokia cell phones from his pocket and handed over the same to PW.26. He told him that one phone belongs to him and another belongs to the deceased. He also confessed that the wrist watch and gold ornaments were with accused No.2. In the presence of mediators, accused No.2 also confessed about the commission of offence. She took out one zip purse and removed the gold chain with locket, three gold rings and also ear hanging (jumkalu). These ornaments were identified by PWs.1 and 2 as that of the deceased. There is no explanation from the accused as to how they came into possession of these articles more so, gold ornaments which contain the descriptive particulars as given by PWs.1 and 2 in their earlier version, except saying that those are planted. Mere because these two accused were found in possession of ornaments belonging to the deceased, the said circumstance by itself is not sufficient to say that they are responsible for the death of the deceased. As the prosecution failed to prove other circumstances connecting the accused with the crime, we feel that the accused are liable for the offence punishable under Section 411 IPC.

34) In the result, both the Criminal Appeals are allowed in part. The conviction and sentence recorded against the appellants/ accused Nos.1 and 2 in the judgment, dated 24.10.2011 in S.C.No. 271 of 2010 on the file of the Sessions Judge, Mahila Court, Vijayawada, for the offences punishable under Sections 302, 380, 201 read with 34 IPC are set aside and consequently, the appellants are convicted for the offence punishable under Section 411 IPC. For the altered conviction, both the appellants are sentenced to suffer rigorous imprisonment for a period of three years. The period of remand underwent by them during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellants/ accused Nos.1 and 2 shall be set at liberty forthwith on completion of three years rigorous imprisonment, if not required in connection with any other case. . The order passed with regard to case property shall stand confirmed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Date: 23.02.2018
gkv/ gm

