

HIGH COURT FOR THE STATE OF TELANGANA

HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1134 OF 2012

Date: 30.07.2019

Between:

1. Antoth Nanda @ Ravi

2. Katravath Keshavulu @ Keshiya.

...Appellants/Accused 1 and 2.

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad.

... Respondent/Complainant

Counsel for the Appellant

: Sri P.Prabhakar Reddy

Counsel for the Respondent

: Smt.J.Sridevi, Additional
Public Prosecutor

The Court made the following:

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), is filed by the appellants/accused 1 and 2, aggrieved by the judgment, dated 29.10.2012, passed in Sessions Case No.747 of 2008 by the learned III Additional District and Sessions Judge (F.T.C.), Ranga Reddy District, wherein the appellants/accused 1 and 2 were convicted of the offence punishable under Sections 364-A, 302 and 201 of I.P.C and sentenced to suffer Rigorous Imprisonment for life for the offence under Sections 364-A and 302 I.P.C and to pay a fine of Rs.500/-, and in default, to suffer Simple Imprisonment for three months, and further sentenced to suffer Rigorous Imprisonment for one year for the offence punishable under Section 201 I.P.C. The substantive sentences were directed to run concurrently.

2. The case of the prosecution in brief is that on 08-09-2007 at 10-30 a.m, Megavath Redya (PW.1) lodged a report that at about 8.00 a.m, his elder son Rajendra Prasad (hereinafter referred to as 'deceased'), left the house for purchasing eraser from the nearby shop and did not return. He waited for one hour and searched his son in the surroundings, with the relatives and friends, but could not trace his son and requested to take necessary action. Basing on the said report, Head Constable, Maheshwaram (PW.11), registered a case in Cr.No.118 of 2007 under the head 'boy missing' and took up investigation. During the course of investigation, he examined the *defacto*-complainant (PW.1-father of the deceased) and his wife (PW.2-mother of the deceased) and issued look out notices. On 14.09.2007, PW.1 again went to the police station and informed that

he received a missed call from Mobile No.9948077327 to his cell No.9948545296 and suspected the caller, about missing of his son, and on enquiry, he came to know that the suspect is Nanda, who kidnapped his son Rajendra Prasad (deceased). S.I of Police, Maheswaram (PW.13) took up investigation and altered the Section of law from 'boy missing' to section 363 of I.P.C and submitted Section Alteration Memo and handed over the C.D file to C.I of Police (PW.14). On 15.09.2007, the accused 1 and 2 were apprehended and on interrogation, they confessed the offence of kidnap of Megavath Rajendra Prasad (deceased) on 08.09.2007 to demand ransom from his father (PW.1) and also confessed the killing and throwing away of the body in Gungal forest. PW.14-C.I of Police, Pahadishareef, secured the presence of PW.8 (V.Panthu Nayak) and PW.9 (M.Ravi) and recorded the confession of accused 1 and 2 and in pursuance of their confession, went to the forest area of Gungal and traced the dead body, which was in decomposed state. PW.14 conducted scene of offence panchanama, drawn rough sketch, photographed the scene of offence and also conducted inquest over the dead body and seized Splendor Motor Cycle No.AP 29 BA 5164 belonging to PW.5 (M.Raju), used for the commission of offence. PW.14 arrested the accused 1 and 2 and altered the Section of law to Sections 374-A, 302 and 201 I.P.C and filed charge sheet.

3. The learned IV Metropolitan Magistrate, Cyberabad at L.B Nagar took cognizance of the case in PRC.No.45 of 2008 under Sections 364-A, 302 and 201 of IPC and committed the case to the Court of Session, Metropolitan Sessions Judge, Cyberabad at L.B.Nagar under Section 209 Cr.P.C as the offences under Sections 364-A, 302 and 201 of IPC are exclusively triable by the Court of

Session, which was taken on file as Sessions Case No.747 of 2008 and made over to the Court of III Additional District and Sessions Judge, (F.T.C), Ranga Reddy District. On appearance of the accused 1 and 2, charges under Sections 364-A, 302 and 201 of IPC were framed against appellants/accused 1 and 2 and read over and explained to them in Telugu, for which, they pleaded not guilty and claimed to be tried.

4. During the course of trial, the prosecution examined PW.1 to PW.14 and got marked Exs.P1 to P16, besides MO.1-Bike.

5. After closure of prosecution evidence, when the appellants/accused 1 and 2 were examined under Section 313 Cr.P.C explaining the incriminating material appearing against them, they denied the same and did not choose to examine any witness.

6. The trial Court on analysis of both oral and documentary evidence and after hearing both sides, held that the prosecution proved the charges against the appellants/accused 1 and 2 under Sections 364-A, 302 and 201 of I.P.C, and accordingly convicted and sentenced the appellants/accused 1 and 2 as indicated above. Hence this Criminal Appeal by the appellants/accused 1 and 2.

7. Heard arguments of Sri P.Prabhakar Reddy, learned counsel for the appellants/accused 1 and 2 and Smt. J.Sridevi, learned Additional Public Prosecutor for the respondent/State and perused the record.

8. Sri P.Prabhakar Reddy, learned counsel for the appellants/accused 1 and 2 would contend that the conviction and sentence recorded against the appellants/accused 1 and 2 is

contrary to law, weight of evidence and probabilities of the case. The entire case is based on circumstantial evidence and alleged confession of the accused 1 and 2. The alleged confession made by the accused 1 and 2 is invented for the purpose of the case by the prosecution and the chain of circumstances brought on record is incomplete and erringly points towards the accused 1 and 2 as the persons guilty of the offence. There is no legally acceptable evidence on record to prove that the dead body of deceased was recovered at the instance of appellants/accused 1 and 2. No D.N.A test was conducted and there is no acceptable identification of the dead body of the deceased. Further, there is no evidence to substantiate the cause of death. The missed calls alleged to have been made by accused No.1 to the cell phone of PW.1 was not established by leading cogent evidence. Further, there is no evidence of demand of ransom by any of the accused. The prosecution failed to prove the guilt of the accused 1 and 2 beyond all reasonable doubt. The trial Judge recorded the conviction based on surmises and conjectures, and ultimately prayed to set aside the impugned judgment.

9. On the other hand, Smt. J. Sridevi, learned Additional Public Prosecutor for the State, contended that there is cogent and convincing evidence to establish the kidnapping of the deceased and also causing his death. The dead body was recovered at the instance of accused 1 and 2. There is also telephone call made by accused No.1 to the cell phone of PW.1. There is no reason for the accused No.1 to make missed calls to the cell phone of PW.1 (father of deceased). There is also evidence of PW.5 (owner of the motor bike), who categorically stated that the accused No.1 took his motor cycle to go to Maheshwaram on the date of alleged offence. There is also

evidence of PW.5 that he came to know that the accused 1 and 2 took the son of PW.1 on his motor vehicle and killed him in forest area. Moreover, the dead body was recovered at the instance of accused 1 and 2. The trial Court had rightly analyzed the entire evidence and recorded conviction and sentence against the accused 1 and 2, and ultimately prayed to dismiss the appeal.

10. In view of the submissions made by both sides, the following points have come up for determination:

- 1. Whether the subject dead body recovered in the instant case, belong to Rajendra Prasad i.e., missing son of PW.1?***
- 2. Whether the cause of death is established, as homicidal?***
- 3. Whether the accused 1 and 2 caused the death of Rajendra Prasad (deceased)? and***
- 4. Whether the conviction and sentence recorded against the accused 1 and 2 for the offence punishable under Sections 364-A, 302 and 201 of I.P.C by the trial Court is proved beyond all reasonable doubt?***

11. **POINTS:** It is the specific case of the prosecution that the accused 1 and 2 on 08.09.2007, at about 8-00 a.m, kidnapped the deceased, who was aged 9 years, when the deceased was returning from the shop and took him to Gungal forest area, Yacharam Mandal and caused the death of the said deceased. The accused 1 and 2 kidnapped the deceased to demand ransom from his father (PW.1).

12. In view of the submissions made by both sides, it is appropriate to place precisely, the evidence of the prosecution witnesses on record.

13. PW.1-*de facto* complainant, is the father of the deceased. His evidence is that on 08.09.2007 (second Saturday), his elder son, the deceased went to shop to purchase eraser at around 8.00 a.m and did not return. He searched for his son. He received two phone calls from phone No.9948077327 to his cell phone No.9948545296 and those were missed calls. On 15.09.2007, he received information from public and police that the dead body of the deceased (his son) was found in the forest area of Gungal. He reached the forest area and found the dead body of the deceased in a highly decomposed and unidentifiable state. With the help of dress of his son, he identified the dead body. He found the head and limbs separated from the dead body. He came to know that accused 1 and 2 took his son to the forest area on the bike of Megavath Raju (PW.5). The evidence of PW.2, mother of the deceased corroborated with the evidence of PW.1.

14. PW.3 (A.Krishna), one of the relatives of PW.1, deposed that the deceased went to shop and did not return. PW.1 informed him that he received missed calls from a phone and on enquiry he came to know that the cell phone number belongs to the accused No.1. PW.3 deposed that on police interrogation the accused 1 and 2 informed that they killed the deceased in the forest area of Gungal Kancha and they proceeded there and found the dead body of the deceased in a highly decomposed state. PW.4 is the photographer and he deposed about taking photos of the dead body which was in a highly

decomposed state and those photographs are marked as Exs.P.2 to P.21.

15. PW.5 deposed that about five years back accused No.1 took his bike to go to Maheswaram and returned it on the same day at about 2-00 p.m. Subsequently, he came to know that the accused took the son of PW.1 on his motor cycle and killed him in the forest area and then returned the motor cycle. The said motor cycle is marked as MO.1.

16. The evidence of PW.6 and PW.7 is that they did not see the accused taking away the deceased on motor cycle. They did not say that the accused took the son of PW.1 and they also stated that they do not know how the deceased died. They did not support the case of the prosecution and declared hostile.

17. PWs.8 and 9 are said to be the witnesses for confession. They deposed that about five years back they went to police station and police interrogated the accused about kidnapping of deceased and the accused led them to Gunagal forest area where the dead body of the deceased was found. Police recorded panchanama of scene of offence and conducted inquest and also prepared rough sketch in which they attested. The admissible portion of accused 1 and 2 are separately marked as Exs.P.5 and P.6, respectively, and Ex.P.7 is the panchanama of scene of offence and Ex.P.8 is the rough sketch map and Ex.P.9 is the inquest report. PWs.8 and 9 are declared hostile to the extent of recovery of motor bike.

18. The evidence of PW.10 is a circumstantial evidence. He deposed that the accused informed him that they want to kidnap a boy from

thanda and he refused to join accused 1 and 2. On the next day morning, through news paper, he came to know that a boy was kidnapped and murdered by the accused.

19. PW.11 is the Assistant Sub-Inspector of Police, Shamshabad Rural. He deposed that on 08.09.2007, PW.1 came to police station and lodged Ex.P.1-report; he registered Ex.P.1 as a case in Cr.No.118 of 2007 and submitted FIR (Ex.P.12) and also deposed of recording of statements of PWs.1 and 2. In the cross-examination he deposed that PW.1 did not express suspicion on anybody.

20. PW.12 is a Doctor, who conducted autopsy over the decomposed dead body of the deceased, aged 9 years, on the spot on 15.09.2007. He deposed that on his examination, he found both humerus right and left skull bones scattered, body was highly decomposed and bones scattered, the cause of death was not ascertained. Ex.P.13 is the Post Mortem Examination certificate given by the Doctor. He also deposed that the jaw and right and left humerus were sent to DNA examination. As per Ex.P.16-FSL report, no DNA was extracted from the teeth mandible, two bones (small), Blue colour T-shirt and Jeans nickker belonging to the dead body. Therefore, there is no identification of dead body by DNA examination.

21. PW.13 is the Sub-Inspector of Police. He deposed with regard to alternation of Section of law from 'missing boy' to Section 363 I.P.C. PW.13 issued Ex.P.14-Section alteration memo.

22. PW.14 is the Inspector of Police. He deposed that he took up investigation in the case from PW.13. He further deposed that on his

transfer, his successor officer conducted further investigation and filed charge sheet on receipt of Ex.P.16-FSL report.

23. Admittedly, there are no direct witnesses to the alleged kidnap and commission of subject death of the deceased. The prosecution case is based on circumstantial evidence. Therefore, at this juncture, it is apt and appropriate to refer the decisions of the Hon'ble Apex Court in ***Navaneethakrishnan vs. The State***¹, ***Devi Lal vs. State of Rajasthan***² and ***Chandru @ Chandrasekaran vs. State rep. by Deputy Superintendent of Police, CB CID & another***³.

24. In ***Navaneethakrishnan*** (*supra* 1), the Hon'ble Apex Court held as follows:

"23) The law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. When the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubt. The court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. There is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. The Court in mindful of caution by the settled principles of law and the

¹ AIR 2018 SC 2027

² AIR 2019 SC 688

³ Criminal Appeal No.1193 of 2011 (dt.12.02.2019)

decisions rendered by this Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution has failed to prove.”

25. In the case of ***Devi Lal*** (*supra* 2), the Hon’ble Apex Court held as follows:

“While scrutinising circumstantial evidence, a Court had to evaluate it to ensure chain of events was established clearly and completely to Rule out any reasonable likelihood of innocence of accused. Underlying principle was whether chain was complete or not, indeed it would depend on facts of each case emanating from evidence and there could not be a straight jacket formula which can be laid down for purpose. But circumstances adduced when considered collectively, it must lead only to conclusion that, there could not be a person other than Accused who alone was perpetrator of crime alleged and circumstances must establish conclusive nature consistent only with hypothesis of guilt of accused. That apart, in case of circumstantial evidence, two views were possible on case of record, one pointing to guilt of Accused and other his innocence. Accused was indeed entitled to have benefit of one which was favourable to him.”

26. In the case of ***Chandru @ Chandrasekaran*** (*supra* 3), the Hon’ble Apex Court held as follows:

“11. The law can be summarised in the following terms:

1. The circumstances relied upon by the prosecution which lead to an inference to the guilt of the accused must be proved beyond doubt;
2. The circumstances should unerringly point towards the guilt of the accused;
3. The circumstances should be linked together in such a manner that the cumulative effect of the chain formed by joining the links is so complete that it leads to only one conclusion i.e. the guilt of the accused;

4. That there should be no probability of the crime having been committed by a person other than the accused.”

27. The dead body of the deceased was photographed by PW.4 and Exs.P.2 to P.21 are the photographs. As per these photographs, the dead body was in a highly decomposed state. PW.1 had also clearly admitted the same in his deposition. He stated that he identified with the help of the dress of his son. It is also relevant to state that the alleged kidnap took place on 08.09.2007 and the dead body was found on 15.09.2007 i.e., after a week. Further more, as per the photographs and evidence of PW.12 (Doctor) both humerus right and left skull bones scattered. Post mortem examination was conducted on the spot itself on 15.09.2007. The cause of death was not ascertained/determined by the Doctor (PW.12). The jaw and right and left humerus sent to FSL for DNA examination also did not yield any result. PWs.1 and 2 are the parents said to have been identified the dead body looking at the clothes found near the dead body. The dead body is found after one week from the date of kidnapping in a forest area in a highly decomposed state. Further, head and limbs were separated from the dead body. As per the photographs, the face of the body is completely damaged. Generally when the clothes were in the forest area for a considerable period they get soiled and faded. The dead body was found on 15.09.2007 and it was a rainy season. Therefore, it is difficult to hold that the dead body was identifiable by looking at the clothes found near the dead body. Furthermore, there is no iota of evidence to ascertain that the subject death is homicidal.

28. It is relevant to state that PWs.6 and 7 were pressed into service. They did not depose that they saw accused 1 and 2 taking the deceased. They did not support the case of the prosecution. So

there is no evidence of any witness to establish that the deceased was found/seen in the company of the accused 1 and 2. It is also alleged that the accused No.1 telephoned to PW.1. No cell phones were seized, no call data is collected from the authorities concerned and no material is placed to substantiate this piece of evidence. The motor cycle which is alleged to have been used in the commission of offence was marked as MO.1 in this case. Even the owner (PW.5) of MO.1-motor cycle did not see the accused taking the deceased on his motor cycle. However, the motor cycle was returned to PW.5 on the date of alleged offence at 2-00 p.m. PW.8, a witness to recovery of dead body, deposed that the accused led him to Gunugal forest area, where the dead body of the deceased was traced. The police recorded panchanama. PW.9, another witness to the recovery dead body panchanama, deposed that the accused admitted the offence and led them to Gunugal forest area and found the dead body of the deceased in a highly decomposed state. There is no specific evidence of these witnesses in which area of the forest this dead body was found. PW.8 did not say that the accused had shown the dead body. There is inconsistency with regard to showing the dead body of the deceased to PWs.8 and 9. It is also relevant to state that there is no medical record to establish that the subject death as homicidal. The dead body was highly decomposed; limbs and head were separated from the body. Looking at the colour of the clothe it is difficult to hold that the dead body is of the deceased. Moreover, the alleged confession made by the accused with regard to leading of PW.8 and PW.9 to the forest area and showing the dead body is also a doubtful one. Moreover, these two witnesses are also said to be the witnesses to the seizure of MO.1-motor cycle, pursuant to the confession made by the

accused. They did not support the prosecution case and were declared hostile. PWs.8 and 9 are doubtful witnesses and their evidence is not inspiring confidence to hold that the dead body was discovered pursuant to the confession made by accused 1 and 2. As per the evidence of PW.10, a circumstantial witness, the accused 1 and 2 proposed him to kidnap a boy, and on the next day of proposal he found through news papers that accused 1 and 2 kidnapped a boy and murdered him. The prosecution case is that after 8 days of kidnapping, the dead body of the kidnapped boy was found. Therefore, no credibility can be given to the evidence of PW.10. At the most their evidence raises a suspicion against the accused.

29. Therefore, the entire evidence placed on record do not clearly and clinchingly establishes that the deceased was kidnapped by the accused 1 and 2. The chain of events placed on record does not lead to irresistible conclusion about the guilt of the accused. There are two views possible, one is the innocence of the accused and the other is guilt of the accused. It is pertinent to note that there is no proper identification of the dead body. There is no legally acceptable evidence that the subject death is homicidal. In the instant case, the Court has to be watchful and avoid the danger of allowing suspicion to take the place of legal proof. The Court is required to be mindful of caution by the settled principles of law and the decisions rendered by this Court as well by the Hon'ble Apex Court that in a given case like this, where the prosecution rests on the circumstantial evidence, the prosecution must place and prove all the necessary circumstances, which would constitute a complete chain without a snap and pointing to the hypothesis that except the accused, no one had committed the offence, which in the present case, the prosecution

has failed to do so. All the points are answered against the prosecution.

30. The learned Trial Judge had not properly analyzed the evidence on record with regard to identification, cause of death and recovery of the dead body pursuant to the alleged confession made by the accused. Under these circumstances, all the contentions raised on behalf of the State do not merit consideration. The trial Court is not justified in convicting and sentencing the appellants/accused 1 and 2 of the offences under Sections 364-A, 302 and 201 of I.P.C.

31. In the result, the Criminal Appeal is allowed, setting aside the conviction and sentence recorded against the appellants/accused 1 and 2 of the offences punishable under Sections 364-A, 302 and 201 of I.P.C in the impugned judgment, dated 29.10.2012, passed in Sessions Case No.747 of 2008 by the learned III Additional District and Sessions Judge (F.T.C.) Ranga Reddy District. The bail bonds shall stand cancelled. The appellants/accused 1 and 2 shall be set at liberty forthwith, if they are not required in any other case.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, HCJ

Dr. SHAMEEM AKTHER, J

Date: 30.07.2019
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