

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL APPEAL No.589 of 2013

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

Heard Sri B.Venkata Ramesh, the learned Legal Aid counsel and the learned Public Prosecutor.

2. The sole accused in Sessions Case No. 287 of 2012 on the file of the III Additional Sessions Judge, Kurnool at Nandyal, is the appellant herein. He was tried on three charges. The first charge was under Section 376(1), the second under Section 302 and the third charge under Section 201 IPC. Vide judgment dated 25.03.2013, the learned Additional Sessions Judge, convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.100/- in default to undergo simple imprisonment for a period of one month. The accused was also convicted for the offence punishable under Section 376(1) IPC and sentenced to suffer simple imprisonment for a period of seven years and to pay a fine of Rs.100/- in default to suffer simple imprisonment for a period of one month. He was also convicted for the offence punishable under Section 201 IPC and sentenced to suffer simple imprisonment for three years and to pay a fine of Rs.100/- in

default to suffer simple imprisonment for a period of one month. All the sentences were directed to run concurrently.

3. The gravamen of the charge is that on 06.06.2011, at about 08.30 p.m., the accused is said to have committed rape on the deceased-Haripriya and thereafter, strangled her to death.

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

PW3 is the father of the deceased while PW4 is the grandfather of the deceased. PW6 is the brother of the deceased. The deceased Haripriya, who was studying D.Ed. II year in Government Junior College, Allagadda, took a room along with her friends near her College, for her residence. In the month of April, 2011, the deceased came to the house of PW3, as she was having some thyroid problem. They took her to Government General Hospital at Kurnool, where a surgery was conducted. About twenty days later, she came to Lingala village, as the college was closed due to summer vacation. On 06.06.2011, i.e., after summer vacation, at about 11 a.m., PW3 and PW6 accompanied the deceased to R.T.C. Bus station and made her board a bus to go to Atmakur and from there to Allagadda. On the same day, PW6 called the deceased and asked her journey and destination particulars, to which the deceased replied that she was at Nandyal, trying to catch a bus to go to Allagadda. She further stated that after reaching Allagadda, she would call him back. However, they did not receive any call from the deceased. When they tried to

contact her, found her phone was in switched off mode. The same was informed to the relatives and friends. As there was no information about the deceased, her family members went to Allagadda on the next day and enquired about her in the college, but, could not receive any information about her. Later, they went to the police station at Allagadda and lodged a report.

5. On 10.06.2011, PW8, the Talari of P.Chinthakuntla village, came and informed PW1-the Village Revenue Officer of Devarayapuram, Allagadda Mandal about a dead body lying in the fields of Chintalakuntla village. Immediately, PW1 proceeded to the spot and found the dead body of a woman. On examination, he noticed one note book on which the words "J.Haripriya, II D.Ed.," were written. He also noticed a pair of chappals at the spot. Basing on the name mentioned on the cover of the note book, they identified the deceased as Haripriya. Later, PW2, who is a resident of Allagadda village, came to the spot and identified the body as that of the deceased. Basing on the same, a report came to be lodged on 10.06.2011 by PW1 before PW27-the Sub Inspector of Police, Allagadda Town Police Station, which came to be registered as Crime No. 68 of 2011, for the offence punishable under Section 302 IPC. Ex.P22 is the F.I.R.

6. Further investigation in this matter was taken up by PW28-the Circle Inspector of Police, Allagadda. After receiving a copy of the F.I.R., on 10.06.2011 at 12.30 noon, he proceeded to the scene of offence. He contacted the clues team and dog squad for their

assistance. The scene of offence was situated in the fields of Chintakuntla village besides Chintakunta-Padakandla road, behind the Indane Gas godown. In the presence of PW1, he prepared observation report and also a rough sketch of the scene. Thereafter, he examined PWs 3 to 7. Ex.P23 is the rough sketch of the scene, and Ex.P3 is the observation report of the scene. Thereafter, he conducted inquest over the dead body, which is placed on record as Ex.P2. After conducting inquest, he sent the body of the deceased for post mortem examination.

7. PW25-the Assistant Professor, Department of Forensic Medicine, Government General Hospital, Kurnool conducted autopsy over the body of the deceased. According to him, the cause of death was due to asphyxia, resulting from ligature strangulation. The post mortem doctor sent samples for FSL report, and after receiving the chemical analysis report from FSL, he issued post mortem report. Ex.P20 is the said report. However, PW25, in his evidence, admits that he cannot give any opinion regarding sexual assault on the deceased, as there is a possibility of semen getting disseminated, due to lapse of time. He also opined that there was no discharge of semen from vagina or cervix of the deceased and that the semen marks would not be found on the clothes if the weather is wet for more than twenty four hours.

8. PW28, who continued with the investigation, effected the arrest of the accused. He proceeded with the investigation by recording the statements of PWs 9, 10, 11, 12, 14 and 15. On

15.06.2011, while he was in his office, PW19-P.Sudhakar Rao came to the police station and produced the accused (N.Chinna Swamulu) along with the extra judicial confession statement. Ex.P17 is the said statement. PW28 examined the said Sudhakar Rao and recorded his statement. Thereafter, in the presence of PW4, he interrogated the accused, who confessed about the commission of the offence. Pursuant to the confession made, the accused accompanied them to Kasinthala temple, which is situated near the outskirts of Allagadda, from where the dress and chunni were seized under a cover of mahazarnama. The said items are placed on record as M.Os 1 to 9. Thereafter, the accused was remanded to judicial custody.

9. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 66 of 2011 on the file of the Judicial Magistrate of First Class, Allagadda. On appearance, copies of the documents were furnished and after satisfying the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions, where it came to be numbered as S.C.No. 287 of 2012 on the file of the III Additional Sessions Judge, Kurnool at Nandyal. Basing on the material on record, charges for the offences punishable under Sections 376(1), 302 and 201 of IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

10. In support of its case, the prosecution examined PWs.1 to 30 and got marked Exs.P1 to P30 and M.Os.1 to 17. After the closure

of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced by the accused in support of his defence.

11. Accepting the circumstances relied upon by the prosecution connecting the accused with the crime, more particularly, the circumstance with regard to the accused being last seen in the company of the deceased, the extra-judicial confession of the accused made before PW19, and the medical evidence, the learned Sessions Judge convicted the accused under Sections 376(1), 302 and 201 IPC. Challenging the same, the present appeal came to be filed through legal aid.

12. The learned counsel mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. According to him, the prosecution gave a twist to the case after examining PWs 1 to 8, who expressed suspicion only against one Rangaiah. According to him, without effecting the arrest of the said Rangaiah and without examining him, the prosecution is now trying to prove the involvement of the accused in the commission of the offence. In the absence of any medical evidence, to say, that there was any sexual assault on the deceased, the counsel contends that the case of the prosecution that the accused initially committed sexual assault on the

deceased and killed her when she threatened to lodge a complaint, has to be disbelieved.

13. On the other hand, the learned Public Prosecutor would submit that in cases of this nature, the circumstance of last seen can be made the basis to convict the accused, and since the same is established through the evidence of PWs 15, 16 and 17, the conviction warrants no interference.

14. In order to appreciate the same, it would be useful to refer to the evidence of the witnesses. As stated earlier, PWs 3, 4, 5, 6 and 7 are the relatives of the deceased. All of them, in one voice, deposed about the deceased coming to their house during the summer vacation, undergoing the thyroid operation in Government General Hospital, Kurnool and thereafter, leaving their village to go to college at Allagadda. PW3 and PW6 are said to have seen the deceased last while she boarded the bus at their village, to go to Allagadda. While she was at Nandyal, PW6 called the deceased, who informed him that she is boarding a bus to go to Allagadda. In the cross-examination of all the witnesses, it has been elicited that they have suspicion against one Rangaiah, who is the husband of the sister of PW3, and who belongs to Yerrapalle of Kadapa District. The evidence of the witnesses also show that the said Rangaiah was harassing the deceased to give consent for marrying her, which was not acceptable to the deceased. As such, they thought that the said Rangaiah must have been responsible for the incident. The evidence on record also shows that after the refusal

by the deceased to marry Rangaiah, the prosecution witnesses were not on talking terms with him. Though the said version of PWs 3 to 8, referred to above, finds place in the F.I.R and also in the inquest, no effort was made by the prosecution either to register a case against the said Rangaiah or to examine him during the course of investigation. After examining (8) witnesses, the prosecution introduced a new version, showing the accused as the person responsible for the incident. In support of the same, they pressed into service the evidence of PWs 15, 16 and 17 to show that the accused was last seen in the company of the deceased.

15. Before dealing with the evidence of PWs 15, 16 and 17, we also intend to refer to the evidence of PW9. PW9, who has completed her D.Ed. at Allagadda, deposed that the deceased was her classmate as well as roommate. She deposed that on the date of reopening of the college, i.e., on 06.06.2011, herself and the deceased reached Allagadda to attend their college. On the same day, the deceased telephoned to PW9, stating that she is also coming to Allagadda. But, at 4 p.m., the deceased telephoned to PW9, stating that she cannot come over to Allagadda on that day, as she is staying at Nandyal, and that she would attend the college on the next day. She further deposed that two of the sisters of the deceased are also studying at Allagadda in A.P. Residential School. Her evidence is also to the effect that the accused also used to visit their college to meet the deceased, but she has no doubt on the behaviour and character of the accused.

16. In the cross-examination, PW9 admits that about five or six relatives of the deceased, including her parents, used to come to see her at the college. She admits that the accused must have come to see the deceased about two or three times. She also admits that she has no acquaintance with the accused and the deceased also did not introduce the accused to her. She further stated that the deceased did not report to her about the bad behaviour of the accused at any time.

17. PW10 is an E.M.T., in 108 ambulance service. He claims to know the accused and the deceased. According to him, the deceased is his sister by courtesy. His evidence shows that the deceased took a room near to her college along with some other friends. His evidence shows that at times, the accused also used to go and meet the deceased in her room. He claims to have seen the accused along with the deceased in the college. The deceased used to complain to PW10 that the accused was unnecessarily coming to meet her. Hence, he suspects the attitude of the accused. This version of PW10 runs contrary to the evidence of PW9, since PW9, in her cross-examination admits that the deceased never complained to her about the behaviour of the accused due to his frequent visits, nor did she suspect the accused in the commission of the offence.

18. PW11 is a Clerk working in Allagadda town near Ravi Public School. He deposed that he, along with three others took a room for rent and resided there, as his roommates were studying D.Ed.

in K.V.N.College, which is the same college in which the deceased was also studying. He claims to know the deceased and also having acquaintance with her. According to him, the deceased used to visit her sisters who are studying in Velugu School in Allagadda and he, along with some of his roommates, used to visit the deceased and her sisters at Velugu School. He states that he knows the accused and noticed him once, and when he asked the deceased as to who he was, she disclosed that he belongs to her village. He deposed that he has some doubt about the behaviour of the deceased. But, in the cross-examination, he admits that he has no acquaintance with the accused, but has seen him only once at Allagadda near the college, and later, he did not see the accused anywhere. His evidence only indicates that he had seen the accused near the college once and has no acquaintance with him.

19. The evidence of PW15 is to the effect that he worked as Teacher in K.V.N. D.Ed. College, Allagadda, and knows the deceased in his case. He deposed that on 06.06.2011, the deceased telephoned to him, and came to Kurnool. While he was talking with the deceased, the accused came there, knocked the door and enquired about the deceased. When PW15 questioned about him, the accused is said to have disclosed that he belongs to Lingala village and his name is Chinna Swamulu. When he asked the deceased about the accused, she is alleged to have stated that the accused is her relative and belongs to her village. The accused is said to have questioned the deceased as to what she was doing there, and later, both of them left the room of PW15. His

evidence is to the effect that after some time, when he called the deceased, she did not lift the phone. Later, he got a text message from the deceased, stating that she is safe. Later, he came to know that the deceased was killed. His evidence also shows that when the deceased underwent the operation for her thyroid problem in Government General Hospital, Kurnool, he financially helped her by giving Rs.3,000/- through his friend by name Jagan, who was not examined.

20. It is to be noted here that PWs 3 to 8 never spoke about the deceased going to Kurnool on the date of incident. The evidence of the friend of the deceased, i.e., PW9 also shows that at about 4 p.m., on 06.06.2011, she received a call from the deceased stating that she was not coming to Allagadda on that day, as she was staying at Nandyal in her maternal aunt's house. No evidence has been placed on record to show as to why the deceased proceeded to Kurnool. Even assuming that the deceased proceeded to Kurnool, there is no evidence on record to show as to why she went to the house of PW15. Though PW15, in his evidence, deposed that he helped the deceased by giving Rs.3,000/- at the time of her operation at Government General Hospital, Kurnool, through one, Jagan, neither the brother, sister or father of the deceased deposed about the fact of taking any money from PW15 from Jagan, or PW15 lending money to the deceased for getting the operation performed on the deceased. Therefore, we feel that there was no necessity for the deceased to go to Kurnool at that

time, and any amount of doubt as to whether she really visited Kurnool.

21. The evidence of PW28-the investigating officer is to the effect that PWs 15 and 16 were examined by the police on 13.06.2011 and PWs 17 and 18 were examined on 14.06.2011. There is no material to show as to why police examined PWs 15 and 16 on 13.06.2011. As stated earlier, PWs 3 to 8 nowhere informed about the deceased going to Kurnool after she left the village. In the absence of any information from any quarter with regard to the deceased going to Kurnool, a doubt arises as to the source of information which made the police to examine PWs 15 and 16 on 13.06.2011. Even assuming, for the sake of argument, that the deceased went to Kurnool and went to the house of PW15, the purpose for which she went to the house of PW15 was not spoken to by any of the witnesses. Even if it is to be believed that the deceased went to the house of PW15 on 06.06.2011, i.e., nearly four days prior to the tracing of the body of the deceased, we feel that this circumstance, even if accepted, does not establish that the accused was last seen in the company of the deceased. Having regard to the above, we feel that this circumstance, even if it is accepted to be true, cannot be made the basis to connect the accused with the commission of the offence, due to long interval of time between the accused last seen in the company of the deceased and the recovery of the body and the body being found near Allagadda and not at Kurnool.

22. The only other evidence left, is the evidence of PW16-the auto driver, who is said to have dropped the accused and the deceased from Allagadda circle to Indane Gas godown. According to him, he claims to have collected a sum of Rs.25/- from them as transport charges. In his evidence in chief, he does not give the date as to when he dropped both the accused and deceased, except stating that about a year back, he took the accused and the deceased in his auto. In the cross-examination, he admits that the accused and deceased boarded his auto at 6.30 or 7 p.m., that he has no acquaintance with the deceased and that he did not state to the police about the particulars of the deceased. He further admits that he did not state to the police that he is having suspicion against the accused. He further admits that subsequent to the date on which the accused and deceased boarded his auto, he has never seen the accused. He also admits that he has no specific reason to know the identity of the accused, as several passengers travel in his auto everyday. He further admits that he did not inform about the accused and deceased boarding his auto, prior to his examination by the police.

23. That being the position, as observed by us earlier, there is no clinching material to show as to what made the prosecution to go and examine PW16, who has not disclosed about accused and deceased boarding his auto, till he was examined by the police. Even assuming that the accused and deceased boarded his auto, it would be very difficult to connect the accused with the crime, as he himself admits that there are no specific reasons to remember

the identity of the accused, as several passengers travel in his auto everyday. It is not the case of the prosecution that there were any special marks on the body of the accused or the deceased which made PW16 remember them. Hence, we feel that it may not be safe to accept the evidence of PW16-the auto driver to connect the accused with the crime.

24. Similar is the evidence of PW17, who claims to have seen the accused and deceased at Government General Hospital, Kurnool, but in cross-examination, admits that he did not inform the said fact to anyone, including the family members of the deceased, and for the first time, he stated this fact when the police examined him. Therefore, the reasoning adopted by us to disbelieve the testimony of PWs 15 and 16, also applies equally to disbelieve the evidence of PW17.

25. One other circumstance which made us to disbelieve the evidence of PWs 16 and 17 is that all the family members of the deceased expressed suspicion only against one Rangaiah. The First Information Report was given suspecting Rangaiah as the culprit, and even in the inquest, the prosecution witnesses suspected Rangaiah. However, without proceeding with the investigation against the said Rangaiah, based on the information furnished by the family members of the deceased, the police tried to set up these three witnesses, viz., PWs 15, 16 and 17 to show that the accused was last seen in the company of the deceased on 06.06.2011.

26. The Apex Court, in a judgment reported in Anjan Kumar Sarma and others v. State of Assam, allowed the appeal, holding that mere absence of satisfactory explanation by the accused in the circumstances of last seen together, by itself, is not sufficient to base a conviction. In the said case, the missing girl was a fully grown up girl who developed intimacy with one Jit Kakati and when she was with him for a considerable time, her brother was informed about her spending considerable time in bungalow at Sangsua Tea Estate. Her brother visited the bungalow and found her sitting with Jit Kakati and the brother questioned the conduct of Jit Kakati who expressed his intention to marry her and all the accused alongwith deceased left the bungalow on two motorcycles. Subsequently, when she could not be located, it was recorded that she had eloped with Jit Kakati and thereafter her whereabouts were not known. It was in the given facts of the case, it was held that the circumstances of last seen together alongwith the absence of satisfactory explanation were not sufficient for convicting the accused.

27. In view of the discussion and findings arrived at, we feel that the prosecution failed to establish the only circumstance relied upon by them, and even if it is presumed to have been established, the same by itself is not sufficient to connect the accused with the crime, in the absence of any other evidence showing the complicity of the accused.

28. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 25.03.2013 in Sessions Case No.287 of 2012, on the file of the III Additional Sessions Judge, Kurnool at Nandyal for the offences punishable under Sections 376(1), 302 and 201 IPC is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case. Miscellaneous petitions pending, if any, stand closed.

30.06.2018
DMG



JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO