

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT



THE HONOURABLE SRI JUSTICE K. SURESH REDDY
AND
THE HONOURABLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL APPEAL NOS. 1277 OF 2016 AND 3172 of 2018

CRIMINAL APPEAL NO: 1277 OF 2016

Appeal under Section 374(2) of Cr.P.C, against the judgment S.C.No.35 of 2014 on the file of III Additional District and Sessions Court, Srikakulam, dated 31.10.2016.

Between:

Dumpa Buchi Babu @ Bujji, S/o. Yerrayya, (A-2) Aged 30 years, R/o. Segidi Street, Arasavalli, Srikakulam.

...Appellant/Accused No.2

AND

The State of AP., rep., by its Public Prosecutor High Court of Andhra Pradesh, Amaravathi.

...Respondent

CRIMINAL APPEAL NO: 3172 OF 2018

Appeal under Section 374(2) of Cr.P.C, against the judgment dt.31.10.2016 passed in Sessions Case No.35 of 2014 on the file of the III Additional District and Sessions Court, Srikakulam.

Between:

Reddi Govindarao @ Gopi Chandu, S/o Viswanadam, Aged about 32yrs, R/o Killipalem Village, Srikakulam District

...Appellant/Accused No.1

AND

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

...Respondent/Complainant

Counsel for the Appellants in both the Appeals: Smt. C Vasundhara

Reddy

Counsel for the Respondents in both the Appeals: Sri Marri Venkata Ramana, Additional Public Prosecutor

The Court made the following COMMON JUDGMENT :

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY, THE THIRTY FIRST DAY OF JANUARY TWO
THOUSAND AND TWENTY FIVE

SPECIAL DIVISION BENCH

PRESENT
THE HON'BLE SRI JUSTICE K.SURESH REDDY
AND
HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL APPEAL Nos.1277 of 2016 and 3172 of 2018

COMMON JUDGMENT

(*Per Hon'ble Sri Justice K.Suresh Reddy*)

Since both Criminal Appeals arise out of the same Sessions Case i.e., S.C.No.35 of 2014, dated 31.10.2016 on the file of the Court of III Additional District and Sessions Judge, Srikakulam, they are being disposed off by way of this common judgment.

2. Accused .No.2 filed Criminal Appeal No.1277 of 2016; whereas Accused No.1 filed Criminal Appeal No.3172 2018 in the above Sessions Case. They were tried by the learned Additional Sessions Judge under the following charges:-

- 1) First charge was under Section 302 IPC against A1.
- 2) Second charge was under Section 364 IPC against A1.
- 3) Third charge was under Section 384 IPC against A1.
- 4) Fourth charge was under Section 363 IPC against A1.
- 5) Fifth charge under Section 120-B IPC against A1 and A2 and
- 6) Last charge under Section 363 read with 511 IPC against A1 and A2.

3. Substance of the charge is that on 29th July, 2013, at about 7.00 p.m., both the accused having conspired together in order to extort money/ransom from the father of Abhiram @ Abhinaya, kidnapped Abhiram and Koyyanna Govinda @ Gopisankar @ Govindarao (herein after referred to as 'D1 and D2') and took them by saying that they would be given C.D. Player Motors and A1 killed them by beating them with a cricket stump on their head and demanded ransom of Rs.2,00,000/- (Rupees Two Lakhs only) from P.W.1 and thereby they have committed the offences punishable under Sections 302, 364, 384, 120-B and 363 read with 511 IPC.

4. After completion of trial, the learned Additional Sessions Judge found A1 guilty under Section 302 IPC and sentenced him to undergo Rigorous Imprisonment for "LIFE" and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for six (6) months. The learned Additional Sessions Judge further found A1 guilty under Section 364 IPC and sentenced him to undergo Rigorous Imprisonment for a period of ten (10) years and also to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for six (6) months. The learned Additional Sessions Judge also found A1 guilty under Section 384 IPC and sentenced him to undergo Rigorous Imprisonment for a period of three (3) years. The learned Additional Sessions Judge further found A1 guilty under Section 363 IPC and sentenced him to undergo Rigorous Imprisonment for a period of seven (7) years and also to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for six (6) months. The learned Additional Sessions Judge, further found A1 and A2 guilty under Section 120-B IPC and sentenced each of them to undergo Rigorous Imprisonment for "LIFE" and to pay a fine of Rs.10,000/- each in default to undergo Simple Imprisonment for six (6) months. The learned Additional Sessions Judge directed all the substantive sentences imposed upon A1 shall run concurrently.

5. Case of the prosecution, as emanated from the evidence of the prosecution witnesses, is as follows:

(i) P.Ws.1 and 2 are the fathers of D1 and D2 respectively. P.Ws. 6 and 7 are the mothers of D1 and D2 respectively. They are residents of Killipalem Village, Srikakulam Mandal. P.W.1 is doing cement business in Srikakulam District. A1 is the resident of Killipalem Village, whereas A2 is the resident of Arasavalli, Srikakulam Town. D1 and one Rahul Reddy were studying 6th class in Kesavareddi Convent at Arasavalli Road, Srikakulam District. D2 was also studying 6th class in Nagavali Public School, Killipalem Village. They all used to return home every day at about 5.30 p.m. After returning from school, D1, D2 and Rahul Reddy used to play at Ramamandiram for some time. On 29.7.2013 at about 6.30 P.M., when P.W.1 telephoned to his wife, D1 attended the call and informed him that he is going to play with D2 and P.W.14. At about 8.00 or 8.15 P.M. P.W.1 received a call from an unknown person, who informed him that he kidnapped D1 and demanded a ransom of Rs.2,00,000/- to release D1. Immediately, P.W.1 telephoned to P.W.8, who is the father of P.W.14 and enquired about his son and P.W.14. P.W.8 replied that D1, D2 and P.W.14 were playing at

Ramamandir and there was power cut at about 7.30 P.M., then he went to temple premises and brought his son back to home. Then P.W.1 enquired him as to whether any other person was present at there. On that P.W.8 replied that A1 was present near the temple. P.W.1 informed P.W.8 stating that somebody telephoned to him and demanded ransom of Rs.2,00,000/- for releasing D1. P.W.1 also informed the said fact to P.Ws.11 and 12 also. In the meanwhile, P.W.2, who is the father of D2, also came there and informed that his son was also missing. Thereafter, P.Ws.11 and 12, P.Ws.2 and 8 came there and made a call to the mobile number, which was received by P.W.1 and one person responded to the said call and informed that unless Rs.2,00,000/- is paid, he would not leave both the deceased. When they asked the said person the place at where the money has to be delivered, he disconnected the phone. Then P.Ws. 1 and 2 went to police station and gave a report- Ex.P1.

(ii) P.W.19 –the Head Constable, Srikakulam Rural, on receipt of Ex.P1-report from P.W.1, registered a case in Crime No.208 of 2013 for the offence under Section 364 IPC and issued copies of FIRs to all the concerned. The said FIR was marked as Ex.P28. He recorded statements of P.Ws. 1 and 2. Thereafter, P.Ws.1, 2 and others searched for the missing boys in and around the village. On

the next day i.e., on 30.7.2013, at about 10.00 a.m. P.W.4 went to the house of P.W.1 and told him that D1 and D2 were found dead in her agricultural land. Then P.Ws.1, 2 and other villagers went to the agricultural land of P.W.4 and found both the dead bodies of the deceased. They found grievous injuries on the heads of both the deceased. Thereafter, P.W.1 went to the police station and gave report.

(iii) P.W.20-the then Head Constable, Srikakulam Rural Police Station, on receipt of Ex.P2-report from P.W.1, altered Section of law from 364 IPC to 302 and 364 IPC and issued copies of altered FIR to all the concerned. Ex.P29 is the altered FIR.

(iv) P.W.21-the then Inspector of Police, Srikakulam Town circle, took up investigation. He addressed a letter to the Superintendent of Police for obtaining call data of sim numbers 8501818723 and 9603956942. Immediately P.W.21 went to Killipalem village and secured the presence of P.Ws 1 and 2 and examined them. He went to the scene of offence and prepared rough sketch-Ex.P29(A).When he was going in search of missing bodies, he received a call from P.W.20 stating that P.W.1 came to police station and presented Ex.P2 stating that both the dead bodies of kidnapped children were found in the sugarcane tope of P.W.4. Then

he went to the scene of offence i.e. sugarcane tope of P.W.4 and secured the presence of P.W.16 and other mediators and examined the scene. He prepared rough sketch-Ex.P30 at the scene of offence. Then he found both the dead bodies of the kidnapped children (D1 and D2) with head injuries. He seized blood stained earth and controlled earth at the scene of offence. He also prepared observation report-Ex.P13 at the scene of offence. He secured the presence of P.W.16 and held inquest over the dead body of D2. Inquest report pertaining to D2 was marked as Ex.P14. He also held inquest over the dead body of D1 in the presence of P.W.17. Inquest report pertaining to D1 was marked as Ex.P23. He secured the presence of P.Ws. 1 to 5 and recorded their statements. Thereafter he went to Killipalem village and recorded statements of P.Ws. 6 to 8, 11 to 14. On 31.7.2013, he collected call data of sim Nos. 8501818723 and 9603956942. Thereafter he visited Voppangi village and secured the presence of P.Ws.9 to 12 and recorded their statements. Call data of the above sim numbers was marked as Exs.P31 and 32.

(v) Alternate Nodal Officer, Idea Cellular Limited, Hyderabad was examined as P.W.23 and call data-Exs.P31 and 32 were marked through him.

(vi) On 04.8.2013, at about 11.30 a.m., VRO, Killipalem Village- P.W.16, came to P.W.21 and produced A1 stating that he made an extra judicial confession before him that he killed both D1 and D2. P.W.16 produced A1 along with the statement of A1-Ex.P15. In the presence of P.W.16 and another, P.W.21 interrogated A1 and recorded his confessional statement. P.W.21 seized two mobile phones-M.Os 1 and 2 from A1. As already stated, the call data pertaining to these mobile phone numbers were marked as Exs.P31 and 32. He also seized Rs.500/- note from pant pocket of A1 , which is identified to be stolen property in Crime No.225 of 2012 of Srikakulam Rural Police Station. In pursuance of the said confession made by A1, P.W.21 seized cricket stump-MO3, shirt and pant-Mos. 4 and 5 from the bushes at Nagavali river bank near Killipalem village under the cover of panchanama-Ex.P19. From there P.W.21 proceeded to the house of accused and seized one gold piece which was the stolen property in Crime No.225 of 2012 of Srikakulam Rural Police station. From there P.W.21 went to the house of A2 at about 5.00 p.m. on the same day and took him into the custody and seized his mobile phone. He also seized Rs.500/- (two in number) from his pocket, which was also the stolen property

in Crime No.225 of 2012 of Srikakulam Rural Police Station under cover of panchanama-Ex.P20.

(vii) On 02.8.2013, P.W.24-the then Sub-Divisional Police Officer, Srikakulam took up further investigation and verified the investigation already conducted by P.W.21. On 22.8.2013, he forwarded the material objects to FSL, Hyderabad. On 30.10.2013, he received RFSL report-Exs.P37 and 38 and after completion of investigation, P.W.24 filed charge sheet.

6. In support of its case, the prosecution examined P.Ws.1 to 24 and marked Exs.P1 to P39 and exhibited M.Os.1 to 11.

7. When the accused were examined under Section 313 Cr.P.C., they denied the incriminating evidence found against them from the prosecution witnesses, but they did not choose to examine any witness in their defence. But, on behalf of defence, relevant portions in statement of P.W.15 recorded under Section 161 Cr.P.C. were marked as Exs.D1 and D2.

8. Heard the learned counsel for the appellants as well as the learned Additional Public Prosecutor.

9. Admittedly, there are no eye witnesses to the alleged incident and the prosecution rests its case on the circumstantial evidence.

10. P.W.1 has specifically stated in his evidence that on 29.7.2013, D1 went out for playing with D2 and P.W.14. At about 8.00 or 8.30 P.M. on the same day when he returned home, he did not find D1. He further deposed in his evidence that at about 8.30 P.M. he received a call from mobile phone bearing No. 8501818723 and informed him that the caller kidnapped D1 and demanded a ransom of Rs.2,00,000/- for release of D1. Immediately P.W.1 informed the same to P.W.2 who also told that his son also is missing. Immediately, P.Ws 1 and 2 enquired P.W.8 whose son i.e. P.W.14 was also playing with D1 and D2. It is also stated by P.W.1 that P.W.8 informed them that as there was power cut at about 7.30 p.m. he brought back his son-P.W.14 to home. P.W.8 also informed P.Ws. 1 and 2 that at that time the children were playing at Ramamandir and he saw A1 there at that time. Immediately P.Ws. 1 and 2 informed P.Ws. 11 and 12 about the demand made by A1. Thereafter, they telephoned to the same mobile number and asked him as to where the amount of Rs.2,00,000/- has to be delivered. But A1 disconnected the phone. Thereafter, P.Ws. 1 and 2 went to the police station and gave report-Ex.P1. The evidence of P.Ws. 1 and 2 further disclose that on the next day at about 10.00 a.m. P.W.4 went to P.W.1 and informed him stating that D1 and D2 were lying dead in

her sugarcane tope. Thereafter, P.Ws. 1 and 2 and other villagers went to the sugarcane tope of P.W.4 and found both the dead bodies. Thereafter P.W.1 went to police station and gave Ex.P2-report, on the basis of which, FIR was altered. The evidence of P.Ws 1 to 5 goes to show that both D1 and D2 were missing from the evening of 29.7.2013 and the dead bodies were found on the morning of 30.7.2013.

11. P.W.8 who is the father of P.W.14 specifically stated in his evidence that when he went to bring back his son-P.W.14, he saw A1 near Ramamandir. Further, the call data particulars clearly indicate that A1 telephoned to P.W.1 at the relevant point of time, which was established by the evidence of P.W.23 coupled with Exs.P31 and P32. As such, the prosecution is able to prove the factum of missing of D1 and D2 on the evening of 29.7.2013 and finding of both the dead bodies on the morning of 30.7.2013 and also calls made by A1 to P.W.1 demanding ransom.

12. The next crucial evidence examined by the prosecution is P.W.14, who is the son of P.W.8. P.W.14 is also studying 6th class. He specifically stated in his evidence that on the date of alleged incident, he played with D1 and D2 near Ramamandir in the village from 6.30 p.m. onwards and there was a power cut at about 7.15

p.m. Then, his father P.W.8 came and took him to his home. As such, without any hesitation, it can be safely presumed through the evidence of P.W.14 that D1, D2 and P.W.14 played at Rammandir on the evening of 29.7.2013 up to 7.30 p.m. P.W.8 further stated in his evidence that while he was taking back P.W.14 to home, he found A1 at Rammandir. As such, except A1, no other person was present at Rammandir at relevant point of time, where both D1 and D2 were playing.

13. The next witness examined by the prosecution is P.W.9-who is none other than the brother-in-law of A1. P.W.9 in his evidence stated that the accused was working as a mason in Tagarapuvalasa village and he was addicted to vices. He further stated that A1 was using his mobile phone.

14. The other witness examined by prosecution is P.W.10-the sister-in-law of A1. Of course, P.Ws.9 and 10 did not support the case of the prosecution.

15. The other witness examined by the prosecution is P.W.15. P.W.15 in his evidence stated that A1 is his uncle. He further stated that A1 has taken two CD player motors from him. He also stated that on 29.7.2013 at about 6.00 p.m. A1 telephoned to him and enquired him about both the deceased. He informed A1 that both the

deceased were playing at Ramamandir. On the same day, at about 8.00 p.m. A1 once again telephoned to P.W.15 and asked him to bring soap, chappals and clothes to the backside of the school. P.W.15 went back side of the school and handed over them to A1. Thereafter A1 changed his clothes and went away. P.W.15 further stated in his evidence as follows;

I was with my friends in the street, when I received phone call from A.1. on 29.7.2013, at about 6.00 p.m. On 29.7.2013 I have not gone to my college though it was a working day. Half an hour later I informed to A.1 that about the deceased boys were playing at Ramamandiram. On that day A.1 Govindarao called me over cell phone thrice. I have no idea where I was when A.1 call me over cell phone 2nd time. I asked the wife of A.1 to give soap, chapels and clothes of A.1 as he was asking for them. I handed over them to A.1 at 8.30 P.M., night, at school bind."

16. The next evidence adduced by the prosecution is the evidence of P.W.16, before whom A1 made an extra judicial confession admitting that he killed both the deceased. Immediately, P.W.16 along with the statement of A1-Ex.P15 produced A1 before P.W.21. On the confession made by A1, P.W.21 recovered MOs.3 to 5 under a cover of panchanama-Ex.P19 in the presence of P.W.16 and another. As such, there is nothing to disbelieve the evidence of

P.W.16. Hence, the prosecution is able to prove the factum of missing of D1 and D2 on the evening of 29.7.2013 and finding the dead bodies at about 10.a.m. on 30.7.2013 and also the factum of presence of A1 at Ramamandir at the relevant point of time when both D1 and D2 were playing and thereafter A1 killed both the deceased with MO3 and thereafter changed the clothes, which were brought by P.W.15 and absconded later. Therefore, the prosecution is able to prove all the circumstances pointing out the guilt towards A1 alone giving no scope for another person to kill both the deceased.

17. In view of the above facts and circumstances, as the evidence of prosecution witnesses inspire confidence of this Court and as there is nothing to disbelieve their evidence, this Court is of the considered view that the prosecution has proved the guilt of the appellant/ accused No.1 beyond all reasonable doubt. Therefore, we are of the considered view that the convictions and sentences recorded by the trial Court needs no interference so far as appellant/A1 in Criminal Appeal No.3172 of 2018 is concerned.

18. So far as A2 /appellant in Criminal Appeal No.1277/2016 is concerned, absolutely there is no evidence on record, except the confession made by A1. Even according to confession made by A1,

A2 did not partake in the attack. Learned Additional Sessions Judge convicted A2 with the aid of 120-B IPC. Absolutely, the prosecution has not placed any material to show conspiracy between A1 and A2 for committing the offence. Therefore, we have no hesitation to come to a conclusion that the conviction and sentence recorded against A2 under Section 120-B IPC cannot be sustained.

19. In the result, Criminal Appeal No.3172 of 2018 is dismissed by confirming the conviction and sentences recorded against the appellant/A1 by the learned III Additional District and Sessions Judge, Srikakulam, in Sessions Case No.35 of 2014, dated 31.10.2016, under Sections 302, 364, 384 and 363 IPC. However, the conviction and sentence recorded under Section 120-B IPC against A1 is hereby set aside. Needless to state that the period already undergone by the appellant/Accused No.1 shall be given set off under Section 428 Cr.P.C.

20. Criminal Appeal No.1277 of 2016 is allowed by setting aside the conviction and sentence recorded against appellant/Accused No.2 by the learned III Additional District and Sessions Judge, Srikakulam, in Sessions Case S.C.No.35 of 2014, dated 31.10.2016. Accordingly the appellant/Accused No.2 is acquitted. As the appellant/Accused No.2 was already enlarged on

bail, he is directed to appear before the Superintendent, Central Prison, Visakhapatnam for completing the legal formalities in terms of the Order passed by the combined High Court in '**Batchu Ranga Rao & others Vs. State of A.P.**'. Fine amount, if any, paid by the appellant/Accused No.2 shall be refunded to him.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

¹ 2016 (3) ALT (Crl.) 505 (DB) (AP)

Sd/- E KAMESWARA RAO
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The III Additional District and Sessions Court, Srikakulam, Srikakulam District.
2. The Judicial Magistrate of First Class, Srikakulam, Srikakulam District.
3. The Superintendent, Central Prison, Visakhapatnam, Visakhapatnam District.
4. The Sub - Divisional Police Officer, Srikakulam, Srikakulam District.
5. One CC to Sri. C Vasundhara Reddy, Advocate [OPUC]
6. Two CCs to the Public Prosecutor, High Court of Andhra Pradesh at Amaravathi [OUT]
7. The Section Officer, V.R. Section, High Court of Andhra Pradesh at Amaravathi.
8. Three CD Copies

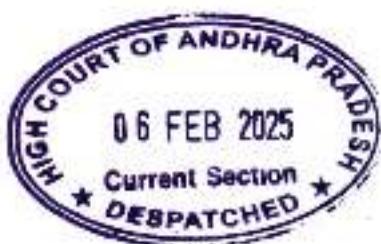
Stu
sree

HIGH COURT

DATED:31/01/2025

COMMON JUDGMENT

CRLA.No.1277 of 2016 and 3172 of 2018



**ALLOWING THE CRL.A.No.1277 of 2016 AND
DISMISSING THE CRL.A.No.3172 of 2018**