

HIGH COURT OF ANDHRA PRADESH**Bench: Justices U. Durga Prasad Rao and Kiranmayee Mandava****Date of Decision: 19th June 2024**

Case No.: CRIMINAL APPEAL NO: 457/2019

APPELLANT(S): T. Bhaskar and OthersAppellant**VERSUS****RESPONDENT(S): State of Andhra PradeshRespondent****Legislation:**

Sections 302, 364, 201, 341, 323, 379, 506, 143, 290, 354 of the Indian Penal Code (IPC)

Sections 161, 162, 164, 313 of the Code of Criminal Procedure (Cr.P.C.)

Subject: Criminal appeal challenging the conviction and sentence for the offences under Sections 302, 364, and 201 IPC, arising out of the kidnapping and murder of Bhoominathan.

Headnotes:

Hostile Witnesses – Evidentiary Value – Reliance on Admissible Portion – The Court held that the evidence of a hostile witness cannot be discarded entirely and must be considered with due care. The admissible portion of PW-5’s testimony, corroborated by other reliable witnesses, indicated that the appellants had kidnapped the deceased. [Paras 9-10, 12-14].

Circumstantial Evidence – Delay in Lodging FIR – The trial court observed no undue delay in lodging the FIR and found the evidence regarding the kidnapping and subsequent murder of the deceased credible, notwithstanding the partial hostility of PW-5 and PW-6. [Paras 9, 13-14].

Burden of Proof – Homicidal Death – The Court reiterated that once the kidnapping is proved and the deceased is found dead, the burden shifts to the accused to explain the cause of death, which they failed to do. The conviction under Sections 302, 364, and 201 IPC was upheld based on the evidence and the failure of the accused to rebut the prosecution’s case. [Para 14].

Decision – Appeal Dismissed – The High Court confirmed the trial court’s judgment, dismissing the appeal and upholding the conviction and sentence of life imprisonment and fines for the offences under Sections 302, 364, and 201 IPC. [Para 15].

Referred Cases:

- State of Karnataka v. P. Ravi Kumar alias Ravi (2018) 9 SCC 614
- Ramesh Baburao Devaskar v. State of Maharashtra (2007) 13 SCC 501
- Malti Sahu v. Rahul (2022) 10 SCC 226
- Neeraj Dutta v. State (Govt. of N.C.T. of Delhi) (2023) 4 SCC 731 = MANU/SC/1617/2022

Representing Advocates:

For the Appellant(s): C. Vasundhara Reddy, G. Vijaya Saradhi

For the Respondent: Public Prosecutor (AP)

JUDGMENT: *(Per Hon’ble Sri Justice U. Durga Prasad Rao)*

Challenging the conviction and sentence recorded in Sessions Case No.251/2018 by the learned Principal Sessions Judge, Nellore Accused Nos.1 and 2 preferred the instant criminal appeal.

1. By impugned judgment, the trial Court convicted and sentenced A1 and A2 with life imprisonment and fine of Rs.5,000/- IDSI simple imprisonment for 6 months on two counts for the offences U/s 302 and 364 IPC and imprisonment of 7 years and fine of Rs.5,000/- IDSI for six months for the offence U/s 201 IPC with a direction that all the substantial sentences shall run concurrently.

2. **Matrix of the case:**

(a) The prosecution’s case is that the deceased Bhominathan was an auto driver, earning livelihood by auto hiring. PW.1/Rajagopal Vellimalai @ Peddodu and his wife PW.2 are the parents of the deceased. PW.3 is the elder brother of the deceased.

The family of the deceased was living in Chandrababu Nagar, Nellore. A1 is a resident of Sramika Nagar, Nellore, and he is having autos which he hires to drivers. The deceased and A1 were known to each other, so also PWs.1 to 3. On 22.03.2016 PW.2 gave report to Nellore Rural Police, against A1 and others, which was registered as Crime No.108/2016 U/s 143, 290, 354, 323 and 506 r/w 34 IPC. It was alleged against A1 that he was sitting near Vinayaka Temple in Chandrababu Nagar Area, and threatening females, and when PW.2 questioned A1 and his friends, he threatened her. In that regard, A1 lodged a report which was registered in Crime No.109/2016 U/s 341, 323, 379 r/w 34 IPC. Ultimately PW.1 – the ASI, Nellore Rural PS filed Charge sheet in Crime No.108/2016, while filing referred charge sheet in Cr.No.109/2016 as false. The incident giving rise to these reports took place on 20.03.2016.

(b) In the background of these disputes, when the deceased was proceeding in his auto bearing No. AP-26-X-9579 on 20.03.2016, at about 06:00 PM and when he reached the Banyan tree in Talpagiri Colony, Nellore, the accused forcibly dragged the deceased from his auto, into their auto and thus kidnapped him and left that place. This was seen by PW5-Yesu informed PW.1 about the same. PW.1 searched for his son, and gave Ex.P1-report at about midnight, to the Nellore V Town Police, alleging that his son was kidnapped by A1, and three others. It was registered as Crime No.118/2016 by PW.13-Sub Inspector of Police, V Town PS, Nellore. While the search for the abducted person continued, the dead body of Bhoominathan was found with multiple injuries near Sarvepalli Reservoir of Anikepalli Village, Venkatachalam Mandal, Nellore District. The information was received by PW.1 and he went there and identified the dead body of his son. Basing on the statement of PW.1, PW.13 filed alteration memo by adding Section 302 IPC. Altered FIR was sent to all the officers. Subsequently Inspector of Police / PW.14 took up investigation. He examined other witnesses and recorded their statements. He visited the place where the dead body was found, and got prepared the scene of observation report in the presence of mediators, and later seized the clothes on the dead body of the deceased. Further investigation was conducted by PW.15-the Inspector of Police, V Town PS and charge sheet was filed against A1 to A4 for the offences U/s 341, 364, 302, 201 r/w 34 IPC.

(c) On appearance of the accused, the trial Court framed charges U/s 364 and 201 IPC against A1 to A4; Section 302 IPC against A1 to A3 and Section 302 r/w 34 IPC against A4 and all the accused denied the charges and claimed for trial.

(d) During trial prosecution examined PWs.1 to 15 and marked Ex.P1 to P24 and produced MOs.1 to 8.

(e) PWs 1 and 2 are the parents of the deceased. PW.3 is the elder brother of the deceased. PW.4 is the relative of the deceased. PW.5 is Yesu who saw the kidnapping and informed PW.1. PW.6 is Muddukrishna, resident of Chandrababu Nagar, who did not support the case of the prosecution. PW.7 is the Assistant Sub-Inspector of Police, who registered Crime Nos.108/2016 and 109/2016. PW.8 and PW.9 are witnesses for scene of offence observation. PW.10 is a witness for the observation of scene of offence at Sarvepalli Reservoir. PW.11 is the Doctor who conducted post-mortem. PW.12 is one of the mediators present at the time of arrest of the accused, and seizure of iron-pipe. PW.13 initially registered FIR U/s 363 r/w 34 IPC, and visited the scene of offence. PW.14 took up investigation after the section of law was altered to 302 IPC. PW.15 got recorded the statements of PW.5 and PW.6 and got conducted Test Identification Parade. He filed chargesheet.

Observations and Findings of the trial Court:

The trial Court, on analysis of the evidence on record, observed that the past disputes and registration of mutual FIRs between A1 and PWs.2 and others are the motive in the present case for the accused to kidnap and commit murder of Bhoominathan.

(a) Nextly, the trial Court observed that strictly speaking the case on hand is not based purely on circumstantial evidence, inasmuch as, PW.1 gave Ex.P.1 - report to the police stating that PW.5 informed him that A1 and A2 and two others have assaulted and abducted his son, on the strength of which, Ex.P.15 – FIR was registered. The trial Court further observed that though PW.5 did not

fully support prosecution case and turned hostile, however the admissible portion of his evidence would show that basing on his information only report was lodged with police by PW.1. The police went to the scene of offence and found the auto of the deceased abandoned. These circumstances would show that the deceased was abducted from his auto by the assailants near the Banyan tree at Talpagiri colony, Nellore and the said incident was seen by PW.5 and informed to PW.1 and PW.2. Though PW.5 did not elaborate the incident, however, as the deceased was involved in the incident he gave the information to PWs.1 and 2 – the parents of the deceased.

(b) Regarding the plea of delay in lodging FIR, the trial Court observed that there was no much delay in lodging the FIR as the information about the occurrence was received by PW.1 from PwW.5 at about 06:00 PM on 26.03.2016 and after making a futile search for his son he lodged report in the midnight at about 12:30 hours and hence the delay was only six hours. However there was no fabrication about the incident as the names of accused which were furnished by PW.5 alone were mentioned in the FIR and in fact, the names of A3 and A4 were not mentioned therein. Therefore, delay was not a big consequence.

(c) Regarding the contention that the name of the informant who informed about the location of the dead body near Anikepalli Tank was not revealed by PW.1 and other witnesses which creates any amount of doubt about the prosecution case is concerned, the trial Court turned down the said contention by observing that PWs.1 and 2 were under great stress due to the missing of their son by the time they received information about his dead body and therefore they might not have concentrated on the name of the informant and hence omission to mention the name of the informant or his non-examination will not discredit the prosecution case.

(d) The trial Court ultimately observed that A1 and A2 were found kidnapping the deceased by PW.5 and when once the kidnap is proved and subsequently the dead body of the victim was traced, the burden will be on the A1 and A2 to explain about the cause of death of the deceased and most importantly, their innocence. As they failed in this regard, they should be held liable for the offences U/s

364, 302 and 201 IPC. The trial court accordingly convicted and sentenced them as stated supra.

Hence the criminal appeal.

3. **Arguments:**

Heard arguments of Smt. C. Vasundhara Reddy, learned counsel for appellants and Sri Y. Nagi Reddy, learned Public Prosecutor for respondent.

4. Severely fulminating the judgment of trial Court convicting A1 and A2, Smt. C. Vasundhara Reddy, firstly argued that the case on hand is solely based on circumstantial evidence, however the prosecution failed to prove all the important connecting links to form a complete chain to invariably establish the guilt of the accused. In expatiation, learned counsel argued, the prosecution utterly failed to prove that A1 and A2 have kidnapped the deceased and ultimately killed him. PW.5 who is said to have informed PWs.1 and 2 about the galata between deceased and the accused and their kidnapping him from Talpagiri Colony, Nellore, did not support prosecution case and he was declared hostile. In that view, there is no reliable evidence to hold that A1 and A2 have kidnapped the deceased. However, trial Court has not considered this aspect in right perspective and basing on Ex.P.6-164 Cr.P.C Statement of PW.5, held as if the factum of kidnap was proved. Learned counsel would argue that 164 Cr.P.C statement is not a substantial piece of evidence so that a Court can place implicit reliance on it. Learned counsel relied on **State of Karnataka v. P.Ravi Kumar Alias Ravi**

(a) Nextly, learned counsel argued that the prosecution has also failed to prove the motive for the accused to kidnap and kill the deceased. Though previous disputes resulted in lodging complaints against each other, that was an issue between A1 and PW.2 but that issue has nothing to do with the present case and it cannot be contended that keeping grudge in mind due to the disputes with PW.2, A1 and other accused have kidnapped the deceased with whom admittedly they have no issues. Hence the prosecution miserably failed to prove the motive aspect. Alternatively learned counsel argued that even assuming that there was a motive for the accused, however that alone is not sufficient to convict the accused. On this

aspect learned counsel relied upon **Ramesh Baburao Devaskar v. State of Maharashtra**. Finally, learned counsel argued that A1 and A2 stand on the same footing as A3 and A4 who were acquitted and therefore the trial Court ought to have acquitted them also. Learned counsel thus prayed to allow the appeal.

5. Per contra, learned Public Prosecutor while supporting the judgment argued that the case on hand is not the one solely based on circumstantial evidence. As rightly observed by the trial Court there was a direct eye witness in the form of PW.5 who had seen the accused kidnapping the deceased and he informed the said fact to PWs.1 and 2 the parents of the deceased. Basing on his information only, PWs.1 and 2 and their relations set out in search of the deceased and when they failed to trace him, they gave Ex.P1-report to the police on the midnight mentioning that on the information of PW.5 only they came to know that their son was kidnapped by the accused. Learned PP further argued that though PW.5 turned hostile during trial, however, the reliable portion of his evidence would clearly indicate that he gave information to PWs.1 and 2 about the galata. Unless the deceased was involved in the said galata, there was no necessity for PW.5 to specifically inform to PWs.1 and 2. Hence in spite of PW.5 turned hostile, the evidence of PWs.1 and 2 to the effect that they were being informed by PW.5 that the accused kidnapped their son and he witnessed the said incident can be accepted. Learned PP would further argue that merely because a witness turned hostile, his entire evidence need not be discarded. On the other hand, that part of his evidence which is reliable and corroborated by other reliable witnesses can be accepted by the Court. On this aspect he relied upon **Malti Sahu v Rahul** and **Neeraj Dutta v. State (Govt. of N.C.T. of Delhi)**. He further argued that in the circumstances of the case, there is no delay in lodging the FIR and most importantly there was no roping in of innocents. PW.1 lodged the report believing the information of PW.5. The report was also lodged within six hours of getting information. Hence the trial Court rightly rejected the contra argument of the appellants. He thus prayed to dismiss the appeal.
6. The points for consideration are:
 1. Whether there is plausible evidence in this case to prove the guilt of accused ?

2. Whether the conviction and sentence passed by the trial Court is legally sustainable ?
3. Whether there are merits in the criminal appeal ?

ANALYSIS:

7. **POINTS 1 to 3** : These points are intertwined hence they are taken up together. At the outset, as rightly observed by trial Court, this is not a case purely based on circumstantial evidence, for, according to PWs 1 to 4, on the evening of incident i.e., on 26.03.2016 at about 06:30 pm PW.5 rushed to PW.1's house and informed that his son Bhoominathan was beaten and forcibly taken away in an auto by the accused and they searched for him but could not find and on the next day morning they came to know that dead body of Bhoominathan was lying near Anikepalli Tank. Thus the prosecution case not pivots primarily on circumstantial evidence but hinges on the evidence of PWs.5 & 6. As stated supra according to prosecution, PW.5 was an eye witness to the incident of accused beating the deceased and kidnapping him in a auto near a Banyan tree in Talpagiri colony on the evening of 26.03.2016 at about 06:00 pm. So also, PW.6 is concerned, according to prosecution he saw when A1, A2 and others were taking the deceased in an auto by beating him. However, during evidence both these witnesses did not support prosecution case and hence they were declared hostile. Since prosecution case mainly depends on the evidence of these two witnesses and as they turned hostile, it is germane for us to discuss the evidentiary value of a hostile witness. Law is no more *res integra* on this aspect. The Apex Court in **Neeraj Datta's** case (supra 4) has observed thus:

"67. Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic

rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the Accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence."

In **Malti Sahu's** case (supra 3) also the Apex Court expressed the same view.

8. In the light of above jurisprudence, the probative value of the evidence of PWs. 5 & 6 has to be evaluated with reference to the other facts and evidence.

9. **PW.1** is the father of the deceased. He deposed to the effect that PW.2 is his wife, deceased is his elder son, PW.3 is his younger son. The deceased is running an auto. A1 owns autos and he gives on hire basis to drivers in their locality and collects rents in the evening. For that purpose A1 sits at Vinayaka Temple situated in their locality i.e., Chandrababu Nagar in the evening hours along with his friends and consumes alcohol along with them and creates nuisance at the temple. They also used to tease the women in their locality. His further version is that, one week prior to the death of Bhominathan, PW.2 objected to the hooligan behavior of A1 and his associates. An altercation ensued. Therefore, PW.2 gave report to police and A1 also gave report.

(a) It should be noted at this juncture that as per PW.7-the ASI, Nellore Rural PS, on 22.03.2016 report was given against A1 and others which was registered as Cr.No.108/2016 for the offences under Section 143, 219, 354, 323 & 506 r/w 34 IPC. As a counterblast, A1 gave a report that he was beaten by PW2 and others. His statement was also registered as FIR in Cr.No.109/12016 U/s 341, 323, 379 r/w 34 IPC. As per PW.7, after investigation, he filed charge sheet in the report of PW.2. i.e., Cr.No.108/2016 and filed referred charge sheet in Cr.No.109/2016 as false.

(b) Then coming to the further version of PW.1, on 26.03.2016 at about 06:00 pm his son left home towards Ayyappa Swamy Temple with auto to pick up passengers. At 06:30 pm, PW.5-Terlling Yesu came running to his house and informed him that Bhominathan was

being beaten by the accused near Banyan tree in Talpagiri colony and he was forcibly pushed into another auto and taken away by the accused. On that PWs. 1 to 3 and others rushed to the spot and found the auto of his son on the road but they did not find Bhoominathan. They searched in and around but could not locate him and in the midnight they gave Ex.P1 report to the police. On the next day morning at 07:00 am he came to know through some of his relatives that the dead body of his son was lying near Anikepalli Tank. Himself and his family members rushed there and found the dead body of his son near Anikepalli Tank with injuries on the head and other parts. He then went to V Town police station and informed the said fact. Police recorded his statement and conducted investigation. According to this witness, due to the disputes occurred between his son and accused, the accused killed his son. PWs.2 to 4 also deposed in similar lines regarding the incident proper and other associate facts. Needless to emphasize, PWs.1 to 4 depended on the information provided by PW.5 on the incident proper.

10. Then PW.5 is concerned, in his chief examination, he deposed that he knows PW.1 & 2 and the deceased. Out of all the accused, he knew only A2. Then regarding the incident he stated that on 26.03.2016 at about 06:00 pm, while he was returning to his house on his bike from the gym near Bollineni Hospital, he observed some galata at the Banyan tree in Talpagiri colony. He stated that he cannot identify the persons involved in the galata. Then he went and informed about the galata to PW.1 & 2 who were on the road in Chandrababu Nagar. He admitted that his statement under 164 Cr.P.C. was recorded by the Magistrate. However, according to him, police asked him to give statement as if Bhoominathan was in altercation with some persons. He was afraid of police when he gave the statement. However, he was able to give evidence without any fear in the Court.

(a) It should be noted in Ex.P6-164 Cr.P.C. statement this witness deposed before the JMFC for Railways, Nellore to the effect that when he reached the Banyan tree in Talpagiri colony, he heard loud shouts and when he saw he observed all the four accused (the names of accused No.3 & 4 are stated as Hussain and Mani and later he clarified that Hussain's another name is Khadar Basha and Mani's real name is Ravi i.e., A3 & A4) were beating Bhoominathan and out of fear this witness remained at a distance and went and informed to the

family members of Bhominathan. He further stated that on the next day he came to know that the accused have killed Bhominathan and left near Survepalli Reservoir. However, in his evidence, he deviated from his earlier version. So, learned Public Prosecutor got him declared as hostile and cross-examined him with reference to his earlier statements under 161 & 164 Cr.P.C. The witness stated that out of fear of police, he stated so. He could not give answerer to the question as to why he did not intimate to the Magistrate that the police asked him to give the statement as instructed by them and that he was afraid of police. In the cross-examination of Public Prosecutor he stated that he was still afraid of police. He further stated that he knows A2 as he resides behind his house. He further stated that Dada Peer is his friend who works as a mechanic under A1. A2 is also his friend. He further admitted that five or six years ago he purchased a second hand auto and he sold the said auto to A1. He denied the suggestion of Public Prosecutor that because of friendship with A1 & A2 he turned hostile. He admitted that he identified A1 A2 and A4 in the Test identification Parade.

(b) In the cross-examination of accused, he stated that he was shown the photos of A1 to A4 by the police prior to the T.I.Parade. He has no friendship with A1 except selling the auto. However, in the reexamination by Public Prosecutor, he admitted that he was having friendship with A1 and A2 even prior to T.I.Parade.

(c) Then in the examination made by the Court, he stated that he knew PW.1 to 3 and the deceased. He saw six to seven persons at Banyan tree. He did not choose to inform police even though those persons were involved in a fight.

The above is the evidence of PW.5.

11. Then PW.6 – Veluru Muddu Krishna is concerned, according to prosecution when the accused were forcibly taking away the deceased in the auto, PW.6 happened to witnessed the same. However, in his evidence PW.6 did not support the prosecution. He deposed that he knows PW1 and 2 and their sons and he also knows that Bhominathan died but he does not know the cause of his death. He further deposed that he does not know the accused. In view of his aforesaid version, learned public prosecutor got him declared as

hostile and crossexamined with reference to his earlier version under Ex.P7-161 Cr.P.C statement and Ex.P8-164 Cr.P.C statement. This witness admitted to have stated as contained in those statements to the effect that he saw the accused and Bhoominathan in one auto and he was being assaulted by A1, A3 and A4 while A2 was driving the auto. Again in the crossexamination of the defence side, he stated that he gave statement before the Magistrate against accused as per the instructions of police. Thus as can be seen, PW.6 changed his versions at a different stages of his deposition and there is no consistency in it. There is no corroboration from other reliable witnesses on the aspect that he witnessed accused forcibly taking away the deceased in an auto by beating him. Therefore, the evidence of PW.6 cannot be taken into consideration.

12. Then we carefully scrutinized the evidence of PW.5. His admissions are to the effect that he knows A1 & A2 and they are his friends. On 26.03.2016 at about 06:00 pm while he was returning from gym, he saw galata at the Banyan tree in Talpagiri colony and he went and informed to PW.1 & 2 about the said galata. He of course stated that he could not identify the persons involved in the galata. Be that as it may, PWs.1 to 4 in one voice stated that this witness went to their house and informed that the accused have beaten their son Bhoominathan and forcibly taken him in their auto. Whereas, PW.5 says that he only informed about the galata but he did not mention the persons who were involved in the said galata. This part of his evidence is undoubtedly a false statement, because unless this witness went and informed about the galata and persons involved in the said galata, PW.1 to 4 had no occasion to know the particulars of the persons involved in the galata. In our view, there was no necessity for PW.1 to 4 to falsely depose that on the information of PW.5 they came to know that Bhoominathan was beaten and kidnapped by the accused. Most importantly, PW.1 and his family members immediately rushed to the spot on the information of PW.5 and having not found their son but only his auto, they searched for him and gave Ex.P1-report on that night. In the said report they specifically mentioned about A1, A2 and the alias names of the A3 & A4. The FIR was lodged without any delay and in the FIR the name of the accused was also specifically mentioned. All these events would unerringly show that it was the PW.5 alone informed to PW.1 about accused beating and

kidnapping Bhominathan. Therefore, his version that he only informed about the galata but not about the persons involved is a fabrication. Since, A1 & A2 are his friends, PW.5 gave false evidence to save them. So, from the admissible portion of the evidence of PW.5 coupled with the unimpeachable evidence of PW.1 to 4, it is clear that the accused party have kidnapped the deceased. So far as the accused are concerned, A1 & A2 are mentioned in the FIR and there is no identity problem for PW.5 as they are his friends. A3 & A4 are concerned, in the FIR different names are mentioned and the police have not mentioned in the chargesheet whether A3 & A4 have different names also. Therefore, the trial Court rightly gave benefit of doubt to A3 & A4. However, A1 & A2 cannot be treated on the same footing. So far as the offence of murder is concerned, as rightly observed by the trial court, since the dead body of the deceased was found on the next day near Anikepalli Tank with injuries on his head and other parts of the body and as the PW.11 who conducted post mortem found fracture of skull and other lacerated injuries on the head and opined that the death was due to shock and hemorrhage due to head injury, it is clear that the death of the deceased is a homicidal one. As the deceased was found kidnapped by A1 & A2 and some others on the previous day evening and as he was found dead in suspicious circumstances on the next day morning, the responsibility lies with A1 & A2 to answer the death of the deceased. Since they failed in that regard, the trial Court rightly convicted A1 & A2 for the offences under Sections 364, 302 & 201 IPC. The judgment of the trial Court is impregnable either on facts or in law.

The arguments advanced on behalf of the appellants and the judgments relied by the learned counsel do not improve the case of appellants. We find no merits in the appeal.

13. Accordingly, this Criminal Appeal is dismissed by confirming the conviction and sentence passed by the trial Court.

As a sequel, interlocutory applications, pending if any in this appeal, shall stand closed.

*Disclaimer: Always compare with the original copy of judgment from the official website.