



**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE FIRST DAY OF FEBRUARY  
TWO THOUSAND AND TWENTY TWO

**PRSENT**

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR**  
**THE HONOURABLE DR JUSTICE K MANMADHA RAO**  
**CRIMINAL APPEAL NO: 87 OF 2015**

**Between:**

1. PUTTI VINOD, GUNTUR DT., R/o 4th lane, Vengalreddy Nagar,  
Narasaraopet,  
Guntur District.

**...PETITIONER(S)**

**AND:**

1. STATE OF AP., REP PP., Rep. by its Public Prosecutor, High Court of  
Judicature  
At Hyderabad

**...RESPONDENTS**

**Counsel for the Petitioner(s): MASTHAN NAIDU CHERUKURI**

**Counsel for the Respondents: PUBLIC PROSECUTOR (AP)**

**The Court made the following: ORDER**



**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**  
**AND**

**THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

**Criminal Appeal No. 87 of 2015**

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

1) Accused No.1 in Sessions Case No. 294 of 2012 on the file of XIII Additional District and Sessions Judge, Narasaraopet, is the appellant herein. He along with Accused No. 2 [acquitted] were tried for an offence punishable under Section 302 read with 34 of Indian Penal Code [**I.P.C.**], for causing the death of one Kshatri Nagamani [**Deceased**] on 05.10.2011 at 4.00 p.m. at Subabul Garden. By its Judgment, dated 17.11.2014, the learned Sessions Judge convicted Accused No.1 alone for the offence punishable under Section 302 I.P.C. and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.1,000/- in default to undergo simple imprisonment for one month.

2) The facts, in the issue, are as under:

- i) PW1 is the father of PW2 and husband of the deceased; PW3 is the mother of PW1. The marriage of PW1 with the deceased took place about nine years prior to the incident. He was blessed with two children.
- ii) On 05.10.2011 the deceased and PW2 went to attend calls of nature while PW1 left the house at 7.00 a.m., to his work at Gollapadu Village. It is said that, when PW2 and



her mother [deceased] went to the fields in the evening, at that time Accused No. 1 and another person were present there and the mother of PW2 and both the accused talked with each other for about half an hour and, thereafter, her mother [deceased] handed over water mug and mobile phone to PW2. Then, she along with both the accused went inside Subabul Garden. PW2 claims to have waited there till 7.00 p.m., and as her mother [deceased] did not return back, due to fear she returned to her house. At about 7.00 p.m., PW2 telephoned and informed PW1 about her mother [deceased] not returning home. By 7.30 p.m. PW1 returned home and searched for his wife [deceased], but could not trace her. When enquired with PW2, she informed him that herself and the deceased went to attend calls of nature at 4.00 p.m., where her mother [deceased] handed over mobile phone and water mug to her and went into Subabul Garden, and as she did not return back, PW2 claims to have returned home.

- iii) On knowing the same, PW1 took the mobile phone of his wife [deceased] and verified incoming calls. He noticed one number displayed three or four times and the said number is 8096616403. He called the said number through the mobile of his wife [deceased]. One person lifted the phone, revealed his name as Vinod [A1] and then cut the phone. The said Vinod [A1] was a tenant in the house of PW3. On



the next day, i.e., on 06.10.2011 at 10.00 a.m., in the morning, PW1 went to Police Station and lodged a report with PW11 – Sub-Inspector of Police. Basing on Ex.P1 report, PW11 registered a case in Crime No. 156 of 2011 under the head of woman missing and sent copies of First Information Report to all concerned. Ex.P12 is the First Information Report. He examined PW1 to PW3 and recorded their statements. He sent radio message about the missing woman to all the police stations.

- iv) On 07.10.2011, PW11 along with Inspector of Police [PW10] visited the house situated in 4<sup>th</sup> lane of Vengalareddy Colony bearing door number 13-4-65/10. One person, who was present there tried to run away. He was apprehended and when enquired, revealed his name as P. Vinod [A1]. The said visit was in the presence of PW7. A1 is said to have confessed about the commission of the offence and also disclosed that he will show them the place where the dead body of Nagamani [deceased] is lying. Ex.P2 is the admissible portion of A1. It is said that, A1 also handed over the wrist watch of the deceased, which is marked as M.O.1. The evidence of PW10 – Inspector of Police, would show that he handed over the mediatorsnama prepared to PW11, who basing on the same altered Section of law to 302 and 201 read with 34 I.P.C. Ex.P13 is the section alternation memo.



- v) PW11 after altering the section of law proceeded to the scene of offence where he prepared a rough sketch of scene, which is placed on record as Ex.P14. The evidence further discloses that A1 lead them to the scene of offence, which is Subabul Garden of PW9 situated by the side of the road leading to Kotappakonda Village. At the scene, A1 showed the dead body of the deceased. By that time, the relatives of the deceased, who were present there, identified the body as that of the deceased. It is said that, at the scene A1 handed over his mobile phone [M.O.9] to PW10.
- vi) PW10 prepared a panchanama of the scene and also got the dead body photographed. He noticed a towel around the neck of the deceased, which is marked as M.O.4. The same was seized under Ex.P5. He then conducted inquest over the dead body of the deceased in the presence of three mediators. Ex.P3 is the inquest report. At the time of inquest, he examined PW1 to PW4 and PW6 and recorded their statements and, thereafter, sent the body for post-mortem examination.
- vii) PW8 – the Civil Assistant Surgeon, Area Hospital, Narasaraopet, conducted autopsy over the dead body of the deceased on 07.11.2011 at 4.00 p.m., and issued Ex.P6 – the post-mortem certificate. After receipt of R.F.S.L., report, he opined that the death was due to



strangulation with towel and due to injuries on ribs and left lung by over laying. Ex.P8 is the final opinion.

viii) PW10, who continued with the investigation, arrested Accused No.2 on 07.10.2011 at about 4.00 p.m., and seized Hero Honda Motorcycle [M.O.8] from him. Both the accused were sent to judicial custody. After collecting all the documents and after completing the investigation, a charge-sheet came to be filed, which was taken on file as P.R.C. No. 13 of 2012 on the file of I Additional Junior Civil Judge, Narasaraopet.

3) On appearance of the accused, copies of documents as required under Section 207 Cr.P.C., came to be furnished. Since the case is triable by Court of Sessions, the matter was committed to the Sessions Court under Section 209 Cr.P.C. Basing on the material available on record, charge as referred to above came to be framed, read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PW1 to PW11 and got marked Ex.P1 to Ex.P14, beside marking M.Os. 1 to M.O.9. After completion of prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses, to which they denied,



however, except examining DW1 and DW2, no documentary evidence was adduced.

5) Basing on the circumstances relied upon by the prosecution, namely, motive; accused being 'last seen' in the company of the deceased; recovery of dead body at the instance of A1; the learned Sessions Judge convicted A1 alone under Section 302 I.P.C. Challenging the same, the present appeal came to be filed.

6) (i) Sri. Mastan Naidu Cherukuri, learned counsel appearing for the appellant mainly submits that there are no eye witnesses to the incident and the circumstances relied upon by the prosecution are not proved beyond reasonable doubt. He further submits that, though the prosecution pressed into service the evidence of PW2 to establish the theory of accused 'last seen' in the company of the deceased, but, there are number of circumstances to indicate that PW2 was not present along with the deceased at the Subabul Garden of PW9. He further submits that, if really PW2 had disclosed about the said information to PW1, definitely the same would have reflected in the First Information Report, which was lodged on the next day. Since, the First Information Report is silent on all the material aspects including the telephone number, the deceased being last seen in the company of the accused etc., doubt arises as to whether really PW2 was accompanied her mother [deceased] to attend calls of nature. He further submits that, even on



05.10.2011 when PW1 enquired PW2 as to what happened, she did not disclose about the meeting the accused at Subabul Garden of PW9. She only speaks about deceased not returning home. Even the evidence of PW3 is silent about any information being furnished by PW2 with regard to PW2 accompanying the deceased to answer calls of nature.

(ii) Insofar as recovery of body, at the instance of A1, is concerned, he would submit that the same is not proved as the panch, who was examined to speak about the same did not support the prosecution case. Even otherwise, he would submit that the entire village was aware the dead body lying there since number of family members of the deceased gathered on the road where the dead body was lying by the time A1 took the police to the said place. Therefore, it cannot be said to be a discovery made pursuant to a confession made under Section 27 of the Indian Evidence Act, 1872.

(iii) Coming to the recovery of the wrist watch, he would submit that the evidence of PW1 would show that the wrist watch was on the dead body itself when PW1 and others noticed the body of the deceased. Having regard to all the circumstances, he would submit that the prosecution has failed to prove its case beyond reasonable doubt.

7) On the other hand, Sri. K.Srinivasa Reddy, learned Public Prosecutor, opposed the same contending that non-mentioning of details of A1 and A2 in the First Information Report or to PW1





and PW3 by PW2, while giving evidence, do not go to the root of the matter. According to him, A1 and A2 being known persons, were coming to the house regularly and, as such, PW2 might not have disclosed the names of A1 and A2 as the persons who met them at the scene. He further submits that, since the dead body came to be recovered at the instance of A1, and in the absence of any cross-examination to disbelieve the same, he would submit that the said circumstance is sufficient to base a conviction. The learned Public Prosecutor further submits that, though PW2 is a child witness, but there is nothing to disbelieve her version. In his view, the conduct of PW2 is natural and can be believed to connect the accused with the crime. According to him, the evidence of PW2 and other witnesses would clearly show that there was a 'motive' for the accused to commit the offence. In view of the above, he would submit that the conviction and sentence imposed on Accused No. 1 requires no interference.

8) The point that arises for consideration is, *whether the prosecution was able to bring home the guilt of the Accused No.1 beyond reasonable doubt?*

9) It is no doubt true that there are no eye witnesses to the incident and the case rests on circumstantial evidence. In a case arising out of circumstantial evidence, the prosecution has to prove each of the circumstance relied upon by them and the circumstances so proved should form a chain of events, which



should lead to an irresistible conclusion establishing the guilt of the accused.

10) In ***R.Damodaran v. The State Rep. By The Inspector Of Police<sup>1</sup>***, the Apex Court after referring to the judgment of a three Judge Bench in ***Padala Veera Reddy Vs. State of Andhra Pradesh and Ors<sup>2</sup>***, held that, in a case which rests on circumstantial evidence such evidence must satisfy the following tests:

1. *the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
2. *those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
3. *the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
4. *the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See ***Gambhir v. State of Maharashtra<sup>3</sup>***)*

11) Keeping in view the law laid down by the Apex Court in the judgments referred to above, it is now to be seen whether the circumstances relied upon by the prosecution are proved and if

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<sup>1</sup> AIR (2021) SC 1173

<sup>2</sup> 1989 Supp (2) SCC 706

<sup>3</sup> (1982) 2 SCC 351



proved, whether they form a chain of events connecting the accused with the crime leading to an inescapable conclusion, the guilt of the accused.

**I. Motive.**

12) Coming to the “Motive” aspect, it would be relevant to extract the evidence of PW1, PW2, PW6 and PW10.

13) PW1 in his examination-in-chief deposed that, his wife [deceased] was having illicit intimacy with A1 and used to give money to him and meet him at Subabul Garden. As his wife could not cooperate with A1, A1 murdered her with the help of A2. The relevant portion in the evidence of PW1 is as under:

“A1 Vinod killed my wife with the help of A2 Lalibabu. My wife Nagamani was having illicit intimacy with A1 P.Vinod. My wife used to give money to A1 P.Vinod and she also used to meet A1 Vinod at Subabul Garden. After that as my wife could not cooperate with A1 Vinod, he murdered her.”

14) In cross-examination, PW1 admits as under:

**“I do not know about the illicit relationship between my wife and A1 – P. Vinod till the death of my wife.**

It is true that I have not mentioned any suspicion against A1 – Vinod in Ex.P1 about the death of my wife”.

“I came to know through Police that A1 – P. Vinod killed my wife and I do not know any other source of information with regard to involvement of A1 for the death of my wife.”

15) PW2, who is the daughter of PW1 and the deceased, in her evidence deposed that, A1 used to visit their house in the



absence of her father and also used to sleep at their house. He also used to take food at their house and whenever he visited their house her mother was present at house and provided food to him. As her mother asked A1 to pay money, he killed her mother. However, in cross-examination PW2 admits as under:

“..... I have not informed to my father that A1 Vinod used to visit our house in the evening. I also not informed to my grandmother that A1 – Vinod used to visit our house in the evening.”

16) PW6, who is elder brother of the deceased, in his evidence deposed that, he came to know through Police that A1 killed his sister Nagamani, who was having illicit intimacy with A1. However, in cross-examination, he admits as under:

“I have no personal knowledge about the cause of death of Nagamani. I came to know about cause of the death of Nagamani through police.

17) At this stage, it would be relevant to refer to the evidence of PW10 – Inspector of Police, Narasaraopet Rural Circle. According to him, his investigation revealed that A1 was having illicit relationship with deceased and when the deceased refused to continue relationship with A1 Vinod, he developed grudge and killed her with the help of A2. However, in cross-examination, PW10 admits that, his investigation does not reveal any money transactions between the deceased and accused. It would be relevant to extract the same, as under:



“During the course of investigation, I never come across with regard to any money transaction between deceased and Vinod”.

18) Therefore, in one breadth PW1 was made to say that the motive for the offence is illicit relationship and non-payment of money demanded by A1; while evidence of PW2 and PW6 is to the effect that the cause for the incident is because of the money transaction between A1 and the deceased. If the reason for committing the murder is illicit relationship between A1 and the deceased, it is doubtful as to whether A1 would have killed the deceased, since nobody suspected the relationship between A1 and the deceased and even PW1 and PW3 were not aware about the same. Even PW2, who speaks so many things in Court, did not inform anyone of her family members about the visit of the accused to her house at any point of time earlier. In fact, the evidence of PW10 falsifies the evidence of PW1, PW2 and PW6 with regard to money transaction between the deceased and accused. Therefore, we hold that the prosecution has not come forward with any specific ‘motive’ for the accused to kill the deceased. As stated earlier, each witness is giving different version which we are not inclined to accept.

## ***II. Accused and deceased ‘last seen’ together.***

19) The main ground relied upon by the prosecution is the accused and deceased being ‘last seen’ together, which they sought to establish through the evidence of PW2. In order to appreciate the same, it would be appropriate to refer to the



evidence of PW2, who is none other than the daughter of the deceased and also the evidence of PW1, who is husband of the deceased.

20) PW2 was aged about nine years at the time of giving evidence and six years on the date of incident. According to her, on 05.10.2011 herself and her mother [deceased] went to fields to attend calls of nature. By that time, A1 and another person were present there, who came there by walk. According to her by the time they went to the fields of PW9, it was evening. Both the accused talked with her mother [deceased] for half an hour and, thereafter, her mother [deceased] handed over water mug and mobile phone, and went inside the Subabul Garden along with the accused. PW2 claims to have waited there till 7.00 p.m. As her mother [deceased] did not return back, PW2 returned to her house. She claims to have informed her father [PW1] through mobile phone after returning home. At about 7.30 p.m., her father [PW1] returned home and searched for her mother [deceased] but could not trace her. Thereafter, her father informed her paternal grandmother [PW3] and then all of them searched for the deceased, but in vain. A report came to be lodged on the next day morning at 10.00 a.m. PW2 also went along with her father [PW1] to the Police Station for lodging the report. According to her, police enquired her and she informed the police as to what happened. On 07.10.2011 she along with other relatives accompanied her father [PW1] to Subabul



Garden, where the dead body was found. She further deposed that, by the time they reached Subabul Garden, Police and A1 was present there. It is her version that, A1 used to visit the house in the absence of her father [PW1] and take food and sleep in their house. According to her, whenever A1 visited the house, the deceased used to provide food to A1. It is her evidence that, as the deceased demanded A1 to pay the money, he killed her.

21) In the cross-examination, she admits going to Police Station along with PW1 on the next day at 10.00 a.m. where Police recorded her statement. She further admits that she does not know when her father [PW1] lodged the report with police. She also admits that she used to go to school at 8.00 a.m. in the morning and return back at 4.00 p.m., however denies the suggestion that she is attending private tuitions in the evening. She further admits that, her mother [deceased] used to be at her house by the time she returns from school. She further admits that, on the fateful day, her mother [deceased] did not attend coolie work and she also did not attend the school. She further clarifies that, on that day the school was closed as her teacher was not in town. She further admits that, she has not informed her father [PW1] about A1 visiting their house in the evening/in the absence of PW1. She also admits that she has not informed to her grandmother [PW3] about A1 visiting the house during evening time. It was further elicited in the cross-examination that herself and her mother [deceased] went into Subabul



Garden. At the same time, she also admits that, on that day her mother [deceased] and A1 talked with each for one hour and her mother handed over a mug and mobile phone and then went inside Subabul Garden along with A1. She further admits that, cars and motorcycle pass through the said road, apart from people passing through the road near the Subabul Garden. It was further elicited that, when her mother [deceased] went inside the subabul Garden, she slept in the fields for some time and then woke up when it started raining. She further admits that her father [PW1] searched in the Subabul Garden on that day, but could not trace the body. It was further elicited that Subabul Garden is visible from their house and that A1 was present by the time they visited the Subabul Garden.

22) Strangely, PW2 admits that she has witnessed A1 and A2 killing her mother [deceased] at Subabul Garden, but, did not raise cries after witnessing the incident and also did not inform her father [PW1] about she witnessing A1 and A2 killing the deceased. She also admits that, she has not informed police about she witnessing A1 and A2 killing the deceased. She categorically admits that her version now in the cross-examination is an improvement to what she has stated in the chief-examination with regard to killing of the deceased. This, in substance, is the evidence of PW2 with regard to accused being 'last seen' in the company of the deceased.





23) From the evidence of this witness, it is discernible that she along with her mother [deceased] claims to have gone to answer calls of nature at Subabul Garden on 05.10.2011 at 4.00 or 4.30 p.m. PW2 claims to have witnessed the incident of accused killing the deceased but kept quiet without informing anybody. She claims to have returned home at 7.00 p.m. and, thereafter, called her father [PW1] informing about the deceased not returning home. At this stage, it is also to be noted that PW2 went along with her father [PW1] to Police Station on the next day morning at 10.00 a.m. when a report is said to have been lodged. At this stage, it would be useful to refer to the evidence of PW1, who is none other than the father of PW2 and husband of deceased.

24) According to PW1, on 05.10.2011 at 7.00 a.m. he left his house to attend to work. At about 7.00 p.m., his daughter [PW2] telephoned him and informed that whereabouts of his wife [deceased] are not known and asked him to return home immediately. Accordingly, he rushed home by 7.30 p.m., and enquiries with his daughter [PW2] revealed that herself and his wife [deceased] went to the fields of PW9 to attend calls of nature at 4.00 p.m. where his wife handed over mobile phone and water mug to PW2 and went inside the Subabul Garden, as the deceased failed to come back, PW2 returned home. The evidence of PW1 further disclose that, he verified the mobile phone of his wife [deceased] and found one number being displayed three or



four times, which was received by his wife [deceased]. He called that number, which was lifted by a person, who revealed his name as Vinod and then disconnected the call. According to him, the said Vinod is a tenant in the house of PW3. PW1 along with PW3 and PW2 searched for the deceased, but in vain and, thereafter, law was set into motion by lodging a report [Ex.P1]. According to him, the body was recovered on 07.10.2011 at 11.30 a.m. in the Subabul Garden.

25) PW1 was also cross-examined at length, wherein, he admits that on that day itself they searched for his wife [deceased] in Subabul Garden, but could not trace her due to darkness. He also admits that he is not aware about the illicit relationship between A1 and deceased till the death of his wife [deceased]. He further admits that, he has not entertained any suspicion against the accused in Ex.P1 report. He further admits that he came to know about the involvement of A1 in the commission of offence through police and that he has no source of information with regard to the involvement of A1 in the commission of offence. It would be appropriate to extract the same as under:

“I came to know through Police that A1 – P. Vinod killed my wife and I do not have any other source of information with regard to involvement of A1 for the death of my wife”.



26) PW1 further admits in the cross-examination that he identified the body of his wife [deceased] basing on her clothes and the wearing of gold colour wrist watch on the dead body. It would be appropriate to extract the same, which is as under:

“My wife was wearing Gold colour wrist watch on the date of her death. I also saw wrist watch when I noticed the dead body of my wife. As I used to see wrist watch of my wife I can say that those are belongs to my wife”.

27) From the evidence of this witness, it is clear that he was not aware of the alleged intimacy between A1 and the deceased and even PW2 did not inform him about the involvement of A1 and A2 or A1 and A2 meeting the deceased or A1 meeting the deceased on 05.10.2011 at Subabul Garden. In fact, PW2 never disclosed about the presence of accused or deceased going to Subabul Garden along with A1 and A2 on the fateful day.

28) PW3, who is grandmother of PW2, in her evidence, deposed that, on 05.10.2011 by 7.00 p.m. her son [PW1] telephoned to her informing about the missing of his wife [deceased]. Then, she went to the house of PW1 and searched for the deceased, but, could not trace her. On the next day morning at about 10.00 a.m., herself, PW1 and PW2 went to the police station and lodged a report. Her enquiries with PW2 revealed that PW2 and deceased went to Subabul Garden to attend calls of nature and the deceased is said to have gone inside the Subabul Garden.



29) From the evidence of this witness, it is very much clear that even when PW3 enquired with PW2, she did not reveal anything about the accused. In fact, in the cross-examination she admits that she has not enquired even from PW1 as to how the deceased died. Even when they went to Subabul Garden in the night, they did not trace the body of the deceased. She categorically admits that, PW2 has not informed to her as to what happened on that day and she claims to have come to know the facts only after lodging of the report through PW2.

30) Before analyzing the evidence of these witnesses, we also intend to refer to Ex.P1 – the report lodged by PW1 on the next day. The said report was lodged on 06.10.2011 at 10.00 a.m., which lead to registration of a case in Crime No. 156 of 2011 under the head “woman missing” of Narasaraopet Rural Police Station. In the said report, it is stated that, marriage of PW1 with the deceased took place about nine years ago and they were blessed with two children. According to him, on 05.10.2011 at 7.00 a.m., in the morning, he went to Gollapadu Village, for the purpose of earning. At about 7.00 p.m., in the evening, his daughter [Birabai –PW2] telephoned him informing that herself and her mother [deceased] went to answer calls of nature, wherein, her mother gave her cell phone and went away saying that she will come within short time, but did not return. On receipt of the said information, the informant [PW1] claims to have returned and enquired with his daughter [PW2] and then



searched for his wife [deceased] in surrounding places, but could not find her. He noticed a call from a cell phone number 8096616403. This, in substance, is the content of the First Information Report, which was lodged on the next day morning at 10.00 a.m. by PW1.

31) An analysis of the evidence of PW1 to PW3 and the contents of Ex.P1 [report], in our view throw some doubt as to whether really PW2 witnessed A1 and A2 at the Subabul Garden and the deceased going along with them into the said garden. If really PW2 had seen A1 and A2 at the garden, and if really A1 and A2 and her mother [deceased] talked together for some time and, thereafter, went into the Subabul Garden, she would not have missed mentioning the same to her father [PW1], who returned the home at 7.00 p.m. pursuant to the call made by her informing about deceased not returning home. At least, on next day morning she would have revealed the said facts when they were not able to trace the deceased in spite of making hectic search in and around their place. It is not as if the accused is a stranger to PW2. If really PW2 has disclosed some information about the involvement of the accused or about the deceased meeting the accused, the same would have been reflected in the First Information Report given by PW1.

32) It is now to be seen, *whether the evidence of PW2, who is a child witness can be accepted when it is fraught with so many improbabilities?*



33) In ***Digamber Viashnav and Another V. State of Chhattisgarh***<sup>4</sup>, the Hon'ble Supreme Court while dealing with the evidence of child witness, held as under:

“20. Bearing these principles in mind, we shall now consider the contentions of the learned counsel for the parties. In coming to the conclusion that the accused have committed the offence, the prosecution has relied on (i) Testimony of child witness Kumari Chandni (PW8); (ii) The recoveries made under Section 27 of the Evidence Act; (iii) The fingerprint report; (iv) FSL report; (v) Motive of committing robbery; and (vi) Evidence of last seen together.

21. The case of the prosecution is mainly dependent on the testimony of Chandni, the child witness, who was examined as PW-8. Section 118 of the Evidence Act governs competence of the persons to testify which also includes a child witness. Evidence of the child witness and its credibility could depend upon the facts and circumstances of each case. There is no rule of practice that in every case the evidence of a child witness has to be corroborated by other evidence before a conviction can be allowed to stand but as a prudence, the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Only precaution which the court has to bear in mind while assessing the evidence of a child witness is that witness must be a reliable one.

22. This Court has consistently held that evidence of a child witness must be evaluated carefully as the child may be swayed by what others tell him and he is an easy prey to tutoring. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than law. [See ***Panchhi and others v. State of U.P.***, (1998) 7 SCC 177, ***State of U.P. v. Ashok Dixit and***

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<sup>4</sup> (2019) 4 Supreme Court Cases 522



*another*, (2000) 3 SCC 70, and *State of Rajasthan v. Om Prakash*, (2002) 5 SCC 745].

23. In *Alagupandi alias Alagupandian v. State of Tamil Nadu*, (2012) 10 SCC 451, this Court has emphasized the need to accept the testimony of a child with caution after substantial corroboration before acting upon it. It was held that:

"36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable."

24. It is clear from the testimony of PW-8 that she is not an eyewitness to the incident. She was aged about 9 years at the time of the incident. Her evidence is fraught with inconsistencies. None of the other witnesses have identified the appellants. Therefore, heavy reliance was placed on the testimony of PW-8. She did not tell PW-1, Badridas about the appellants while disclosing about the incident for the first time. This is reflected from the FIR which has been registered against unknown persons. In such circumstances, it is risky to rely on the uncorroborated identification of the appellants at the



instance of PW-8, who has not disclosed about the appellants at the first instance before PW-1 Badridas.”

34) At this stage, it would also be useful to refer to the decision of the Apex Court in ***Hamza V. Muhammed Kutty Alias Mani and Others***<sup>5</sup>. It was also a case where PW1 who was aged about 7 years on the date of incident and claims to be a witness to the incident, failed to disclose about the same to the police on the date of incident, though the police came to her house where the incident took place. Only on the next day evening after her mother's body was buried, he went to the grandmother's house, slept there with his elder aunt Sareena and on that night disclosed about the incident to his aunt Sareena. It is the version of PW1 that thereafter his maternal grandmother Nabeesa and his uncle Hamza then came there and heard what he said. The prosecution examined Hamza as PW2 who told that his mother and wife Sareena were told by PW 1 about the incident, namely, A-1 stabbing while A-2 holding her. PW2, however, has said that the husband of the deceased used to send money in the name of A-1 and A-2 and the deceased informed her husband about non-receipt of money and thereafter the husband of the deceased started sending money to the deceased. The evidence of PW2 in the said case makes it clear that there was some animosity between A-1 and A-2 on account of what the deceased had told him about A-1 and A-2. Having regard to the above, it was held that even though the

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<sup>5</sup> (2013) 11 Supreme Court Cases 150





evidence of PW2 corroborates the testimony of PW1, his evidence cannot be relied upon to lend assurance that PW 1 was giving a true version of the incident.

35) Even in the instant case, except the evidence of PW2, there is no other evidence available on record to establish the theory of accused being 'last seen' in the company of the deceased. When once the evidence of PW2 is found to be doubtful, it can be held without any hesitation that the prosecution has failed to prove the said circumstance.

***III. Recovery of wrist watch of the deceased at the instance of A1.***

36) It would be appropriate to deal with the recovery of wrist watch [M.O.1] of the deceased pursuant to the arrest of A1, which, in our view, has some bearing on the circumstance of accused showing the dead body of the deceased.

37) PW10 – Sub-Inspector of Police, in his evidence deposed that, on 07.10.2011 on credible information, he secured the presence of PW7 and visited the house situated in 4<sup>th</sup> lane of Vengalareddy Colony bearing door number 13-4-65/10. At that time, one person who was present there tried to run away after seeing them. They caught hold of the said person and when enquired, revealed his name as Vinod [A1]. He is said to have confessed about the commission of the offence and also disclosed that he will show the dead body of Nagamani



[deceased] which is lying in Subabul Garden. Ex.P2 is the said confessional statement of A1. According to PW10, A1 also handed over the wrist watch, which is marked as M.O.1. The same was seized under a mediatorsnama.

38) Before going further, it would be appropriate to refer to the evidence of PW7, who in his evidence deposed that, on 07.10.2011, Inspector of Police, called him to Rural Police Station at 9.00 a.m. Then, he along with one Srinivasulu accompanied the police to Vengal Reddy Colony of Narasaraopet, where, himself and police party entered the house. One person who was present there tried to run away. Then the Sub-Inspector of Police questioned the said person. PW7 further deposed that, he cannot say whether accused who is present before the court is one of the accused who was present in the house at Vengal Reddy Colony. But, however, states that the person present in the said house revealed his name as Vinod. According to him, Sub-Inspector of Police enquired Vinod as to where he kept the wrist watch [M.O.1]. The said Vinod showed the place where he kept the wrist watch of the deceased, which was seized under a mediatorsnama. He also claims to have stated to show the dead body of the deceased and accordingly lead them to Subabul Garden situated near Yellamanda Village at Kotappakonda road.



39) Insofar as the recovery of wrist watch [M.O.1] is concerned, the evidence of PW7 and PW10 is to the effect that it was recovered from the house of A1 on 07.10.2011. But, PW1 in his cross-examination admits that the wrist watch [M.O.1] was found on the body of the deceased. According to him, he saw the wrist watch and then he identified the dead body of his wife. According to him, the said wrist watch belongs to his wife. It would be appropriate to extract the same, which is as under:

“My wife was wearing Gold colour wrist watch on the date of her death. I also saw wrist watch when I noticed the dead body of my wife. As I used to see wrist watch of my wife I can say that those are belongs to my wife”.

40) In the evidence-in-chief, PW1 identifies the said wrist watch [M.O.1]. Except the said wrist watch, there is no other wrist watch seized or marked. Having regard to the above, the recovery of the wrist watch [M.O.1] from the house of A1 is doubtful and the same cannot be believed.

#### ***IV. Recovery of dead body at the instance of the accused***

41) Insofar as recovery of dead body of the deceased at the instance of A1 is concerned, prosecution is again relying upon the evidence of PW7 and PW10. In order to appreciate the fact of discovery of the dead body basing on the confession made by A1 [under Section 27 of Indian Evidence Act], it is to be noted that the evidence of PW6 falsifies the same. According to her, on 05.10.2011 afternoon PW1 telephoned her and enquired whether Nagamani [deceased] visited her house. She informed in



negative. On 06.10.2011 at 7.00 p.m., Police Constable telephoned and requested her to come down to Narasaraopet. She further deposed that, they came to know about the death of Nagamani [deceased] on 05.10.2011 itself. According to her, she came to Narasaraopet on 06.10.2011, along with her mother and brother and then went to Police Station. The police took them to a garden where they noticed the dead body of her sister. They found the body with injuries on neck, with tongue protruding out. On their enquiry, police informed and showed A1 as the person responsible for the death of the deceased. Then the police sent the dead body for post-mortem examination.

42) A reading of the cross-examination of PW6 would show that she and her family members were aware about the death of deceased on 05.10.2011 and the dead body lying at Subabul Garden on 06.10.2011 itself. It would be appropriate to extract the evidence of PW6 which is as under:

“We came to Narasaraopet at 7.00 a.m. morning on 06.10.2011. At that time, P.Ws., 1 to 3 were not present at the police station, Narasaraopet. Along with police we went to Subabul Garden in our vehicle. We directly went to the place where dead body of Nagamani was lying. I have no personal knowledge about the cause of the death of Nagamani. I came to know about cause of the death of Nagamani through police. I came to Narasaraopet yesterday night. I have not visited police station yesterday night”.



43) From the evidence of PW6, who is none other than the sister of PW1, it is clear that even prior to the confession made by the accused, the police examined her at the Subabul Garden and in fact, they went to Subabul Garden on 06.10.2011 along with Police in their vehicle. If really there was any discrepancy in the evidence of PW6 with regard to date of discovery of body, as urged, namely, as to whether it was on 06.10.2011 or 07.10.2011, the prosecution ought to have clarified the same by recalling PW6, which was not done.

44) PW10 – Inspector of Police, in his evidence deposed that, on 07.10.2011 on credible information, he secured the presence of PW7 and visited a house situated in 4<sup>th</sup> lane of Vengalareddy Colony bearing door number 13-4-65/10. At that time, one person who was present there tried to run away after seeing them. They caught hold of the said person and when enquired, revealed his name as Vinod [A1]. He is said to have confessed about the commission of the offence and led them to Subabul Garden of PW9, which was situated by the side of road leading to Kotappakonda village, where the dead body of Nagamani [deceased] was lying. At that time, the relatives of Nagamani [deceased] were already present at the road. The relatives of deceased identified the dead body of the deceased at the scene.

45) The evidence of PW10 also makes it clear that, even by the time he along with PW7 and A1 went to the scene of offence, the relatives of the deceased were already present on the road,



meaning thereby that the family members of the deceased were aware about the body lying nearby. In fact, this piece of evidence runs contrary to the evidence of PW6, who in categorical terms deposed that on 06.10.2011 at 7.00 a.m. Police Constable telephoned and informed about the death of Nagamani and asked her to come down to Narasaraopet and from there they went to Police Station and then to Subabul garden, which we have referred to earlier.

46) At this stage, it would be appropriate to refer to the evidence of PW7 – the mediator, who deposed about the arrest of the accused and also the confession made by the accused leading to discovery of dead body at his instance. Though, in the evidence-in-chief, he deposed that he went to Police Station at 9.30 a.m., on 07.10.2011 and from there along with police party went to the house at Vengalareddy Colony, where they noticed the accused person in the house bearing No. 13-4-65/10. Vinod [A1] stated before the police and PW7 that he will show the place where the dead body of deceased [Nagamani] is lying and, accordingly, lead them to Subabul Garden situated near Yellamanda Village at Kotappakonda road. A mediatorsnama to that effect vide Ex.P2 was prepared at the house. It is said that, A1 has shown the dead body of Nagamani in Subabul Garden. In the cross-examination, PW7 admits that, on 07.10.2011, when they visited the house at Vengalareddy Nagar, two or three persons were present in the house and about 50 persons



gathered near the house. The house consists of two rooms in the ground floor. According to him, they were at the house at Vengalareddy Nagar upto 11.30 a.m. on 07.10.2011 and when they reached Subabul Garden on 07.10.2011, about 200 people were already present there. It would be appropriate to extract the relevant portion, in the cross-examination of PW7, which is as under:

“Myself, Inspector of Police and Police Constables went to the house at Vengalareddy Nagar on 07.10.2011. When we visited the said house at Vengalareddy Nagar, two or three persons were present in that house. At that time about 50 persons gathered near the said house at Vengalareddy Nagar. The said house consists of two rooms in the ground floor. The said Vinod is in the ground floor. At that time 3 more male persons were present in the said house. Police have not enquired said three male persons. It is not mentioned in mediatorsnama that 3 other male persons were also present in the said house. One police constable drafted mediatorsnama at that house. The said constable also signed in the mediatorsnama. Police have not affixed slips on the wrist watch (M.O.1). We were there at the house at Vengalareddy Nagar upto 11.30 a.m. on 07.10.2011. When we reached Subabul garden on 07.10.2011, about 200 people were present there. Police constable drafted mediatorsnama at Subabul Garden. The said constable signed in the mediatorsnamma. It is true that 3<sup>rd</sup> lane in Ex.P5 appears that it was inserted subsequently.”

47) From the evidence of this witness, it is clear that by the time the police went to the place where the dead body was lying, basing on the confession of A1, nearly 200 villagers were present there. Therefore, the argument of the learned Public Prosecutor



that the dead body was discovered pursuant to a confession by A1 cannot be accepted. It appears that the entire village including the family members of the deceased were aware as to where the dead body was lying, even prior to A1 leading the police party to the said place.

48) It is worth noting that the evidence of PW7 to the effect that they were in the hosue at Vengalareddy Nagar till 11.30 a.m. and from there they went to Subabul Garden, if true, it is strange as to how PW1 could receive a telephone call at 11.30 a.m., asking him to come over to Subabul Garden as the dead body was found lying there. Similarly, PW3, who in her evidence deposed about receiving a call at 11.00 a.m. asking her to come over to Subabul Garden situated near Chikati Colony of Narasaraopet. Ergo, having regard to all the above circumstances, it cannot be said that the recovery of the said dead body was based on a statement made by A1 before the police leading to a discovery of a fact under Section 27 of the Indian Evidence Act.

49) The learned Sessions Judge while observing that the non-mentioning the details of A1 in the First Information Report is not fatal to the case of the prosecution as PW2 informed the police on 06.10.2011 about the presence of A1 and A2 at Subabgul Garden on that day and the evidence of PW3 about PW2 explaining what all happened after returning home from the police station, but it is to be noted that, though PW3 speaks





about PW2 informing everything after lodging of the report in the police station, but, the evidence of PW2 is silent on this aspect. Merely because the death of the deceased was not to the knowledge of PW2 at the time of giving the report, that cannot be a reason to omit mentioning the material aspect in F.I.R., which goes to the root of the matter. It is needless to mention that, there is no dispute with regard to PW2 accompanying the deceased to attend calls of nature, but, the dispute is with regard to the deceased meeting A1 and A2 at the Subabul Garden on 05.10.2011. When the evidence of PW2 is to the effect that she saw A1 and A2 talking with the deceased and going inside the Subabul Garden along with deceased, and when benefit of doubt is given to A2, it is difficult to accept the evidence of PW2 for convicting A1 on that score as well.

50) In ***Kailash Gour and others vs. State of Assam***<sup>6</sup> the Apex Court held as under:

“It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between accused ‘may have committed the offence’ and ‘must have committed the offence’ which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away.”

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<sup>6</sup> AIR 2012 SC 786



51) Having regard to above, we feel that the circumstances relied upon by the prosecution are not proved beyond doubt and the said circumstances do not form a complete chain, connecting the accused with the crime. Considering the judgments referred to above and in the absence of any cogent and convincing evidence, we feel that, it may not be safe to convict the appellant/accused No.1 for the charge of murder basing on the evidence adduced. Accordingly, we are inclined to acquit the Appellant/Accused No.1 by extending benefit of doubt.

52) In the result, the Criminal Appeal is **allowed**. The conviction and sentence recorded against the appellant/accused No. 1 in the Judgment, dated 17.11.2014 in Sessions Case No.294 of 2012 on the file of the XIII Additional District and Sessions Judge, Narasaraopet, for an offence punishable under Section 302 I.P.C., is set- aside and he is **acquitted** for the said offence. Consequently, the appellant/accused no. 1 shall be set at liberty forthwith, if he is not required in any other case or crime. The fine amount, if any, paid by the appellant/accused no.1 shall be refunded to him. No order as to costs.

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

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**JUSTICE C. PRAVEEN KUMAR**

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**DR. JUSTICE K. MANMADHA RAO**

Date: 01.02.2022  
S.M./



**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**  
**AND**  
**THE HON'BLE DR. JUSTICE K. MANMADHA RAO**

**Criminal Appeal No. 87 of 2015**  
*(Per Hon'ble Sri Justice C.Praveen Kumar)*

Date: 01.02.2022

S.M.