

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**CRIMINAL APPEAL No. 474 OF 2018**

Between:

1. Tirumanuyam Srinivasulu Reddy @ Srunivasulu,
S/o T. Venkata Krishna Reddy, Aged about 51 years,
R/o D.No.1-42, Papanaidupeta, Yerpedu Mandal.
2. Kurralakuva Leela Prakash, S/o K. Subramanyam,
Aged about 43 years, R/o Krishnaiah kaluva Village,
Renigunta Mandal.

... **Appellants**

AND

State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P.,
Amaravati.

... **Respondent**

Date of Judgment Pronounced : 24.07.2026

SUBMITTED FOR APPROVAL:**HONOURABLE SRI JUSTICE K SURESH REDDY**

And

HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copy of judgment may
be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Lordships wish to see the
fair copy of the judgment? | Yes/No |

JUSTICE K.SURESH REDDY_____
JUSTICE CHALLA GUNARANJAN

*** HONOURABLE SRI JUSTICE K SURESH REDDY**

And

HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

+ CRIMINAL APPEAL No. 474 OF 2018

%Dated: 24-07-2026

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... **Appellants**

Vs.

\$ State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P.,
Amaravati.

... **Respondent**

!Counsel for the appellants :

1. Sri Posani Venkatewarlu, learned Senior Counsel appearing for appellant No.1/Accused No.1
2. Sri B. Kodandarami Reddy, learned counsel appearing for appellant No.2/Accused No.2

^Counsel for the respondent: Learned Public Prosecutor

<GIST:

>HEAD NOTE:

? Cases referred:

1. (2023) 10 SCC 181
2. 2024 INSC 87
3. 2025 INSC 114
4. AIR 2001 SC 1436
5. AIR 2000 SC 2988

Date of reserved for orders : 28-04-2026

Date of pronouncement : 24.07.2026

Date of uploading : 30.07.2026

APHC010091822018



IN THE HIGH COURT OF ANDHRA PRADESH

AT AMARAVATI

[3578]

(Special Original Jurisdiction)

FRIDAY, THE 24th DAY OF JULY 2026

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

CRIMINAL APPEAL NO: 474/2018

Between:

- 1.TIRUMANUYAM SRINIVASULU REDDY @ SRUNIVASULU, R/O.
D.NO. 1-42, PAPAN AidUPETA, YERPEDU MANDAL.
- 2.KURRAKALUVA LEELA PRAKASH, R/O. KRISHNAIAH KALUVA
VILLAGE, RENIGUNTA MANDAL.

...APPELLANT(S)

AND

STATE OF AP, Rep by its Public Prosecutor, High Court of Judicature at
Hyderabad, For the State of Telangana and A.P.

...RESPONDENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to may be pleased to set aside the Conviction Judgment dated 30-01-2018 passed by the Learned III Additional Dist and Sessions Judge, Tirupati in Sessions Case No. 155 of 2016 and consequently to acquit the Appellants/Convicts No. 1 and 2 unconditionally and pass

Counsel for the Appellant(S):

- 1.SRI D KODANDARAMI REDDY
- 2.SRI VENKATESWARLU POSANI

Counsel for the Respondent:

- 1.PUBLIC PROSECUTOR (AP)

Whether the order is :

Speaking Yes / Reasoned Yes

Reportable Yes / Non-Reportable No

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

**FRIDAY, THE TWENTY FOURTH DAY OF JULY, TWO THOUSAND AND
TWENTY SIX**

SPECIAL DIVISION BENCH

PRESENT

HONOURABLE SRI JUSTICE K SURESH REDDY

And

HONOURABLE SRI JUSTICE CHALLA GUNARANJAN

CRIMINAL APPEAL No.474 of 2018

JUDGMENT: (*Per Justice K. Suresh Reddy*)

Both the accused in Sessions Case No.155 of 2016 on the file of the Court of III Additional District and Sessions Judge, Tirupati, are the appellants. They were tried by the learned Additional Sessions Judge, Chittoor under the following charges.

- (i) First charge was under Section 364 IPC against both the accused.
- (ii) Second charge was under Section 302 IPC against Accused No.1
- (iii) Third charge was under Section 302 r/w 34 IPC against Accused No.2.
- (iv) Fourth charge was under Section 201 IPC against Accused No.1
and
- (v) Last charge was under Section 201 r/w 34 IPC against Accused No.2.

2. Substance of the charge is that, on 22.12.2014 at about 4.30 p.m., both the accused, in furtherance of their common intention, kidnapped K. Lakshmi Priya (hereinafter referred to as 'the deceased'), a minor girl, near Lakshmi Vinayaka Ladies Tailoring Shop situated near Sai Baba Temple on Old Renigunta Road, Tiruchanur, on a Bajaj Pulsar motorcycle bearing Registration No.AP 03 BA 6452 belonging to Accused No.2 and taken her to Vikruthamala Tank, Yerpedu Mandal, Accused No.1 caused the death of the deceased by drowning her in the tank, buried her dead body in a pit near the said tank, and threw away the spade, school bag and school uniform of the deceased to screen away the evidence, thereby committed offences punishable under Sections 364, 302, 302 r/w 34, 201 and 201 r/w 34 IPC.

3. After completion of trial, the learned Additional Sessions Judge convicted both the accused under Section 364 IPC and sentenced them to undergo Rigorous Imprisonment for a period of ten (10) years and also to pay a fine of Rs.1,000/- each, in default to undergo Simple Imprisonment for a period of three (3) months. The learned Additional Sessions Judge further convicted both the accused under Sections 302 IPC and 302 r/w 34 IPC and sentenced them to undergo Imprisonment for **'Life'** and also to pay a fine of Rs.1000/- each, in default to undergo Simple Imprisonment for a period of three (3) months. The learned Additional Sessions Judge further convicted both the accused under Section 201 and 201 r/w 34 IPC and sentenced them to undergo Rigorous Imprisonment for a period of seven (7) years and also to pay a fine of Rs.1,000/- each, in default to undergo Simple Imprisonment for a

period of three (3) months. The learned Additional Sessions Judge further directed A1 to pay a compensation of Rs.3,00,000/- to P.W.1 under Section 357 Cr.P.C, in default to undergo Simple Imprisonment for two (2) years. All the substantive sentences were directed to run concurrently.

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

(i) Accused No.1 is a resident of Papanaidupet Village, Yerpedu Mandal, whereas Accused No.2 is a resident of Krishnaiah Kaluva Village, Renigunta Mandal. P.Ws.1 and 6, who are wife and husband, are residents of Tiruchanur. The deceased is their daughter. P.W.2 is the elder sister of P.W.1. Accused No.1 is closely related to P.Ws.1 and 6. Accused No.1 and P.W.6 worked in Dubai for some time, during which period Accused No.1 fell due to a tune of Rs.3,00,000 to P.W.6 /-. Thereafter, both of them returned to India. Subsequently, P.Ws.1 and 6 constructed a house at Tiruchanur, where they were residing at the time of the incident. The deceased was studying U.K.G. in Vaishnavi Vidyalaya School, Tiruchanur. She used to go to school at about 8.30 a.m. and return home at about 4.30 p.m. by school van. P.W.1 used to pick up the deceased from the school van, which used to halt near the tailoring shop of P.W.3.

(ii) On 07.03.2014, Accused No.1 celebrated birthday of his younger son. At the invitation extended by him, P.Ws.1 and 6 attended the said function. In the said function, P.Ws.1 and 6 demanded Accused No.1 for repayment of the due amount to them in the presence of P.Ws.2 and 7. This

gave rise to a verbal altercation between Accused No.1 and P.Ws.1 and 6, during which Accused No.1 is said have threatened them with dire consequences.

(iii) On 22.12.2014, the deceased went to school as usual. At about 4.30 p.m., P.W.1 went to the bus stop near the tailoring shop of P.W.3 to pick up the deceased from the school van. At that juncture, Accused No.1 kidnapped the deceased on a Bajaj Pulsar motorcycle bearing Registration No.AP 03 BA 6452 belonging to Accused No.2, which was driven by Accused No.2, while Accused No.1 travelled as the pillion rider and the deceased was made to sit in between them. Though P.W.1 raised hue and cry, both the accused went towards Renigunta with the deceased. Immediately, P.W.1 telephoned P.W.2 and informed her about the incident, and thereafter proceeded to the police station and gave a report.

(iv) On the same day, at about 5.00 p.m., P.W.18, Inspector of Police, Tiruchanur Police Station, received Ex.P1-report from P.W.1 and registered a case in Crime No.376 of 2014 under Section 364 IPC. He submitted copies of First Information Report to all the concerned. The First Information Report is marked as Ex.P15. P.W.1 also produced a photograph of the deceased. Immediately, P.W.18 recorded statements of P.Ws.1 and 2. The Special Teams collected the mobile phone number of Accused No.1 and commenced tracking of his location. Then, P.W.18, along with P.Ws.1 and 2, proceeded to the first scene of offence situated in front of tailoring shop of P.W.3 at about 6.00 p.m., where he prepared a rough sketch marked as Ex.P16. He secured

the presence of P.Ws.3 and 4 and recorded their statements. While the investigation was in progress, P.W.18 received information that both the accused were moving in the vicinity of Tirupati Airport and Papanaidupeta, whereupon he alerted the Special Teams with instructions to apprehend both the accused and rescue the victim girl. Thereafter, at about 7.45 p.m., he visited Vaishnavi Vidyalaya School and recorded statements of school staff.

(v) At about 11.00 p.m. on the same day, on receipt of credible information, P.W.18 along with his staff and mediators, P.W.14 and others, intercepted Accused No.2 while he was found sitting on M.O.10, a black-coloured motorcycle at Vikruthamala crossroad. When confronted by P.W.18, Accused No.2 stated that he was waiting for his friend. In the meanwhile, Accused No.1 reached the spot, then P.W.18, with the assistance of his staff, apprehended both the accused. During interrogation, both the accused confessed about the commission of offence. Then, P.W.18 arrested both the accused in the presence of mediators and seized M.O.10 motorcycle from the possession of Accused No.2. Both the accused led the investigating team to the burial ground situated near a tank and showed the place where they had buried the dead body of the deceased. They also showed the place where they had concealed M.Os.1 to 8 belonging to the deceased, as well as M.O.9, a spade. Since it was late in the night, P.W.18 posted a guard at the said place and resumed the investigation on the following day at about 7.00 a.m., when he visited the second scene of offence in the presence of mediators, P.Ws.12 and 14. Thereafter, P.W.18 sent a requisition to the

Tahsildar, Yerpedu Mandal, for exhumation of the dead body of the deceased. Pursuant thereto, P.W.9, the Scavenger, exhumed the dead body, which was found in a naked condition. P.W.18 prepared a rough sketch-Ex.P17 and also prepared an observation report-Ex.P7, at the second scene of offence. Pursuant to the confession made by both the accused, P.W.18 seized M.Os.1 to 8 in the presence of the mediators, P.W.14 and others. He also held inquest over the dead body in the presence mediators, P.Ws.12 and 17. He also seized samples of mud and water from the pond. Even before proceeding to the second scene of offence, P.W.18 informed P.W.1 about the incident at about 7.00 a.m. on 23.12.2014. On receiving the said information, P.W.6, the father of the deceased, returned to the village from Chennai.

(vi) After completion of exhumation proceedings and after completion of inquest, P.W.18 altered the sections of law from Section 364 IPC to Sections 364, 302 and 201 read with Section 34 IPC. He issued copies of altered FIR to all the concerned. Ex.P18 is the altered First Information Report. Thereafter, he recorded statements of P.Ws.1, 2 and 6 to 9. On the same day, both the accused were remanded to judicial custody.

(vii) On 24.12.2014, P.W.18 seized M.O.9-spade under a cover of panchanama in the presence of P.W.14 and another. On 27.12.2014, he recorded statements of P.Ws.10 and 11.

(viii) After completion of inquest, P.W.18 sent the dead body for post-mortem examination. P.W.16, Assistant Professor, Department of Forensic Medicine, S.V. Medical College, Tirupati, conducted autopsy over the

dead body on 23.12.2014 between 2.45 p.m. and 4.30 p.m. He opined the cause of death was due to asphyxia as a result of drowning. He issued post-mortem certificate-Ex.P11 and final opinion- Ex.P14.

(ix) On 27.01.2015, P.W.18 sent a requisition to the Chief Judicial Magistrate, Chittoor, for conducting Test Identification Parade of both the accused. Pursuant thereto, P.W.15, the Chief Judicial Magistrate, Chittoor, conducted Test Identification Parade, during which the prosecution witnesses identified both the accused. Test Identification Parade Proceedings were marked as Ex.P10.

(x) On 09.5.2015, P.W.18 seized passport of Accused No.1 under a cover of panchanama in the presence of mediators and the said passport was marked as Ex.P20. After collecting all documents and after completion of investigation, P.W.18 filed charge sheet.

5. In support of its case, the prosecution examined PWs.1 to 18, got marked Exs.P.1 to P.20, apart from exhibiting MOs.1 to 10.

6. When the accused were examined under Section 313 Cr.P.C., they denied the incriminating evidence appearing against them.

7. Accepting the evidence of prosecution witnesses, the learned Additional Sessions Judge, convicted and sentenced both the accused as aforesaid.

8. Heard Sri Posani Venkateswarlu, learned Senior Counsel appearing for appellant No.1./Accused No.1, Sri D.Kodandarami Reddy, learned counsel

appearing for appellant No.2/Accused No.2 and Sri Marri Venkata Ramana, learned Additional Public Prosecutor appearing for the respondent-State.

9. Learned Senior Counsel appearing for appellant/Accused No.1 strenuously contended that the prosecution has not placed any documentary evidence to establish that A1 had indebted an amount of Rs.3,00,000/- to P.W.6. He further contended that there is absolutely no evidence to prove the alleged commission of murder. He also contended that P.Ws.1, 4 and 5 did not witness the alleged kidnapping of the deceased by the accused. According to the learned Senior Counsel, P.Ws.1, 4, 5 and 7 are highly interested witnesses, and therefore, no reliance can be placed on their testimony. As such, he requests this Court to allow the appeal by setting aside the conviction and sentence recorded by the learned Additional Sessions Judge against Appellant No.1/Accused No.1.

10. Learned counsel appearing for appellant No.2/Accused No.2 contended that the prosecution has neither alleged nor established any motive on the part of Accused No.2 to kidnap the deceased. He further contended that Accused No.2 had not participated in the commission of murder of deceased. He also contended that the prosecution has failed to adduce any evidence to establish that Accused No.2 acted in furtherance of common intention with Accused No.1 to commit the murder of the deceased. Therefore, he requests this Court to allow the appeal by setting aside the conviction and sentence recorded by the learned Additional Sessions Judge against appellant No.2/Accused No.2.

11. On the other hand, the learned Additional Public Prosecutor vehemently opposed the appeal contending that the prosecution has established the guilt of both the accused beyond reasonable doubt through the cogent and convincing evidence of P.Ws.1, 2, 4 to 8, 10 and 11. He further contended that the incident took place at about 4.30 p.m. on 22.12.2014 and that P.W.1 gave report-Ex.P1 to the police at about 5.00 p.m., i.e., within half an hour. He further contended that both the accused were apprehended at about 11.00 p.m. on the very same day and that the dead body of the deceased, as well as M.Os.1 to 9, were recovered at their instance. According to the learned Additional Public Prosecutor, the evidence of P.W.14, one of the mediators, corroborates the testimony of the Investigating Officer with regard to recovery of the dead body and M.Os.1 to 8 belonging to the deceased near the scene of offence. He further contended that the evidence of P.W.15 also lends support to the prosecution case inasmuch as she conducted Test Identification Parade during which the prosecution witnesses identified both the accused. He also contended that the ocular version spoken to by the material prosecution witnesses is supported by the medical evidence adduced through P.W.16, coupled with post-mortem certificate- Ex.P11, the final opinion-Ex.P14, and RFSL reports-Exs.P12 and P13. As such, he requests this Court to dismiss the appeal by confirming the conviction and sentence recorded by the learned Additional Sessions Judge.

12. We have carefully scrutinized the entire evidence on record.

13. Admittedly, the prosecution, in so far as the offence of murder is concerned, rests its case entirely on circumstantial evidence, as there are no eyewitnesses to the alleged incident. In so far as the offence of kidnapping is concerned, the evidence of eyewitnesses is available on record. The circumstances relied on by the prosecution are as follows:

- (i) The first circumstance relied on by the prosecution is the 'motive' i.e. the Accused No.1 had monetary disputes with P.Ws.1 and 6.
- (ii) The second circumstance relied on by the prosecution is that both the accused kidnapped the deceased at about 4.30 p.m. on 22.12.2014 at the first scene of offence.
- (iii) The third circumstance relied on by the prosecution is that both the accused were last seen in the company of the deceased.
- (iv) The fourth circumstance relied on by the prosecution is the recovery of the dead body of the deceased from the second scene of offence at the instance of both the accused.
- (v) The fifth and last circumstance relied on by the prosecution is the recovery of M.Os.1 to 9 near the second scene of offence at the instance of the accused.

14. So far as the first circumstance is concerned, the prosecution relies on the evidence of P.Ws.1, 2, 6 and 7. P.Ws.1 and 6 are none other than the parents of the deceased. P.W.2 is the elder sister of P.W.1, whereas P.W.7 is related to both Accused No.1 and P.Ws.1 and 6.

15. A careful scrutiny of the evidence of P.Ws.1, 2, 6 and 7 would disclose that all of them have consistently deposed that Accused No.1 had indebted an amount of Rs.3,00,000/- to P.W.6. Their evidence further reveal that, on the invitation extended by Accused No.1, they attended birthday function held at his residence on 07.03.2014. It is their consistent version that, in the said function, P.Ws.1 and 6 demanded Accused No.1 for repayment of the said amount, whereupon an altercation ensued between them. According to these witnesses, Accused No.1 felt humiliated in the presence of the relatives and, on that account, threatened P.Ws.1 and 6 with dire consequences.

16. It is no doubt true that the prosecution has not produced any documentary evidence to establish that Accused No.1 indebted to P.W.6 an amount of Rs.3,00,000/-. However, the absence of documentary evidence is not, by itself, fatal to the prosecution case, particularly when the oral testimony of P.Ws.1, 2, 6 and 7 is consistent, cogent and inspire confidence. We find no material contradictions or infirmities in their evidence on this aspect. Therefore, we are of the considered view that the prosecution has successfully established the motive attributed to Accused No.1 for the commission of the offence.

17. Insofar as the second circumstance, namely, the kidnapping of the deceased from the first scene of offence, is concerned, the prosecution relies on the evidence of P.Ws.1 and 3 to 5. It is true that P.W.3 did not support the

case of the prosecution. However, the evidence of P.Ws.1, 4 and 5 assumes significance in establishing the said circumstance.

18. P.W.1, in her evidence, has categorically deposed that, at about 4.30 p.m. on the fateful day, when she went to the first scene of offence to pick up the deceased, who had alighted from the school van in front of the shop of P.W.3, she noticed Accused No.1 forcibly taking away the deceased on the motorcycle ridden by Accused No.2.

19. Apart from the testimony of P.W.1, the prosecution has also relied on the evidence of P.Ws.4 and 5. P.W.4, who is the mother of another student studying in the same school, deposed that at about 4.30 p.m. she went to the first scene of offence to receive her son and nephew, who had alighted from the school van. According to her, after her son, nephew and the deceased got down from the school van, Accused No.1 came there and took away the deceased on the motorcycle of Accused No.2 towards the Renigunta Bypass Road.

20. P.W.5, who was working as a teacher in the said school and was travelling in the same school van, has also spoken to the very same fact. She deposed that, after the deceased and two other boys alighted from the school van at the first scene of offence, Accused No.1 caught hold of the hand of the deceased and took her towards the motorcycle ridden by Accused No.2. According to her, Accused No.2 was riding the motorcycle, while Accused No.1 boarded it as the pillion rider after making the deceased sit in between

them. She further stated that Accused No.1 was wearing red-colour T-shirt with black stripes.

21. Though P.Ws.1, 4 and 5 were subjected to lengthy cross-examination, nothing worthwhile could be elicited to discredit their testimony or to create any doubt with regard to the occurrence spoken to by them. Their evidence is consistent, cogent and inspire confidence. We are, therefore, of the considered view that the prosecution has successfully established the second circumstance, namely, that both the accused kidnapped the deceased from the first scene of offence.

22. Insofar as the third circumstance, i.e. 'last seen theory', is concerned, the prosecution relies on the evidence of P.Ws.8, 10 and 11. All the said witnesses are independent witnesses. A careful appreciation of their evidence would disclose that they have consistently deposed that, at about 5.30 p.m. on the date of incident, they noticed both the accused proceeding on a motorcycle with a girl child seated in between them.

23. P.W.8 has further deposed that he was well acquainted with Accused No.1 and had also attended the birthday function held in the month of March, 2014. He specifically stated that the girl child, whom he saw on the motorcycle along with the accused, was wearing school uniform. P.Ws.10 and 11 have also spoken in the same manner as that of P.W.8. P.Ws. 10 and 11 further stated that they participated in the Test Identification Parade and identified both the accused.

24. On a careful consideration of the consistent and cogent evidence of P.Ws.8, 10 and 11, all of whom are independent witnesses, we find no reason to disbelieve their testimony. Their evidence clearly establish that both the accused were last seen together with the deceased while proceeding on a motorcycle at about 5.30 p.m. on the date of the incident. We are, therefore, of the considered view that the prosecution has successfully established the third circumstance, i.e. 'last seen theory' also.

25. The fourth circumstance relied on by the prosecution is the recovery of the dead body of the deceased at the second scene of offence at the instance of both the accused.

26. P.W.18, the Investigating Officer, in his evidence, stated that both the accused were apprehended on the night of 22.12.2014 at about 11.00 p.m. The prosecution examined the mediator to the arrest as P.W.14, who fully supported the prosecution case and categorically confirmed the arrest of both the accused at the said time.

27. The evidence of P.Ws.14 and 18 further disclose that the dead body was traced at the instance of the both the accused. P.Ws.14 and 18 further stated that as it was late in night, the dead body was exhumed at about 7.00 a.m. on the next day i.e. on 23.12.2024. The version of P.Ws.14 and 18 also lends support to the prosecution case.

28. The evidence of P.Ws.14 and 18 is further corroborated by the testimony of P.Ws.12 and 17, the mediators, who were present at the time of exhumation of the dead body as well as during the inquest proceedings. The

evidence of P.Ws.12,14, 17 and 18, read conjointly, clearly establishes that the dead body of the deceased was traced near the second scene of offence pursuant to the disclosure statement made by both the accused. Thus, the prosecution has clinchingly established the fourth circumstance, i.e. recovery of the dead body at the instance of both the accused.

29. The last circumstance relied on by the prosecution is recovery of M.Os.1 to 9 at the instance of both the accused. P.Ws.14 and 18 have categorically deposed that M.Os.1 to 9 were recovered pursuant to confessional statements made by both the accused. Further, P.Ws.1 and 6 identified M.Os.1 to 8 as they belonging to the deceased. Their evidence stands duly corroborated by the testimony of P.Ws.12, 14, 17 and 18, who spoke to the recovery proceedings. Accordingly, the prosecution has clinchingly established the last circumstance, i.e. the recovery of M.Os.1 to 9 at the instance of both the accused.

30. Apart from the aforesaid circumstances, the prosecution has also established the identity of both the accused through the evidence of the learned III Additional Judicial Magistrate of First Class, Chittoor, who was examined as P.W.15. P.W.15 conducted the Test Identification Parade, during which the prosecution witnesses successfully identified both the accused. The evidence of P.W.15 lends support to the identification of the accused by the prosecution witnesses. Thus, the identity of both the accused as the perpetrators of the offence stands clinchingly established, leaving no room for any ambiguity or doubt.

31. At this juncture, the learned counsel appearing for appellant No.2/Accused No.2 contended that, at the most, the evidence on record establish the participation of appellant No.2/Accused No.2 in kidnapping the deceased and that he had no role in commission of the murder. It is his further submission that appellant No.2 cannot be convicted under Section 302 IPC merely because he participated in the offence under Section 364 IPC, particularly when the prosecution has failed to place any material on record to establish that appellant No.2 shared a common intention with appellant No.1 to commit the murder of the deceased. Accordingly, it is contended that the conviction of appellant No.2 under Section 302 IPC is legally unsustainable.

32. In support of the aforesaid submissions, learned counsel appearing for appellant No.2/Accused No.2 placed reliance on the judgment of the Hon'ble Supreme Court in **Chandra Pratap Singh v. State of Madhya Pradesh¹**, wherein the Hon'ble Supreme Court held as follows:

“18. We have carefully perused the evidence of PW-1 and PW-2. There is no evidence of the presence of common intention. Only the act of stopping the deceased Uma Prasad will not, by itself, bring the case within the purview of Section 34 of IPC. There is no overt act attributed to the appellant by any prosecution witness in the assault on deceased Uma Prasad. It is difficult to infer a prior meeting of minds in this case. There is no material to prove the existence of common intention which is the necessary ingredient of Section 34 of IPC. In

¹ (2023) 10 SCC 181

this case, there is no overlap between a common object and a common intention. Therefore, the conviction of the appellant under Section 302, read with Section 34 will have to be set aside.

19. However, the evidence of two eyewitnesses (PW1 and PW2) is very consistent on the role played by the appellant in dragging the dead body of the deceased and throwing the same into a well. There is hardly any cross-examination on this aspect of both PW1 and PW2. Therefore, there is every justification for convicting the appellant for the offence punishable under Section 201 of IPC of causing the disappearance of the evidence of the crime. Hence, the conviction and sentence of the appellant for the offence under Section 201 of IPC will have to be maintained. The order dated 20th April 2012 passed in this appeal records that the appellant was enlarged on bail as he remained incarcerated for about nine years. The appellant was sentenced to undergo rigorous imprisonment for five years for the offence under Section 201 of IPC, which he has already undergone.

20. Hence, the appeal partly succeeds. We set aside the appellant's conviction for the offence punishable under Section 302, read with Section 34 of IPC. However, appellant's conviction for the offence punishable under Section 201 of IPC is confirmed. The appellant has already undergone the sentence for the said offence. Therefore, the bail bonds of the appellant stand cancelled.”

33. Learned counsel appearing for appellant No.2/Accused No.2 further placed reliance on the judgment of the Hon'ble Supreme Court in ***Velthepu Srinivas and Others v. State of Andhra Pradesh (now State of Telangana) and Another***², wherein the Hon'ble Supreme Court held as follows:

“28. Even though, A-3 might not have had the common intention to commit the murder, nevertheless, his participation in the assault and the wielding of the stone certainly makes him culpable for the offence that he has committed. While we acquit A-3 of the offence under Section 302 read with Section 34 of the IPC, he is liable for the offence under 304 Part II IPC. The law on Section 304 Part II has been succinctly laid down in Camilo Vaz v. State of Goa, (2000) 9 SCC 1, where it was held that:

“14. This section is in two parts. If analysed, the section provides for two kinds of punishment to two different situations: (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here the important ingredient is the “intention”; (2) if the act is done with the knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on a vital part of the body with such force that the person hit

² 2024 INSC 87

meets his death, knowledge has to be imputed to the accused....”

29. In the past, this Court has considered factors such as lack of medical evidence to prove whether the act/injury was individually sufficient to cause death 1, a single blow on head with a hammer² and lack of cogent evidence of the eye-witnesses that the accused shared a common intention to commit murder 3 as some factors to commute a sentence from Section 302 to Section 304 Part II IPC.

30. Returning back to the facts of the case, there is certainly no escape from coming to the conclusion that A-3 should have had the knowledge that the use of a stone to hit the head of the deceased is likely to cause death. However, as demonstrated before, the evidence is insufficient to deduce a conclusion that he shared a common intention with the other accused to commit the murder of the deceased. Considering the role that A-3 has played, we hold him guilty of the offence under Section 304 Part II IPC. “

34. Learned counsel appearing for appellant No.2/Accused No.2 further placed reliance on the judgment of the Hon'ble Supreme Court in ***Constable 907 Surendra Singh and Another v. State of Uttarakhand***³, wherein the Hon'ble Supreme Court held as follows:

“15. Upon consideration of these factors, the learned trial judge came to a conclusion that even if it was assumed that the remaining three accused had accompanied accused No.1- Jagdish Singh, there was no

³ 2025 INSC 114

evidence to come to a conclusion that accused Nos. 2, 3 and 4 (the appellants herein) who were in car with accused No.1-Jagdish Singh had shared a common intention with him to fire upon or to kill the deceased.

16. The learned trial judge, therefore, found that the prosecution had failed to prove the mental involvement of accused Nos. 2, 3 and 4 (the appellants herein) with accused No.1-Jagdish Singh beyond the shadow of reasonable doubt.

17. However, this well-reasoned finding of the learned trial court has been upset by the High Court on the ground that the remaining three accused were sitting in the same vehicle along with accused No.1-Jagdish Kumar was sufficient to convict them with the aid of Section 34 of the IPC.

18. By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of:

(i) Ezajhussain Sabdarhussain and another v. State of Gujarat;

(ii) Jasdeep Singh alias Jassu v. State of Punjab;

(iii) Gadadhar Chandra v. State of West Bengal (supra);

and

(iv) Madhusudan and others v. State of Madhya Pradesh.

19. In the present case, as observed by the learned trial judge, the prosecution has failed to place on record any evidence to show that the accused Nos. 2, 3 and 4 (the appellants herein) had common intention with accused No.1-Jagdish Singh prior to the accused No.1-Jagdish Singh's shooting at the deceased resulting in her death."

35. The learned counsel appearing for appellant No.2/Accused No.2 placed reliance on the aforesaid three decisions in support of his contention. We have carefully considered the principles laid down therein. However, in our considered view, the facts and circumstances of the cases before the Hon'ble Supreme Court are clearly distinguishable from the facts of the present case.

36. In the first judgment, the Hon'ble Supreme Court found that there was no evidence whatsoever to establish the existence of a common intention on the part of the appellant to commit the murder and, therefore, set aside the conviction under Section 302 read with Section 34 IPC, while maintaining the conviction under Section 201 IPC. Likewise, in **Velthepu Srinivas and others v. State of Andhra Pradesh (now State of Telangana) and another**, the Hon'ble Supreme Court, on appreciation of the evidence on record, held that the prosecution had failed to establish that Accused No.3 shared the common intention to commit the murder and consequently altered his conviction from Section 302 read with Section 34 IPC to Section 304 Part II IPC.

37. Insofar as the third judgment in **Constable 907 Surendra Singh and another v. State of Uttarakhand** is concerned, the said case arose out

of an appeal against the reversal of an order of acquittal recorded by the Trial Court. The Hon'ble Supreme Court reiterated the well-settled principles governing interference with an order of acquittal and restored the acquittal, holding that the prosecution had failed to establish that the accused shared a common intention with the principal offender. It is trite that the scope of interference in an appeal against acquittal stands on an entirely different footing from that of an appeal against conviction.

38. Therefore, having regard to the factual matrix and the evidence available in the present case, we are of the considered view that the aforesaid decisions do not advance the case of appellant No.2/Accused No.2, as they are clearly distinguishable on facts and are of no assistance to him.

39. In reply, the learned Additional Public Prosecutor contended that the contention of the learned counsel appearing for appellant No.2/Accused No.2 that his participation was confined only to the kidnapping of the deceased and that he had no role in the murder is unsustainable in law as well as on facts. He submitted that once the prosecution establishes that the deceased was abducted by both the accused and was last seen alive in their company, it is not incumbent upon the prosecution to adduce direct or independent evidence regarding the actual commission of the murder.

40. Learned Additional Public Prosecutor relied on the judgment reported in ***Sucha Singh Vs. State of Punjab***⁴, wherein the Hon'ble Supreme Court held as follows,

⁴ ***AIR 2001 SC 1436***

“22. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle to be laid down is that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of *killing* kidnapped innocents outside the ken of others.

23. Lastly, learned counsel invited our attention to a note which was recovered by the police from the scene of murder. That note contained the scribbling purported to have been authored by a group styled as Babbar Khalsa, owning the two murders of the deceased. We do not know how the said note would help the appellant unless he shows that he has nothing to do with that self styled Babbar Khalsa, even assuming that the note was left by the murderers without any intention to mislead the investigation. At any rate, we are not persuaded to change our conclusion on the strength of the said note.”

41. Learned Additional Public Prosecutor relied on another judgment of the Hon'ble Supreme Court in ***State of West Bengal Vs. Mir Mohammad Omar and Others***⁵, wherein the Hon'ble Supreme Court held as follows;

“35. During arguments we put a question to learned senior counsel for the respondents based on a hypothetical illustration. If a boy is kidnapped from the lawful custody of his guardian in the sight of his people and the kidnappers disappeared with the prey, what would be the normal inference if the mangled dead body of the boy is recovered within a couple of hours from elsewhere. The query was made whether upon proof of the above facts an inference could be drawn that the kidnappers would have killed the boy. Learned senior counsel finally conceded that in such a case the inference is reasonably certain that the boy was killed by the kidnappers unless they explain otherwise.

36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of

⁵ AIR 2000 SC 2988

certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. In *Shambu Nath Mehra vs. The State of Ajmer* (1956 SCR 199) the learned Judge has stated the legal principle thus: "This lays down the general rule that in a criminal case the burden of proof is on the prosecution and section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."

39. In the present case, the facts which prosecution proved including the proclaimed intention of the accused, when considered in the light of the proximity of time within which the victim sustained fatal injuries and the proximity of the place within which the dead body was found are enough to draw an inference that victim's death was caused by the same abductors. If any deviation from the aforesaid course would have

been factually correct only the abductors would know about it, because such deviation would have been especially within their knowledge. As they refused to state such facts the inference would stand undisturbed.

40. The Division Bench of the High Court instead of dealing with the circumstances of the case and issues involved made only some general comments and after castigating the investigating officers in severe language reached the final part of its judgment upholding the conviction under Section 364/34 IPC and reduced the sentence to the period which the convict had already undergone. The Division Bench used unkind remarks against the investigating officer saying "investigation of the case was perfunctory and suffered from serious lacuna and irregularity".

41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that

criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above.

42. In the present case we have not come across any such serious flaw in the investigation which had affected the case or which would have impaired the core of the prosecution case justifying or warranting the pejorative remarks made by the Division Bench of the High Court against the investigating officers.”

42. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Sucha Singh v. State of Punjab***, the learned Additional Public Prosecutor submitted that the Hon'ble Supreme Court has categorically held that where a person is kidnapped in the sight of others and is thereafter found murdered, the prosecution cannot be expected to produce independent evidence of the actual murder. It was held that insisting upon such evidence would amount to providing a safe shield for persons who abduct innocent victims and eliminate

them away from the public gaze. Therefore, according to the learned Additional Public Prosecutor, the absence of direct evidence regarding the actual murder cannot enure to the benefit of appellant No.2 when the prosecution has otherwise established the circumstances leading to the death of the deceased.

43. Learned Additional Public Prosecutor further placed reliance on the judgment of the Hon'ble Supreme Court in ***State of West Bengal v. Mir Mohammad Omar and Others*** and contended that, once the prosecution establishes by cogent and convincing evidence that the victim was abducted by the accused and was thereafter found dead within close proximity of time, the facts relating to the fate of the victim after the abduction are especially within the knowledge of the abductors. It was submitted that, in such circumstances, Section 106 of the Indian Evidence Act comes into operation, casting a burden upon the accused to explain the circumstances in which they parted company with the victim or what subsequently happened to her. Their failure to furnish any explanation, according to the learned Additional Public Prosecutor, entitles the Court to draw the legitimate inference that the homicidal death of the victim was caused by the very abductors.

44. The learned Additional Public Prosecutor would therefore contend that, in the present case, the prosecution has successfully established that both the accused kidnapped the deceased, that she was last seen alive in their exclusive company, and that her dead body was recovered within a short span of time. Since neither of the accused has offered any explanation

whatsoever as to the circumstances in which the deceased met with homicidal death, though such facts were especially within their knowledge, the inference contemplated by the Hon'ble Supreme Court in ***State of West Bengal v. Mir Mohammad Omar and Others*** necessarily follows, namely, that the homicidal death of the deceased was caused by the very abductors. It was, therefore, contended that the failure of the accused to discharge the burden cast upon them under Section 106 of the Indian Evidence Act constitutes an additional incriminating circumstance completing the chain of circumstances and unerringly pointing towards their guilt.

45. Applying the aforesaid principles to the facts of the present case, we find that the prosecution has succeeded in establishing, by cogent, convincing and reliable evidence, that it was both the accused who kidnapped the deceased from the first scene of offence. The evidence of P.Ws.8, 10 and 11 establishes that the deceased was last seen alive in the company of both the accused. A cumulative appreciation of the evidence of P.Ws.1, 4, 5, 8, 10 and 11 clearly establish that both the accused abducted the deceased from the first scene of offence. Significantly, the evidence of P.W.18 further establishes that both the accused were apprehended at about 11.00 p.m. on 22.12.2014, immediately after the occurrence, thereby lending further assurance to the prosecution case regarding their presence and involvement in the kidnapping of the deceased. Once the prosecution established that the deceased was last seen alive in the exclusive company of both the accused, the burden shifted on them, in terms of Section 106 of the Indian Evidence Act, to explain the

circumstances in which they parted company with the deceased or as to what subsequently happened to the kidnapped minor girl. The facts relating to the fate of the deceased after her abduction were especially within the knowledge of both the accused. However, neither of the accused has chosen to offer any explanation whatsoever. In the light of the principles laid down by the Hon'ble Supreme Court in *State of West Bengal v. Mir Mohammad Omar and Others*, the failure of the accused to explain the circumstances leading to the death of the deceased permits the Court to draw the legitimate inference that the homicidal death of the deceased was caused by the very abductors. The prosecution has further established that the dead body of the deceased and M.Os.1 to 8 were recovered pursuant to the disclosure statements made by both the accused. The evidence of P.Ws.14 and 18 clearly proves that the recoveries were effected at the second scene of offence at the instance of both the accused, thereby lending further assurance to the prosecution case. Equally significant is the close proximity of time between the kidnap and the recovery of the dead body. The evidence on record discloses that the deceased was abducted by both the accused at about 4.30 p.m. on 22.12.2014. On the very same day, both the accused were apprehended by P.W.18 near the scene of offence. Thereafter, at about 11.00 p.m., P.W.18 came to know that the dead body was lying at the second scene of offence, and the dead body was recovered at about 7.00 a.m. on the following day, i.e., 23.12.2014. Thus, there was hardly any time gap between the kidnapping and the recovery of the dead body. In view of the law laid down by the Hon'ble

Supreme Court in ***Sucha Singh v. State of Punjab***, the prosecution cannot be expected to adduce direct evidence regarding the actual commission of murder when the victim was abducted and thereafter found dead within a short span of time. The proved circumstances are sufficient to establish the culpability of the abductors.

46. Thus, the prosecution has established that both the accused kidnapped the deceased, that the deceased was last seen alive in their exclusive company, that both the accused were apprehended by P.W.18 near the scene of offence on 22.12.2014, that the dead body of the deceased and the incriminating material objects were recovered pursuant to their disclosure statements, and that neither of the accused offered any explanation regarding the fate of the deceased, though the relevant facts were especially within their knowledge. These proved circumstances, when considered conjointly, form a complete and unbroken chain leading to the only irresistible conclusion that it was both the accused who committed the offences with which they were charged. The chain of circumstances is wholly consistent with the guilt of the accused and wholly inconsistent with any hypothesis of their innocence. Accordingly, we are of the considered opinion that the prosecution has established the guilt of appellant Nos.1 and 2 beyond reasonable doubt. We find no perversity, illegality or infirmity in the judgment of conviction and order of sentence passed by the learned III Additional Sessions Judge, Tirupati. Consequently, the Criminal Appeal is liable to be dismissed.

47. In the result, the present Criminal Appeal is dismissed confirming the conviction and sentence passed by the learned III Additional District and Sessions Judge, Chittoor, in Sessions Case No.155 of 2016, dated 30.01.2018.

Miscellaneous petitions, if any, pending in the Criminal Appeal, shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE CHALLA GUNARANJAN

Date:24.07.2026

Note:

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