ABC 2025 (II) 798 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Pankaj Mithal & Prasanna B. Varale, JJ.)

Criminal Appeal No. 4623 of 2024

Decided On 17 September 2025

THAMMINENI BHASKAR ***- Appellant(s).***

Versus

THE STATE OF ANDHRA PRADESH ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 – Sections 302, 364, 201 (Bharatiya Nyaya Sanhita, 2023 – Sections 103(1), 140(1), 238) – Circumstantial Evidence – Hostile Eye-Witnesses – Last-Seen Theory – Complete Chain Required – Held, when the only two alleged eye-witnesses resile in court and fail to support even the foundational fact of kidnapping/abduction, their earlier statements u/ss 161 & 164 CrPC (BNSS – Sections 180 & 183) cannot be treated as substantive evidence – no evidence remains that the deceased was forcibly taken away by the appellant or was last seen in his company – mere proof of motive (prior enmity and cross-cases) is wholly insufficient – the circumstantial chain stands broken at the very first link – the five golden principles (panchsheel) of circumstantial evidence not satisfied – conviction and life sentence set aside – appellant acquitted. (Paras 9–15)***

(B) Indian Penal Code, 1860 – Section 364 (Bharatiya Nyaya Sanhita, 2023 – Section 140(1) – Kidnapping/Abduction – Proof of Forcible Taking Away – Absence of Corroboration by Witnesses – Effect Held, prosecution utterly failed to prove that the deceased was dragged from his auto and forcibly put into another auto – both witnesses who allegedly saw the incident spoke only of vague "galata" under the banyan tree and could not identify any person – no evidence of kidnapping/abduction – foundational allegation for invoking Section 364 IPC not established. (Paras 7, 8, 12 & 13)

(C) Evidence Act – Section 3 (BSA S. 2) – Relevant fact – Last-Seen Theory – Essential Ingredients – Need for Proof that Deceased was in Company of Accused – Held, in the complete absence of evidence (direct or circumstantial) that the deceased was last seen alive in the company of the appellant, the last-seen theory cannot be pressed into service – without this link, no inference of guilt for murder can be drawn. (Para 13)

Facts:- *An auto-driver (deceased) disappeared after allegedly being forcibly taken away near a banyan tree in Nellore. His body bearing multiple injuries was recovered the next day. The prosecution case rested entirely on circumstantial evidence and the "last-seen" theory, relying on two eye-witnesses (PW-5 & PW-6) and prior enmity. Both eye-witnesses turned hostile at trial and did not support kidnapping or identification of the appellant. Finding no evidence of abduction or that the deceased was last seen with the appellant, and applying the panchsheel of circumstantial evidence, the Supreme Court held that the prosecution failed to prove any incriminating circumstance, set aside the life sentence confirmed by the Andhra Pradesh High Court, and acquitted the appellant.*

Law of relief:- ***(i) When the alleged eye-witnesses resile in court and fail to support even the foundational fact, their earlier statements u/ss 161 & 164 CrPC (BNSS – Sections 180 & 183) cannot be treated as substantive evidence.***

(ii) The complete absence of evidence that the deceased was last seen alive in the company of the appellant, the last-seen theory cannot be pressed into service.

Counsel:-

For Appellant(s): *Mr. K.K. Mani, Adv.*

For Respondent(s): *Ms. Prerna Singh, Adv.*

JUDGMENT

Pankaj Mithal, J.: -

1. The appellant who is Accused No.1('A-1') was convicted under Sections 302 and 364 of the Indian Penal Code, 1860 ('IPC') and was sentenced to life imprisonment and to pay a fine of Rs.5,000/- and seven years of rigorous imprisonment and fine of Rs.5,000/- under Section 201 of the IPC with the direction that both the sentences shall run concurrently. In the event of default in payment of the fine, he was directed to undergo further imprisonment of six months.

2. The aforesaid judgment and order of conviction and sentence have been confirmed by the High Court by the impugned Judgment and order dated 19.06.2024.

3. The prosecution case is that the deceased Bhoominadhan was an auto driver. The family of the deceased consisting of his father Rajagopal Vellimalai @ Peddodu-PW-1 and his mother-PW-2 along with elder brother-PW-3 were living in Chandrababu Nagar, Nellore. The appellant-A-1 was known to them as he was also involved in auto business, but was living in Sramika Nagar, Nellore.

4. It appears that on 22.03.2016, the mother of the deceased-PW-2 reported to the Nellore Rural Police, that A-1 along with his friends while sitting near Vinayaka Temple in Chandrababu Nagar Area was passing obscene remarks against the females and were threatening them. On this report, Crime No.108/2016 under Sections 143, 290, 354, 323 and 506 read with Section 34 of the IPC was registered. In this connection A-1 also lodged a cross First Information Report ('FIR') which was registered as Crime No.109/2016 under Sections 341, 323, 379 read with Section 34 of the IPC.

5. A few days thereafter, the father of the deceased/PW-1 lodged an FIR No.118 of 2016 on 27.03.2016 alleging that on 26.03.2016 at about 06:30 p.m. when his son reached near banyan tree in Talpagiri Colony, Nellore City, the accused A-1 and his friends forcibly took him away into their auto and thus, kidnapped him. On the next day, the dead body of the deceased Bhoominadhan was found with multiple injuries near Sarvepalli Reservior of Anikepalli Village in Nellore District. On receiving the information, PW-1 went there and identified the dead body of his son. Accordingly, the alteration memo was filed adding Section 302 of the IPC in the FIR.

6. The case of the prosecution in short is that when the deceased Bhoominadhan was proceeding in his auto at about 06.00 p.m. in the evening of 26.03.2016 and had reached the banyan tree in the Talpagiri Colony, Nellore, the accused forcibly dragged the deceased from his auto into their own auto and kidnapped him, which in fact was witnessed by PW-5, who further informed about the incident to PW-1. The father of the deceased Bhoominadhan, PW-1 searched for his son and submitted an FIR to the police at about midnight alleging that his son was abducted by A-1 and his friends.

7. Both PW-5 and PW-6 gave statements to the Police under Section 161 Cr.P.C. that they have seen the accused persons dragging the deceased Bhoominadhan into an auto on the evening of 26.03.2016. The statements of these two witnesses were also recorded before the Magistrate under Section 164 Cr.P.C., wherein they stated that when they reached the banyan tree at Talpagiri colony, they heard cries and when they turned back, they saw the accused and three other persons beating the deceased Bhoominadhan whereupon information of it was given to the PW-1.

8. The testimony of the aforesaid two witnesses PW-5 and PW-6 was recorded before the Trial Court where they clearly stated that they only observed some 'galata' under the banyan tree in Talpagiri

Colony but they could not identify the persons involved in the 'galata'. They nowhere stated that they witnessed the deceased Bhoominadhan being dragged and put into an auto.

9. The submission of Mr. K.K. Mani, learned counsel appearing for the appellant, is that there is no eye-witness in the case who might have seen A-1 committing the offence of killing the deceased. The conviction is entirely based on circumstantial evidence and more particularly on the testimony of PW-5 and PW-6. The aforesaid two witnesses PW-5 and PW-6 have turned hostile and they have not proved the kidnapping of the deceased Bhoominadhan. There is no evidence that the deceased was last seen with A-1 and therefore, he is not the person answerable and responsible for Bhoominadhan's death.

10. In defence, Ms. Prerna Singh, learned counsel appearing for the respondent-State, submitted that there was a clear motive on the part of the accused to commit the offence and that even if PW-5 and PW-6 have turned hostile, it has been proved by circumstantial evidence that A-1 and his friends are guilty of committing the offence as they failed to give any explanation as to what happened to the deceased after he was taken away by them in the evening of 26.03.2016.

11. Undoubtedly, the defence counsel from the deposition of PW-7 (IO) has been able to prove the animosity between the parties on account of the previous report lodged by the PW-2, mother of the deceased against A-1. The aforesaid animosity between them may be the motive behind the crime but it is not sufficient to prove the commission of the crime unless the evidence proves kidnapping/ abduction and killing of the deceased, either by direct or circumstantial evidence.

12. We have gone through the statements of PW-5 and PW-6 and are of the clear view that they have not uttered a single word so as to prove the kidnapping as alleged or even that the deceased was with them at any point of time in the evening of 26.03.2016. The only thing proved from the statements of the aforesaid witnesses is that there was some 'galata' under the banyan tree in Talpagiri Colony but they were unable to identify the persons involved in it. They even failed to testify that any information was given by them to PW-1 regarding the alleged kidnapping of the deceased Bhoominadhan.

13. In the absence of such evidence and the fact that both PW-5 and PW-6 have turned hostile, it cannot be held that A-1 was involved in the incident and that he was responsible for the killing of

the deceased, on the basis of the last seen theory. There is no evidence to either prove the kidnapping of the deceased Bhoominadhan or that he was last seen in the company of A-1.

14. In view of the aforesaid facts and circumstances, and keeping in mind the five golden principles which constitute the panchsheel of the proof of a case based on circumstantial evidence, we are of the opinion that the prosecution has miserably failed to prove the commission of the offence at the hands of A-1.

15. Accordingly, both the Trial Court and the High Court erred in convicting the appellant-A-1 on complete misreading of the evidence. Thus, the impugned judgments and orders of the High Court and the Trial Court are hereby set aside and the accused A-1, the appellant herein, is acquitted of all the charges and is directed to be released forthwith, if not involved in any other case.

16. The appeal is allowed accordingly.

17. Pending application(s), if any, shall stand disposed of.

Result:- Appeal allowed. Convictions and sentences set aside. Appellant acquitted and directed to be released forthwith if not required in any other case.