

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Criminal Appeal Nos.679 of 2010 & 88 of 2013

Between:

Shaik Baji@ Repalle Baji.

...appellant.

and

The State of Andhra Pradesh, represented by its
Public Prosecutor, High Court of Andhra Pradesh at Hyderabad.

...Respondent.

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DATE OF JUDGMENT PRONOUNCED: 20.08.2015

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**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS**

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?
 2. Whether the copies of judgment may be
marked to Law Reporters/Journals?
 3. Whether Their Lordship wish to see the
fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
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...Respondent.

! Counsel for appellant: Smt.M.Bhagyasri

^ Counsel for Respondent : Public Prosecutor

< GIST:

> HEAD NOTE:

? Cases referred

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COMMON JUDGMENT: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Initially, the Sessions Case was split and it was proceeded against Accused Nos.2 and 3, as Accused No.1 was at large for a while, and thereafter, he was also proceeded against. That is the

reason why both the Sessions Case Nos.733 of 2008 and 588 of 2009 were tried together, and consequently, the two appeals have been preferred to this Court.

These two appeals are directed against the judgment rendered by the learned XI District and Sessions Judge (Fast Track Court), Guntur at Tenali, in S.C.No.733 of 2008 convicting Accused No.1 for the offences punishable under Sections 302 and 342 read with Section 34 of the Indian Penal Code, and sentencing him to undergo imprisonment for life. Hence these appeals.

During the pendency of the Sessions Case, Accused No.2 died and consequently, the matter abated. So far as Accused No.3 is concerned, the learned Sessions Judge acquitted him for want of evidence.

Heard Smt.Bhagyasri, learned counsel for the appellant, and the learned Public Prosecutor.

The case of the prosecution is that Accused Nos.1 and 2 went to the house of the deceased–Gouse on 19.05.2007 and picked up a quarrel there with the deceased and since the deceased was passing on certain information about the activities of Accused No.1 to the police at Vijayawada, which was causing hardship to Accused No.1, Accused Nos.1 and 2 took away the deceased on the pretext of going to the police station for sorting out the issue and in stead, they have killed him.

There was no eyewitness at all for the commission of the offence. Only circumstantial evidence is propounded for securing the conviction.

On behalf of the prosecution, PWs.1 to 12 were examined and Exs.P.1 to P.16 were also got marked. Material objects 1 to 8 have

been exhibited. Though none was examined on behalf of the defence, but nonetheless, portions of the apparent contradictions in the Statements under Section 161 of the Code of Criminal Procedure made by PWs.1 and 2, have been got marked as Exs.D.1 to D.3.

PW.1 is the mother of the deceased. PW.2 is the daughter's son of PW.1. PWs.3 and 4 have turned hostile and the learned Public Prosecutor could not extract any useful statement from them during the course of cross-examination. PW.5 also turned hostile, but however, during the course of cross-examination, he made a statement that he signed the inquest report, but however without reading it. No further useful information has been extracted from this witness. PW.6 has been examined for establishing the fact that Accused No.1 was seen at graveyard by him and at the request of the Inspector of Police, when they approached the graveyard, Accused No.1 tried to run away from the said place, but however the police caught him and at that stage, he informed the police that he was running away from the scene as he killed Gouse. PW.7 is a Civil Assistant Surgeon, District Head-Quarters Hospital at Tenali, who conducted the post-mortem examination on the deceased. PW.8 is the Sub-Inspector of Police, who received the complaint and registered it as F.I.R.No.111 of 2007 under Ex.P.11. PW.9 is a punch witness for the inquest. PW.10 is the Inspector of Police, who examined the scene of offence near Repalle gate. PW.11 is the Assistant Director of Forensic Science Laboratory, Hyderabad, who has received the material objects and examined them. PW.12 is the Investigating Officer.

Thus, it becomes clear that except PWs.1 and 2, no other witness could have spoken about the factum of any possible interaction between Accused Nos.1 and 2 and the deceased as all other witnesses are independent or third party witnesses to any such occurrence. The prosecution pressed into service the theory of 'last seen' by the deceased in the presence of Accused Nos.1

and 2.

Let us examine now in this context as to what PWs.1 and 2 have deposed. PW.1, who is the mother of the deceased, would state that the deceased-Gouse worked as lorry cleaner. He was married and was having two children. The deceased has divorced his wife as he suspected that his wife was having illicit relationship with Accused No.1. It is stated by her that Accused Nos.1 and 2 came to their house along with the deceased about 3.00 P.M., on the day of the incident and that their son brought a biryani packet and that the husband of PW.1 informed that he has not asked for biryani to be fetched, then Accused No.1 beat the deceased-Gouse and that Accused No.1 asked the deceased to settle the issue before police and then Accused Nos.1 and 2 and Gouse went out and that at about 7.00 P.M., someone told her that their son was killed and his body is at Repalle gate and that her husband and PW.2 went to that particular place and they have identified the dead-body of her son and thereafter PW.1 also went there and that the legs and hands of the deceased were tied and a piece of cloth was stuffed into his mouth and that she has suspected Accused Nos.1 and 2 for the death of her son, as the deceased has given information to Vijayawada Police regarding the activities of Accused No.1.

Now, PW.2 had deposed that the deceased was working as a lorry driver. We can ignore the contradiction in this regard between the statements of PWs.1 and 2. But however, PW.2 has deposed that Accused Nos.1 and 2 and the deceased-Gouse came to their house at about 3.00 P.M., on the day of the incident and then deceased brought along with him a biryani packet. PW.2 stated that Accused No.1 asked the grandfather of PW.2 and father of the deceased whether he asked for biryani and that his grandfather stated that he did not ask for it. Then Accused No.1 gave a blow to the deceased stating that the deceased has lied with Accused No.1, when he told him that the father

of the deceased asked him to fetch biryani. Then, Accused No.1 asked the deceased to accompany him to the police station to sort out the issue relating to the information passed on by the deceased to police and that Accused Nos.1 and 2 and the deceased went out and that at about 7.00 P.M., one person came and informed them that the dead-body of Gouse was lying at Repalle gate and then he accompanied his grandfather and found the dead-body of Gouse with hands and legs tied and that he and his grandfather came and informed other family members about the death of Gouse and thereafter his grandfather proceeded to the police, lodged the complaint and he identified the signature of his grandfather found on the complaint, which was registered as F.I.R.No.111 of 2007 by the police.

Upon a careful analysis of this evidence, what emerges was that Accused Nos.1 and 2 and the deceased-Gouse walked into the home of PW.1 at about 3.00 P.M., on the day of the incident. PW.1, the mother of the deceased, was very honest in disclosing the fact that the deceased has divorced his wife for the reason that the deceased has suspected the fidelity of his wife, on account of the illicit relationship, which Accused No.1 had with his wife. At once, it becomes clear about the inimical role Accused No.1 played in the family affairs of the deceased. If Accused No.1 is suspected to be the cause for ruining the family relationship of the deceased with his wife, it would be so unnatural that the deceased would still be on some kind of friendly terms with Accused No.1. Therefore, the statements made by PWs.1 and 2 that Accused Nos.1 and 2 and the deceased-Gouse together walked into the house of PW.1 at about 3.00 P.M., on the date of the incident is so unnatural and unbelievable. May be the deceased was passing on information about the objectionable activities of Accused No.1 to the police and as a result Accused No.1 must be having tough time to face at the hands of the police, that perhaps could be a factor or

motive for the possible elimination of the deceased. But however strong the suspicion might be, it is not a substitute for the proof.

When the presence of Accused No.1 at the house of PW.1 on the date of the incident itself raises a doubt in our mind, we could not find any other piece of corroboration for the presence of Accused No.1 on the date of the incident at the house of PW.1. This apart, PWs.1 and 2 have categorically deposed that the deceased-Gouse has brought a biryani packet along with him, which is meant for his father. Then Accused No.1 appears to have questioned the father of the deceased as to whether he did really demand for biryani to be fetched by the deceased. In view of the hostile relationship of Accused No.1, which was reflected on the family affairs of the deceased, the conversation between the father of the deceased and Accused No.1 could not have ended up with a reply being furnished by the father of the deceased to Accused No.1. In normal circumstances, PW.1 and the father of the deceased would have simply asked Accused No.1 to leave their house immediately instead of meddling with their family affairs. On the other hand, without any demur or protest, they have allowed Accused No.1 to get into their house. According to the prosecution, their son-the deceased, agreed to go out with Accused No.1 which again is so unnatural. If the deceased was passing on information to police with regard to the activities of Accused No.1, he would have, in the least, agreed to go along with Accused No.1 to the police station.

We are, therefore of the opinion that the theory of 'last seen' of the deceased in the company of Accused Nos.1 and 2 has no credible basis for us to subscribe to that view. When once the theory of 'last seen' together by Accused No.1 with the deceased falls to ground, there is no other circumstance, which could link the death of the deceased to Accused No.1. We are, therefore of the opinion that the contention urged by Smt.Bhagyasri that the prosecution has failed to

establish the guilt of Accused No.1 beyond all reasonable doubt, deserves to be accepted.

In the result, the criminal appeals are allowed and the conviction and sentence handed out to Accused No.1 by the learned XI Additional District & Sessions Judge (Fast Track Court), Tenali, Guntur District in Sessions Case Nos.733 of 2008 & 588 of 2009 dated 08.02.2010 for the offences punishable under Sections 302 and 342 read with Section 34 I.P.C., are set aside. Accused No.1 shall be set at liberty forthwith, if his presence is not required in any other case, and the fine amount, if any, paid by him shall be refunded to him.

We appreciate the thorough presentation of the case by Smt.Bhagyasri, the legal aid brief and the frankness with which the learned Public Prosecutor made his submissions.

NOOTY RAMAMOHANA RAO, J

ANIS, J

20th August 2015

L.R. copy to be marked.

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