

HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

HON'BLE SRT JUSTICE ANIS

CRIMINAL APPEAL NOS.806 AND 909 OF 2010

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

Since both these appeals are directed against the judgment and sentence rendered by the IV Additional District and Sessions Judge, (Fast Track Court), Mahabubnagar, in Sessions Case No.7 of 2009, dated 16.06.2010, we heard them together.

Crl.A.No.806 of 2010 was preferred by accused No.2, while Crl.A.No.909 of 2010 was preferred by accused Nos.1 and 3.

The case of the prosecution is that PW1, the complainant and the deceased, his brother-in-law, went out to consult a lawyer, who is prosecuting one of the cases, in which the deceased was interested. Around 9.45 p.m after the consultation work with the advocate was over, they were returning via clock tower area. It is PW1, who was riding the motorcycle, while the deceased was riding as a pillion. The deceased seems to have suggested to PW1 to stop the motorcycle and go to nearby chips shop to buy the same. Accordingly, PW1 stopped his motor cycle, went to a nearby shop, purchased chips and while returning from a distance of 10 feet, he has seen his brother-in-law, the deceased, has been attacked by five or six people with hunting sickles and other deadly weapons. Because of the hue and cry raised by him, the accused persons ran away from the scene and

though PW1 tried to catch hold of them, he could not succeed. By the time, he returned, his brother-in-law has collapsed on the road. It is the specific case of the prosecution that it is PW1 along with some others, shifted the deceased to the local Government Hospital and then he went to the police station and lodged the complaint-Ex.P1. After investigation, accused Nos.1 to 3 have been charge-sheeted for the offence punishable under Section 302 IPC.

In support of the case of the prosecution, PWs.1 to 10 were examined and Exs.P1 to P17 have been got marked. Six material objects, of which Mos.1 to 3 are the hunting sickles allegedly used by the accused for accomplishing the crime, are also got marked. Mos.4 to 6 are the apparel worn by the deceased. The Sessions Court found the accused guilty of the offence punishable under Section 302 read with 34 IPC and accordingly, sentenced them to undergo imprisonment for life and to pay fine of Rs.500/-.

Entire case hinges upon the version spoken to by PW1. PW1 is a young man of around 28 years. He has set out that his sister was given in marriage to the deceased and their son by name Hari Teja was studying 10th Class and with a view to help him, get proper schooling, the deceased seems to have hired a premises in Mahabubnagar Town. To look after his son, the deceased used to frequent Mahabubnagar from his village Marikal. On 12.03.2008 at about 2.00 p.m, the deceased was stated to have gone to Mahahubnagar Town from Marikal Village. Around 8.30 p.m while PW1 was staying at his house, the deceased came there and suggested PW1 to accompany him to have a consultation with his lawyer. In as much as one Srinivas Goud, a Journalist has got published a news item describing the deceased as a rowdy sheeter, the deceased has filed a criminal case for defamation against the said Srinivas Goud, the Journalist. The said case appears to have been posted to 14.03.2008. Hence, the visit to lawyer's office

was undertaken. It is stated by PW1 that after the consultation was over around 9.45 p.m., they were returning and that PW1 was riding the motorcycle while the deceased was the pillion rider. Upon a request made by the deceased, PW1 appears to have stopped the motor cycle near Ocean Lodge and went to buy chips leaving the motor cycle and the deceased behind. After purchasing the chips when he was returning, he observed the accused attacking the deceased with hunting sickles. He has clearly deposed that he has observed the attack from a distance of 10 feet and he has observed the attackers hacking on the neck and head of the deceased. Upon the hue and cry raised by him, the accused party ran away from the scene of offence and though he tried to catch hold of the accused, they escaped. It is stated by him that the deceased has fallen down on the road and it is PW1, who shifted him to the local Government Hospital with the support of others. Then at about 11.30 p.m, he went to the police station and lodged the complaint marked as Ex.P1, which is registered as FIR No.49 of 2008 on 12.03.2008. In Ex.P1, it is stated that he has seen five or six persons, who attacked his brother-in-law and that the incident occurred around 10-00 p.m and that the deceased died on the spot and that one Srinivas Goud, reporter of Vartha newspaper, is responsible for the death of the deceased because of the defamation case filed against him. It is also further alleged that certain other cases have also been filed against the said Srinivasa Goud, newspaper reporter under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the said Srinivas Goud suspected that the deceased got them filed those cases against him and hence developed grudge. It is also alleged that the said Srinivas Goud threatened the deceased to withdraw the defamation case and since it was not done, Srinivas Goud got executed a murder with the help of hired killers.

At the very outset, the defence has clearly brought out that there was no chips shop available near about Ocean Lodge, for the deceased to ask PW1 to go and buy chips for PW1 to stop his motor bike there and leave the company of the deceased for buying chips.

From the narration of the event by PW1, it clearly emerges that PW1 has straightaway suspected Srinivas Goud as responsible for causing the murder of the deceased and for accomplishing the said task, he has hired 5 or 6 killers as well. However, during the cross-examination, PW1 would set out that A1 had a fair price shop in Marikal village, while A2 has land at Marikal and three months prior to the death of the deceased, the dealership of A1 was got cancelled and that his brother-in-law, the deceased has informed him about the land dispute between himself and A2 one month prior to his death and that the land of A2 is adjoining the land of the deceased and that the deceased has informed him about the cancellation of the fair price shop dealership of A1 and that since 2004 there was trouble brewing between the deceased and Srinivas Goud and only a week days prior to the death, PW1 came to know of the defamation case lodged by the deceased against the said Srinivas Goud.

From the above information extracted during the course of cross-examination of PW1, it emerges that A1 and A2 are apparently known to PW1, even prior to the murder of the deceased. But, however, he has not named them in the complaint-Ex.P1. This apart, he has mentioned that five or six un-identified persons had attacked his brother-in-law with weapons. Most significantly, he proceeded to state as under:

“ I have mentioned that Srinivas Goud also attacked my brother-in-law. Including Srinivas Goud five or six persons were attacking my brother-in-law. Srinivas Goud was also holding weapon in his hands. The culprits absconded from the scene along with their weapons and not left any weapon on the spot...”

The above part of deposition of PW1 during cross-examination was a clear case of improvement from what he has stated at the very first instance in his complaint which was lodged around 11.30 p.m on the date of the incident, wherein he merely suspected the role of Sreenivasa Goud, whereas, he improved it as if Sreenivasa Goud had directly attacked the deceased.

It will be also useful right at this juncture to bring out one other glaring contradiction in the prosecution case set up against the accused. Sri M.Muthaiah, Circle Inspector of Police has been examined as PW10 as he investigated the crime. In his chief examination, he would set out that he took the complainant along with him immediately after receiving information regarding the offence and went to the scene of offence, which is located in front of the Ocean lodge. By then, the dead body was already shifted to the Government Head Quarters Hospital, Mahabubnagar. But, however, he has summoned mediators, PW5, LW11 and in their presence, conducted the scene of offence panchanama at 00.45 A.M (in the mid night) as there were lights in the street and also seized one hunting sickle that was lying there and left behind by the accused after the commission of the offence.

It would be useful to have a look at the scene of offence panchanama, marked as Ex.P2. In the sketch prepared, no where the Investigating Officer has marked the hunting sickle allegedly left behind by the offenders at the scene of offence, which he is stated to have seized in the presence of PW5 and LW 11. This statement of the Investigating Officer - PW10 stands out in contrast to what PW1 has stated, which we extracted supra, wherein PW1 categorically deposed that there was no hunting sickle left behind by the offenders and in fact they carried away the weapons used by them for

committing the offence. Apart from the above glaring contradiction, during the course of cross-examination, PW10 has admitted that he has not shown in the scene of offence sketch that one hunting sickle was left at the scene and hence the distance between where the hunting sickle was lying and the place of dead body was also not mentioned. However he added as under:

“The hunting sickle was with blood on the road. I cannot say whether deceased was beat with the hunting sickle lying in the blood or not.”

PW1 is the one who has witnessed the attack on the deceased and he is the one who saw the deceased collapsing on the road. He is the one who shifted the deceased to the hospital and later on went to the police station nearly 1 ½ hours later on and lodged the complaint Ex.P1. The road was a busy road. All these factors, leave behind a strong suspicion in our mind about the presence of a hunting sickle lying on the road undisturbed all along. It also creates a suspicion about its seizure by PW10 in the presence of PW5.

Further, it would be really baffling that an experienced investigator like that of PW10 would have failed to collect blood sample of the deceased and would have further failed to have the blood available on the hunting sickle said to have been seized by him compared with the blood stains of the deceased.

Most significantly since PW1 has not stated about the presence of A1, A2 or A3 in his complaint, burden was lying heavily on the prosecution to establish as to how PW10 could gather the information that it is A1, A2 and A3, who committed the offence without disclosing as to the sources of such information. PW10 merely asserted that he made efforts

for apprehending the accused and on 26.03.2008 he received information regarding the presence of the accused at APSRTC Bus Stand at Mahabubnagar and hence he rushed along with his staff to the bus stand and apprehended the accused-A1 to A3. When they were about to make a confession to him, he summoned the mediators PW6 and LW13 and in their presence he recorded the confessional statements of accused A1 at 3.00 p.m, A2 at 4.30 p.m and A3 at 5.15 p.m. After recording those confessional statements of the accused, they are stated to have led the police party and panchas to an open place near Registration Office, which is close to the scene of offence. Then A1 went to the open place located, opposite to the Registration Office and brought out a plastic bag hidden behind the thorny bushes there and produced it before the panchas. He then removed one hunting sickle from the bag and shown to the panchas by saying that it was the one used by him for the commission of the offence. Then PW10 has seized the same under seizure panchanama, marked as Ex.P6. Then A2 has taken out another weapon from the same bag and identified that it is the same weapon used by him for the commission of offence. That was seized under seizure panchanama marked as Ex.P7.

From the above narration, the apprehension of accused Nos.1, 2, and 3 and their making confession readily as if they were waiting for the police party to arrive at the bus stand and then their leading them to an open place opposite to the Registration Office and then A1 producing a plastic bag somewhere from out of the bushes and then producing exactly the weapon which he has used and then leaving the bag to A2 to produce the second weapon which he has used, is so artificial for any one to believe it. Firstly, there was no other material available with the police between 12.3.2008 and 26.03.2008 for them to suspect A1, A2 and A3 for their involvement in the crime. Secondly, A1 and A2 hiding the bag

behind the bushes in an open space opposite to such a public premises such as Registration Office. Further, when PW1 stated that he had chased the attackers, it was so improbable that the accused would have stopped at the open place opposite to Registration Office, which is so close by to the scene of offence. The priority would be to make good one's escape rather than screen away the weapons used for the offence.

The Investigating Officer has referred the material objects to the Forensic Science Laboratory and the report furnished by the Forensic Science Laboratory is marked as Ex.P14. When we look at Ex.P14, we found that all the three hunting sickles seized by the Investigating Officer have been sent to the Forensic Science Laboratory and the Forensic Science Laboratory detected blood on them and the origin of the blood stains is of human. Further, the blood group of blood stains found on item No.4 is 'A' blood group. Item No.4 is a white colour terry cotton pant, which the deceased was allegedly wearing. It is baffling again, that the human blood which is said to have been found on the three hunting sickles has not been attempted to be determined/compared with reference to the blood group found on item No.4 by the Forensic Science Laboratory. The finding of the Forensic Science Laboratory to the extent it is relevant reads as under:

“Blood group of blood stains on item Nos. 2, 3, 5, 6 and 7 could not be determined.”

Item Nos.2, 6 and 7, examined by FSL, are the hunting sickles. The failure of the Forensic Science Laboratory, which could identify the blood group available on the trouser worn by the deceased, to identify the blood available on the sickles leaves a gaping hole in the theory of the prosecution, that it is Mos.1, 2 and 3 that are used for the commission of the offence, particularly in the face of the statement of PW10 that

it is MO3 that was seized by him at the scene of offence.

As we have already noticed supra, there is any amount of contradiction with regard to seizure of a hunting sickle from the scene of offence itself. The seizure of other two sickles as narrated by PW10 does not inspire confidence in our mind to accept the same. This apart having attributed, thanks to Exs.P6 and P7, that it is A1 and A2, who have produced the hunting sickles used for committing the offence, no such similar effort is made to link up the third hunting sickle to A3 at all.

This apart, we have scanned through the entire evidence carefully. PW10 has been extensively cross-examined to ascertain as to how he arrived at the possible linkage of A1, A2 and A3 to the crime while PW1 though narrated knowledge about the affairs of A1 and A2 *vis- a-vis* his brother in law, but, however, he has not named them or identified them though he has seen them at the scene of offence from such short distance of 10 feet. Hence, we have reason to suspect the role of A1, A2 & A3 with the commission of the offence.

This apart in Ex.P1, PW1 has mentioned that Srinivas Goud, the main suspect has hired killers. Therefore, burden is lying heavily on the prosecution to establish that it is Srinivas Goud, who has hired A1, A2 & A3 for accomplishing the crime. No evidence is produced in that regard. That was missing completely. The justification offered by the learned Additional Public Prosecutor is that Srinivas Goud, who is arrayed as A.4 has died in the mean time. But, that was no reason for not investigating as to the possible linkage of A1, A2 & A3 to A4. In the absence of any material for suspecting the role of accused for commission of the offence, it becomes very difficult for us to believe that it is A1, A2 & A3, who alone have committed the crime. To cover up, PW1 has improved the case, by attributing motive for the offence to A1 & A2. Thus, the original theory of hired killers, as

mentioned in Ex.P1 was changed to that of direct action for a motive.

During the course of cross-examination, the Investigating Officer has pointed out that PW2, the wife of the deceased has informed the Investigating Officer that there were certain disputes with regard to certain property matters between the deceased and his brother Dattatreya. But, however, the Investigating Officer has admitted not to have investigated the role of the said Dattatreya, as he did not call Dattatreya to enquire in connection with death of the deceased. PW10 proceeds further to make the following statement.

“..... Nobody expressed suspicion against A1 to A3 when I enquired about the offence. Except the confession of A1 to A3 there is no material to connect A1 to A3 with the death of the deceased. ...”

It is a pity that the Investigating officer has not carried out investigation on proper lines. PW10 has left too much to be desired by us and he has failed to establish by any credible material as to how he could suspect the role of A1 to A3 prior to apprehending them on 26.03.2008. The only repeated answer furnished by PW10 was the confession said to have been made by A1 to A3. As we have already pointed out supra the confession said to have been made by A1 to A3 no sooner they were apprehended around 2:30 p.m near A.P.S.R.T.C bus stand, Mahaboob Nagar is so artificial. It does not inspire any confidence in our mind, for such an event to occur at all in less than 30 minutes of their apprehension at a public place such as APSRTC Depot. This apart, a confession said to have been made to a police officer can never be made the basis for convicting.

There is another disturbing feature which we must advert to. The Investigating Officer has conceded during the course of cross examination as under:

“.... It is true that after arrest of the accused press conference and video conference were held and the accused were shown. ...”

It is no doubt true that it was further added that the accused were covered while showing them before the media, but, still the fact remains that if the accused persons were already presented before public media, the subsequent identification parade that is carried out on 19th April, 2008 loses much of its credibility. Hence, we are not willing to attach any significance to the identification parade carried out and the identity established during such a parade.

For all the aforesaid reasons, we are convinced that the prosecution has failed to establish that it is A1 to A3, who have committed the offence charged against them and hence, they are entitled to be acquitted.

Accordingly, both the appeals are allowed. The judgment and sentence rendered in S.C.No.7 of 2009 on the file of IV Additional District and Sessions Judge (Fast Track Court), Mahabubnagar, is set aside. Accused-A1 to A3 shall be set at liberty forthwith in case their presence is not required in any other criminal case.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

29th October, 2015

rkk/sr

Note:LR Copy to be marked.