

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY**

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.1017 of 2010

25.04.2016

Between:

Gadusu Ashok and others ...Appellants/Accused
Nos.1 to 6

And

The State of Telangana,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellants: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:

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JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The prosecution laid charge sheet against the appellants by arraigning them as accused Nos.1 to 6 for allegedly killing one Yekula Prabhakar (hereinafter referred to as 'the deceased'). The appellants were charged for the offences punishable under Sections 147, 148, 302 and 323 read with 149 I.P.C. They were found guilty for the abovementioned offences and were accordingly convicted and sentenced to undergo Simple Imprisonment (S.I.) for a period of one year for the offence punishable under Section 147 read with 149 I.P.C., to undergo Rigorous Imprisonment (R.I.) for a period of two years for the offence punishable under Section 148 read with 149 I.P.C., to undergo imprisonment for life and pay a fine of Rs.10,000/- each in default, to undergo S.I. for a period of six months for the offence punishable under Section 302 read with 149 I.P.C., and also to undergo S.I. for a period of one year for the offence punishable under Section 323 read with 149 I.P.C. and all the sentences were directed to run concurrently.

2. The prosecution case, in brief, is as under:

One Smt.Yekula Laxmamma - P.W.1 and the wife of the deceased, went to Devarakonda Police Station and lodged a Telugu written complaint on 04.07.2008 at 12.30 hours stating that on that day at 10.30 hours, when she along with P.W.5 and the deceased were present at her house, the appellants came there and forcibly dragged P.W.5 on to the road and beat her. Further, the appellants also dragged the deceased on to the road and kicked him with legs. At the same time, one Boddu Laxmaiah, Ex-

M.P.T.C. member along with the appellants have pulled the deceased on to the ground, appellant No.2 beat the deceased with a big stone over his stomach and P.W.1 went to the rescue of her husband, but, appellant No.2 kicked her on stomach, she fell down on the ground, appellant No.4 caught hold of both the legs of the deceased and the said B.Laxmaiah instructed the appellants as to why they are causing delay in finishing the deceased, upon which, appellant No.1 axed the deceased on his neck twice and the blood scattered over her clothes as well as P.W.3. Both P.Ws.1 and 3 came near the deceased and found him dead with cut injury on his neck. On the report of P.W.1, crime No.17 of 2008 was registered for the offences punishable under Sections 147, 148, 302 read with 149 I.P.C. and later Section 323 I.P.C. was added.

P.W.13 – the Circle Inspector of Police, Devarakonda, who conducted the investigation, examined P.W.1 and recorded her statement under Section 161 Cr.P.C. He went to the scene of offence situated in Harijanawada locality of Thatikole village on BT road and secured the presence of P.Ws.2 to 7 and some others and examined them and recorded their statements under Section 161 Cr.P.C. He summoned L.W.14 – Samula Venkataiah and P.W.8 and in their presence, held inquest over the dead body. He sent the body for post mortem examination to find out the exact cause of death of the deceased. P.W.9 – Dr.Bhanu Prasad, Civil Assistant Surgeon, conducted autopsy over the dead body of the deceased and issued Ex.P-5 - post mortem report. During the inquest, P.W.13 seized the blood stained clothes of the deceased. Later, he examined the scene of offence minutely and conducted the scene of offence panchanama and seized the blood stained saree of

P.W.3, blood stained earth, controlled earth, blood stained margo's wooden log, and one pair of black colour synthetic chappal (spicy safar) from the scene of offence in the presence of Samula Venkataiah and P.W.8, besides preparing the rough sketch. The material objects were sent to the F.S.L., Hyderabad for examination and report.

While the investigation was in progress, on 07.07.2008, P.W.13 apprehended the appellants at Bus Station, Konda Mallepally at 05.00 hours and on interrogation, all the appellants confessed their guilt. He summoned P.Ws.10 and 11 and in their presence, recorded the confessional statements of the appellants. Appellant No.1 lead the Police along with panchas to Thatikole road bridge, where he showed the axe hidden under the bridge in bushes and the said axe was seized under separate seizure panchanama at the instance of appellant No.1 in the presence of P.Ws.10 and 11. All the appellants were brought to Devarakonda Police Station at 9.30 hours and were arrested. After completion of the investigation, P.W.13 filed the charge sheet.

3. All the appellants pleaded not guilty and requested to be tried. Accordingly, the prosecution conducted trial, during which, it examined P.Ws.1 to 14, marked Exs.P-1 to P-22 and produced M.Os.1 to 9. On behalf of the defence, it marked Exs.D-1 and D-2 - portions of Section 161 Cr.P.C. statements of P.Ws.2 and 5 respectively. After appreciation of the oral and documentary evidence, the Court below convicted the appellants as noted above.

4. At the hearing, Smt.A.Gayatri Reddy, learned counsel for the appellants/accused Nos.1 to 6, has argued that the whole case of the prosecution is vitiated by the admission

of P.W.1 that the Police have drafted Ex.P-1 – complaint, that there is material inconsistency in the manner and the place and time at which Ex.P-1 was given and that as admitted by P.W.4, the Police arrived at 11.00 a.m. itself and recorded his statement, while as per the case of the prosecution, Ex.P-1 was given at 12.30 hours. That this fact shows that Ex.P-1 was not the First Information Report (F.I.R.) and the Police have commenced investigation even before the case was registered. She has further stated that even as per the admission of P.W.1, before giving report several congress party leaders met her and instructed her as to how to give complaint. The learned counsel has, therefore, submitted that Ex.P-1 was prepared after consultations and confabulations leading to false implications owing to the serious disputes between the two leading political parties viz., Congress and Telugu Desam. The learned counsel has further argued that as per Ex.P-2 – inquest report, P.W.1 alone was the eyewitness, whereas the prosecution added P.Ws.3 and 5 subsequently as eyewitnesses. That though P.W.1 stated that blood scattered over her clothes and that of P.W.3, their clothes were not seized by P.W.13 and that P.W.3 was examined one week after the alleged police complaint and the alleged blood stained clothes were seized from her. That as per the opinion of P.W.9 given in Ex.P-5 - post mortem report, the death might have taken place 12 to 24 hours prior to the post mortem examination conducted between 4.30 and 5.30 p.m. on 04.07.2008 and going by the same, the death would have occurred before 4.30 a.m. on 04.07.2008, while it is the case of the prosecution that the alleged incident had taken place at 12.30 hours on the date of the incident.

5. The learned Public Prosecutor (TS) has strongly

supported the case of the prosecution.

6. We have carefully considered the submissions of the learned counsel for the parties with reference to the evidence on record.

7. Let us first deal with the submissions relating to Ex.P-1 - Police report advanced by the learned counsel for the appellants.

Ex.P-1 - report contains an endorsement by the Sub-Inspector of Police - P.W.12 that the same was received at the Police Station at 12.30 hours on 04.07.2008. In her evidence, P.W.1, the wife of the deceased deposed that she lodged a report to the Police when they came to their Village after the death of her husband and one Siraj - Police Constable drafted Ex.P-1 to her dictation. In his evidence, P.W.12 deposed that on 04.07.2008 at 12.30 hours, P.W.1 came to the Police Station and lodged a report, based on which he registered the aforesaid crime. Thus, there is a serious material discrepancy between the versions of P.Ws.1 and 12 on the place at which Ex.P-1 was prepared and given.

As regards the time of Ex.P-1, P.W.1 stated that the Police came to her village at 2.00 p.m. on the date of the incident, 1½ hours thereafter, she gave report to the Police and contrary to this, as noted above, in Ex.P-1, it was endorsed that the report was received at 12.30 hours. P.W.1 also admitted that before the report was given, several congress party leaders came to her and instructed her as to how to give report to the Police. These candid admissions by P.W.1 not only contradicted the contents of Ex.P-1 regarding the time at which Ex.P-1 was received by

the Police, but also disclose that Ex.P-1 was the result of consultations and confabulations.

In a catena of judgments, the Supreme Court held that an F.I.R. which is based on a report given after consultations and confabulations inherently weakens the case of the prosecution as it gives rise to false implications. (See **State of A.P v. Punati Ramulu and other**^[1])

8. In the light of the above discussion, we are of the opinion that there was every scope for false implications by the prosecution as admittedly, the appellants belonged to the Telugu Desam party and the deceased belonged to the Congress party.

9. Moreover, P.W.4 categorically stated that the Police arrived at the scene at 11.00 a.m. itself and recorded his statement. This clearly shows that even before the F.I.R was registered, the Police have started the investigation and therefore, Ex.P-18 - F.I.R. is not the true First Information Report.

In **Mehraj Singh vs. State of U.P.**^[2], while dealing with the delay in lodging F.I.R., the Supreme Court held at para 12:

“FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in

lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under [Section 174](#) CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by P.W.8."

10. Coming to the evidence on record, Ex.P-2 - inquest report has shown P.W.1 alone as the eyewitness to the occurrence. In her evidence, P.W.1 admitted that there were several cases and counter cases pending before the Judicial First Class Magistrate, Devarakonda against the deceased; that her husband (deceased) was a strong

supporter of Congress-I party; that one Boddu Laxmaiah, who was Sarpanch and Ex-M.P.T.C. member, belonged to Telugu Desam party; and that there were serious disputes between her husband and the said Laxmaiah. She denied the suggestion that her husband was not killed at the instigation of Boddu Laxmaiah and that, some unknown offenders have killed her husband. She further stated that after her husband was attacked, he was suffering heavy bleeding and blood spilled over her and P.W.3. For the reasons best known to them, the Police have not seized the alleged blood stained clothes of P.W.1. In her cross-examination, P.W.3 stated that eight days after the incident, the Police have recorded her statement. However, P.W.13 has a different version to come out with. According to him, he recorded the statement of P.W.3 on 04.7.2008. Thus, there is a serious variation on the date of recording the statement of P.W.3. Though in Ex.P-3, the scene of offence panchanama, it was mentioned that on being asked she went into the house and handed over the blood stained saree after changing to another saree, a serious suspicion is cast on the truthfulness of this document as to its time. Had P.W.3 been examined and her saree been recovered on 04.7.2008 itself, there is absolutely no reason for her to state in her evidence that she was examined eight days after the alleged incident. As regards the medical evidence, Ex.P-5 – post mortem report found the following injuries on the dead body of the deceased:

- “1. A contusion on neck,
2. Damage of the greater vessels,
3. Fracture of cervical 5, 6 and 7 and complete cut of the trachea, and
4. Complete cut of the neck and with back side skin only.”

11. P.W.1 deposed that appellant No.4 threw stone on the abdomen of the deceased. The post mortem report has not found any such injury on the abdomen of the deceased.

P.W.9, who conducted autopsy over the dead body of the deceased, opined that the time of death of the deceased was 12 to 24 hours prior to the time of the post mortem examination, which commenced at around 4.30 p.m. on 04.7.2008. Even if the minimum time given out by the doctor is adopted, the death would have occurred around 4.30 a.m. on 04.7.2008. But, the entire case of the prosecution is to the effect that the occurrence has taken place at 10.30 a.m. on 04.7.2008. This clearly shows that the prosecution has failed to establish that the deceased was killed at the time and in the manner, in which it was alleged.

12. One another aspect which casts a serious shadow of doubt on the case of the prosecution is that the prosecution witnesses have spoken in one voice that the deceased was attacked by the appellants on the instigation of Boddu Laxmaiah, who was stated to be the supporter of the Telugu Desam party and former M.P.T.C. member. In the cross-examination, P.W.14 stated that though due to the political grudges in the village, the name of Boddu Laxmaiah was initially shown as accused No.7 in the F.I.R. and the statements of the witnesses were recorded, as per his investigation, accused No.7 was not present in the village at the time of the incident and the contents of the report and the statements of the witnesses are incorrect. When the very presence of accused No.7 at the scene of offence and the part played by him, as spoken to by P.Ws.1, 3 and 5 - the alleged eyewitnesses, were not believed and the same

was not proved during the investigation, as rightly argued by the learned counsel for the appellants, the whole edifice of the prosecution case crumbles. This further proves that the prosecution case was built up on a completely false and imaginary theory.

13. From the evidence on record as discussed above, it is clear that there was a serious rivalry between the appellants and the deceased, as a result of which, the very complaint itself was lodged after consultations and discussions leading to false implication of the appellants.

The material inconsistency in the evidence of the prosecution witnesses further strengthens the case of the defence that the appellants were falsely implicated. In our opinion, the Court below has failed to properly appreciate the evidence on record and erroneously convicted the appellants for the various offences as stated hereinbefore.

14. In the result, the Criminal Appeal is allowed. The appellants/accused Nos.1 to 6 are acquitted of all the offences with which they were charged and the conviction and sentence recorded against them in judgment, dated 26.08.2010, in Sessions Case No.493 of 2009 on the file of the learned Judge, Family Court-cum-Additional District and Sessions Judge's Court, Nalgonda are set aside. The appellants/accused Nos.1 to 6 are, accordingly, set at liberty and they shall be released forthwith, if they are not required in connection with any other offence. The fine amount, if any, paid by the appellants/accused Nos.1 to 6 shall be returned to them forthwith.

C.V.NAGARJUNA REDDY, J

25th April, 2016
GHN/DR

M.S.K.JAISWAL, J

[\[1\]](#) 1993 CrI.LJ 3684(1)
[\[2\]](#) (1994)5 SCC 188