

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI**

CRIMINAL APPEAL No.1778 of 2009

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JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

This appeal by the State under Section 378 Cr.P.C. is directed against the judgment in S.C.No.567 of 2006 on the file of the learned III Additional Sessions Judge (Fast Track Court), Asifabad. By the said judgment, the accused in Crime No.8 of 2006 on the file of Bheemini Police Station were all acquitted. The accused were charged under Sections 302 and 307 I.P.C. read with Section 34 I.P.C.

The case of the prosecution was that on 27.02.2006 at 8.30 A.M. PW.1 lodged a report with PW.20 that on 26.02.2006 at 17.30 hours, when he and his brothers were standing near his house, A3 was returning to his house along with his bulls and on seeing them, he picked up a quarrel with them. On hearing the galata, the sons of A3, being A1 and A2, came there with an axe and sticks and attacked them. A3 was stated to have beaten the deceased, the brother of PW.1, with sticks causing bleeding injuries and as a result, he lost consciousness and succumbed while being shifted to the Government Hospital at Bellampalli.

The prosecution examined PWs.1 to 21 and marked Exs.P.1 to P.26 in evidence. Case properties were marked as M.Os.1 to 9.

By the judgment under appeal, the learned III Additional Sessions Judge held that A1 to A3 were not guilty of the charged offences and acquitted them under Section 235 (1) Cr.P.C.

Learned Public Prosecutor would contend before us that the medical evidence clearly established that PWs.1 and 5 sustained injuries when the attack by the accused took place leading to the death of the deceased. However, he fairly admits that there was not only some delay in the lodging of the FIR, but the same was also submitted to the Court with further delay. No reasonable explanation is

forthcoming either for the delay in the lodging of the FIR or in its despatch to the Court. This is one circumstance which would contribute to raising reasonable doubt as to the prosecution's case.

The case of the prosecution was that PW.1 came to the police station on 27.02.2006 at 8.30 A.M. to lodge the report. But, as per the wound certificate (Ex.P.19), PW.1 was not discharged from the hospital till 10.00 A.M. on 27.02.2006. That apart, PW.1 was stated to have informed his relations about the alleged attack on 26.02.2006 at 11.00 P.M., but there is no explanation as to why he did not inform the police at that time. Further, there is no explanation for the delay in the despatch of the FIR to the Judicial Magistrate of First Class, Sirpur. The FIR was admittedly received by the Court only on 28.02.2006.

Learned Public Prosecutor also has no explanation as to the crucial discrepancies in the statements of the prosecution witnesses, especially in connection with the injuries allegedly sustained by PWs.1 and 5 and identification of the persons responsible for the same.

It is a settled position of law that delay in the lodging of the FIR and despatch thereof to the competent criminal Court would be a factor to dilute the strength of the case of the prosecution. Such delay would invariably give rise to a presumption that consultations and deliberations preceded the lodging of the report of first information. This was one of the reasons why the learned Sessions Judge was inclined to disbelieve the prosecution case. Added to that, the discrepancies in the prosecution case in terms of the evidence put forth also weighed with the learned

III Additional Sessions Judge.

We find no grounds to interfere with the findings of the learned Sessions Judge in this regard.

The appeal is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed.

SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

Date:18.07.2016

GJ