

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

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

CRIMINAL APPEAL No.756 of 2010

**-
15.03.2016**

Between:

Srimanthula Bikshapathi

..Appellant/Accused No.3

And

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

..Respondent

Counsel for the appellant: Mr.T.Ramchander Rao

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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

Accused No.3 in S.C.No.310 of 1995, who has been separately sentenced, *vide* judgment, dated 28.05.2010, in S.C.No.314 of 2010, on the file of learned Sessions Judge, Karimnagar, filed this criminal appeal against his conviction for the offence under Section 302 I.P.C. read with Section 34 I.P.C. and sentencing him to undergo imprisonment for life and also to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment (R.I.) for a period of one year.

2. The facts, in brief, are that the appellant, who is accused No.3 in S.C.No.310 of 1995, is the brother of accused Nos.1 and 2 in that case. All of them were prosecuted on the charge that they murdered one Srimanthula Pedda Sathaiah (hereinafter referred to as 'the deceased') at Mogilipalem Village. It was specifically alleged that when the deceased was trying to escape on observing the three accused including the appellant, the appellant chased him from behind and poured acid on him, resulting in the deceased falling down and that accused Nos.1 and 2 attacked the deceased with axes on his head and neck, while the appellant beat him with a stick, as a result of which, the deceased died. All the three accused were tried in S.C.No.310 of 1995. By judgment, dated 18.09.1996, in the said S.C., the learned Sessions Judge, Karimnagar, found all the accused including the appellant, guilty of murdering the deceased. However, at that stage, the appellant has fled from justice, as a result of which, the case was split up and accused Nos. 1 and 2 were sentenced to life imprisonment, by the aforesaid judgment. Feeling aggrieved by the said judgment, accused Nos.1 and 2 filed Criminal Appeal No.1082 of 1996. By judgment^[1], dated 11.03.1998, a Division Bench of this

Court has dismissed the said appeal and confirmed the conviction and sentencing of accused Nos.1 and 2. Evidently thereafter, the appellant has surrendered himself before the Police and after hearing him, his case was renumbered as S.C.No.314 of 2010 and by the judgment under this appeal, he was sentenced as referred to above.

3. At the hearing, Mr.T.Ramchander Rao, learned counsel for the appellant – accused No.3, has submitted that his client is innocent and that the version of the prosecution that the appellant has poured acid on the deceased chasing him from behind is unnatural, as it was not possible for a person to pour acid while chasing a person from behind and that too without the offender suffering from any burn injuries in that process. Alternatively, he has submitted that even if the case of the prosecution is taken on its face value, the appellant allegedly beat the deceased only with a stick, by which he would not have caused the death of the deceased and that therefore, he cannot be treated on par with accused Nos.1 and 2, who allegedly attacked the deceased with axes causing fatal injuries.

4. The learned Public Prosecutor (AP) appearing for the respondent-state, while opposing the above submissions, has submitted that as the appellant was charged not only for the offence under Section 302 I.P.C., but also for the offence under Section 34 I.P.C., irrespective of his role, he is equally liable for the murder of the deceased as he had common intention along with accused Nos.1 and 2. He has further submitted that since the whole case of the prosecution was believed not only by the Sessions Court, but also by this Court while dealing with the appeal filed by accused Nos.1 and 2, the case of the appellant cannot be treated separately.

5. We have carefully considered the submissions of the learned counsel for both the parties.

6. Before proceeding with the further discussion, we need to observe that the appellant was tried along with accused Nos.1 and 2 and he was also found guilty, by the judgment of the Sessions Court delivered on 18.09.1996 in S.C.No.310 of 1995. As he has absconded thereafter, his case was split up and by a separate judgment, dated 28.05.2010, in S.C.No.314 of 2010, he was sentenced as referred to above. From the perusal of the grounds of this appeal, it is evident that the appellant has not specifically questioned the judgment, dated 18.09.1996, in S.C.No.310 of 1995. Thus, in effect, the appellant has only questioned his sentencing and not his conviction. This apart, we do not find any reason to treat the appellant separately from accused Nos.1 and 2. Indeed, in the appeal filed by the said accused, categorical findings were rendered by the Division Bench of this Court regarding the role played by the appellant - accused No.3. It is apposite to reproduce the relevant paras of the judgment, dated 11.03.1998, in Criminal Appeal No.1082 of 1996, hereunder:

“21. It is true that the names of PWs.2 and 3 were not mentioned in Ex.P1. Further in the inquest report Ex.P3, the names of PWs.2 and 3 found place. Though PW1 was declared hostile, in his cross-examination he stated that the contents of Ex.P 1 are correct and the police recorded his statement under [Section 161, Cr.P.C.](#) It is also relevant to notice that the family members of the deceased reposed confidence in PW1, as he, being the village servant, would narrate the incident to the police while lodging Ex.P1, complaint. Though in Ex.P1 PW1 has narrated the entire scene of offence stating participation of each of the accused including A3, he failed to mention the names of PWs.2 and 3. However, we are inclined to hold that non-mentioning of names of PWs.2 and 3 in Ex.P1 would not be fatal to the case of the prosecution. It is relevant to notice that in Ex.P3, inquest report, the names of PWs.2 and 3 are found. In the chief examination as well as in the cross-examination PWs.2 and 3 stated that A3 poured acid on the deceased and also beat with a stick, as a result of which the deceased fell down and though the deceased pleaded to A3 not to beat him, still A3 beat him. At that point of time after the deceased falling

down, A1 and A2 chased the deceased armed with axes and axed the deceased on his neck. The oral evidence of PW3 as to the injuries also corroborates with the evidence of PW2.

23. As regards the opinion of the Doctor, PW14, who examined the body of the deceased, injuries 1, 3 and 4 are undoubtedly referable to injuries caused as a result of the axes by accused 1 and 2. Insofar as injury Nos.7,8 and 9 are concerned, they attribute to the participation of A3. Therefore, the participation has been spoken to by PWs.2 and 3 who have deposed that A3 poured acid on the face of the deceased. Though the doctor, PW14 has stated that these injuries are not possible by pouring irritant substance from behind, the fact remains that PWs.2 and 3 have deposed about pouring of acid by A3 on the deceased. Since the doctor found the irritant substance on the body of the deceased while examining the body of the deceased, we are of the view, that the probabilities given by PW14, the doctor, as regards the use of acid by A3 is only an opinion, can not defeat the prosecution case as held by respondent in the case referred to above.”

7. When the appellant – accused No.3 suffered conviction in common with accused Nos.1 and 2 and the said conviction *qua* accused Nos. 1 and 2 was confirmed by this Court, by recording conclusive findings in the aforementioned judgment not only against accused Nos.1 and 2 but also against the appellant, regarding his role and participation in the murder of the deceased, we cannot take a view different from the one taken by this Court in the said case, lest, it amounts to reviewing that judgment. At any rate, we are entirely in agreement with the view taken by the Division Bench in the aforementioned appeal and we have no reason to come to a different conclusion as regards the appellant.

8. For the aforementioned reasons, we do not find any merit in this Criminal Appeal and the same is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

15th March, 2016
GHN

[\[1\]](#) Srimanthula Chinna Sathaiah and another vs. State of A.P.[1998(4) ALD 18 (DB)]