

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

Criminal Appeal no.1370 of 2010

JUDGMENT

(per Hon'ble Sri Justice M. Seetharama Murti)

In this appeal under Section 374(2) CrPC, the appellant/sole accused impugned the judgment dated 29.09.2010 of the learned I Additional Sessions Judge, Nizamabad in S.C.No.41 of 2006 whereby the said learned Additional Sessions Judge found the accused guilty of the offence punishable under Section 302 IPC and imposed a sentence of rigorous imprisonment for life.

2. We have heard the submissions of the learned counsel for the appellant/accused and the learned Public Prosecutor appearing for the respondent/ State. We have perused the material on record.

3. The learned I Additional Sessions Judge framed the following charge against the accused.

'that the deceased Sanghi Narsimlu was owning flour mill and one Anjamma W/o Late Thota Laxmaiah was working in the flour mill of deceased. In the month of October 2004 while she was working in the flour mill, you went to her and beat her with a spade and same was obstructed by deceased. Then you threw the deceased and threatened him with dire consequences. In pursuance of said incident, on 16-7-2005 at 12 noon while you were proceeding to your field with an axe, you saw the deceased in the company of LW4- Middela Sailu & PW-3 Surampally Narayana in front of Gajula Ramana Medical shop at Durki (V) and you attacked the deceased with an axe and caused bleeding injuries and he succumbed to injuries while shifting to the hospital. And you committed the murder intentionally (knowingly) causing the death of the deceased Sanghi Narsimlu and thereby committed an offence punishable under Section 302 IPC and within my cognizance. '

[Reproduced verbatim]

4. At trial, the prosecution examined PWs 1 to 12 and exhibited P1 to P10 and marked MOs 1 to 5. No evidence was adduced on the side of the defence.

5. The case of the prosecution as unfolded by the evidence adduced to sustain the charge against the accused, which needs examination, is as follows:

The accused, Middela Parvaiah, and the deceased, Sanghi Narsimlu, are residents of Durki Village. LW10, Anjamma, is working in the flour mill of the deceased for the last several years. The wife of the accused died some time back. The accused developed illicit intimacy with LW10, Thokala Anjamma. On account of some disputes in that regard a criminal case was registered against the accused. The accused did not like the intervention of the deceased in that dispute and bore grudge against the deceased thinking that the deceased is responsible for the criminal case registered against him at the behest of Anjamma. On 16.07.2005 at about 12:00 noon, the deceased, Sanghi Narsimlu, PW3, Surampally Narayana and LW4, Middela Sailu were sitting on a pial (Arugu=permanent structure) in front of the medical shop of PW6, Gajula Venkata Ramana and were having tea. At that time, the accused came from behind and gave a blow on the head of the deceased with an axe and ran away with the axe having inflicted injury on the deceased. The deceased fell down on sustaining the said injury. LW2, Sanghi Bhoodevi, the wife of the deceased, came to know of the said incident through LW4, Middela Sailu. PW4, Kothuru Satyanarayana, on seeing the wife of the deceased proceeding hurriedly, made an enquiry and came to know that her husband was killed and accompanied her to the scene of offence. They observed that the deceased was lying on the ground with a head injury. PW4, PW5, Md.Meenaz, and LW8, Sk.Ravoof, shifted the deceased to the Government hospital, Banswada. On their way to the hospital PW2, Sanghi Kanthi Kiran, another son of the deceased, joined them and went to the hospital along with them. At the hospital, the Doctor declared that the deceased was brought dead. PW1, Sanghi Ramesh Kumar,

the son of the deceased, who is a Government employee elsewhere, received information from PW6 on phone regarding the attack on his father and shifting of his father to Government hospital, Banswada. PW1 came to the hospital at about 03:30 P.M., and came to know about the incident on enquires made with the above said persons, who brought the deceased to the hospital. PW1 lodged Exhibit P1 report with the police. PW10, the SI of police, Birkur Police Station, having received Exhibit P1 report registered the crime for the offence under Section 302 IPC at about 01:45 P.M., on the basis of Exhibit P1, report, and issued Exhibit P7, FIR. PW12, the then CI holding charge of the post of the CI, Banswada, took up investigation. On receipt of information, he rushed to the mortuary of the Government hospital, Banswada where the body of the deceased was kept. He secured mediators – LW11, Uduthala Saya Goud, and PW7, Puram Sailu, and held inquest over the dead body of the deceased in the presence of relatives and others and examined during course of the inquest PW1, LW2, Sanghi Bhoodevi, the wife of the deceased, PW2, Sanghi Kanthi Kiran, LW4, M. Sailu, PWs3 to 6 and LW8, Sk. Ravoof, and recorded their statements. At that time, he seized the blood stained clothes of the deceased, MOs 1 to 3, Shirt, lungi and baniyan under the cover of Exhibit P2, inquest Panchanama. On his requisition, PW8, Dr. Shinde Babu, conducted post mortem examination over the dead body of the deceased on 16.07.2005 at about 04:15 PM and issued Exhibit P4, Post Mortem Examination Report, stating that the deceased sustained the following injury: 'lacerated injury 5 ½" x 2" x 3" at the junction of right and left parietal bones of skull'. He opined that the cause of death is 'cerebral haemorrhage with protruded brain cortex due to open head injury'. PW12 further proceeded to the scene of offence along with LW11, Uduthala Saya Goud, and PW7 and observed the scene of offence in their presence and prepared Exhibit P3, scene of offence observation report/ scene of offence Panchanama, and rough sketch of scene of offence. At that time, he collected blood stained and controlled earths (MO 4) from the scene of

offence and got taken photographs of the scene. He handed over subsequent investigation to the regular CI, PW11. PW11 took up further investigation and examined LW10, Anjamma, and made a requisition to the Judicial Magistrate of First Class, Bodhan, for recording the 164 CrPC statements of PW1, LW4, Middela Sailu, and PW3. Exhibit P8 is the letter of request. Accordingly, the learned Magistrate recorded the statements of the said witnesses. PW11 verified the statements recorded by his predecessor and the investigation that was done by the predecessor. On 28.07.2005 at about 10:40 A.M., he apprehended the accused at Hanuman Temple in the outskirts of Durki village and secured the presence of LW14, D. Srinivas, and PW9, P. Gangaram, and pursuant to the confession made by the accused recovered MO5, axe, under Exhibit P6, recovery Panchanama, and produced the accused before the learned Magistrate and obtained orders of judicial remand. He sent the seized objects and recovered material object to the Forensic Science Laboratory and filed the charge sheet after receiving Exhibit P9, FSL report.

6. From a plain reading of the prosecution evidence it is clear that PW3, Surampally Narayana, and LW4, Middela Sailu, are the direct witnesses to the incident and that on hearing their hues and cries after the attack on the deceased, PW6, Venkata Ramana, went and saw the deceased with a bleeding head injury. Since LW4, Middela Sailu, is not examined and as PW6 is not a direct witness to the incident proper, the prosecution case hinges on the direct ocular testimony of PW3, who was said to have witnessed the actual attack on the deceased by the accused. Therefore, in the first instance, we prefer to refer to the evidence of PW3. PW3 in his examination in chief deposed as follows: "The incident occurred on 16.07.2005 at about 12:00 noon in front of medical shop owned by PW6. At that time, I, LW4, Middela Sailu, and the deceased were sitting on the permanent structure (arugu) in front of the medical shop. We were having tea. Meanwhile the accused came from the back side and gave a blow on the head of the deceased with an axe and ran

away with the axe after inflicting the said injury upon the deceased. The deceased fell down on account of the said injury. Out of fear, we came on to the road and I requested LW4, M Sailu, to inform about the incident to the family of the deceased.” In his cross-examination, while maintaining his stand, he stated as follows: “At the time of the incident we were sitting on stairs of closed shutter. The deceased was sitting towards the medical shop side and Sailu was sitting in the middle and I sat adjacent to Sailu. I joined the deceased and LW4, M. Sailu, at about 11:30 A.M. The incident occurred at about 11:45 AM. Out of fear I went to the main road. After the incident 15 to 20 persons gathered at the scene of offence. I was present at the scene of offence till the deceased was shifted to the hospital.”

7. As rightly and fairly stated, if the presence of PW3 at the scene of offence and his version are to be accepted as true, his afore stated evidence coupled with other circumstances is by itself sufficient to hold that the prosecution was successful in bringing home the guilt of the accused for the offence with which he was charged. Therefore, the learned Public Prosecutor supported the judgment impugned and prayed for the dismissal of the appeal of the accused. However, the core contention of the accused is that PW3 was not present at the scene and that he is an implanted witness and that the times mentioned in the original FIR [Column No.3(b) & (c)] were manipulated to suit the tainted and false prosecution version and that the whole case of the prosecution was built up after the investigation has commenced without a first information report from any person and without the registration of the crime and that in fact after the inquest was held on the dead body of the deceased, the report was received after 03:30 P.M., that is, at about 04:00 or 04:30 P.M but, the times mentioned in the FIR and the other material documents on record were manipulated and were corrected by applying white fluid wherever necessary to cover up the blemishes and to facilitate creation of a story by implantation of some persons including PW3 as eye witnesses. *Per contra*, the

learned Public Prosecutor would contend that there is no merit in the contentions of the defence and that PW3 and LW4, M. Sailu, the other eyewitness (not examined) witnessed the incident proper and that the lapses on the part of the investigating officer in correcting the time mentioned at Column No.3(b) & (c) in the FIR and other document in his over anxiety are not fatal in view of the direct ocular evidence and that the evidence of PW3 cannot be discarded by dubbing him as an implanted witness.

8. In view of the said rival contentions, before coming to a conclusion whether it is safe to rely upon the evidence of PW3, who is said to be a direct witness to the incident of murder, the circumstances of the case borne out by the record have to be examined as the saying goes that men may lie but not matters.

9. In the first place, it is necessary to examine the contents of Exhibit P2, inquest report. The same on a perusal would bring to the fore the following aspects: Inquest was held on the same day from 02.00 P.M. onwards for two hours, that is, till 04.00 P.M. Along with four others PW3, Surampally Narayana was also present at the time of inquest and his presence is noted in the inquest report. Though there are two eyewitnesses according to the prosecution case, no person stated before the police officer, PW12, who held inquest, that anyone of them had witnessed the occurrence as an eyewitness. None of the two witnesses saying to the investigating officer that they have directly witnessed the incident is contrary to normal human conduct. After the incident 15 to 20 persons gathered at the scene of offence is undisputed. Even though the inquest was held for two hours, neither PW3 nor the other eyewitness came forward claiming to be an eyewitness. The presence of PW3 at the time the inquest was held is undeniable; and indeed, the said aspect is not in dispute. Though PW3 is obviously present when the inquest was held and when the investigating officer prepared the inquest report, he did not say

before the investigating officer that he witnessed the incident. But, he claims himself to be an eyewitness subsequently. No explanation is forthcoming from any quarter as to why PW3 or the other eyewitness could not tell the investigating officer that they have witnessed the incident of murder. According to the evidence of PW12, at the time of inquest he recorded the statements of inquest panch witness and also other witnesses including the statement of PW3. Therefore, it is obvious that even at the time of giving a statement to the police officer at the time of inquest, PW3 did not disclose to the said police officer that he witnessed the accused attacking the deceased with an axe and causing a head injury to the deceased from behind and the deceased falling down after sustaining the said injury. None of the two eyewitnesses lodged a report with the investigating officer. In fact in the inquest Panchanama, Exhibit P2, there is no mention that the actual occurrence was witnessed by any person; and, the recording therein would only show that there are no eye-witnesses to the occurrence. PW2, who is the son of the deceased and who accompanied the persons who shifted the deceased to the hospital also did not lodge a report. PW1 who is a Government employee and who was working elsewhere was said to have come to the hospital and made enquiries and then lodged report after coming to know about the details of the incident.

10. In this backdrop, the next aspect to be examined is as to when the first report was lodged and when the crime was registered. This aspect assumes importance in the light of the defence that if one goes by the original time of the report given by PW1 and the original time mentioned in the FIR before its manipulation it becomes manifest that the investigation into the crime commenced even before the registration of the alleged crime and that the earliest or first information given to the police concerned was apparently suppressed. A plain perusal of Exhibit P7, FIR, shows that the time of receipt of first information mentioned in the FIR was altered by applying white fluid

and in Column No.3(b) the time of receipt of information at the police station was mentioned as '1:45 PM' and in Column No.3 (c), pertaining to General Diary reference entry number, the time was mentioned as '13:45 hours'. According to the defence, PW1 gave his alleged report to the police after 03:30 P.M., that is, at about 04.00 or 04.30 P.M., on 16.07.2005 and that the said delay in lodging the report and registering the crime was clearly due to the time taken to incriminate the accused after due manipulations and deliberations. It was also urged that the case was foisted against the accused by implanting PW3 and others as eyewitnesses, and as such the report was received belatedly, but, to cover up the delay in receiving the report, the times in the crucial documents including the FIR are manipulated and corrected by applying white fluid only to show that the report was promptly given at 01.30 P.M., and that the crime was duly registered by 01.45 P.M., without any delay and to give the prosecution version a colour of reality. The corrections in the times referred to above in Exhibit P7, FIR, which are self evident need no further dilation and it is trite to note that the same give strength to the contentions of the defence. In deed in Column No.7 of the FIR, names of three accused viz., Middela Parvaiah, Jinka Narayana and Middela Ramulu were mentioned while in fact, it is nobody's case.

11. The most crucial aspect which further supports and provides a ring of truth to the case of the defence is also evident from the contents of the FIR at Column No.15 wherein the date and time of despatch to the Court were mentioned as '16.07.2005 at 01:30 PM'. If one goes by the corrected times mentioned in the first page of the FIR, they indicate that the first information was received at 01:45 PM and the crime was registered immediately thereafter. Therefore, the content of the FIR showing that the FIR was despatched to the Court at 01:30 P.M., that is, even before the crime was registered at 01.45 P.M. lays bare the falsity of the prosecution case. Even in Exhibit P1 report said to have been given by PW1 also the time at which it was received was

corrected by applying white fluid. It appears that the time of receipt of Exhibit P1 might have been originally mentioned as between '04.30 and 05.00 PM' or so as per the version of PW1, who lodged the report; but, later it was corrected as 13.45 hours by manipulation and after applying white fluid. Even in the last page of the FIR dealing with the endorsement about registration of the crime on receipt of Exhibit P1, report, the time was altered to 1:45 PM after applying white fluid. The consistency in the correction of the time at all relevant places in the crucial documents is self explanatory about the falsity of the case. Further, in Exhibit P3, scene of offence Panchanama, the place intended for mentioning the time was left blank. When, in the report of PW1 under Exhibit P1, PW1 categorically stated about the occurrence in the presence of PW3 and another and that the alleged attack with an axe on the deceased by the alleged sole accused took place at the time when PW3, the deceased and LW4, Middela Sailu, were taking tea, there is no reason for the police officer who registered the crime to mention along with the name of the accused, the names of two other accused, Jinka Narayana and Middela Ramulu, in the Column of the FIR dealing with the names of suspects/ accused. This aspect also shows that there was manipulation of truth and suppression of material facts and the said aspect casts a deep-seated shadow of doubt on the whole of the prosecution case.

12. Another important aspect of the matter is that the distance between the police station and the Court could be covered by one hour, as per the evidence brought on record. The endorsement of the Officer of the Court would show that Exhibit P7, FIR, was received by the Court at 10:00 PM. Had the first information been really received at 01:45 P.M and the case was registered and the FIR was issued and despatched to the Court promptly, the FIR ought to have been received by the Court much earlier. But that is not so. This circumstance as contended by the defence clearly suggests that the crime might have been registered and the FIR might have been issued only after 03:30 P.M. that is, at

or about 04.00 or 04.30 P.M. or so but, the times mentioned in the first information report and other records were manipulated to show that the crime was registered at 01:45 P.M. without any delay. Above all, PW1 in his examination in chief categorically stated that on receiving telephonic information about the attack on his father, he went along with his family members to Banswada hospital about at 03:30 PM and that LW4, Middela Sailu, and PW3, Surampally Narayana, who were present at the hospital, informed him on his enquiry with them that the deceased, PW3 and LW4, Middela Sailu, were sitting in front of the medical shop of PW6 at about 12:00 noon and that the accused beat the deceased with an axe on the head of the deceased. He further stated in his cross-examination that he lodged a complaint between 04:30 to 05:00 PM. However, as already noted the manipulated records would show as if Exhibit P1 report was received by the police officer at 13:45 hours and that the crime was registered at the same time. PW2, the brother of PW1, also stated that PW1 came to the hospital at about 03:30 PM and that he had narrated the incident to PW1 as disclosed to him by his mother LW2, Sanghi Bhoodevi. Therefore, PW1 who is employed elsewhere and who came directly to the hospital came to know about the incident only at 03:30 PM. As such, there is no prospect of PW1 lodging a report by 01:45 PM at the police station. Even in this report, Exhibit P1, the time of occurrence is corrected by over writing. This portion of evidence of the material witnesses who are the children of the deceased, would reveal that the police version of the prosecution case that Exhibit P1, report, was received from PW1 at 13.45 hours and that the crime was registered by 01:45 P.M. (13:45 hours) is far from truth and cannot be accepted. If that be so, the inquest held at 02.00 P.M., and the investigation done and the evidence collected even before the receipt of the report and the registration of crime is rendered illegal and untrustworthy. Hence, the evidence analysed supra and the circumstances of the case clearly expose that the entire case was a manipulation of the police and that the sole

witness who was examined before the Court by citing him as one of the eye-witnesses, is in deed not an eye witness and his services were pressed into service after the inquest was held and after the time of report and the time of registration of crime are manipulated. For all the above stated reasons, we hold that the prosecution case implicating the accused is shrouded in suspicion and is untrustworthy and that the prosecution failed to establish the case beyond reasonable doubt.

13. Our view in the case on hand finds support from the facts, the observations and the ratio in *State of Bihar v. Naresh Yadav and others*¹. On the aspect of silence of the alleged eye-witnesses at the time of inquest, the facts of the case on hand bear a close similarity to the facts of the cited case. In paragraph 12 of the reported judgment, the Supreme Court having adverted to the relevant facts observed as follows:

‘We find no reason to take a different view because the findings recorded by the learned Judge are fully supported by the evidence on record and the circumstances of the case. In the first instance there appears to be no reason why no one stated before the Investigating Officer who came to the place of occurrence at 7.20 a.m. that he had witnessed the occurrence as an eye-witness. Since they claimed to be eye-witnesses and large number of persons had gathered at the place of occurrence when the Investigating Officer reached that place with police force, the normal course of human conduct would have been, for any of the eye-witnesses to immediately inform the Investigating Officer that he had witnessed the occurrence. We fail to understand why from 7.30 a.m. till 8.45 a.m., while the Investigating Officer was preparing inquest reports no one came before him claiming to be an eye witness. The most interesting part of the story is the role of PW-1, *Ramji Singh*. He is a witness to the inquest report and obviously he was present when the Investigating Officer was preparing the inquest reports. He also claims to be an eye-witness and has deposed as such. One fails to understand why he could not tell the Investigating Officer that he himself was an eye-witness. This was sought to be got over by an argument that the villagers must have been shocked by the ghastly incident and therefore they did not make such a statement before the Investigating Officer. The argument is to be stated to be rejected. If PW-1 could be a witness to the inquest reports which were being prepared on the spot, there is no reason why he could not be the first informant in the case.’

¹ 2004 (1) ALD (Crl) 766 (SC)

14. Reverting to the facts of the case, in the light of all the circumstances stated supra, the presence of PW3 at the time of occurrence appears to be highly doubtful. It is obvious that when the statement of PW3 was recorded at the time of inquest he did not state that he witnessed the incident and that he is an eye-witness to the occurrence. Had he stated so, the contents of the Inquest report would have been otherwise. Therefore, the later prosecution version that he was an eye-witness to the occurrence is implausible and far-fetched. No explanation is forthcoming from the prosecution for the corrections in the time mentioned in Exhibit P1, report, and Exhibit P7, FIR, which are fatal to the case of the prosecution, having regard to the facts and circumstances of the case. The record makes it manifest that the crime was registered after deliberations by implanting PW3 and another as eye witnesses and that the material documents forming part of the case record were manipulated to show that there is no delay in either lodging the report or registering the crime and that the investigation commenced after the registration of the crime. Suffice to say that the prosecution version that PW3 is an eyewitness to the incident does not inspire confidence and the circumstances brought about from the material on record cast a solemn and reasonable doubt about the presence of PW3 and LW4, M. Sailu, [who was not examined] at the scene at the time of occurrence. It may also be necessary to state that the FSL Report, Exhibit P9, would show that no blood is detected on MO5, Axe, said to have been recovered pursuant to the recovery confession made by the accused.

15. Viewed thus, we find that the Court below was in error in excluding the serious manipulations resorted to by the investigating officer and in accepting PW3 as an eyewitness to the incident by simply brushing aside the vital contentions of the defence which, on our careful examination, are sufficient to hold that PW3 is an implanted witness and that the prosecution case is built up

after due deliberations and manipulations by creating a story that PW3 and LW4, M. Sailu, are eyewitnesses to the incident though in fact the said versions does not appear to be true, in the facts and circumstances of the case.

16. In the result, the Criminal Appeal is allowed and the conviction of the appellant/ sole accused for the offence punishable under Section 302 IPC and the sentence imposed upon him by the learned I Additional Sessions Judge in S.C.No.41 of 2006 are accordingly set aside. The appellant is accordingly acquitted of the said offence. He shall be set at liberty forthwith, if his confinement is not required in any other case. The fine amount, if paid already, shall be refunded to him after time for preferring further appeal/ revision is over.



JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

16.08.2016

Note: LR copy to the marked.

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