

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

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

CRIMINAL APPEAL No.1236 of 2008

Date:15.02.2016

Between:

State of A.P., repled by the
Public Prosecutor, Hyderabad.

.....Appellant

And:

Balija Bhaskara Ramanjaneyulu,
S/o Lalappa and six others.

.....Respondents/

Accused

Counsel for the Appellant: Mr. Posani Venkateswarlu
Public Prosecutor (AP)

Counsel for the Respondents: None appeared

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

The State preferred this Criminal Appeal feeling aggrieved by the acquittal of accused Nos.3 to 7 in Sessions Case No.384 of 2002 by the Principal Sessions Judge, Kurnool, vide judgment, dated 12.12.2003.

The case of the prosecution in brief is that one Ala Sanjeeva Reddy (deceased No.1) had two sisters, viz., Nagamma and Sanjamma. They were given in marriage to Lalappa. Bhaskara Narayana (deceased No.2) is the son of Nagamma. Ramanjaneyulu (Accused No.1) and Anjaneyulu (Accused No.2) are the sons of Sanjamma. Ala Thimmaiah (Accused No.3) is the brother-in-law of accused Nos.1 and 2 and Thimma Reddy (Accused No.4) is the son of accused No.3. Accused Nos.5 to 7 are the wives of Accused Nos.1 to 3 respectively. There were civil disputes among deceased No.1 on one side and accused Nos.1 and 2 on the other about the sharing of the land left by their father-Late Lalappa. On 03.8.2001, accused Nos.1 to 7 conspired together, formed into an unlawful assembly; and accused Nos.1 to 4 armed with weapons entered into the house of Bhaskara Narayana (deceased No.2). At that time, P.Ws.2 and 3 who were the wife and son of deceased No.2, respectively, were present in the house. Immediately, P.W-2 rushed to the house of deceased No.1 and intimated the same to the latter. Deceased No.1, his son (P.W-1) and two of their neighbours, viz., P.Ws.4 and 5, and others reached the house of deceased No.2. Deceased No.1 tried to pacify the accused and stood between deceased No.2 and the accused. Accused Nos.1 to 4 stabbed deceased No.1 and again accused Nos.1 to 3 stabbed deceased No.2. Both the injured were shifted to the Government hospital, Dhone, where deceased No.1 died immediately, while deceased No.2 was alive and died a day later. Based on the intimation of a Medico legal case, P.W-3-Sub-Inspector of Police, Dhone Police Station went to the hospital and recorded the statement (Ex.P-16) from deceased No.2 in the presence of the duty doctor (PW-12), who endorsed on the statement that the patient (deceased No.2) was conscious and

coherent. The statement of deceased No.2 was registered as First Information Report (Ex.P-17). Thereafter, deceased No.2 was shifted to the Government Hospital, Kurnool, where he was declared dead. P.Ws.10 and 11-doctors conducted post-mortem on deceased Nos.1 and 2 and issued Exs.P-11 and P-12-certificates respectively. P.W-14-Inspector of Police conducted investigation and filed charge sheet against the seven accused for the offences under Sections-302, 147, 148 and 449 read with 149 of the Indian Penal Code. After the case was committed to the Sessions Court, the same was numbered as Sessions Case No.384 of 2002 on the file of the Principal Sessions Judge, Kurnool. Before the Sessions Court, the prosecution has examined P.Ws.1 to 14 and got marked Exs.P-1 to P-27 besides M.Os.1 to 12 being marked.

Based on the oral and documentary evidence, the trial Court has convicted accused Nos.1 and 2 for the offences under Section-449 I.P.C. for committing house trespass, under Section-302 I.P.C. for causing the death of deceased No.1 and under Section-302 I.P.C. for causing the death of deceased No.2. Accused Nos.3 to 7 were found not guilty and accordingly, they were acquitted under Section-235(1) of the Criminal Procedure Code. Accused Nos.1 and 2 were sentenced to suffer rigorous imprisonment for a period of five years each and also to pay a fine of Rs.500/- each, in default, to suffer rigorous imprisonment for two months each for the offence punishable under Section-449 I.P.C. They were also sentenced to suffer imprisonment for life and also to pay a fine of Rs.500/- each, in default, to suffer rigorous imprisonment for two months each for the offence under Section-302 I.P.F. for causing the death of deceased No.1. They were also sentenced to suffer imprisonment for life and also to pay a fine of Rs.500/- each, in default, to suffer rigorous imprisonment for two months each for the offence punishable under Section-302 I.P.C. for causing the death of deceased No.2. The sentences were directed to be run concurrently except the default sentences. As mentioned above, all other accused *i.e.*, accused Nos.3 to 7 were acquitted.

At the hearing, there is no representation for the respondents-accused.

Mr. Posani Venkateswarlu, learned Public Prosecutor (Andhra Pradesh) appearing for the appellant-State, has submitted that the trial Court has erroneously acquitted accused Nos.3 to 7 despite the fact that there is credible and cogent evidence such as Ex.P-16-the statement of deceased No.2 recorded by the Police in the presence of the duty doctor and the consistent evidence of

P.Ws.1 to 3 which has lent corroboration to the said statement of deceased No.2. He has further submitted that the trial Court has committed a grave error in basing the acquittal of accused Nos.3 to 7 only on the fact that P.Ws.4 and 5, who are the neighbours and considered as independent witnesses, have not supported the case of the prosecution to the extent of the charges against the said accused.

We have carefully considered the submissions of the learned Public Prosecutor.

The evidence on record would reveal that P.Ws.1 to 3, who are none other than the son of deceased No.1 and the wife and son of deceased No.2, respectively, are interested witnesses. Though in law, the evidence of interested witnesses is very much admissible, the same must be scrutinized carefully and ordinarily, and unless their evidence is clear, cogent and free from any doubts, strong corroboration is needed to convict the accused based on such evidence. P.Ws.4 and 5, who are neighbours and independent witnesses, have not lent corroboration to the evidence of P.Ws.1 to 3 to the extent of participation of accused Nos.3 to 7 in the alleged offence. In such a case, the Court has to be very circumspect in handing out conviction of accused Nos.3 to 7 based on the evidence of partisan witnesses. P.Ws.4 and 5, who are declared as hostile witnesses, have categorically deposed that they do not know accused Nos.3 to 7 and that they have not witnessed these persons being at the scene of offence, leave alone, participating in the alleged offence. Thus, in our opinion, the trial Court has taken a view which cannot be treated as a wholly erroneous view. Even if, on re-appreciation of the evidence, this Court comes to a different view, accused Nos.3 to 7 having already been acquitted, it is not appropriate to convict these accused based on such a view.

One other aspect which needs mention in this context is that feeling aggrieved by the conviction of accused Nos.1 and 2 by the trial Court, they have filed Criminal Appeal No.930 of 2004. While confirming the conviction of accused Nos.1 and 2 by its judgment, dated 18.8.2006, this Court has observed that accused Nos.3 to 7 have been acquitted of the charges as, independent witnesses have not spoken to their participation in stabbing of the deceased.

For the above-mentioned reasons, we do not find any merit in the Criminal Appeal and hence, the same is dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

15th February, 2016

DR