

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
WEDNESDAY THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(20.04.2016)

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.1016 of 2010
&
CRIMINAL APPEAL No.262 of 2011

Crl.A.No.1016 of 2010

-
Between:

Gorikadi Raju

..... Appellant/Accused No.1

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....Respondent

Counsel for the Appellant : **Smt.C.VASUNDHARA REDDY**
For Mr.Palle Sriharinath

Counsel for the Respondent : **PUBLIC PROSECUTOR (TS)**

Crl.No.262 of 2011

-
Between:

Narsamma

..... Appellant/PW 6

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....Respondent

Counsel for the Appellant : **None appeared**

Counsel for the Respondent : **PUBLIC PROSECUTOR (TS)**

The Court made the following:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**CRIMINAL APPEAL No.1016 of 2010
&
CRIMINAL APPEAL No.262 of 2011**

COMMON JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

The appellant/A1 and one Ganta Sanjeeva(A2) were charged for the offences under sections 302, 380, 109 r/w.302 IPC and made to stand trial for those offences in S.C.No.142 of 2006, on the file of the III Additional District and Sessions Judge, (Fast Track Court), Medak, and by judgment dated 17.08.2010, the learned Sessions Judge acquitted the appellant/A1 for the offence under Section 380 and A2 for the offence under Section 109 r/w.302 IPC as they are found not guilty of the charges. The learned Sessions Judge found the appellant/A1 guilty of the offence under Section 302 IPC, convicted and sentenced him to suffer imprisonment for life and to pay a fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for two months. Feeling aggrieved thereby, the appellant/A1 filed CrI.A.No.1016/2010.

2. CrI.A.No.262 of 2011 is filed by the appellant/PW 6, who is the mother of Deceased No.2 (Shamantha), feeling aggrieved by the confiscation order with regard to M.Os.3 to 7 passed in same judgment dated 17.08.2010.

3. For the convenience, the appellant is referred to as "A1" and deceased Nos.1 to 3 are referred to as "D1, D2 & D3".

4. The case of the prosecution in brief is that on 08.01.2006 at

07.00 hours PW 1, Sarpanch of Sulthanpur village, lodged a complaint before PW 15-Sub Inspector of Police, IDA Bollaram PS, stating that on 08.01.2006 at about 5.30 a.m PW 2, LW 3-Manne Veeresham and LW 4-Naikoti Anjaiah of his village informed him that A1 axed D1, his second wife D2 and their daughter D3 and fled away. Basing on the said complaint, PW 15 registered Cr.No.5/2006 under Section 302 IPC and issued Ex.P16 FIR. On receipt of information, PW 13 took up investigation and rushed to the scene of offence and prepared Ex.P4 panchanama in the presence of PW 9, held inquest over the dead bodies of D1 to D3 and examined PWs 2 to 8, 10 and 11 and recorded their statements, that thereafter, sent the dead bodies for post mortem examination. On 08.01.2006 PW 14 held autopsy over the dead bodies of D1 to D3 and opined that the cause of death was due to shock and haemorrhage due to cutting of carotid artery. On 09.01.2006 PW 13 arrested A1 and A2 and at their instance he recovered the material objects in the presence of PW 12 under cover of Exs.P14 and P15 panchanamas.

5. The investigation by PW 13 disclosed that A1 and PW 3 are the sons of D1, D2 is his second wife and D3 is their daughter, PW 4 is the nephew and PW 5 is the brother of D1, PW 6 is the mother of D2, and PW 7 is the wife of A1 and PW 8 is her father. About one or two months prior to the incident, D1 sold 20 guntas of land, for which, there arose a dispute for share of sale proceeds in between A1 and D1, and in the said altercation, A1 threatened D1 to kill him, that on the date of incident, A1 axed D1 to D3 after bolting the doors of inmates of the house from outside. After committing the offence, A1 met PW 8, who is his father-in-law, at around 5 a.m. and informed him that he has finished D1 to D3 and when he tried to give him the cover containing gold and silver ornaments, PW 8 refused to take and drove him out from his house.

6. The plea of the accused is one of denial.

7. In order to bring home the guilt of the accused, the prosecution

examined PWs 1 to 15 and marked Exs.P1 to P20 and MOs.1 to 10. No evidence was let in on behalf of the defence.

8. On appreciation of oral and documentary evidence, the learned Sessions Judge disposed of the sessions case in the manner, as stated above.

9. The learned counsel for A1 submitted that in view of the family disputes in between himself and his wife-PW 7 and others, A1 has been falsely implicated taking advantage of the unfortunate murder of three persons in the house by unknown persons, who killed the deceased and robbed the ornaments. She has further submitted that basing on the evidence of PW 7, the wife of A1, it cannot be said that the case of the prosecution that it is A1 who killed D1, D2 and D3 is proved. The learned counsel further submitted that the Court below has erred in finding A1 guilty merely based on suspicion and hence the same is liable to be set aside.

10. The learned Public Prosecutor submitted that the relationship between A1, the deceased and the prosecution witnesses is not disputed, so also there is no dispute in so far as the factum of three murders, having taken place in the intervening night of 7/8.1.2006 is concerned. He has further submitted that there is consistent evidence on record that in between 12 to 5 a.m D1 to D3 were brutally hacked to death by A1, who is none other than the son of D1. He has further submitted that there is consistent evidence with regard to the motive for A1 who has caused the death of D1 to D3, and PW 7 who is none other than the wife of A1 gave graphic account as to what all happened on the fateful night and from that evidence, the only inference that can be drawn is that it is A1 who has killed his father (D1), stepmother (D2) and their 3 year old daughter. The learned Public Prosecutor further submitted that the evidence is consistent and cogent which clearly shows that A1 nurtured grievance against his father (D1) in view of certain disputes with

regard to the share in the property, meeting of house expenses, and demanding share in the salary of A1. He also submitted that if really the deceased were done to death by strangers for gain, A1, being elder son of D1, would have been the first person to lodge the complaint, but not to make himself scarce right from 5.30 a.m on 08.01.2006 till he was apprehended. The learned Public Prosecutor submitted that the court below has properly appreciated the evidence on record and found A1 guilty, which does not warrant any interference.

11. We have carefully considered the respective submissions of the learned counsel for the parties and perused the material on record.

12. The points for consideration are whether the prosecution proved its case beyond reasonable doubt so as to sustain the conviction and sentence recorded against A1, and whether PW 6 is entitled to claim M.Os.3 to 7 or whether the judgment impugned needs to be set aside, modified or varied.

13. An incident of diabolical manifestation has taken place in the intervening night of 7/8.1.2006 within the house which was occupied by D1 to D3, A1, PW 7, PW 3 and other family members. At about 5.30 a.m in the morning, D1 to D3 were found lying dead in the bedroom with their necks being slashed. While D1 was aged about 60 years, his second wife (D2) was aged about 30 years and D3 is a 3 year old daughter of D1 and D2. A1 is the son of D1, born through his first wife, who died, and immediately thereafter, D1 married D2. PW 3 is another son of D1, whereas PW 7 is the wife of A1. The fact that the death of three persons was homicidal and violent and has taken place at the place and time alleged is not denied. On the other hand, the defence of A1 is that on the intervening night the offence was committed by unknown offenders for robbery. It is the further contention of A1 that he was not in the village in the said night and he has been falsely implicated by all the family members, including his wife- PW 7 due to disputes between them.

14. At the outset, it may be stated that A1 has taken the plea of alibi

both during the course of evidence as well as during his examination under Section 313 Cr.P.C. According to A1, his wife (PW 7) was not leading matrimonial life with him and that when he was in the house of his maternal uncle, the police have arrested him. Having taken such a plea, no iota of evidence was produced by A1 to show that he was not present in the house when the incident took place during the fateful night. As is well known, the plea of alibi is dangerous for the reasons that once it is proved, A1 will be out of court, and if it is proved to be false, it will lead to irresistible inference that it is A1 who is the author of the crime. Having taken a specific stand that A1 was not in the house and when the prosecution could establish his presence in the house and when he fails to prove even by preponderance of probabilities that he was not in the house at the relevant time, the said plea can be termed as having been raised only to wriggle out of his involvement in the crime.

15. As already noticed, the allegation of the prosecution, which is consistently spoken to by the prosecution witnesses is that in the night of 07.01.2006 all the family members, including PW 3, PW 7, D1 to D3 have watched TV which was in the bedroom of D1 and D2 till about 12 midnight during which A1 was in his room and at about 5.30 a.m the inmates of the house woke up to see the gory and horrifying scene of three of family members lying dead with severe injuries on neck and head.

16. So far as the motive is concerned, it is in the evidence of the prosecution witnesses which is consistent to the effect that ever since the marriage of D1 and D2, there used to be disputes and quarrels between the father (D1) and son (A1) on different issues, such as, sharing the salary, meeting the house expenses, disposal of the landed property by D1, denying the share in the property by D1 to A1, the grandeur with which the marriage dinner of the sister of A1 was to be celebrated etc. Bearing in mind all the above disputes or difference of opinion in

between A1 and D1, A1 is said to have nurtured a serious grouse against D1 and was planning to eliminate D1, D2 and D3 which he successfully executed in the night of the incident. Even though the non-appellant/A2 was said to have been involved in the crime, but he has been acquitted. The role attributed to the non-appellant/A2 is that he gave certain medicine to A1 to mix it in the eatable of D1 and D2 so that once they consume, they will go into deep slumber which would facilitate the diabolical design of A1. Even though this allegation has not been substantiated, what we feel is that there appears to be some force in the case of the prosecution that something was given to D1 and D2 before they were slashed. We are of the opinion that the deceased being in deep sleep due to some intoxicant, could not have raised cries even though they received deadly blows on their neck and head one after the other by the assailants.

17. In order to see as to whether the prosecution proved that it is A1 who has committed the gruesome murders, the evidence of material prosecution witnesses needs to be carefully analysed. When an incident took place within the four walls of the house, the only evidence that can be expected is that of the relatives or other inmates of the house, who are closely related to the deceased and A1. The other evidence with regard to scene of offence, inquest, and post-mortem examination need not be discussed in detail as there was no controversy on that aspect. The only contentious aspect is as to whether it is A1 who killed the deceased or whether the crime was perpetrated by the strangers for gain.

18. PW1 is the Sarpanch of the village and also the *de facto* complainant. He deposed that on the morning of 08.01.2006 he was informed by PW 3 and two others that A1 killed D1 to D3, and that he went to the scene of offence and observed the three dead bodies lying with cut throat injuries caused by axe and lodged the complaint. He also spoke about the disputes in between A1 and D1, which are said to have taken place at the time when D1 sold 20 guntas of land and even at the

Registration Office, A1 and D1 were quarrelling and it is he who pacified the dispute promising to settle the dispute in the village. It is also in his evidence that even in the Registration Office, A1 threatened D1 that he would kill him at any time. He denied the suggestion that the deceased and prosecution witnesses are his political supporters and therefore, he is giving false evidence against A1 who belonged to a different political party. He also denied the suggestion that there were no disputes in between A1 and D1 and the deceased were attacked by thieves and that A1 was not in the village and in the house at the time of incident. Specific suggestion put to PW 1 is that in the night of the incident, A1 had been to his brother-in-law's village, but whereas in the examination under Section 313 Cr.P.C he stated that he went to his maternal uncle's house.

19. PW 2 is a neighbouring resident and an independent witness. He deposed that on 08.01.2006 in the morning at about 5 a.m, he heard sounds from the house of the deceased, observed the villagers going towards the house and he also went there and found D1 to D3 lying dead with cut injuries on throat. He further deposed that PW 3, the other son of D1 was also present in the house and when he enquired he was told that in the night at about 12 midnight they all watched TV in the bedroom of D1 and D2 and in the early morning when he wanted to go out of the room, he found the door of his room was bolted from outside. He further deposed that when the bolt was removed and when door was opened, they went to the room of D1 where he found D1 to D3 lying dead. It is also in the evidence of PW 2 that they searched for the elder son of D1 i.e. A1, but he was not found in the house at that time. He further deposed that D1 and A1 used to quarrel for the money. In the cross-examination, it is admitted by PW 2 that presently he is in the political party to which PW 1 belongs and that he also dabbles in politics and contested for MPTC. The suggestion that is put to PW 2 is that there were certain financial disputes in between D1 and A1 and therefore they

implicated A1 falsely.

20. PW 3 is the brother of A1 and the younger son of D1. While he admitted the death of D1 to D3, he denied knowledge as to how they died. He was declared hostile by the prosecution, and in the cross-examination, he admitted that himself, D2, D3 and PW 7 watched TV in the room of D1 and D2 till 12.30 a.m. and in the early morning he has seen D1 to D3 lying dead in their room.

21. Even though PW 3 turned hostile, his evidence substantiated the undisputed fact that the incident took place somewhere in between 12 to 5 a.m in the intervening night of 7/8.1.2006.

22. Similar is the evidence of PW 4, who is the son-in-law of the younger brother of D1. He deposed that when he woke up in the morning, he has seen many people near the scene of offence and came to know that D1 to D3 were murdered, but he does not know who are involved in the crime and who are responsible for it. This witness was also declared hostile and in the cross-examination, he denied having stated before the police as in Ex.P3.

23. PW 5 is the brother of D1. He deposed that in between A1 and D1 there were misunderstandings in the matter of sharing the salary of A1. He deposed that for some days A1 lived separately from his father (D1), that when D1 sold the property, A1 obstructed and objected and that in the morning of the incident, he has seen people going towards the house of the deceased and he also went there and found three persons lying dead with injuries. In the cross-examination, it is elicited from PW 5 that no complaint is lodged either by A1 or D1 in view of the existing disputes. Material admission elicited from the mouth of PW 5 is that A1 did not attend the funeral of his deceased father. He further deposed that on Thursday (i.e. on 12.01.2006) when he went to the police station, he saw A1 in the lock up.

24. PW 6 is the mother of D2. She deposed that after D1 married her daughter (D2), A1 began quarrelling with D1 and he also used to

beat D1. She further deposed that A1 was not giving salary to his father (D1) and in that connection, there were disputes. She further deposed that after coming to know of the death of the deceased, she went there and found her daughter (D2), son-in-law (D1) and their daughter (D3) lying dead. It is elicited from her cross-examination that all the family members including A1 were living in the same house.

25. The star witness for the prosecution is PW 7. She is the wife of A1. She deposed that she married A1 about 4 years prior to the incident and that there used to be some disputes between her husband and her father-in-law (D1) with regard to salary. She further deposed that herself, D2, D3, her husband (A1), her brother-in-law (PW 3) were all living in the same house. She further deposed that at one time, A1 and D1 quarrelled due to which, her paternal uncle Mutyalu took her father-in-law (D1) to his house and he stayed there. Thereafter, they all went to the house of the said Mutyalu and brought D1 back. After D2 returned from delivery, her husband (A1) insisted for separation, to which she opposed and when she proceeded to agricultural land, A1 packed all the articles for leaving the house. They left the joint family house and lived separately and at that time, the marriage of the daughter of D1 was performed and at that time, there arose quarrel between A1 and D1 with regard to arrangements. PW 7 further deposed that when her husband (A1) used to entertain an idea of attacking D1 since he sold away the land, she was resisting the same, that on one occasion, on being insisted by her husband (A1), she asked D1 for a share in the property and at that time D1 proclaimed that neither she (PW 7) nor his son (A1) will get any share in the property and that according to him (D1), both of them (PW 7 and A1) are dead, and that this proclamation made by D1 was conveyed by PW 7 to her husband (A1). She also deposed that she also came to know about a dispute pending in the court in between A1 and D1. She claims that at the intervention of the elders, she again joined the joint

family and for about 15 days they lived happily. She further deposed that in the night of the incident she has seen her husband trying to enter into the room of the deceased and when she enquired, he threatened her not to disclose anything to anybody and even he tried to beat her when she resisted. She also deposed that A1 used to say that he would beat and kill D1.

26. With regard to the incident, PW 7 deposed that in the night till 12 a.m herself, Narasimha and one Fareed have watched TV in the room of D1 and D2, and at that time, A1 was in the room, that at about 5 or 5.30 a.m PW 4 knocked the door of her bedroom and when she tried to open the door, she found that it was bolted from outside, that when PW 4 removed the bolt, she came out and found that the room of PW 3 was also bolted from outside and when they removed the bolt, PW 3 came out. PW 7 further deposed that at that time A1 was not in the house, that after few minutes, PW 3 raised cries stating that D1 to D3 are lying dead, that they went there and found the dead bodies of D1 to D3 and that they went and informed about the same to Mutyalu, the brother of D1. It is also in her evidence that when the villagers gathered there, they suspected her involvement also and beat her, and that the villagers and she suspected that it is A1 who killed the deceased.

27. This material witness has been elaborately and comprehensively cross-examined. Except for suggesting that she is giving false evidence due to disputes between herself and her husband (A1), nothing concrete and specific was elicited from her for disbelieving her narration of events that unfolded in the intervening night of the incident. However, nothing is placed on record to show that the wife was having such hostile feelings towards her husband so as to implicate him in a gruesome case of causing murder of three persons. Except for usual wear and tear in the matrimonial life, nothing is brought on record to even remotely presume that PW 7 has given evidence falsely implicating her husband by shielding real culprits who are known or unknown.

28. A careful perusal of the testimony of PW 7 makes us believe that the same is convincing and inspiring confidence of the court. From her evidence, the facts that are proved are that till about 12 a.m they all watched TV and at that time her husband (A1) was in the room, and thereafter, by 5 a.m except for A1, all the other family members were in the house and doors of their bedrooms were bolted from outside. This leads to unassailable conclusion that it is A1 who has committed the crime.

29. The other evidence supports the version of PW 7. Her own father, PW 8 stated that in the early morning of 8.1.2006 A1 came to him with a bag in his hand and he informed him that he killed D1 to D3 and wanted him to keep the bag containing jewellery in safe custody, that he virtually pushed out A1 and did not allow him inside. PW 8 was also searchingly cross-examined, but nothing was elicited from him to show that he has any axe to grind against A1, who is none other than his son-in-law.

30. The other evidence on record comprises the confession and recovery of material objects. According to the prosecution, A1 was apprehended on 09.01.2006 at about 3.30 p.m. PW 12 is the Mandal Revenue Inspector, who acted as panch witness and he deposed that A1 confessed having committed the crime and at his instance, M.Os.3 to 7 were recovered from A1, that M.O.10 axe was also recovered at the instance of A1, with which he claims to have committed the crime.

31. PW 13 is the investigating officer, who also spoke about the confession leading to the recovery of incriminating material objects at the instance of A1.

32. Upon carefully perusing the evidence of the prosecution witnesses, more particularly that of PWs 7 and 8, we see no reason to differ with the view taken by the learned trial court. The evidence of PWs 7 and 8 conclusively established the involvement of A1 in the gruesome

murder of D1 to D3. It is A1, having nurtured a grouse against his father (D1), and stepmother (D2), that has eliminated them along with their daughter (D3). The learned Sessions Judge has properly appreciated the oral and documentary evidence available on record and found A1 guilty of the charge under Section 302 IPC.

33. In so far as CrI.A.No.262 of 2011 is concerned, the same has been filed by PW 6, who is the mother of D2. She pleaded that she is entitled to claim M.Os.3 to 7, which belonged to her daughter (D2), and that the trial court erred in confiscating M.Os.3 to 7 to State.

34. A perusal of the testimony of PW 6 does not show that she is in any way claiming that the jewellery that was found missing from the house of the deceased, belonged to D2. As already stated, D2 is the second wife of D1, and PW 6 is the mother of D2. Therefore, unless it is properly established that she is entitled to the custody of gold and silver ornaments, the same cannot be returned to PW 6. Therefore, the order of the learned Sessions Judge, directing confiscating M.Os.3 to 7 cannot be said to be erroneous.

35. For the reasons stated supra, both the appeals fail and the same are dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 20.04.2016

Dsr

