IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(09.03.2016)

PRESENT

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

&

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

CRIMINAL APPEAL No.926 of 2010

Between:

Chinna @ Chinni @ Pinapple and another

..... APPELLANTS/A1 & A2

AND

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

.....RESPONDENT

Counsel for the Appellants **: Sri N.RAVI PRASAD**

Counsel for the Respondent **: PUBLIC PROSECUTOR**

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.926 of 2010

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

This criminal appeal is filed against judgment dated 16.04.2010 in Sessions Case No.138 of 2009 on the file of the VIII Additional District & Sessions Judge (Fast Track Court), Chittoor, by and under which, the learned Sessions Judge has convicted the appellants/A1 & A2 for the offence punishable under section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.100/- each, in default, to suffer simple imprisonment for a period of 15 days.

2. The case of the prosecution in brief is that the deceased S.Sekhar is the husband of A2-Lakshmi, and they are residents of Iruvaram H.Wada, Chittoor town. PW 1-M.Vasantha is the younger sister of the deceased. Both the deceased and A2 were blessed with two sons and one daughter. Both the deceased and A2 are eking out their livelihood by attending cooli works. While so, prior to two months of the incident, A1 came to Iruvaram for doing cooli work and developed intimacy with the deceased and A2 and used to visit the house of the deceased now and then. A1 was residing in the house of the deceased and in the absence of the deceased, he developed illegal intimacy with A2. On coming to know the said illegal relationship of A1 & A2, the deceased suffered mentally and informed the said fact to PW 1, his younger sister, who was residing in the same village. On 6/07.10.2008 at 2 a.m the deceased came to the house and found both A1 & A2 in compromising position and questioned A1 about spoiling his family life. A1 and A2 threatened the deceased to kill if he reveals their relationship to anybody. During the said altercation, A1 and A2 decided to kill the deceased and in the said process, A1 picked up a stout stick from the kitchen and beat on the head of the deceased indiscriminately and A2 caught hold of the tuft of the deceased, hit his head to a wall number of times, caught hold of his legs, dragged and pushed him down and insisted A1 to kill the deceased, and A1 pressed the neck of the deceased and killed him. After committing the said heinous act, both A1 & A2 went to JMC water

tank to clean their bloodstained cloths. PWs 4 and 5 found them at odd hours and when they questioned, A1 & A2 replied that they killed the deceased. On intimation, PW 1 and her family members came to the house of the deceased at 2.30 a.m and found the dead body of the deceased and at 7.30 a.m. PW 1 lodged a complaint before PW 10-the Sub-Inspector of Police, Chittoor II Town P.S. who in turn registered the same as a case in Cr.No.92/2008 under Section 302 IPC and took up investigation. During course of investigation, PW 10 held inquest over the dead body of the deceased in the presence of PW 6 and two others and prepared a rough sketch of the scene of offence, got taken the photographs of the deceased, examined the witnesses and recorded their statements and sent the dead body for post mortem. PW 9 conducted post mortem over the dead body of the deceased and opined that the deceased died due to injury to vital organ brain. On 07.10.2008 at 1.30 p.m PW 10 arrested A1 and A2 and recorded their confessional statements in the presence of PW 6 and another. Based on the confession of A1, PW 10 seized the bloodstained stick. After completion of investigation, the Inspector of Police filed charge sheet.

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

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 10 and marked Exs.P1 to P10 and M.Os.1 to 12. On behalf of defence, no oral evidence was adduced, but Exs.D1 and D2 were marked on their behalf. Based on oral and documentary evidence, the learned Sessions Judge has convicted the appellants/A1 & A2 and sentenced him, as stated supra.

5. The point for consideration is whether the prosecution proved its case against A1 & A2 beyond reasonable doubt so as to sustain the conviction and sentence recorded against A1 & A2, or whether it needs to be set aside, modified or varied.

6. We have carefully considered the respective submissions of the learned counsel for both parties and perused the record.

7. The admitted fact is that A2–Lakshmi is the wife of the

deceased – Sekhar having married about 15 years prior to October, 2008, and were blessed with two sons and one daughter. They were the migrant labourers having settled in Palamaner. A1–Chinna also migrated to Palamaner and was doing labour work. He was known to the deceased. Initially A1 was visiting the house of the deceased and A2 now and then but about 15 days prior to 07.10.2008, he started living in the house of the deceased and A2. A1 is alleged to have betrayed the trust reposed in him by the deceased and in return for the hospitality, A1 developed illicit intimacy with A2. This was noticed by the deceased who is said to have poured his vows and expressed his frustration and anguish before his younger sister– Vasantha (PW.1), who advised the deceased not to reveal about it to others. Lest, it may tarnish the reputation of the family and also pacified the deceased saying that she will speak to A2 to desist from her amorous activities.

8. On 07.10.2008, the deceased is said to have seen his wife-A2 and his ungrateful guest/A1 in a compromising position and this has infuriated the accused and in the same night, at about 01.00 a.m., both the accused are alleged to have beat the deceased indiscriminately with stick on head, banged his head to a wall and also applied pressure on his neck, due to which the deceased died instantaneously. Thereafter, both the appellants/accused are said to have gone to a water tank and were washing themselves and this was noticed by PWs.4 and 5 who were returning on a two wheeler. When confronted, A1 and A2 are said to have confessed before them that they caused the death of the deceased and thereafter both the appellants/accused were brought to the village and were confined in a temple and next day morning at about 07.00 a.m., the sister of the deceased-Vasantha (PW.1) on being told by PWs.4 and 5 that it is the accused who killed the deceased, went to the Police Station and lodged the complaint-Ex.P.1. The crime was registered and FIR was sent to the jurisdictional Magistrate and it was received at about 10.50

a.m.

9. Though the appellants/accused denied the allegations made against them but they have not come forward with any specific defence. It is not disputed that the deceased met homicidal death in his own house which was occupied by his wife/A2 and her alleged paramour/A1. Except for a bald suggestion that somebody has killed the deceased, nothing specific is contended by the appellants/accused. The defence of the appellants/accused which should be probablized by the circumstances will be relevant when the dead body of the deceased was found lying in the house in the mid-night to which none except A2 and A1 had access.

10. The evidence on record comprises of the *de facto* complainant-PW.1 and PWs.2 and 3 who are the husband and son of PW.1. Their evidence is to the effect that in the mid-night on having come to know that the deceased is lying dead in the house, three of them went there and found the dead body in the house and were told by PWs.4 and 5 that it is the accused who killed the deceased unable to digest the fact that the deceased has seen A1 and A2 in a compromising position. The evidence of these three witnesses establishes the fact that the deceased was found lying dead in the house with severe injuries on head and they were told by PWs.4 and 5 that both the appellants/accused have confessed their guilt before them when they were seen washing their blood stains at the water tank in the midnight. These three witnesses are elaborately cross-examined but nothing concrete is elicited from them for disbelieving their evidence which is very precise and descriptive as to what they have seen and heard.

11. The material evidence is that of PWs.4 and 5. PW.4 is a contractor and PW.5 is a labourer. It is in their evidence that they were returning in the midnight on the two wheeler from Chittoor to Iruvaram village and at the water tank, which was constructed by JMC Company for the benefit of the residents of Iruvaram village, they found A1 and

A2 washing their blood stains with water. They enquired them and both the accused confessed that they having been seen by the deceased in a compromising position, both of them killed the deceased. It is also in their evidence that both the persons were brought to a temple and were detained there till the police arrived and were taken their custody. The evidence of both the witnesses is cogent, consistent and inspires the confidence of the Court. Nothing is suggested to them as to why they have got anything to do with the appellants/accused so as to implicate them falsely in a heinous crime. Both of them are impartial and disinterested witnesses. As already observed, they are searchingly cross-examined but no significant admissions have been elicited from them for disbelieving their statement that they have seen the accused washing themselves at the water tank in the midnight and when confronted, both the accused spilling the beans in their presence. It is not even suggested to them that these witnesses have not seen the accused at the water tank or that the accused were not brought by PWs.4 and 5 into the village and were handed over to the police. Upon careful scrutiny of the evidence of these two independent witnesses, the only conclusion that can be drawn is that they are the truthful and reliable witnesses and their evidence is consistent with the other circumstances of the case.

12. Learned Counsel appearing for the appellants/accused submits that there is delay in lodging the F.I.R., which on perusal of the record do not appear to be correct.

13. In ***State of Rajasthan v. Daud Khan***[1] the Supreme Court while dealing with the issue of delay in lodging the FIR, observed as under:

> "The purpose of the "forthwith" communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefroe, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in

lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the Officer-in-charge of police station concerned concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.

Further, before raising a contention based on delay in sending report under Section 157 Cr.P.C, the accused must show that prejudice was caused due to such delay in dispatch of the FIR to the Magistrate.

It is no doubt true that one of the external checks against antedating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR "forthwith" ensures that there is no manipulation or interpolation in the FIR. If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case."

14. The incident took place in the midnight at about 01.30 a.m., and PWs.1 to 3 and others came to know about it immediately thereafter and by 07.00 a.m., i.e., immediately after the sunrise, the sister of the deceased (PW.1) went to the Police Station and lodged the written complaint. The F.I.R. was also received by the jurisdictional Magistrate within three hours thereafter. Absolutely, there is no possibility of there being any attempt to manipulate the earliest

version made available to the investigating agency about the manner and method in which the ghastly incident took place.

15. Learned Counsel appearing for the appellants/accused submits that the recovery of the incriminating weapon viz., the firewood stick-M.O.5 is doubtful for the reason that it is in the evidence of other witnesses that near the dead body they have found one stick and therefore the alleged recovery of M.O.5 at the instance of the accused from the house of A1 is doubtful. There is no substance in this submission as well for the reason that it is in the evidence of the prosecution witnesses that the accused has picked up one of the firewood sticks lying in the house of the deceased and attacked the deceased with one of the sticks. PW 2 stated that one stick is lying at the scene, whereas PWs 6 and 10 stated that A1 himself produced MO.5 stick which was found mixed with firewood inside the house and the same was seized under cover of Ex.P3. The trial Court erred in observing that in view of evidence of PW 2, the alleged recovery of MO 5 at the instance of A1 is doubtful. PW 6 is the panch witness for the recovery in pursuance to the confession said to have been made by A1 and he is also a labourer. Absolutely nothing is brought on record to disbelieve the claim of PW 6 which is corroborated by the Investigating Officer that at the instance of A1, the stick-M.O.5 was recovered from A1 in pursuance to his confession made before PW 6 and others.

16. The ocular testimony on record is consistent with the medical evidence on record and the Doctor-PW 9 who conducted autopsy found as many as six injuries on the head and face of the deceased. The Medical Officer opined that the cause of death is due to injuries on the vital organs and the death as per the medical opinion could have taken place in the midnight intervening 06/07.10.2008.

17. When such an incriminating material evidence of the prosecution witnesses is put to the appellants/accused during the course of their examination under Section 313 Cr.P.C., except for saying that it is false, nothing has been explained by them as to what

are the reasons for all the prosecution witnesses to speak in one voice against them, more particularly, it was obligatory on the part of A2 being the wife of the deceased to bring on record the circumstances in which her husband was found lying dead in their house in the midnight with severe injuries on the head, if it was not the act committed by them. No doubt, such a burden cannot be placed on the accused but the onus certainly lies upon them, more particularly on A2 the wife to bring on record the circumstances in which her husband was brutally murdered in their house, if it was in the circumstances other than that is alleged by the prosecution and substantially proved by the evidence of all the prosecution witnesses.

18. Upon perusal of the oral and documentary evidence on record, we are of the opinion that the learned Sessions Judge has rightly believed the evidence on record for determining the guilt of the accused and the finding of conviction and sentence is based on the legally acceptable evidence on record warranting no interference. There are no merits in the appeal and the same is liable to be dismissed. The point is accordingly answered.

For the foregoing reasons, the Criminal Appeal is dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 09.03.2016
Dsr/Smr

[1] (2016) 2 SCC 607