

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

AND

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

CRIMINAL APPEAL Nos.755 of 2010 and 141 of 2014

16.02.2016

Crl.A.No.755 of 2010:

Between:

Karri Nageswara Rao @ Bujji and another.

..Appellants

And

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

..Respondent

Crl.A.No.141 of 2014:

Between:

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

..Appellant

and

Karri Chakradhara Rao

..Respondent

The Court made the following:

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COMMON JUDGMENT: (Per CVNR,J)

These two criminal appeals arise out of a common case, viz., Sessions Case No.238 of 2008 on the file of learned III Additional Sessions Judge, Kakinada, East Godavari District, which was disposed of *vide* judgment, dated 14.05.2010. CrI.A.No.755 of 2010 is filed by accused Nos.1 and 2 against the aforesaid judgment convicting them for an offence under Section 307 I.P.C. and sentencing them to suffer rigorous imprisonment (R.I.) for a period of ten years each and also to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment (S.I.) for a period of three months each and also convicting them for an offence under Section 302 I.P.C. and sentencing them to suffer imprisonment for life. These sentences were directed to run concurrently. CrI.A.No.141 of 2014 is filed by the State feeling aggrieved by the acquittal of accused No.3. We have heard both cases together.

2. The case of the prosecution, in brief, is as under:

On 11.06.2007, at about 8.00 p.m., accused Nos.1 to 3 attacked one Eluganti Subrahmanyam (P.W.1) at Atchampeta Junction in Thimmapuram Village. Accused Nos.1 and 2 attacked him with knives, while accused No.3 beat him with a stick. During the same altercation, accused Nos.1 and 2 attacked one Eluganti Srinu (deceased) with knives and accused No.3 beat him with stick and caused his death.

On 11.06.2007, between 7.30 and 8.00 p.m., P.W.1 was at the pan shop of P.W.3 at Atchampeta Junction. When he was sitting in a chair, all the three accused came there, accused Nos.1 and 2 being armed with knives and accused No.3 being armed with stick. Accused No.3 beat P.W.1 with a stick. Accused Nos.1 and 2 attacked P.W.1 with knives on his head. P.W.1 tried to ward off the blow and in that process, he lost his little finger of his right hand and little finger and right finger of his left hand. Accused No.2 attacked P.W.1 on his left shoulder. When the deceased came to the rescue of P.W.1, all the three accused attacked

him stating that P.W.1 is no more and they should kill the deceased as well. Accused No.3 beat the deceased with stick on the left side of his head. Accused Nos.1 and 2 attacked the deceased with knives causing injuries to his head and both hands. When the deceased tried to run away, accused No.3 beat him with stick on his legs, due to which the deceased fell down on the ground. Then accused No.1 attacked the deceased with knife causing injury on the left side near the waist. Accused Nos.1 and 2 beat the deceased indiscriminately. P.Ws.2, 3 & 4, one Vishnu (L.W.3) and one N.Srinu (L.W.6) witnessed the incident. P.W.2, Vishnu (L.W.3) and others shifted P.W.1 and the deceased to the hospital. On the same day i.e., 11.06.2007, at about 9.00 p.m., P.W.10, the Chief Medical Officer, Government General Hospital, Kakinada, examined P.W.1 and found 13 external injuries on him and he has issued Ex.P-10 wound certificate. The Sub Inspector of Police, by name, O.Ramana Reddy, on receiving the information about the incident, proceeded to the hospital and recorded the statement of P.W.1 at about 10.00 p.m., which is marked as Ex.P-1 and he has registered the same as crime No.40 of 2007 of Thimmapuram Police Station for the offences under Sections 302 and 307 read with Section 34 I.P.C. and sent Ex.P-14 - F.I.R. to the Court. The Inspector of Police, Kakinada (Rural) - P.W.11, on receiving the information about the incident, went to the scene of offence and found a pool of blood at the scene of offence and later, he went to the Government General Hospital, Kakinada and examined P.W.1 and recorded his statement. He has also examined P.W.2 and Vishnu (L.W.3). Later, he verified the C.D. files in crime No.55 of 2005 and crime No.60 of 2007. On the next day i.e., 12.06.2007, at about 7.00 a.m., P.W.11 proceeded to the scene of offence and prepared Ex.P-5 - observation report in the presence of P.W.9. He prepared Ex.P-15 - rough sketch and later, proceeded to the hospital and held inquest over the dead body of the deceased between 9.30 and 12.30 a.m. in the presence of P.W.8 and prepared Ex.P-6 inquest report. The dead body was sent for post mortem examination. P.W.6 - a Professor of Forensic Medicine, Rangaraya Medical College, Kakinada, conducted autopsy over the dead body of the deceased on 12.06.2007 between 12.45 and

1.45 p.m. and issued Ex.P-4 - post mortem report. On 19.06.2007, P.W.11 received information about the accused and apprehended all the three accused near the mango tope of Vasantha Rayudu at Atchampet and interrogated them and recovered M.Os. 1 and 2 – knives, M.O.3 - stick and also M.Os.16 to 18 (clothes). Accused No.1 has taken P.W.11 to P.W.7, who sells knives and axes. After receiving the post mortem report and the F.S.L. report, P.W.11 filed charge sheet (Ex.P-18).

3. In support of its case, the prosecution has examined P.Ws.1 to 11 and marked Exs.P-1 to P-18 and produced M.Os.1 to 18. The accused marked Exs.D-1 and D-2. As the accused pleaded not guilty, the Sessions Court has conducted trial and convicted accused Nos.1 and 2 and acquitted accused No.3 of the offences with which they were charged and awarded sentences as referred to above.

4. At the hearing, Mr.T.Pradyumna Kumar Reddy, learned counsel for the appellants - accused Nos.1 and 2 in CrI.A.No.755 of 2010, has advanced the following submissions:

- (1). The accused, even accepting the case of the prosecution, had no motive to kill the deceased and that as the prosecution has failed to establish the motive, conviction of accused Nos.1 and 2 cannot be sustained.
- (2). The evidence on record discloses that the incident does not occur at the time and place as pleaded by the prosecution.
- (3). The medical evidence does not support the case of the prosecution.
- (4). Except the evidence of the interested witnesses, viz., P.Ws.1 and 2, no evidence of independent witnesses on record would support the case of the prosecution.
- (5). The evidence of P.Ws.3 and 4, who are examined as independent witnesses, clearly eliminate the participation of accused No.3 and this evidence being contrary to the evidence of P.Ws.1 and 2, the whole prosecution version as to the manner in which the offence has taken place is liable to be disbelieved.
- (6). P.W.1, who is the injured witness, failed to attribute detailed overt

acts to the accused in his Ex.P-1 report and he has improved his version as P.W.1 and therefore, no credibility can be given to his evidence.

(7). If P.W.1 has received grievous injuries as pleaded by the prosecution, he would not have been in proper physical condition to notice and remember the attack on the deceased and that therefore, his evidence lacks credibility and the same cannot be given any weight whatsoever.

(8). P.Ws.1 and 2 being interested witnesses, their evidence cannot be accepted without proper corroboration by the testimony of independent witnesses and as such corroboration has not been lent by P.Ws.3 and 4, the lower Court has committed a serious error in believing the version of the prosecution and convicting the appellants – accused Nos.1 and 2.

5. Opposing the above submissions, Mr.Posani Venkateswarlu, learned Public Prosecutor (AP), has strongly supported the case of the prosecution as accepted by the lower Court to the extent of conviction of the appellants – accused Nos.1 and 2. He has stated that even if there are some contradictions in the evidence of the witnesses, they are too minor and trivial, which are liable to be ignored and that the evidence produced by the prosecution has clearly proved the guilt of the appellants – accused Nos. 1 and 2 beyond all reasonable doubts. While arguing the State appeal – CrI.A.No.141 of 2014, the learned Public Prosecutor (AP) has submitted that in the face of the evidence of the injured witness i.e., P.W.1, which deserves due weight, the lower Court has committed a serious error in acquitting accused No.3. He has further submitted that the medical evidence placed on record through the deposition of P.W.10 clearly supports the case of the prosecution that there were lacerated injuries, which could be caused only by a blunt object like a stick and that therefore, the prosecution case is amply supported by the medical evidence, besides the unimpeachable evidence of the injured witness i.e., P.W.1.

6. We have carefully considered the respective submissions of the learned counsel with reference to the evidence on record.

7. With respect to the plea relating to the alleged failure of the prosecution to establish the motive, it is the case of the prosecution that P.W.1 had illicit relationship with the sister of accused No.2 and that on an earlier occasion, the accused attacked P.W.1 and caused injuries resulting in registration of Crime No.55 of 2005. The prosecution has set up the further plea that all the accused as well as the deceased and P.W.1 were auto rickshaw drivers, that initially they have formed a union, viz., Swarna Bharati Auto Union, of which accused No.3 was the President and the rest of them are union members, that the members of the union removed accused No.3 as its President as he misappropriated the funds of the union and elected the deceased as the President and that thereafter, the deceased has changed the name of the union as Lakshmi Ganapathi Auto Union. As submitted by the learned defence counsel, no material was placed on record by the prosecution in support of the said plea set up by it. Therefore, we find some merit in the submission of the learned counsel that the prosecution failed to prove sufficient motive for the accused to commit the offence. However, motive plays insignificant role in a case based on the evidence of eyewitnesses.

In **Atley vs. State of U.P.**^[1], the Supreme Court held as under:

“6.It is true; and where there is a clear proof of motive for the crime, that lends additional support to the finding of the court that the accused was guilty but the absence of clear proof of motive does not necessarily lead to the contrary conclusion.....”

In **State of U.P. vs. Kishanpal and others**^[2], while dealing with the presence of motive, the Apex Court held at para - 39:

“The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eye witnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye witnesses is not convincing.

In the same way, even if there may not be an apparent motive but if the evidence of the eye witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.”

In **Birendra Das vs. State of Assam**^[3] at para-24, the Supreme Court held:

“Thus, acceptance of the direct evidence on record on proper scrutiny and analysis of proof of existence of motive or strength of motive does not affect the prosecution case. That apart, it is always to be borne in mind that different motives may come into operation in the minds of different persons, for human nature has the potentiality to hide many things and that is the realistic diversity of human nature and it would be well-nigh impossible for the prosecution to prove the motive behind every criminal act. Therefore, when the appellants armed with lethal weapons were present and witnessed the occurrence and participated in dragging the deceased to the courtyard of Birendra, establishment of any motive is absolutely inconsequential.”

In the light of the position in law as reflected in the above cases, it is necessary for us to examine whether the prosecution has brought on record, acceptable evidence in order to prove the guilt of the accused without applying the motive test.

8. P.W.1 is the younger brother of the deceased, P.W.2 is the brother-in-law of P.W.1, P.W.3 is the owner of the pan shop, P.W.4 is the owner of the fruit shop, P.W.5 is the photographer, P.W.6 is the Doctor, P.W.7 is the person, who manufactured M.O.1 - knife, P.W.8 is the kirana shop owner and the mediator for the scene of observation report, P.W.9 is the Village Revenue Officer (V.R.O.) who witnessed confession and recovery and P.W.11 is the Investigating Officer. P.Ws.1 to 4 are examined as direct witnesses, of whom, P.W.1 is the injured witness. As per the medical evidence, P.W.1 has received as many as 13 injuries. P.W.10 – Doctor who treated P.W.1, in his evidence, opined that injury Nos.8 and 11, which are incised injuries, could have been caused with M.Os.1 and 2 - knives and they are grievous in nature. Injury No.8 pertains to the two amputated fingers of left hand and injury No.11 relates

to one amputated finger of right hand and multiple lacerations over that hand. Thus, the presence of P.W.1, who has received grievous injuries, cannot be doubted at the scene of offence.

9. The law is well settled that the testimony of an injured witness has a high probative value. (See **State of M.P. vs. Mansingh**^[4])

Though P.W.1 is the brother of the deceased and thereby, he is an interested witness, the fact that he is also a victim of the attack by the accused lends high credibility to his testimony, as ordinarily a victim is not expected to shield the real culprits and implicate the persons, who have not perpetrated the offence unless there exists strong motive for false implication. The defence failed to bring out any such motive for such false implication. P.W.1 is categorical in his evidence about the participation of the accused in general and accused Nos.1 and 2 in particular. He has spoken about the specific overt acts. It may not be out of place to reproduce the part of his evidence, which refers to the specific overt acts, hereunder:

“On 11.06.2007 at about 7.30 or 8 P.M. I was at the shop of I.Madhu (L.W.4) at Atchampeta Junction. I was sitting in a chair at the shop. All the three accused were armed with weapons like two knives and a stick came on to me. A-3 was armed with a stick and A-1 and A-3 were armed with knives. A-3 beat me with stick. A-1 caused injuries to me with the knife on my head. I put my hands over my head to save myself and in that process, I lost little finger of the right hand and little finger and right finger of the left hand. A-2 coming from my side attacked with the knife on my left shoulder. The deceased was also there at a distance. The deceased came to rescue me. All the three accused attacked the deceased also claiming that I am no more and they should also kill the deceased. In that process A-3 beat the deceased with the stick on the left side of his head. Both A-1 and A-2 attacked the deceased with the knives causing injuries to the head and both the hands. The deceased tried to run away from that place and at that time A-3 beat the deceased with a stick on his legs. The deceased fell on the ground. A-1 attacked the deceased with the knife causing injury on the left side near the waist. A-1 and A-2 caused injuries to the deceased indiscriminately. L.W.2, Venkateswararao, Vishnu (L.W.3) both witnessed the attack made on me and the deceased.”

A careful perusal of the cross examination of this witness shows that the defence failed to elicit anything to discredit his testimony regarding the participation or the manner in which the accused have attacked himself and the deceased. P.W.2, who is the brother-in-law of P.W.1, i.e., elder brother of wife of P.W.1, has also lent corroboration to the testimony of P.W.1.

10. The learned counsel for the appellants – accused Nos.1 and 2 in CrI.A.No.755 of 2010 has pointed out the fact that P.W.2 has admitted that though his clothes and also the clothes of his brother - one Vishnu (L.W.3) were stained with blood when they were bringing the injured to the hospital, the Police did not seize their blood stained clothes and that therefore, his evidence is not worthy of acceptance. True, it may be that the Police may have failed to seize the blood stained clothes, but in our opinion, that by itself may not be the sufficient reason for us to disbelieve the presence of P.W.2 at the scene of offence. At any rate, even if the evidence of P.W.2 is not given due weight, the prosecution has examined two independent witnesses i.e., P.Ws.3 and 4. Both these witnesses have deposed categorically that they found accused Nos.1 and 2 causing injuries to P.W.1 with knives and later attacking the deceased also with knives. Thus, the two independent witnesses have strongly corroborated with the version of P.W.1, the injured witness, regarding the participation of accused Nos.1 and 2 in the offence and causing injuries to P.W.1 and death of the deceased.

11. The submission of the learned counsel for the appellants – accused Nos.1 and 2 in CrI.A.No.755 of 2010 that having received the grievous injuries, P.W.1 would not have been in a position to witness the alleged attack on the deceased by accused Nos.1 and 2, appears to us to be without any merit. Even though P.W.1 may have received grievous injuries, the nature of the injuries he has received, viz., amputation of one finger of right hand and two fingers of left hand, by itself may not have disabled the injured from observing the incident of attack on the

deceased by accused Nos.1 and 2. Nothing could be brought on record by the defence that the condition of P.W.1 was such that either he was unconscious or was not in a fit physical condition to observe the attack on the deceased by accused Nos.1 and 2. If there is any element of doubt in this regard, the same is adequately dispelled by the independent testimony of P.Ws.3 and 4. On the above analysis, we are of the opinion that the prosecution has clearly driven home their case that accused Nos.1 and 2 have attacked P.W.1 and the deceased and caused grievous injuries and death respectively.

12. Let us now consider the submission of the learned defence counsel that since the lower Court has partly disbelieved the evidence of P.W.1 regarding participation of accused No.3 in the commission of offence, his entire evidence is liable to be disbelieved.

13. The maxim "*falsus in uno falsus in omnibus*" meaning, false in one thing, false in everything is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, but merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate an exaggeration, embroideries and embellishment. (see **Sohrab vs. State of M.P.** ^[5] and **Ugar Ahir vs. State of Bihar** ^[6])

The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not

what may be called 'a mandatory rule of evidence' (see **Nisar ali vs. State of U.P.**^[7])

The ratio in the above decisions was followed in **Shakila Abdul Gafar Khan vs. Vasant Raghunath Dhoble**^[8], the Supreme Court held:

As the evidence of the injured witness is lent strong corroboration by the testimony of P.Ws.2 to 4, the eyewitness to the extent of participation of accused Nos.1 and 2, it is permissible to accept his evidence to hold the said accused guilty though his testimony to the extent of accused No.3 was not believed by the lower Court in the absence of corroboration by P.Ws.2 to 4.

14. As regards the State Appeal, both P.Ws.3 and 4 have deposed in unison that they have not found accused No.3 at the scene of offence. No doubt, accused No.3 was stated to have attacked P.W.1 with a stick and a corresponding injury was found on the deceased. However, as the two independent witnesses have not testified to the presence of accused No.3 at the scene of offence and his participation, the lower Court has given benefit of doubt in his favour. On these facts of the case, we are of the opinion that this is not a fit case to convict accused No.3 by reversing the judgment of the lower Court.

15. For all the aforementioned reasons, we are inclined to dismiss both the Appeals and the same are, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

16th February, 2016
GHN

(2008) 8 SCC 848 not found

(2015) 13 SCC 116 not found

(2006) 12 SCC 57 found - **B.K. Channappa v. State of Karnataka,**

(2007) 2 SCC (Cri.) 390 not found

Raj Rishi Mehra vs. State of Punjab is found to be an unreported judgment, dated 13.08.2013, of the Supreme Court in WRIT PETITION (CIVIL) No. 73 of 2013, which is a service matter [at one cite it is shown to be in (2013)12 SCC 243]

39) The learned Judge explained the third ingredient in the following words (at page 468):

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved.

But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion." "

[\[1\]](#) AIR 1955 SC 807 = 1955 Cr.L.J. 1653

[\[2\]](#) (2008) 16 SCC 73

[\[3\]](#) (2013) 12 SCC 236

[\[4\]](#) (2003) 10 SCC 414

[\[5\]](#) (1972)3 SCC 751

[\[6\]](#) AIR 1965 SC 277

[\[7\]](#) AIR 1957 SC 366

[\[8\]](#) (2003)7 SCC 749