

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

CRIMINAL APPEAL NO.1565 OF 2010

DATED:20-12-2016

Between:

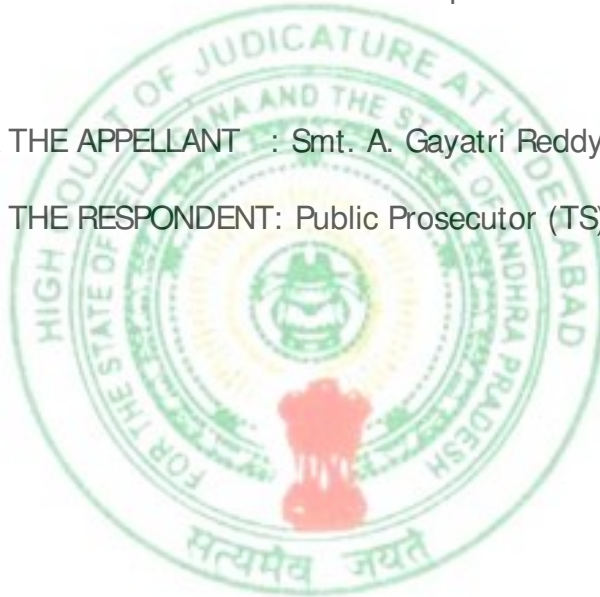
Anthati Ramulu ... Appellant

And

The State of A.P.,
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT : Smt. A. Gayatri Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)



THE COURT MADE THE FOLLOWING:

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

This criminal appeal arises out of judgment dt.19.11.2010 in S.C. No.39 of 2009, on the file of the Principal Sessions Judge, Nalgonda, whereby the appellant was convicted for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life and also to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month.

2. The case of the prosecution in brief is that the appellant – accused and the deceased are residents of Kattangur Village, that P.Ws.1 to 3 are the sons of the deceased and that P.W.4 is the son of the brother of the deceased. That on the night of 31.05.2008 the deceased and his sons - P.Ws.2 and 3 slept in front of their house and the other family members slept inside the house. That at about 10.45 p.m., on hearing some cries, P.W.2 woke up and found the appellant running away while the deceased was chasing him. That P.W.2 also started running towards them and then the deceased fell on the ground near the house of one Medi Narsamma and the appellant ran away. That the deceased, who received a bleeding injury on the left side of the neck, told P.W.2 that the appellant hacked him and was running away. That on hearing the cries of P.W.2, relatives of the deceased and others came to the spot and carried the deceased on a cot to one Dr. Murali and from there they shifted the deceased in an ambulance to Kamineni Hospital, Narketpalli, where he was declared brought dead. That about sixteen years back, there was a quarrel between the appellant and the deceased on the ground that the deceased got illicit contact with the wife of the appellant.

3. That P.W.1 went to the Police Station and lodged Ex.P.1 report, and that P.W.12, Sub-Inspector of Police, received the same on

01.06.2008 at 3.00 a.m. and registered Crime No.72 of 2008 under Section 302 read with Section 34 IPC and issued Ex.P.7 – First Information Report (FIR). That P.W.14, Circle Inspector of Police, Nakrekal, received the FIR, rushed to the scene of offence, examined and recorded the statements of P.Ws.2 and 3, conducted inquest in the presence of P.W.8 and others, and got prepared Ex.P.4 inquest panchanama. That P.W.14 seized M.Os.3 to 5 from the dead body in the presence of P.W.8 and sent the dead body for post-mortem examination. That P.W.14 conducted the scene of offence panchanama in the presence of P.W.7 and others and got prepared Ex.P.2 scene of offence panchanama and Ex.P.3 rough sketch. That P.W.11, Civil Assistant Surgeon, District Head Quarters Hospital, Nalgonda, received requisition from P.W.14, conducted autopsy over the dead body of the deceased on 01.06.2008 at 10.15 a.m., and opined that the cause of the death was haemorrhagic shock secondary to cut injury on neck and that Ex.P.6 is the post-mortem report. That P.W.14 apprehended the appellant on 08.06.2008 at Khaji Kattangur Police Station, recorded his confessional statement in the presence of P.W.13 and that basing on the confession, M.O.6 - knife was seized under Ex.P.5 seizure panchanama. That P.W.14 sent the appellant to remand. Ex.P.10 is the report of the forensic science laboratory. That after completion of the investigation, P.W.14 filed the charge sheet.

4. That appellant pleaded not guilty and claimed to be tried. In support of its case, the prosecution has examined P.Ws.1 to 15, got marked Exs.P.1 to P.10 and produced M.Os.1 to 5. The defence has got marked Exs.D.1 and D.2. On appreciation of evidence, the Court below has convicted and sentenced the appellant, as stated above.

5. Smt. A. Gayatri Reddy, learned counsel for the appellant, submitted that the prosecution has miserably failed to prove the involvement of the appellant in the murder of the deceased, in that, initially F.I.R. was registered against Gudise Yadaiah, Gudise Saidulu, Gudise Narsimha and Gudise Shankar, apart from Anthati Ramulu, the appellant, who alone was prosecuted after deleting the names of others from the charge sheet and that if P.Ws.2 and 3 have witnessed the commission of murder by the appellant, the names of other four persons would not have been shown as accused till the completion of investigation. She has argued that there are inherent contradictions in the evidence of P.Ws.1 to 3, and that a close scrutiny of the evidence would reveal that while P.Ws.2 and 3 were planted witnesses, P.W.1 is a hearsay witness. She has further argued that there are serious discrepancies in the description of Ex.P.8, the crime weapon seizure panchanama, and Ex.P.10, FSL Report. She has lastly submitted that the prosecution has come out with two different versions regarding the motive, one group led by Gudise Yadaiah, and the other by individual, i.e., the appellant, and that having registered the FIR based on the report that both the groups were responsible for the killing of the deceased, the prosecution has abandoned the group led by Gudise Yadaiah, throwing any amount of suspicion on the entire case of prosecution.

6. The learned Public Prosecutor for the State of Telangana has supported the judgment of the lower Court.

7. Having regard to the respective submissions of the counsel for either side, the point that arises for consideration in this appeal is whether the prosecution has proved the guilt of the appellant beyond all

reasonable doubt and whether the judgment of the Court below is sustainable?

8. P.W.1, who is one of the sons of the deceased, gave Ex.P.1 - report. It was mentioned therein that there are serious disputes between the deceased on one side and Gudise Yadaiah and his sons on the other side. It was alleged in the report that keeping in mind the serious disputes, the group led by Gudise Yadaiah along with the appellant attacked the deceased with a sharp edged weapon. Interestingly, no motive has been attributed to the appellant for his joining Gudise Yadaiah group in killing the deceased. There is, however, improvement in the inquest report wherein for the first time it was mentioned that there was illicit intimacy between the deceased and the wife of the appellant. In the charge sheet it was alleged that Gudise Yadaiah, Gudise Saidulu, Gudise Narsimha and Gudise Shankar were named in Ex.P.1 report and during the course of investigation no offence was made out against the said persons and that there is no evidence against them to prove the offence.

9. While P.W.1 is a hearsay witness, P.Ws.2 and 3, who are also the sons of the deceased, were examined as eyewitnesses. Interestingly, in the statement recorded under Section 161 of CrPC, marked as Ex.D.1, P.W.2 stated that after taking the dinner the deceased slept outside the house while P.W.2 and his brother also slept on separate cots. When it comes to his evidence given as P.W.2, he has deposed that he alone slept outside in front of their house along with his father and all other family members slept outside the house. We can thus see oscillating stand taken by P.W.2 between the statement recorded under Section 161 of CrPC and his evidence given before the Court. Had P.W.3 slept along with

P.W.2 in front of their house, there was no reason for him to not refer to his presence in his evidence.

In Ex.D.1, P.W.2 did not specifically refer to the name of the appellant as the one who has attacked his father and who was also allegedly chased by the deceased. All that he has stated is that on hearing the cries of the deceased, P.Ws.2 and 3 started running behind their father who was trying to chase a "person" who allegedly attacked him, and that when the deceased was about to fall in front of the house of one Medi Narsamma they have seen the appellant going away in front of the house of Gogu Saidamma. He has further stated that when he asked his father as to who attacked him, the latter has informed him that the appellant has attacked him with knife and been running away. Thus, the very statement made by P.W.2 is only hearsay, in the sense, he has not seen the appellant attacking his father and at best he has only seen him going away in front of the house of one Gogu Saidamma at the time when the deceased was falling down because of the injury. If P.W.2 was sure about the real offender, there is no reason why in the inquest, the names of Gudise Yadaiah, Gudise Saidulu, Gudise Narsimha and Gudise Shankar were mentioned and shown as suspects. The very fact that those persons were also arraigned as accused till their names were deleted from the charge sheet itself shows that no eyewitness has witnessed the incident to identify the real offenders who have attacked the deceased.

10. As regards P.W.3, another son of the deceased, though P.W.2 in Ex.D.1 has stated that he along with P.W.3 slept outside their house by the side of his father on a separate cot, in his evidence, P.W.2 did not refer to the presence of P.W.3. Moreover, in the sketch appended to Ex.P2 scene of offence panchanama, only one cot was shown outside the

house of the deceased which throws any amount of suspicion on the version of P.Ws.2 and 3 that they also slept outside their house adjacent to the cot on which the deceased was sleeping. These circumstances clearly suggest that both P.Ws.2 and 3 are planted witnesses.

11. P.W.10 was examined as circumstantial witness who allegedly saw the appellant going by the side of her house after the incident. She referred to an incident which allegedly occurred sixteen years prior to the incident pertaining to the alleged misbehaviour of the deceased with the wife of the appellant. P.W.10 in her chief examination deposed that at about 11 p.m., she heard the people crying "thief thief" and that when she woke up, she found the appellant going by the side of her house. The tenor of testimony of this witness does not inspire confidence as it is nobody's case that the appellant was presumed as thief by any other witness including P.Ws.2 and 3 and that anyone has shouted treating the appellant as thief. Further, it is difficult to believe that in connection with an incident allegedly taken place sixteen years prior to the incident, the appellant might have carried the grudge against the deceased and caused his death. She has admitted in her cross-examination that she was the agnate of the deceased. She is, thus, obviously an interested witness, pressed into service to strengthen the case of the prosecution.

12. A scrutiny of the record discloses that based on the version of P.Ws.1 to 3, the following conclusions were drawn in column No. XV of Ex.P4 inquest report:

"As per condition of dead body and opinion of witnesses deceased having Ac. 8.20 gts agricultural land at the outskirts of Satyanarayana Village. Out of it 4 acres Lemon garden, said Lemon Garden was given to lease to one Gudise Yadaiah R/o Sabbidigudem H/o Nakkalapally of Narketpally Mandal for Rs.60,000/- per year about 4 years ago. Lease amount will be given once in two years have to be paid in lump sum Rs.1,20,000/- and agreed for it. Lease

amount paid totally from 2004 to 2006. From 2006 till 2008 lease amount paid only Rs.56,000/- in the year, 2007. Remaining Rs.64,000/- has to be paid. In that matter quarrel taking place between deceased and lease holders. Lease holder Yadaiah expressed inability to pay amount as he has not get good yield this year. On that deceased himself cut away remaining crop and sold the Lemon fruits after leaseholder took away some crop. For that deceased got Rs.30,666/- by keeping this in mind lease holder Gudise Yadaiah and his sons Gudise Saidulu Gudise Narsimha, Gudise Shankar bore grudge and Kattangur village Anthati Ramulu on the pretext of previously the deceased was having illicit intimacy with his wife altogether bore grudge against deceased and with sharp weapons on 31.05.2008 night at about 11 hours when deceased was sleeping in front of his house on cot in front of Bazaar attacked him and killed him by cutting him. This is the (suspicion witnesses) opinion of panchas that witnesses having suspicion like that."

13. As noted hereinbefore, after investigation, the Police have abandoned the theory set up by the alleged eyewitnesses regarding participation of Gudise Yadaiah and his 3 sons and persisted with the prosecution of the appellant alone. Had P.Ws.2 and 3 been truthful, there would have been no possibility of including Gudise Yadaiah and his three sons as accused in the case till their names were deleted from the charge sheet. From this fact itself, it would be quite evident that the prosecution has improved its case from stage to stage against the appellant. In the absence of any credible evidence proving the involvement of the appellant in the commission of offence, he cannot be convicted based on mere suspicion and the hearsay evidence. Moreover, as argued by learned counsel for the appellant, there is discrepancy in the description of M.O.6 between Ex.P8 seizure panchanama of weapon and Ex.P10 F.S.L. Report. In seizure panchanama, the weapon was described as a knife with 6" of length, 4 ½" of width, front portion to knife totally of 9 ½" of length, front portion ½" of width, middle portion 1 ¾" of width and ½" of last portion. In Ex.P.10 FSL report, the weapon was described as a hunting

sickle with a wooden handle of 30 c.ms. Thus, there is a complete change of the nature and size of the weapon between Exs.P8 and P10. All these circumstances throw reasonable doubts in the case of the prosecution. Hence, we are of the opinion that the appellant was wrongly held guilty by the lower Court.

14. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant in the impugned judgment are set aside. Consequently, the appellant shall be set at liberty forthwith, if he is not required in any other case or crime, and the fine amount, if any, paid by him shall be refunded to him.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

20-12-2016

bnr/jsk

