

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

CRIMINAL APPEAL NO.921 OF 2010

DATED:08-03-2016

Between:

Pandeti Vijaya Shekar Raju ... Appellant

And

The State through S.H.O.,
P.S. Gudur
Nellore District
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Mr. N. Ravi Prasad

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

THE COURT MADE THE FOLLOWING:

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

Accused No.2 in Sessions Case No.128 of 2002, on the file of the I Additional Sessions Judge, Nellore, instituted this appeal, feeling aggrieved by his conviction for the offence under Section 302 read with Section 34 of the Indian Penal Code (IPC) and sentencing to suffer rigorous imprisonment for life and also fine of Rs.100/-, in default, to suffer simple imprisonment for fifteen days, vide judgment dt.02.03.2010.

2. The case of the prosecution as reflected from the charge sheet is that both the accused and deceased are residents of Gudur, Nellore District. As the father of the accused died about fifteen years back, P.W.6, their paternal uncle, was providing them with monetary help. The deceased was a real estate agent, who was approached by P.W.6 to sell the latter's property with a request to him to give nine (9) ankanams of land to the accused to enable them to construct a house as they were poor. The deceased has given some land on which the accused constructed a house. One Shaik Chand Basha (L.W.9) approached the jurisdictional court and secured a decision in his favour and against the accused, in pursuance of which he has got the house constructed by the accused demolished on the ground that the same was constructed over the Government land. While the accused were nursing grudge against the deceased on that count, their enmity against the deceased had further compounded with P.W.6 giving his daughter in marriage to the son of the deceased, against the will of the accused. Though P.W.6 has helped the accused in setting up a cold-drinks shop, due to bad vices the accused closed the business and sustained losses. In this situation, the accused hatched a plan to eliminate the deceased.

3. On 6.9.2001 at about 9.00 a.m., both the accused waited near the railway track for arrival of the deceased, and while the deceased was crossing the railway track to go to East Gudur from Malavya Nagar and reached the 3rd railway track on the southern side of Gudur Railway Station, both the accused with a common intention of killing the deceased, stabbed him with knives. When the deceased fell down, the appellant/accused No.2 caught hold of him, and accused No.1 further stabbed him indiscriminately and caused 20 injuries all over the body. P.Ws.1 to 4, who were coming from East Gudur to West Gudur, while crossing the track, saw accused No.2 catching hold of the deceased while accused No.1 was stabbing the deceased. When the said witnesses tried to go near, the accused pelted stones and escaped from the scene of offence by proceeding towards south. Afterwards, the witnesses went to the deceased, found him gasping and shifted the deceased to the Government Hospital, Gudur. On examining the deceased, the Medical Officer declared him dead and the same was intimated to the Railway Police, vide Ex.P.6. P.W.1 lodged Ex.P.1 report to the Railway Police and P.W.8, the Head Constable of Railway Police Station, Gudur, registered Ex.P.7 – First Information Report (FIR) as Crime No.71 of 2001 of Railway Police Station, Gudur, for the offence under Section 302 read with Section 34 of IPC. P.W.8 has submitted the FIR, along with Ex.P.1 – report given by P.W.1 and Ex.P.6 – hospital intimation, to the Special Judicial Magistrate of First Class for Railways, Nellore. As the Sub-Inspector of Police, Gudur Railway Police Station, was on other duty, the Deputy Superintendent of Police, Railways, Nellore, entrusted the investigation to P.W.9, the Sub-Inspector of Police, Government Railway Police Station, Nellore, who went to the scene of offence, seized M.Os.1 to 4 under Ex.P.2, scene observation mahazar, and prepared Ex. P.8, rough sketch of the scene of offence. He has secured a photographer and got the photos taken of the scene of offence and the dead body (Exs.P.9 to P.25). He went to the

Government Hospital mortuary where the dead body was kept, examined P.Ws.1 to 4 and recorded their statements. He has conducted inquest over the dead body from 2.15 p.m. to 4.15 p.m. and prepared Ex.P.3 inquest report. On 07.9.2001, P.W.9 visited the house of the deceased and examined the latter's wife and P.W.5. P.W.9 has later transferred the case dairy file to II Town Police Station, Gudur, with the permission of the Sub-Divisional Police Officer (SDPO), Railways, Nellore, for further investigation. On such transfer, P.W.13, re-registered the FIR as Crime No.35 of 2001 of II Town Police Station, Gudur, for the same offence for which the earlier FIR was registered and conducted investigation. As P.W.11 found the investigation conducted by P.W.9 on correct lines, he has not recorded further statements of any of the witnesses, and forwarded the seized material objects to the Regional Forensic Science Laboratory (RFSL), Vijayawada, through the SDPO, Gudur, for chemical examination. After receiving Exs.P.28 and P.29 reports from the RFSL, P.W.11 filed charge sheet on 31.12.2001.

4. As accused No.1 was absconding, the case was split up and a separate trial was held for the appellant – accused No.2.

In support of its case, the prosecution examined P.Ws.1 to 13 and got Exs.P.1 to P.31 marked. It has also produced M.Os.1 to 9 during the trial. The defence has not examined any witnesses, or marked any documents.

5. On appreciation of the oral and documentary evidence, the lower Court has convicted the appellant and imposed the sentence as referred to supra.

6. Mr. N. Ravi Prasad, learned counsel for the appellant, advanced the following submissions:

(i) That there was delay in sending the FIR by the Police to the Magistrate, in that, while the report was stated to have been given by P.W.1 at 10.30 a.m., the FIR reached the jurisdictional Magistrate at 8.30 p.m., giving scope for confabulations and false implications; (ii)

that P.Ws.1 to 4, the alleged eye-witnesses, were close relatives of the deceased and thereby, they are interested witnesses and as such their evidence cannot be relied upon; (iii) that when the alleged offence has taken place at 9.00 a.m., which was a busy hour, no independent witness was examined in support of the case of the prosecution; (iv) that the motive projected by the prosecution is not sufficient for the accused to cause the death of the deceased; (v) that the medical evidence is purely based on the injuries mentioned in the inquest report and hence it is not safe to rely upon such evidence; and (vi) that even as per the eye-witnesses, the appellant (accused No.2) caught hold of the deceased and accused No.1 stabbed him indiscriminately, and thus the prosecution could not prove the intention on the part of the appellant to kill the deceased.

7. Opposing the above submissions, Mr. Posani Venkateswarlu, learned Public Prosecutor, strongly defended the judgment of the trial Court.

8. Let us first deal with the aspect of motive. It is the case of the prosecution that the accused have developed a serious grouse against the deceased for handing over nine akanams of Government land, when P.W.6 has instructed him to provide his land to enable the accused to construct a house, as they are poor. That one Shaik Chand Basha instituted a litigation with respect to the said property and secured an order from the Court, in pursuance of which he got the house constructed by the accused, demolished. That, added to this, P.W.6 has given his daughter to the son of the deceased in marriage against the will of the accused and thereby the further grouse against the deceased driven them to commit his murder. The appellant is no other than the grand-son of the senior maternal aunt of P.W.1, and who has spoken to the motive for the accused to kill the deceased. P.W.2, the son of the deceased, also corroborated with the testimony of P.W.1 in this regard. Suggestions were, however, put to these witnesses to the effect that the accused cannot have any grudge against the

deceased. Indeed, in his cross-examination, P.W.1 has agreed to that suggestion.

9. In *Shivaji Genu Mohite v. State of Maharashtra*^[1], the Supreme Court held that evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence, that such evidence would form one of the links in the chain of circumstantial evidence in such a case, but, that would not be so in cases where there are eye-witnesses of credibility, though even in such a case if motive is properly proved such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion, but that does not mean that if motive is not established the evidence of an eye-witness is rendered untrustworthy.

In a catena of decisions, the Supreme Court held that even if the absence of motive as alleged is accepted, that is of no consequence and it pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance and if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance (*Hari Shanker v. State of U.P.*^[2], *Bikau Pandey and others v. State of Bihar*^[3], and *Abu Thakir and others v. State of Tamil Nadu*^[4]).

In *Suresh Chandra Bahri v. State of Bihar*^[5] the Supreme Court held that motive is something which prompts a person to form an opinion or intention to do a certain illegal act or even a legal act but with illegal means with a view to achieve that intention, that in a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the court that the accused was guilty of the offence charged with, but it has to be remembered that the absence of proof of motive does not render the evidence bearing on

the guilt of the accused nonetheless untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime. In *Ujagar Singh v. State of Punjab*^[6] the Supreme Court reiterated its view that motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

In *Subedar Tewari v. State of Uttar Pradesh*^[7] the Supreme Court observed that the evidence regarding existence of motive which operates in the mind of an assassin is more often than not within the reach of others and that the motive may not even be known to the victim of the crime.

10. In the light of the settled legal position as above, if the prosecution has let in the evidence of eyewitnesses which is found trustworthy, the accused is liable to be convicted, even if motive is not fully established. While the case set up by the prosecution as spoken to by P.Ws.1 and 2 regarding motive is quite probable, it is not fair to expect the prosecution to place absolute proof before the Court, as the motive lies in the minds of the accused it is not possible for anyone to prove the same with absolute certainty. At any rate, the case of the prosecution may stand or fall based on the trustworthiness or otherwise of the evidence of the direct witnesses, who are P.Ws.1 to 4 in this case. This takes us to the appreciation of the oral evidence adduced by the prosecution.

11. P.W.1, who is an alleged eyewitness, deposed that while the accused is the grand-son of his senior maternal aunt, the deceased is the son-in-law of his another senior material aunt. Thus, there is equal relationship between P.W.1 on the one side and the accused and the deceased on the other side. In the absence of any suggestion put to him by the defence, that he has enmity with the accused, he cannot be termed as an interested witness as he has no reason to lean to the

side of the deceased, when the accused were also equally related to him. P.W.1 cannot therefore be termed as an interested witness. Now, let us analyze his evidence regarding the occurrence. He has deposed that on 06.09.2001 he started from his house in Malavya Nagar, that his house is on the West of the Railway line in Gudur, that at about 8.45 a.m., he came out of the house and on his way to East Gudur, when he went near the house of Koduru Sreenivasulu Reddy, P.W.2 joined him, and that when himself and P.W.2 were crossing the railway line in Gudur Railway Station on the southern side, they saw the appellant (accused No.2) catching hold of the deceased and accused No.1 stabbing him. That on hearing the cries of the deceased, they went towards him and both the accused pelted stones on the persons gathered and ran away. That P.W.3 and P.W.4 came from the eastern side and some persons were watching the occurrence from a distance. That the deceased was gasping and all of them shifted the injured in a rickshaw to Government Hospital, Gudur, between 9.00 and 9.30 a.m., where the doctor examined the injured and declared him dead. That there were several injuries on the body of the deceased. That thereafter, himself along with others came to the Police Station where he has given Ex.P.1, report and that he was also present during the inquest. That the Railway Police examined him and recorded his statement.

12. In his cross-examination, P.W.1 stated that there are residential houses on the west side of the railway lines near the house of Sreenivasulu Reddy, that about 15 to 20 persons gathered from all the sides near the place of offence and all the above said persons witnessed the incident, that they did not try to chase the accused by picking up stones from the railway track, and that he has no disputes with the family of the accused, but that there were disputes between the deceased and the accused. Nothing worth mentioning was suggested to this witness by the defence which has mainly tried to put forth the case that the accused had no motive to kill the deceased.

The only significant suggestion that was given to P.W.1 was that somebody has murdered the deceased due to some grudge and P.W.1 and other relatives colluded and foisted the case against the accused on suspicion.

P.W.2, the son of the deceased, lent corroboration to the testimony of P.W.1 on the aspect of both of them meeting at the place near the house of one Koduru Sreenivasulu Reddy at about 8.45 a.m. on the day of occurrence and witnessing the offence. The defence failed to elicit anything material to discredit his testimony.

P.W.3, who is related to both the accused and the deceased, also testified that when he was returning from East Gudur at about 8.30 a.m., himself and P.W.4 saw the appellant catching hold of the deceased near the railway track and accused No.1 stabbing the deceased. He has also deposed that when they tried to go towards the injured, the appellant and accused No.1 pelted stones towards them and ran away towards south. In his cross-examination, P.W.3 stated that himself and P.W.4 have witnessed the incident from the eastern side and he does not know who saw the incident from the western side. Except suggesting that since P.W.3 was related to the deceased he was cited as a witness and that he has not seen the incident and was deposing falsely, which suggestion was denied by him, nothing incriminating was elicited to throw any element of doubt on his testimony.

The evidence of P.W.4, who is an independent witness and unrelated to either party, is on the same lines as that of P.W.3. He has also deposed that when himself and P.W.3 were coming together and when they reached the railway track near Naidu Kaluva, they saw both the accused, and the appellant catching hold of the deceased and accused No.1 stabbing him. He has further deposed that he saw P.Ws.1 and 2 coming towards east while crossing the railway track. It was suggested to him in the cross-examination that he has not seen the incident and he was cited as a witness as he was working in the

lemon shop of the deceased.

The learned counsel for the appellant has placed heavy reliance on the statement made by P.W.2 in his cross-examination that P.Ws.3 and 4 came to the place of offence after the accused ran away, and submitted that from the categorical admission of P.W.2 it is clear that P.Ws.3 and 4 have not witnessed the occurrence. If we read this statement in isolation, the submissions of the learned counsel appears acceptable. But in his cross-examination, P.W.3 stated that himself and P.W.4 have seen the incident from the eastern side. P.Ws.1 and 2 deposed that they were coming from western side to go to East Gudur. In an ordinary situation, people coming in opposite directions notice each other. However, in an extraordinary situation where a person was being brutally attacked with deadly weapons, the attention of everyone who was witnessing such ghastly incident cannot be expected to be on the surroundings and the presence of the persons near the place of incident. This could be more so in the case of P.W.2, who is none other than the son of the deceased and when his father was being attacked, it was quite natural for him to have his concentration only on the incident and therefore his not noticing P.W.3 and P.W.4 coming in the opposite direction cannot be viewed with suspicion. Indeed, P.W.4, deposed in his evidence that he saw P.Ws.1 and 2 coming towards east by crossing the railway track. On a holistic reading of the evidence of these witnesses, we feel that not much can be read into the statement of P.W.2 so as to disbelieve the presence of P.Ws.3 and 4. More than anything else, the cross-examination of P.Ws.1 to 4 by the defence lacks serious conviction which would be normally present in a case where the witnesses were set up and the accused are really innocent. Even if P.Ws.1 and 3 have close relationship with the deceased, they were equally related to the accused and absolutely there was no reason for them to depose against the accused falsely, if they are not really involved in the commission of offence. Though P.W.2 is an interested witness, his

testimony is fully corroborated by P.Ws.1, 3 and 4.

Under Ex.P.5, the appellant made a statement in the presence of P.W.7 and one J. Chandrasekhar, and the contents of the same were reduced to writing under Ex.P.4. His statement to the effect that he wore another shirt and threw the knife into the thorny bushes, which was located on the southern side of the sub-station, led to the recovery of M.O.7, steel knife under Ex.P.5 – seizure mahazarnama, which was witnessed by P.W.7 and the said J. Chandrasekhar. The inquest proceedings held under Ex.P.3 were witnessed by P.Ws.2, 3, 4 and 7 among others and they found twenty injuries on the body of the deceased. Ex.P.27 – post-mortem certificate also reveals that the deceased had as many as twenty stab injuries. P.W.10, who was the author of Ex.P.27, opined that the deceased died due to shock, haemorrhage due to injury to vital organs, i.e, heart, lung and spleen. In his evidence P.W.10 opined that the injuries noted by him in Ex.P.27 were caused with weapons such as the one shown to him in the Court, which included M.O.7. In his cross-examination, P.W.10 agreed that there is a possibility of the injuries found on the deceased being caused with the stones lying on the railway track. He has denied the suggestion that he has not conducted the post-mortem examination properly and that he has prepared the post-mortem report based on the contents of the inquest report with regard to injuries.

P.W.7, who is a Municipal Councillor, was examined to prove Exs.P.4 and P.5 and recovery of Ex.M.O.7, based on the confession of the appellant. Except various suggestions put to the witness, nothing much could be elicited from him to throw even a shadow of doubt on the credibility of his testimony. Thus, the recovery of M.O.7 proved by the evidence of P.W.7 and the medical evidence, fully corroborated the ocular testimony of P.Ws.1 to 4 proving the participation of the appellant (accused No.2) and accused No.1 in the commission of the offence of which they were charged.

13. Coming to the delay in the FIR reaching the Magistrate, P.W.8,

who was the Head Constable of the Railway Police Station, Gudur, stated in his evidence, that he was in-charge of the Railway Police Station from 7.00 a.m., on 06.09.2001, that at about 10.30 a.m., he received death intimation from Gudur Government Hospital, vide Ex.P.6, that at the same time P.W.1 came to the Railway Police Station and presented Ex.P.1 report, and that he has registered Ex.P.7 - FIR as Crime No.71 of 2001 and sent the same to the Special Judicial Magistrate of First Class for Railways, Nellore. However, P.W.11, who worked as the Inspector of Police at the relevant point of time, stated in his evidence that on 08.9.2001 in his absence, the Sub-Inspector of Police, II Town Police Station, Gudur, received the C.D. File in Crime No.71 of 2001 of Gudur Railway Police Station and on receipt of the same he has registered the FIR as Crime No.35 of 2001. It is significant to note that two FIRs were registered - one by the Railway Police as Crime No.71 of 2001 and another by Gudur II Town Police Station, as Crime No.35 of 2001. While the occurrence has taken place within the jurisdiction of the Railway Police, the CD file was transferred to regular police. No doubt, the first FIR was received by the Court of the Special Judicial Magistrate of First Class for Railways, Nellore, on 07.09.2001 and the second FIR was received by the Court of Judicial Magistrate of First Class, Gudur, on 10.09.2001. Nothing was suggested to either P.W.8, who has sent FIR No.71 of 2001 to the Special Judicial Magistrate of First Class for Railways, Nellore, or to P.W.13, who has sent FIR No.35 of 2001 to the Court of Judicial Magistrate of First Class, Gudur, that the FIR was ante-timed so as to falsely implicate the accused. While the delay in the FIR reaching the Magistrate may give rise to a reasonable presumption that there might have been confabulations, embellishments and false implications in the FIR, in the absence of any suggestions to that effect by the defence and in the face of the evidence of the eye-witnesses, fully corroborated by medical evidence, we are of the opinion that the delay in the FIR reaching the Court of the Special Judicial Magistrate

of First Class for Railways, Nellore, is not fatal to the case of the prosecution in any manner.

14. On a careful analysis and appreciation of the evidence on record, we have no hesitation to hold that the appellant has participated in the commission of the offence by catching hold of the deceased to enable accused No.1 to indiscriminately stab him causing his death and accordingly he is guilty of harbouring common intention along with accused No.1 to kill the deceased, besides participating in the offence. The lower Court therefore has rightly found the appellant guilty of the commission of the offence under Section 302 read with Section 34 of IPC and sentenced him to suffer rigorous imprisonment for life, besides imposing fine of Rs.100/- and in default to suffer simple imprisonment for fifteen days.

15. Hence, we do not find any reason to interfere with the judgment of the lower Court. The appeal is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

08-03-2016

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Note: LR copies to be marked.

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[\[1\]](#) AIR 1973 SC 55

[\[2\]](#) (1996) 9 SCC 40

[\[3\]](#) (2003) 12 SCC 616

[\[4\]](#) (2010) 5 SCC 91

[\[5\]](#) 1999 Supp (1) SCC 80

[\[6\]](#) (2007) 13 SCC 90

[\[7\]](#) 1989 Supp (1) SCC 91