

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

MONDAY, THE EIGHTEENTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN
(18.04.2016)

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

CRIMINAL APPEAL No.991 of 2010

Between:

Atmuri Panduranga Rao @ Baburao

..... APPELLANT/ACCUSED

AND

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

.....RESPONDENT

Counsel for the Appellant : **Sri T.BALI REDDY, Senior**
Counsel

For Mr.C.RAGHU

Counsel for the Respondent : **Sri POSANI VENKATESWARLU,**
PUBLIC PROSECUTOR (AP)

SUBMITTED FOR APPROVAL:

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Ladyship/Lordship wishes to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY,J

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

CRIMINAL APPEAL No.991 of 2010

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

The appellant was charged for the offences under sections 498-A and 302 IPC and made to stand trial for those offences in S.C.No.269/2009, on the file of the Special Sessions Judge-cum-X Additional District Judge, Krishna, Machilipatnam, and by judgment dated 28.06.2010, he was found not guilty and acquitted for the offence under Section 498-A IPC, and found guilty for the offence under Section 302 IPC and was eventually convicted for allegedly killing two persons and he was sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- (Rupees five thousand only), in default, to undergo rigorous imprisonment for one year.

2. For convenience, the appellant is referred to as "the accused". The case of the prosecution in brief is that the accused is resident of Nadupuru, Pedana Mandal, Krishna District. He married A.Leela Kumari (PW 1) about 25 years back and was blessed with two sons. The accused was harassing his wife mentally and physically, due to which, she has filed criminal cases, namely, Cr.No.95/2006 for the offence under Section 498A r/w.Section 34 IPC of Pedana P.S, and Cr.No.58/2008 for the offences under Sections 452, 324, 506 and 509 IPC of Pedana P.S. against him. After the police filed charge sheets, both the cases were compromised between the parties and

ended in acquittal on 04.08.2008.

3. The accused and PW 1 disposed of their house at Gudivada for Rs.5 lakhs prior to purchase of a house in Nadupuru, and the sale proceeds were shared between them, as per which, PW 1 has got Rs.2,50,000/- towards her share. She has spent Rs.1,50,000/- for construction of house at Nadupur and kept the balance amount with her senior paternal uncle Akunuri Venkateswararao, Deceased No.2. For a few days prior to 04.02.2009, the accused was harassing his wife (PW 1) mentally and physically to get back the money from Deceased No.2 for the welfare of their children and necked her out from the house 4 days prior to the date of occurrence. PW 1 went to the house of Deceased No.2 and was living there. A day thereafter the accused went to the house of Deceased No.2 and demanded him to send his wife with money, but the latter has refused the said request.

4. In the night of 04.02.2009, while all the members of the family were sleeping, the accused went to the house of Deceased No.2 at about 11.30 p.m and hacked him on the face with penaka kathi. When the son of Deceased No.2, by name Nancharaiah (Deceased No.1), woke up, the accused also hacked him on the head and face and ran from the house. PW 1, PW 2 and the daughter of Deceased No.2 were inside the house witnessing the incident. After hearing the disturbance in the house, the neighbours rushed there and shifted the injured through 108-Ambulance to the Government hospital, Machilipatnam where the duty doctor declared Deceased No.1 died and admitted Deceased No.2 in the hospital.

5. On receipt of the information, PW 16, the Sub-Inspector of Police, Pedana P.S went to the hospital at 1.30 hours on 05.02.2009 and recorded Ex.P22 statement from Deceased No.2. Based on the said statement, PW 16 registered Cr.No.14/2009 for the offences under Sections 302 and 307 IPC. Subsequently, at 7 a.m. Deceased No.2

also died. PW 16 has issued Ex.P23 express FIR. He has informed PW 19-Inspector of Police over telephone and conducted inquest over the dead body of Deceased No.2, and prepared Ex.P21 inquest panchanama. PW 19 conducted inquest over the dead body of Deceased No.1 and prepared Ex.P19 inquest report. PW 19 went to the village and conducted the scene observation panchanama and prepared Ex.P18 scene observation report and Ex.P31 rough sketch of the scene of offence. On 06.02.2009, PW 19 along with his staff and mediators-PWs 14 and 15 proceeded to the house of the accused and apprehended him and seized M.O.1 knife. He instructed PW 16 to send the accused to the hospital for examination of injuries. PW 17, the Doctor examined the accused and issued Ex.P25 wound certificate. On receipt of requisition from the Government Hospital, Machilipatnam at 2.05 a.m. on 05.02.2009, PW 18-Addl.Judicial First Class Magistrate, Avanigadda visited the hospital and recorded Ex.P30-dying declaration of Deceased No.2. PW12 conducted post mortem on Deceased No.1 and issued Ex.P16 post mortem certificate. PW 11 conducted post mortem on Deceased No.2 and issued Ex.P15 post mortem certificate. After completion of the investigation, PW 19 filed charge sheet for the offences under Sections 498-A and 302 IPC.

6. As the accused pleaded not guilty and insisted on conducting trial, the prosecution examined PWs 1 to 19, marked Exs.P1 to P33 and produced M.Os.1 to 6. On behalf of defence, Ex.D1 was marked. No oral evidence was let in. On appreciation of the oral and documentary evidence, the lower court disposed of the sessions case in the manner, as stated above.

7. We have heard Sri T.Bali Reddy, learned senior counsel, representing Sri C.Raghu, learned counsel for the accused and Sri Posani Venkateswarlu, learned Public Prosecutor for the State.

8. The learned senior counsel submitted that the FIR was registered based on Ex.P22, purported statement of Deceased No.2,

which in fact did not contain the latter's signature and that therefore, the prosecution initiated based on such a document cannot be sustained. He has further argued that Ex.P17, the dying declaration, allegedly recorded by PW 18, did not contain any reference as to the presence of PW 2, and therefore, her presence at the time of commission of the alleged offence is highly doubtful, and that the prosecution has miserably failed to explain the injuries on the accused, which is fatal to the case of the prosecution. In support of his submission, he has placed reliance on the judgment of the Supreme Court in ***Lakshmi Singh v. State of Bihar***^[1].

9. Opposing the above submissions of the learned senior counsel for the accused, Sri P.Venkateswarulu, learned Public Prosecutor, sought to sustain the case of the prosecution and commended the correctness of the judgment of the lower court convicting the accused. He submitted that the evidence of PWs 1 and 2 who are the eyewitnesses, fully supported Ex.P17-dying declaration and therefore, the prosecution was able to strive to prove the guilt of the accused beyond reasonable doubt. He has further submitted that the evidence on record does not show that the injuries on the accused were sustained in the same transaction during which both the deceased died and therefore, there was no obligation on the part of the prosecution to explain the injuries on the accused and on the contrary, it is the accused who must explain as to how he sustained injuries.

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

11. The case of the prosecution is based on the evidence of the eyewitnesses in the form of PWs 1 and 2. In reply to his examination under Section 228 Cr.P.C, the accused, *inter alia*, stated that Deceased No.2 has mislead his wife, got the dowry harassment cases foisted against him by her, forcibly made him to sell the site when

those cases were pending, with the aid of 10 or 15 persons, who threatened him by taking him to the Registrar Office and coerced him to sign the conveyance deed and took away the money. He has further stated that his wife has informed him that she has kept her money with the Deceased No.2, that he insisted that she should bring back the money, for which she has agreed to go to Hyderabad for that purpose and that his wife left his house 3 days back and on coming to know that she was staying in the house of the deceased, he went there where he has received injuries.

12. This plea of the accused proves two aspects, namely, (i) that he has serious grievance against the Deceased No.2 as he fairly believes that the latter was responsible for his wife instituting criminal cases against him and the forcible sale of his plot and taking money from his wife; and (ii) that he has visited the house of the deceased where he has allegedly sustained injuries. If we scan through Ex.P17-dying declaration, it is very clear that even Deceased No.2 has expressed that the accused was suspecting that he was responsible for the disputes between himself and his wife. On the strength of these admitted facts, there is no scope for any doubt that the accused has nursed serious grievance against Deceased No.2 and that was obviously the motive for him to take revenge against Deceased No.2.

13. The evidence of PW 1, who is no other than the wife of the accused, fully lends support to the case of the prosecution as regards the participation of the accused in the commission of offence. She has clearly deposed that on 04.02.2009 she was sleeping in the kitchen room of Deceased No.2, that in the hall portion of the house, Deceased Nos.1 and 2 were sleeping on cots while PW 2 was sleeping on a mat between the two cots. That at about 11.30 p.m she has heard the accused abusing Deceased No.2 and others, that the hall was visible from the kitchen and there was a bed light in the hall and on hearing the voice of her husband, PW 1 switched on the light and she found

that the accused was hacking Deceased No.2 on his head, that when Deceased No.1 woke up, the accused hacked him also with a knife on his head. That due to fear PW 2 has rushed to PW 1 and both of them raised cries after going out through the back door way. Thereupon, the neighbours P.Narayanarao, P.Nancharaiah, S.Arjunarao, Meduri Venkateswararao etc., arrived and on seeing all of them, the accused ran away.

14. In the cross-examination, PW 1 denied the suggestions that a day prior to 04.02.2009 her brother and Deceased No.1 beat the accused and the police filed medical certificate, evidencing injury on the person of the accused, that the accused was remanded to sub-jail in connection with the cases filed by PW 1 and that herself, her brother Ramesh and Deceased No.2 implicated the accused taking advantage of the incident.

15. As regards PW 2, she has fully corroborated the testimony of PW 1. It was suggested to her that as the Deceased No.2 has spent the money of PW 1 for the marriage of PW 2, they have made PW 1 to speak falsehood against the accused as a condition for returning the said money. However, the said suggestion was categorically denied by PW-2.

16. We find nothing material to discredit the evidence of these witnesses either with regard to their presence at the scene of offence or their testimony being untrustworthy.

17. When we come to the dying declarations of Deceased No.2, Ex.P22, the earliest statement was recorded by PW 10 at 1.30 to 2 am on 05.02.2009. Ex.P17, the second statement was recorded by PW13- II Addl.Judicial Magistrate of First Class at 2.57 a.m. Both these documents were properly authenticated by PW 10. Indeed, PW 13 has put all the preliminary questions to satisfy himself about the mental capability of the patient to give the statement and the same was

certified by the Medical Officer. In his brief statement given to PW-13, the Deceased No.2 has categorically stated as under:

“The son-in-law of my younger brother Baburao hacked me on my head. My son Nancharaiah is aged 30 years and myself while we were sleeping in our house, he hacked both of us with knife and ran away. He hacked on my face i.e., on the left side of my cheek. When I cried, Baburao ran away from my house. Baburao’s father’s name is Musalaiah. We used to call Baburao as Musalaiah. Baburao married Leela who is the daughter of my younger brother. There were Court cases in between them. The case against Baburao was dismissed in the Court. Leela came to me two days ago. Thinking that I am not sending Leela for kapuram, he hacked on my face. When Baburao tried to beat Leela previously, I intervened. Thinking that I am responsible for the above disputes, he hacked me. I am no way responsible for not sending Leela to kapuram.”

18. The only variation we find between Ex.P17 and Ex.P22 is that Deceased No.2 has not spoken to the presence of his daughter PW 2 at his house when the occurrence has taken place. Though this may cast a doubt on the presence of PW 2, that could not affect the case of the prosecution in any manner, as the version of Deceased No.2 was fully corroborated by PW 1, who is no other than the wife of the accused and was undoubtedly the eyewitness.

19. In addition to the above, there is ample corroboration to the evidence discussed above in the shape of independent witnesses examined by the prosecution.

20. PW.3 is a neighbouring resident and he deposed that on the date of the incident, he heard shouts from the house of the deceased, hearing which, he rushed towards the house and in that process, he has seen the appellant going away towards Nadupuru village holding a knife. He further deposed that he went inside the house of the deceased and found Deceased No.1 lying on a cot in a pool of blood and Deceased No.2 was sitting on the bench with a bleeding head

injury and when he enquired, Deceased No.2 informed him that the appellant, who is the son-in-law of his brother, has attacked them and caused the injuries.

21. PW.4 is another neighbouring resident and even though he turned hostile, his evidence is categoric to the effect that on the date of the incident, he heard the shouts from the house of the deceased and he went there and noticed Deceased No.1 and Deceased No.2 with bleeding injuries. Since he did not speak about his seeing the appellant going away with a knife, the prosecution treated him hostile and he denied having stated before the police to that effect. He admits that he is a man aged about 70 years and had a vision which is capable of seeing objects at a distance of about 25 yards.

22. PW.5 whose house is situated just behind the house of the deceased also deposed that he heard the shouts at about 11.30 p.m., hearing which he went to the house of the deceased and he has seen the appellant going away holding the knife. He further deposed that when he went inside the house of the deceased, he found Deceased No.1 lying with injuries so also Deceased No.2 and the latter informed him that the appellant hacked him and his son (Deceased No.1) due to the disputes in between the appellant and his wife (PW.1).

23. Similar is the evidence of PW.6, who is also a neighbouring resident. He deposed that having heard the shouts, he went to the house of the deceased and noticed the appellant going away holding the knife and when he entered the house, he has seen Deceased No.1 and Deceased No.2 with injuries. He further deposed that Deceased No.2 informed him that the appellant, who is the son-in-law of his younger brother, has hacked both of them due to the disputes in between the appellant and his own wife.

24. PW.7 is another independent witness. His evidence is similar to that of other neighbouring witnesses and he also speaks about his going to the house of the deceased, finding both of them with

injuries, the appellant going away from there holding the knife and Deceased No.2 informing them that the appellant hacked them.

25. The evidence of P.Ws.3 to 7 is consistent, convincing and cogent. They are all residents of immediate neighbourhood and their evidence is consistent insofar as they are reaching the house of the deceased, noticing the appellant going away from the house holding the knife and when they entered the house, noticing Deceased No.1 and Deceased No.2 with bleeding injuries and Deceased No.2 informing them that it is the appellant who caused the injuries to them. All the witnesses were elaborately and comprehensively cross-examined but nothing concrete is elicited from them for disbelieving their evidence. The only suggestion that is made to these witnesses is that they are anti-social elements in the village and that in order to save themselves, they are giving evidence falsely implicating the appellant. This suggestion is devoid of substance for the reason that what could be deciphered from the suggestion is that it is these witnesses who are responsible for the assault on the two deceased persons and that to save themselves, they are giving false evidence implicating the appellant. It may be recalled that PW.1 is none other than the wife of the appellant. If really the neighbouring residents with whom she has no relation, whatsoever, have caused the death of her senior paternal uncle and cousin brother, she would have been the last person to implicate her own husband exculpating the real culprit viz., the independent prosecution witnesses.

26. As already stated, the evidence of independent prosecution witnesses fully corroborates the evidence of P.Ws.1 and 2 who are the direct eyewitnesses to the incident and also the two dying declarations recorded by the Police Officer as well as the jurisdictional Magistrate which have been extensively referred to above.

27. On behalf of the appellant, a feeble attempt is made by the

learned Counsel by contending that admittedly the appellant has sustained injuries and since the prosecution has not explained the said injuries, it has to be inferred that it has not come out cleanly and placed all the facts before the Court. He submitted that when the material fact of the appellant sustaining injuries has not been spoken to or explained, the irresistible inference that can be drawn is that the prosecution witnesses have tried to hide material facts. In support of his contention, learned Counsel relied upon a decision of the Supreme Court reported in **LAKSHMI SINGH AND OTHERS v. STATE OF BIHAR (1 supra)** wherein after referring to the various authorities on the subject, the Supreme Court observed as under:-

“It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

- (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.
- (2) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) That in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”

28. Insofar as the case in hand is concerned, the above referred judgment has no application, whatsoever, for the simple reason that it

is nobody's case that the appellant sustained the injuries that are found on him at or around the time when the attack on the two deceased persons is said to have taken place.

29. PW.17 is the Medical Officer who examined the injured/accused/appellant on 06.02.2009 when he was produced by the police at 09.45 a.m., and found the following injuries:-

- 1) 10 x 4 cm bleeding laceration on left knee joint;
- 2) 5 x 3 cm., bleeding laceration on posterior aspect of left shoulder; and
- 3) 4 x 2 cm bleeding laceration on left side of scalp in parietal region.

It is admitted by the Medical Officer that the injuries were bleeding and fresh and would have been caused less than six hours prior to his examination. The evidence of PW.17, the Medical Officer, is not denied and on the other hand, when examined under Section 313 Cr.P.C., the appellant specifically admitted that the evidence of the Doctor-PW.17 is true. That means, the appellant had sustained the injuries found on his person on the intervening night of 5/6-2-2009 i.e., nearly 24 hours after the deceased were attacked. It may be recalled that the substantive offence took place at 11.30 p.m., on 04.02.2009 and Deceased No.1 died almost instantaneously whereas Deceased No.2 died at about 07.00 a.m., on 05.02.2009. It appears that more than twenty hours after that, the appellant sustained the injuries as found by the Medical Officer. Therefore, it cannot be said that the appellant has sustained the injuries in the same transaction in which he attacked the deceased and that the non-explanation thereof by the prosecution adversely affects its case. Since the appellant sustained injuries sufficiently long after the main incident took place, it is for him to explain as to how he sustained the injuries. However, he is conspicuously silent about the same. The appellant cannot take advantage of the said circumstance and therefore the said contention

of the learned Counsel is liable to be rejected.

30. Upon careful perusal of the oral and documentary evidence on record, we have no hesitation in holding that it is the appellant who having nurtured a grievance against Deceased No.2 for having provided shelter to his estranged wife (PW.1) has caused grievous injuries on Deceased No.2 and also his son (Deceased No.1), both of whom died and the evidence on record conclusively establishes that it is the appellant who committed the crime. The Court below has properly appreciated the evidence on record in correct perspective and we see no reason to interfere with the judgment under appeal.

31. In the result, the appeal fails and the same is dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 18.04.2016

Dsr/Smr

Note:

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Dsr

[\[1\]](#) AIR 1976 SC 2263 (1)