

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
TUESDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(22.03.2016)

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

CRIMINAL APPEAL Nos.680 & 862 of 2010

Between:

Pallam Jayaram

..... APPELLANT/ACCUSED

(in both appeals)

(Crl.A.680/2010 is filed through Legal Aid Counsel
& Crl.A.862/2010 is filed through an Advocate)

AND

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

.....RESPONDENT

Counsel for the Appellant
In Crl.A.680/2010

: Ms.NASEEB AFSHAN (legal aid)

Counsel for the Appellant
In Crl.A.862/2010

**: Mr.K.Raghunatha Reddy
(Not appeared)**

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 Nos.680 & 862 of 2010

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

Both these appeals are filed by the same appellant/accused, one is filed through Legal Aid Counsel and another is filed by engaging a counsel, against the judgment, dated 10.12.2009, in Sessions Case No.125 of 2007, on the file of the learned V Additional Sessions Judge, Rayachoty, whereby and whereunder, the learned Sessions Judge has convicted the appellant/accused for the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.500/- (Rupees five hundred only), in default to suffer simple imprisonment for six months, while acquitting him of the charge under Section 307 IPC.

2. The case of the prosecution in brief is that the deceased-Somarapu Gangaiah was the maternal uncle of the accused. The accused is a lazy person and wandering in and around the locality without attending to any work. He was addicted to bad vices. He was insisting the deceased to give his daughter to him in marriage, for which the latter was refusing. The accused bore grudge against the deceased and once, prior to the present incident, he attacked the deceased with a pestle and attempted to beat the deceased, but due to timely intervention of his son and wife, the deceased was saved from the hands of the accused. The said matter was placed before the village elders and the same was amicably pacified. But the accused did not change his attitude and was insisting the deceased to give his daughter in marriage to him. On the refusal of the deceased, the accused developed repugnance against him and waiting for an

opportunity to cause harm to the deceased. On 04.01.2007 night, the deceased after having supper, slept alone on a mud pial situated in front of his house, while his family members slept inside the house. Noticing the same, at about 2.50 a.m, the accused armed with an axe, went there and hacked the deceased over his rear side head and the deceased raised cries. On hearing the cries, PWs 1, 2 and others rushed to the scene of offence and witnessed the accused again hacking the deceased over his face and left ear, due to which, the deceased died on the spot. When PW-1, the son of the deceased intervened, the accused made an attempt to kill him, but due to intervention of PW 2 and LW 4-Somarapu Nagamma, PW 1 was saved and the accused fled away. In the morning of 05.01.2007 at 7 a.m PW 1 lodged a report before the Police, Lakkireddipalli P.S, basing on which, PW9-Sub-Inspector of Police registered a case in Cr.No.3/2007 under Sections 302 and 307 IPC and conducted investigation. During course of investigation, PW 9 examined the witnesses and recorded their statements, held inquest over the dead body of the deceased in the presence of inquestdars and seized the material objects, sent the dead body for post mortem, and the Doctor opined that the deceased would appear to have died of cardio respiratory failure, due to shock and hemorrhage, and due to head injury involving brain by a sharp edged weapon. After completion of the investigation, PW 10-Inspector of Police filed the 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 9. On behalf of defence, no oral evidence was adduced, but Ex.D1-part of Section 162 Cr.P.C statement of PW 2, was marked. Based on the oral and documentary evidence, the learned Sessions Judge convicted the appellant/accused and sentenced him for the offence under Section 302 IPC, while acquitting him of the charge

under Section 307 IPC, as stated supra.

5. Learned counsel for the appellant submits that except the testimony of interested witnesses, there is no independent evidence for holding that it is the appellant who has caused the death of the deceased and that the version of eyewitnesses that they have seen the incident proper cannot be believed for the reason that there is no satisfactory evidence to show that there was electricity at the place where the incident took place. The learned counsel further submits that the incident is alleged to have taken place in the midnight at about 2.50 a.m and it is not believable that in the midnight of 4/5.1.2007 when the winter season was at its peak, the deceased would have slept in front of his house on the pial. The learned counsel submits that the deceased was done to death by unknown persons at the place other than the place as alleged and the dead body was brought to the alleged scene of offence, and later in view of the disputes, the appellant has been falsely implicated. The learned counsel submits that the judgment of the Court below cannot, therefore, be sustained and the same is liable to be set aside.

6. On the other hand, the learned Public Prosecutor submits that the evidence of eyewitnesses, more particularly, PWs 1, 2, 4 and 5 clearly establishes that it is the accused who has killed the deceased hacking him with an axe when the deceased was sleeping on the pial in front of his house and the motive therefor is that the deceased, who was the maternal uncle of the accused has refused to perform the marriage of the accused with one of his daughters. The learned Public Prosecutor submits that these witnesses are closely related to the deceased and the appellant and if really it was somebody else other than the appellant, who has caused the death of the deceased, they would have been last persons to implicate the appellant in a heinous crime. The learned Public Prosecutor submits that the evidence of the prosecution witnesses is consistent. With regard to availability of

electricity at the place where the incident took place, it is submitted that the locality is a scheduled caste colony and even though there is no official supply of electricity, each householder will tap the energy directly and therefore, it cannot be said that in the absence of there being authorized electrical connection to the house of the deceased, there was no electricity at that time. The learned Public Prosecutor further submits that as per the almanac of the year 2007, 3rd January was a full moon night and since the incident took place on the very next day night, there would have been sufficient moon light. It is further submitted that the appellant was not a stranger to the material witnesses and it is not difficult for close relatives to identify a person even if there is little amount of light at the place where the incident took place. The learned Public Prosecutor further submits that the specific contention of the appellant that the deceased was hacked to death in the outskirts of the village and the dead body was brought and put on the pial in front of the house of the deceased would nullify the contention of the appellant in so far as the absence of electricity at the house of the deceased is concerned. The learned Public Prosecutor submits that the Court below has appreciated the evidence on record in proper perspective and convicted the appellant and the said findings do not warrant any interference.

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

8. The point for consideration is whether the prosecution proved its case against the appellant/accused beyond reasonable doubt so as to sustain the conviction and sentence recorded against him, or whether it needs to be set aside, modified or varied.

9. The appellant is the son of the elder sister of the deceased and also PW 2. The deceased had five daughters, of whom one of the daughters is Sujata. The appellant was insisting his maternal uncle-deceased to give Sujata in marriage to him, but that was being rejected

by the deceased in view of the adverse antecedents of the appellant. The appellant bore grudge against the deceased and it is on record that about a year prior to the present incident, the appellant made an unsuccessful attempt to attack the deceased with a chutney pounder and the matter was amicably settled in the presence of the elders, one of whom is examined as PW 5. It is also on record that the said Sujata was married to another person about a year prior to the incident. Therefore, the prior unsuccessful attempt of the appellant to attack the deceased took place around the time when Sujata was getting married.

10. In so far as the present incident is concerned, in view of the above mentioned grudge, the appellant is alleged to have attacked the deceased on the intervening night of 4/5.1.2007 when the deceased was sleeping in front of his hut on a pial and at that time, the son of the deceased (PW 1) and his wife Smt.Lakshumamma (LW 2) were sleeping inside. At that time, the accused is alleged to have taken advantage of the loneliness of the deceased and attacked him with an axe and gave four blows on the head, due to which, the deceased died instantaneously. Hearing the cries of the deceased, PW 1-the son, PW 2-the brother, the wife of the deceased and the neighbouring residents came there and they have seen the appellant attacking the deceased, standing nearby, holding axe-MO.7 in his hand.

11. At the outset, it is a fact that the deceased was brutally murdered on the intervening night of 4/5.1.2007. As a matter of fact, the specific contention of the appellant is that the deceased was done to death in the outskirts of the village in the night, probably when the deceased went to answer the calls of nature and the dead body was brought and laid on the pial in front of the house of the deceased, and that the appellant was falsely implicated. Upon perusing the entire material on record, we see no reason for believing either of the two contentions. Firstly, there is no reason whatsoever for PWs 1 and 2 to

implicate the appellant falsely for the reason that when the deceased was their father and brother respectively, the appellant was also their close relation, inasmuch as he is the son of the elder sister of the deceased and PW 2 and they would have been the last persons to implicate the accused falsely in a heinous crime. Secondly, the contention of the appellant that the deceased would have been done to death at a place other than the scene of offence cannot be believed for the reason that the incriminating material, such as, bloodstained earth and control earth have been seized from the place where the incident is said to have taken place. There are also some bloodstains within the hut of the deceased. That apart, when the incident is said to have taken place at 3 a.m i.e. early hours of 5th January, the complaint-Ex.P1 was lodged by PW 1 at about 7 a.m. Therefore, there is no scope whatsoever for believing that PWs 1, 2 and others would have thought of falsely implicating the appellant if really it is not him who committed the crime. The natural conduct of close relations at the earliest point of time will be to ascertain as to who is the real culprit if they have not seen the incident proper. When the complaint-Ex.P1 is lodged with utmost expedition, the contents of which clearly nail the appellant, it cannot be said that the prosecution witnesses have falsely implicated the appellant, more particularly, in the absence of there being any reason whatsoever for them to do so.

12. The contention of the learned counsel for the appellant is that at the place where the incident took place, there was no electricity and therefore, it is difficult to believe that PWs 1, 2 and others would have seen the appellant attacking the deceased. It is consistently spoken to by all the witnesses, including the investigating officer that even though there was no electricity supply in the locality officially, it being a scheduled caste colony, each householder was tapping the energy illegally and there was electrical light in almost every household. Therefore, it cannot be believed that there was no sufficient light where

the incident took place for suspecting the identification made by the eyewitnesses to the effect that it is the appellant who gave deadly blows on the deceased, questioning the act of the deceased in refusing to give one of his daughters in marriage to him. It was spoken to by PWs 1 and 2 that while attacking the deceased, the accused was uttering that how dare the deceased refused to give his daughter in marriage to him. Since the deceased was not a stranger, but was almost a member of the family of PWs 1 and 2 and a neighbouring resident, even if the witnesses could not have seen the appellant physically, they would have easily identified the appellant through his voice when he was uttering such a thing while attacking the deceased. Therefore, there is no substance in the submission of the learned counsel for the appellant that the identification made by PWs 1 and 2 and the other eyewitnesses is doubtful.

13. The learned counsel for the appellant further submitted that it is difficult to believe that in the first week of January the deceased would have slept in open in front of his house, since the climate will not be conducive for sleeping in the open. The deceased was an agriculturist and for people in villages, it is not uncommon to sleep in open, agricultural fields, cattle sheds etc., depending upon the need unmindful of the climate. It all depends upon the personality of individuals, and the power of resistance to the climatic vagaries. Therefore, we see no reason to disbelieve the version of the prosecution witnesses when they say that the deceased was sleeping on the pial in front of his hut when he was hacked.

14. The case of the prosecution rests on the testimony of PWs 1, 2 and 4, who are direct eyewitnesses to the incident. It is in the evidence of PW 1 that in the night of incident when himself and his mother were sleeping inside the hut, the deceased was sleeping in front of the hut on the pial, and that at about 2.50 a.m he heard the cries of his father and immediately he came out and saw the accused

attacking his father with the axe on head, uttering that why his father should not perform the marriage of one of his daughters with the accused. It is further in the evidence of PW 1 that hearing the cries, his another junior paternal uncle (PW 2) came there and he also witnessed the incident. On similar lines is the evidence of PW 2, who was the brother of the deceased and maternal uncle of the appellant. Both the witnesses were elaborately and searchingly cross-examined, but nothing concrete could be elicited for disbelieving that it is appellant who has attacked the deceased, which they have witnessed.

15. PW 4 is another neighbouring resident and he deposed that at about 3 a.m when he was sitting in front of his house after having answered the calls of nature, he has seen the appellant going towards the house of the deceased by holding an axe and immediately some time thereafter he heard the cries of the deceased, rushed there and that by that time the accused was going away from there after hacking the deceased, holding an axe in his hand. He also spoke about the presence of PWs 1, 2 and others.

16. PWs 5 and 6 are the independent witnesses who spoke about the incident said to have taken place nearly a year prior to the present incident.

17. Upon carefully perusing the evidence of PWs 1, 2 and 4, we find it to be cogent, convincing and inspiring the confidence of the Court. Absolutely, nothing is brought on record to suspect or doubt the veracity of their testimony. The learned trial Judge has believed their testimony and held the appellant/accused guilty, and upon reappraisal of evidence, we do not see any reason to take the view other than that has been taken by the trial Court.

18. The other evidence is in respect of the events subsequent to the incident which are not seriously disputed. PW 3 is the panch witness in whose presence the scene of offence panchanama and the inquest on the dead body of the deceased was held. It is also in the

evidence of PW 3 that about 5 days after the incident, the appellant came to him and confessed before him having committed the crime and thereafter, he took the appellant to the police station and handed him over there.

19. PW 7 is another panch witness, who is also a Sarpanch and in his presence the axe-MO.7 was recovered from the house of the appellant.

20. PW 8 is the Medical Officer, who conducted autopsy over the dead body of the deceased and found the following injuries:

- 1) "A lenient cut injury over the scalp in the left frontal parietal region of size 7 cm x 2½ cm x 1½ cm;
- 2) A lenient cut injury on left occipital temporal region of scalp, bony fragment and brain substance is visible, it is measuring 10 cm x 3 cm x 2½ cm in size;
- 3) A cut injury on left ear in the middle of size 4 cm x ½ cm;
- 4) A cut injury of skin behind the left ear of size 2½ x 1 cm;

The Medical Officer opined that the cause of death is shock and hemorrhage due to head injury.

21. PWs 9 and 10 are the investigating officers who spoke about the investigation done by them.

22. From the above, what is noticed is that the evidence of the eyewitnesses clearly points towards the involvement of the appellant in the commission of the crime. The evidence on record establishes that the appellant developed grudge against the deceased for the latter's refusal to perform the marriage of one of his daughters with him. Accepting the evidence on record, the lower court held that the prosecution proved its case beyond reasonable doubt and there are no merits warranting interference with the impugned judgment of the Court below.

For the reasons stated supra, both these Criminal Appeals are dismissed, confirming the conviction of the appellant and sentence as inflicted by the trial Court.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

Date: 22.03.2016

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