

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

CRIMINAL APPEAL No.888 of 2010

Date:28.03.2016

Between:

Vagmare Gangadhar @ Gangadhar Rao,
S/o Laxman Vagmare

**.....Appellant/
Accused No.1**

And:

The State of Telangana, reptd by the
Public Prosecutor

.....Respondent

Counsel for the Appellant: Mr. B.Parameswara Rao
For Mr. Eedana Peddanna

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

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

Accused No.1 in Sessions Case No.436 of 2008
on the file of the learned I Additional Sessions Judge,
Nizamabad, filed this Criminal Appeal feeling aggrieved
by his conviction for the offence under Section-302 of
the Indian Penal Code and sentencing to undergo

rigorous imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month, vide judgment, dated 13.5.2010.

The prosecution case in brief is that on 01.4.2007, at about 10.45 hours, a petition was received through Police Constable No.1357 by the III Town Police Station, Nizamabad with an endorsement of Sub-Inspector of Police, III Town Police Station, Nizamabad. Based on the said report, a case under Section-302 I.P.C. was registered, express intimation letters were sent to all superior officers and investigation was commenced. As per the contents of the report given by P.W-1, on 01.4.2007 at about 10 am, he has noticed a dead body lying under the railway over bridge near a railway track; that his enquiries with the mob, who gathered around the dead body, revealed that somebody has killed him with a hyder stone; that the dead body was identified as that of one Vagmare Shivaji Rao, S/o Laxman, whose occupation was waste paper collection and begging; and that the deceased had a brother, who was mentally unsound. P.W-8 registered a case in Crime No.87 of 2007 for the offence under Section-302 I.P.C. and sent the Case Dairy file to P.W-9 for further investigation. During the course of his investigation, P.W-9 secured the presence of P.Ws.1, 2 and 5, examined them and recorded their detailed statements. He has also secured the presence of L.W-6-Salmedi Praveen, P.W-3 and mediators, conducted scene of offence panchanama at the spot and seized hyder stone, chappals, lungi and blood stained control earth from the scene of offence. P.W-7 photographed the dead body of the deceased and the scene of offence. P.W-9 conducted inquest over the dead body of the deceased in the presence of L.W-6 and P.W-3 and

sent the dead body for post-mortem examination to the Government District Head Quarters Hospital, Nizamabad, under escort of P.C.506 of III Town Police Station, Nizamabad. P.W-4 conducted autopsy over the dead body of the deceased and opined that the deceased died due to head injury and after completion of autopsy, the dead body of the deceased was handed over to his blood relatives, under proper acknowledgment, for conducting the last rites. Later, P.W-9 examined P.Ws.2 and 5, who are allegedly the eye-witnesses for the offence, and recorded their statements. The eye-witnesses stated that the deceased was killed by his own brother, i.e., the appellant along with his associates-accused Nos.2 and 3.

On 07.4.2007, at about 16 hours, on credible information that accused Nos.1 and 3 were available at Janakampet bus-stand, P.W-9, L.W-13 and his staff reached the said place and apprehended both the accused at the bus-stand at around 17.00 hours. P.W-9 interrogated the duo of accused Nos.1 and 3 about the commission of the offence along with accused No.2 on the intervening night of 31.3/01.4.2007. P.W-9 secured the presence of L.W-8-Tondoori Narsaiah and P.W-6 and recorded the confessional panchanama of accused Nos.1 and 2 exclusively and separately. Accused No.1 led the Police and the mediators underneath the railway over bridge, from where, P.W-9 seized the blood stained clothes of accused No.1, which were hidden after commission of the offence, under the cover of Ex.P-4-recovery panchanama. As the efforts made to trap accused No.2 proved futile, accused Nos.1 and 3 were brought to the III Town Police Station, Nizamabad on 07.4.2007, arrested and were produced before the jurisdictional Magistrate, who has remanded them to

judicial custody.

On 11.02.2008, at 6 pm., on receipt of reliable information, P.W-9 along with his staff rushed to the house of accused No.2 situated at Gouthamnagar, Nizamabad, apprehended him and on interrogation, he has voluntarily confessed to have committed the offence. He was, accordingly, arrested and produced before the jurisdictional Magistrate, who has remanded the former to judicial custody. After completion of the investigation, P.W-9 filed the charge sheet.

In support of its case, the prosecution has examined P.Ws.1 to 9 and marked Exs.P-1 to P-7 besides M.Os-1 to 9. No evidence was let in on behalf of the defence.

On appreciation of the evidence on record, the trial Court has convicted the appellant and acquitted accused No.3. The case abated *qua* accused No.2 on account of his death.

Mr. D.Parameswara Rao, learned counsel appearing for the appellant, argued that P.W-2 had not much acquaintance with the appellant and that, therefore, there was no possibility of her identifying the appellant while committing the alleged offence. He has further argued that in her chief-examination, P.W-2 has clearly deposed that at the time when the alleged occurrence has taken place, she was sleeping in her hut and that though she heard about the galata, out of fear, she did not go to the hut of the deceased to see as to what was happening. Based on this evidence, learned counsel submitted that on her own showing, P.W-2 has not witnessed the occurrence.

Learned counsel has further argued that the evidence of another alleged eye-witness-P.W-5 was not reliable for the reason that the incident has allegedly

taken place during the dead of the night and as Ex.P-6-scene of offence panchanama has not noted the existence of street lights, there was no possibility for him to have witnessed the occurrence and identified the assailants in the dark.

Mr. C.Pratap Reddy, the learned Public Prosecutor appearing for the State of Telangana, opposed the above submissions of the learned counsel for the appellant and strongly defended the judgment of the trial Court.

Having regard to the rival submissions of the learned counsel for the parties, the point that arises for consideration is whether the guilt of the appellant was proved beyond reasonable doubt.

P.Ws.2 and 5 are the crucial witnesses in this case. In her chief-examination, P.W-2 has stated that the alleged occurrence has taken place at around 12.30 am., when she was sleeping in her hut and that, at that time, the appellant and the deceased were in drunken condition and making galata. That having heard the galata, she got up, but, out of fear, she did not go to the hut of the deceased to see as to what was going on. With the permission of the Court, the learned Public Prosecutor has cross-examined this witness. In her cross-examination, she has admitted that she has stated before the Police that she had seen the appellant and accused Nos.1 and 3 beating the deceased with stone; that she and P.W-5 had seen the incident; and that out of fear, they returned to their hut and slept. Even in the cross-examination, made on behalf of the appellant, P.W-2 deposed that she had seen the appellant and accused No.3 beating the deceased with stone; that her marriage has taken place in the year 2003; that she was living with her husband and she has a son; that three

days prior to the date of the incident, her husband has beaten her; and that she came back to the railway bridge and was staying with P.W-5 under the bridge. P.W-2 further deposed that the accused have beaten the deceased outside the hut. She has denied the suggestion that the alleged incident has taken place in the hut and that she has not seen the incident.

P.W-5 has fully corroborated with the evidence of P.W-2.

On a careful analysis of the evidence of both these witnesses, the only discrepancy that could be found in their evidence pertains to the time of occurrence. While P.W-2 has stated that the incident has taken place at around 12.30 am, according to P.W-5, it has taken place at around 2 am. Learned counsel for the appellant pointed out this discrepancy during the hearing.

We cannot forget the fact that the said two witnesses were rustic illiterates living by begging and collection of waste papers. They are not expected to possess watches to notice the exact time of occurrence. When the occurrence has taken place during or around the mid night, illiterate persons cannot be expected to give the precise time and therefore, the variation in the timings in the evidence of these two witnesses cannot be magnified out of proportion in order to discredit their evidence. It is worth mentioning that no suggestion was put to either of these witnesses that they have any ill-will against the accused to depose falsely. In our opinion, P.Ws.2 and 5 are natural witnesses, who have no enmity with any of the accused and therefore, we do not find any reason whatsoever to disbelieve their evidence.

As regards the submission of the learned counsel for the appellant that as the incident has allegedly taken place during the night and that, as P.W-2 did not have

much past acquaintance with the appellant, there was no possibility for her to identify the appellant during the night, more so, when in

Ex.P-6, the existence of street lights was not noted, it is to be noted that in her evidence, P.W-2 stated that she knows the appellant and the deceased and that, she also knows accused No.3. She has further stated that she got married in the year 2003 and was living with her husband till three days prior to the date of the incident. She has further stated that she “came back” to the railway bridge and was living with P.W-5 since three days prior to the date of the incident. The fact that she claimed that she came back to the railway bridge shows that she was living at that place earlier and therefore, there is nothing in her evidence to suggest that she had acquaintance with the appellant only for three days prior to the date of the occurrence. Evidently, as she was living under the railway over bridge earlier also, she would have had past acquaintance with the accused and the deceased.

As regards the absence of street lights, no doubt, in Ex.P-6 there was no mention about the same. However, in his cross-examination, P.W-9 has deposed that he has observed the presence of lighting structures over the railway bridge, but, the same was not recorded in the rough sketch. P.W-5 was categorical in his evidence that their huts were beneath the bridge and a light was in existence over the bridge. He has further stated that the quarrel took place between the accused and the appellant for about one hour. Based on the categorical assertion by P.W-5 that there was a light, mere omission on the part of P.W-9 in referring to the existence of light in Ex.P-6-panchanama does not discredit the evidence of P.W-5.

Learned Public Prosecutor has referred to and relied upon the judgment of the Supreme Court in ***State of U.P. Vs. Babu and Ors***^[1], wherein it was held that when the accused persons were known to the witnesses, it is possible for the latter to identify the accused from the manner of speech, the manner of walking and gesticulations.

Both P.Ws.2 and 5 have categorically deposed that on hearing the brawl between the accused and the deceased, they have come out of the hut. P.W-5 has stated that the brawl has lasted for an hour. Therefore, it was not difficult for P.Ws-2 and 5 to identify the appellant, who was known to them at least for three days prior to the date of the incident, if not earlier, and even in the absence of any light, it cannot be said that they would not have identified the appellant.

Viewed from any angle, there is no reason to discredit the evidence of P.Ws.2 and 5, who are the eye-witnesses to the occurrence.

P.W-4 conducted post-mortem over the dead body of the deceased and issued Ex.P-3-Post-mortem certificate, wherein he has stated that in all, six injuries were found on the dead body of the deceased, all of which are anti mortem in nature and he has further opined that the death of the deceased has taken place due to head injury. In his evidence, he has deposed that the injuries would have been caused by some boulders of sufficient size. The Police have recovered M.O-7 from the scene of offence, which appeared to have been used by the appellant for causing injuries to the deceased. Thus, the medical evidence thoroughly supports the evidence of P.Ws.2 and 5.

In our opinion, the trial Court has properly analyzed the evidence on record and rightly found that

the appellant was responsible for the murder of his own brother and accordingly, sentenced him to life imprisonment.

On a careful re-appreciation of the entire evidence on record, we have no reason to take a view different from the one taken by the trial Court regarding the culpability of the appellant.

For the above-mentioned reasons, the Criminal Appeal fails and the same is accordingly, dismissed.

*JUSTICE C.V.NAGARJUNA
REDDY*

JUSTICE M.S.K.JAISWAL

*28th March 2016
DR*

[\[1\]](#) AIR 2003 SC 3408