

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

CRIMINAL APPEAL No.1119 of 2010

Between:

Utchula Raghavulu

..Appellant/Accused

And

The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad.

..Respondent

JUDGMENT PRONOUNCED ON: 27th April, 2016

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

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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
wish to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

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*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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% 27.04.2016

Between:

Utchula Raghavulu

..Appellant/Accused

vs

\$ The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad.

..Respondent

! Counsel for the appellant: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (AP)

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>Head Note:

? Cases referred:

1. (1998) 6 SCC 50
2. (2011) 1 SCC (Cri) 381 : (2010) 12 SCC 324
3. (2013) 3 SCC 462
4. (2015) 9 SCC 588
5. (2015) 4 SCC 749
6. (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262

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Counsel for the appellant: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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

The sole accused in Sessions Case No.129 of 2008 on the file of learned Additional District and Sessions Judge, Machilipatnam, Krishna District, was convicted for the offence punishable under Section 302 I.P.C.

and was sentenced to suffer Rigorous Imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months, by judgment, dated 25.06.2010. Feeling aggrieved by the same, he has filed the present Criminal Appeal.

2. For convenience, the appellant is hereinafter referred to as 'the accused'.

3. The prosecution case, in brief, is that the accused is a resident of Indira Nagar Colony, Gudlavalleru, and that he was living with his wife - Bhagyam and two children by doing coolie work. One Menda Kishore Babu (hereinafter referred as 'the deceased') developed illicit intimacy with the wife of the accused since seven months prior to the date of the occurrence. The accused once caught both of them being together at his house, beat them indiscriminately and sent his wife to her parents' house in Thativarru Village. Thereafter, the accused went to the house of the deceased and threatened him with dire consequences. One month prior to the date of the occurrence, the accused brought his wife back for the purpose of taking photographs in connection with obtaining ration card, but she was continuing illegal contact with the deceased. In this background, the accused decided to do away with the life of the deceased and was waiting for an opportunity in that regard.

On the morning of 19.07.2006, the accused returned from the coolie work, consumed alcohol and while returning to his house from Gudlavalleru centre, when he reached a place near Battu Rayappa house in Nehru Nagar, Shandy Bazaar Street, he noticed the deceased coming in the opposite direction on a motorcycle. The accused pelted a stone on the deceased, due to which, the latter fell down from his motorcycle. Thereupon, the accused beat him with a big cement brick stone on his head, picked up a knife from his navel and hacked the deceased in the middle of his head, lower side of his lower jaw and on the backside of his both knees and forcibly immersed his head in the mud of the drainage canal up to his neck, as a result of which, the deceased succumbed instantaneously. Later, the accused ran away after washing the knife.

Based on Ex.P-1 - report given by P.W.1, P.W.13 - the

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Inspector of Police, Gudlavalleru Police Station, registered crime No.62 of 2006 for the offence punishable under Section 302 I.P.C. at 12.00 hours on 19.07.2006 and submitted F.I.Rs. to all the Police Officers concerned. Due to the severity of the crime, P.W.14 – the Inspector of Police, Pamarru Circle, took up the investigation.

During the course of investigation, P.W.14 visited the scene of offence, prepared Ex.P-13 – rough sketch and Ex.P-6 – scene of offence observation report. He seized the material objects and recorded the statements of P.W.11 and L.W.21 – Adusumilli Rajendra Prasad.

He examined as many as 19 witnesses, recorded their statements, held inquest over the dead body of the deceased, prepared Ex.P-7 – inquest report and sent the dead body for autopsy. P.W.12, Dr.Bhaskara Reddy, Civil Assistant Surgeon, who conducted autopsy over the dead body of the deceased, issued Ex.P-9 – post mortem certificate and opined that the deceased would have died due to the injury to vital organ – brain and hemorrhage of shock.

During the course of further investigation, P.W.14 arrested the accused on 20.07.2006 at 10.00 hours at R.T.C. bus stand, Vijayawada stop in Gudivada, recovered M.O.4 and blood stained clothes under the cover of a mahazar in the presence of P.W.11 and L.W.21 and produced the accused before the Court for judicial custody. He forwarded the material objects to the R.F.S.L. Vijayawada, for analysis and received Ex.P-12 – R.F.S.L. report. After completing the investigation, he filed the charge sheet.

4. The plea of the accused is one of denial and he preferred to be tried. During the trial, the prosecution examined P.Ws.1 to 14, marked Ex.P-1 to P-13 and produced M.Os.1 to 6. On behalf of the defence, no evidence was let in. On appreciation of the oral and documentary evidence, the Court below convicted the accused and sentenced him as noted hereinbefore.

5. We have heard Mrs.A.Gayathri Reddy, learned counsel for the appellant/accused, and the learned Public Prosecutor (AP) at length.

6. The learned counsel for the appellant/accused has submitted that one of the crucial eyewitnesses – P.W.3 turned hostile and that the evidence of P.Ws.4, 6 and 7, who were allegedly the direct witnesses, does not inspire

confidence as each witness has not referred to the presence of the other witness. She has further argued that P.W.12 - the Doctor, admitted in his cross examination that M.O.4 is not a blunt object, while all the injuries were opined to have been caused by blunt object and that therefore, the prosecution has failed to establish that the weapon used in the commission of the offence as M.O.4, as a result of which, the whole prosecution case should fall. She has alternatively submitted that even if the participation of the accused in the commission of the offence is held proved, having regard to the fact that the deceased had developed illicit relationship with his wife, the accused only wanted to cripple both the legs of the deceased and that as there was no intention on his part to kill the deceased, he may be liable for conviction for an offence punishable under Section 304 Part-I I.P.C.

7. The learned Public Prosecutor(AP), while seriously opposing the above submissions of the learned counsel for the appellant/accused, has strongly contended that the prosecution was able to prove the guilt of the accused through the evidence of P.Ws.4, 6 and 7, who are the direct witnesses, and that even if there are some inconsistencies between the medical evidence and the evidence of the eyewitnesses, the latter will prevail over the medical evidence.

8. We have carefully considered the submissions of the learned counsel for the parties with reference to the evidence on record.

9. The motive pleaded by the prosecution for the accused to do away with the deceased was the illicit intimacy between his wife and the deceased.

P.W.1 - the brother-in-law of the deceased, who gave Ex.P-1 - report within two hours of the occurrence, stated that prior to the occurrence, the accused beat the deceased when the latter was going along with the wife of the accused and that the accused bore grudge against the deceased on suspicion of illicit intimacy. In his evidence also, P.W.1 elaborated the illicit relationship between the deceased and the wife of the accused. He stated that disputes persisted between the accused and the deceased in

connection with the said illicit intimacy. That eight months prior to the date of the occurrence, there was a fight between the accused and the deceased and that after the fight, the accused sent away his wife to her parents' house. He also deposed that the accused visited the house of the deceased twice and threatened to kill him in case he does not change his behaviour and put an end to the illicit contact. During his cross examination, it was suggested to P.W.1 that he did not mention in Ex.P-1 about the fight between the accused and the deceased eight months prior to the date of the occurrence and the accused sending his wife to her parents' house on account of the illicit relationship. He, however, stood his ground by reiterating in his cross examination about the illicit contact between the wife of the accused and the deceased and the fact that he referred the same in Ex.P-1. Though P.W.1 has not stated about the exact point of time, at which the accused and the deceased fought prior to the date of the incident and the accused sending his wife to her parents' house, in Ex.P-1, which is the earliest version, he clearly indicated the existence of the illicit relationship between the wife of the accused and the deceased and the same being the cause for the accused to bear grudge against the deceased leading to his murder.

The F.I.R., as held by the Courts in a catena of judgments, cannot be equated to an encyclopedia. The F.I.R. is not expected to contain the elaborate and minute details, both regarding the motive and the manner in which the offence has taken place (See **State of U.P. vs. Harban Sahai**^[1], **State of U.P. vs. Krishna Master**^[2], **Vajresh Venkatray Anvekar vs. State of Karnataka**^[3] and **V.K.Mishra vs. State of Uttarakhand**^[4]).

10. On a careful perusal of Ex.P-1 - report, we find that P.W.1 referred to the relevant background in relation to the illicit contact between the deceased and the wife of the accused and also the past instances viz., that on two previous occasions, the accused beating the deceased on the ground that the latter had illicit relationship with the wife of the accused. In our opinion, these details are sufficient for the prosecution to set the law in motion and based on the said foundation, the prosecution case was developed in the right direction through the evidence of the material prosecution witnesses, such as P.W.1. Accordingly, the prosecution has

established the motive through the cogent evidence.

11. As regards the evidence let in by the prosecution pertaining to the commission of the offence, P.Ws.3, 4, 6 and 7 were the eyewitnesses, of whom, P.W.3 turned hostile and therefore, his evidence may not be relevant.

12. P.W.4, a lorry cleaner and a native of Gudlavalleru Village, deposed that he knows the deceased and the accused. He stated that on one day morning three years back, at about 11.00 a.m., he was travelling on a motorcycle along with his owner Srinu towards centre, that when they reached a place near Shandy, they found the deceased lying in the side canal and the accused was beating him. He further deposed that he cannot say with what weapon he was attacking, but the accused was holding a knife in his hand. He has not actually seen what the accused was doing with the knife. His owner asked him to look at the deceased whether he was being attacked and then he found the accused cutting the deceased with the knife. On seeing the same, immediately himself and his owner went to a tailoring shop, which is situated beyond the Shandy, and there they found P.W.3 and they informed him, what all they have seen. In his cross examination, he deposed that he was examined by the Police on the same day, on which the incident has taken place. What is significant is that in the cross examination, except the question as to whether he was examined by the Police on the same day or not and the suggestion to the effect that he was deposing falsehood, no other question was put to the witness and elicited anything worth mentioning to discredit his evidence.

13. P.W.6 is another eyewitness, who deposed that when he and one Lokanadha Rao (L.W.7) reached Shandy road, they heard some sound and thereupon, they found the deceased lying on the ground and the accused sitting on him, stabbing the deceased on the right side below the jaw, removing the pant portion of both the legs of the deceased and stabbing him on the back side of the knees of both the legs, that when they raised shouts, the accused fled away from the place and that when they went near the deceased, he was found dead. In his cross examination, the witness stated that there were about four or five persons by the time, he reached near the dead body and P.W.3 was shouting that the deceased was being attacked.

That on the date of the incident, the Police asked his name and address and two or three days thereafter, he was examined by the Police though he does not remember the exact date on which he was examined. He denied the suggestion that the deceased was related to him. Except the routine suggestions, such as he has not found the accused at the place of the occurrence stabbing the deceased and that he was deposing falsehood as he belonged to the same caste as that of the deceased, nothing which would discredit the testimony of the witness could be elicited from his evidence.

14. P.W.7, another eyewitness, deposed on the same lines as that of P.Ws.4 and 6. He further deposed that the accused hurled a stone on the deceased, due to which, he fell down from motorcycle, that the accused hit the deceased with a stone, also stabbed him with a knife on his head, lifted pant of his both legs, cut the veins of both the legs and on finding the villagers approaching the scene of offence, the accused fled away from the place. In his cross examination, he stated that the Police examined him at his house and recorded his statement. He denied the suggestion that the accused was not seen at the place of the occurrence and he had not attacked the deceased. The witness denied the suggestion that the deceased belongs to his caste and that he is related to him.

15. If we closely analyze the evidence of the above three witnesses, i.e., P.Ws.4, 6 and 7, their evidence is consistent and we don't find any material inconsistency in their evidence. While P.Ws.4 and 6 have narrated the events after the deceased was thrown to the ground by the accused, the evidence of P.W.7 covered the entire incident commencing from the time, the accused attacked the deceased with a stone making the latter fall on the ground from the motorcycle, till he caused the injuries with knife on the head and on the back of both the legs of the deceased by cutting the veins.

Ex.P-9 – post mortem certificate found six injuries on the body of the deceased. Injury No.1 is a lacerated injury with underlying fracture of the frontal bone of 3" x 1" size and bone deep caused by blunt object, injury No.2 is a lacerated injury of ½" size near right ear caused by blunt object, injury No.3 is a lacerated injury of 3" x 1" size, jaw deep on right side of chin caused by blunt edged weapon, injury No.4 relates to lacerated injuries on

the back of both knees of 5" x 3" size, bone deep caused by blunt and heavy object, injury No.5 is laceration with fracture of underlying scalp of 3" x 1" size, bone deep present over center of the scalp caused by blunt object and injury No.6 is a contusion diffused over the right side of the neck caused by blunt object.

In his evidence, P.W.12 – the Doctor, who conducted autopsy over the dead body of the deceased and issued the post mortem certificate, deposed that injury Nos.1, 5 and 6 were possible with M.O.3 – stone, injury Nos.3 and 4 were possible with M.O.4 - knife and that the fractures noted in the head and the neck, which were fractures of frontal and middle scalp, were also possible with M.O.3 only. No doubt, in his cross examination, P.W.12 opined that M.O.4 was not a blunt object. If we closely examine the injuries found on the dead body of the deceased with reference to the medical evidence, they support the ocular evidence of the eyewitnesses.

The only inconsistency we find between the medical evidence and the testimony of the direct witnesses is in relation to M.O.4, which is sought to be pressed into service in the argument of the learned counsel for the appellant/accused. As per the medical evidence, all the injuries were caused with blunt objects. However, P.W.12 - the Doctor, opined that M.O.4 is not a blunt object. This naturally creates a serious suspicion as to whether M.O.4 was used in the commission of the offence by the accused. The law is well settled that if the medical evidence is inconsistent with the direct evidence, the Court prefers to give weight to the direct evidence over the medical evidence. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to the alternative possibilities cannot be accepted as conclusive. (See **Vijay Paul vs. State (Govt. of NCT) of Delhi**^[5]). However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. (See **Abdul Syeed vs. State of M.P.**^[6])

16. If we carefully sift through the ocular evidence of P.Ws.4, 6 and 7, it is clear that the accused threw a stone on the deceased while the latter was riding a motorcycle. Due to the stone hit, the deceased fell down. P.W.7

gave a graphic description as to what happened subsequently. The accused hit the deceased with a stone, then stabbed him with a knife on his head and lifted the pant of both his legs and cut the veins of both the legs. P.Ws.4 and 6 corroborated with the evidence of P.W.7 on this aspect. Ex.P-9 – the post mortem certificate, found as many as six injuries on the dead body of the deceased. We have also perused Ex.P-5 - comprising six photos, which reveal the injuries on the face and knees portion of both the legs of the deceased with the blood visible on the injuries. We also found the motorcycle by the side of the dead body of the deceased. Even if the prosecution failed to prove that the accused attacked the deceased with M.O.4, which appears to be sharp edged, in our considered opinion that would not discredit the ocular evidence of P.Ws.4, 6 and 7, which remained unimpeached as nothing much could be elicited from their cross examination. All these witnesses are wholly independent witnesses, who are not related in any manner to the deceased or who had any axe to grind the accused. Therefore, even if the prosecution failed to seize the real weapon, which was used by the accused for causing the injuries to the deceased, we have no reason to discredit the evidence of the eyewitnesses.

17. As regards the submission of the learned counsel for the accused that P.Ws.4, 6 and 7 did not refer to the presence of each other, that hardly affects the case of the prosecution so long as the evidence of these witnesses does not suffer from any inconsistencies. Failure of each witness to refer to the presence of the other will have no affect on the case of the prosecution. On a careful appreciation of the entire evidence on record, we have no reason to interfere with the judgment of the Court below.

18. With regard to the submission of the learned counsel that the accused did not have the intention of killing the deceased, we are unable to find any merit in this submission. The evidence on record clearly shows that the accused attacked the deceased with premeditation and the nature of the injuries, which were caused by him to the vital parts, such as head and the ear clearly shows that he had the intention of killing the deceased. Hence, this is not a case where we can convict the accused for the offence punishable under Section 304 I.P.C. The Court below, in our opinion, has

rightly convicted the accused for the offence punishable under Section 302 I.P.C. Hence, its judgment is not liable for interference.

19. For the aforementioned reasons, the Criminal Appeal fails and the same is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

27th April, 2016

Note: L.R. copies to be marked.
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[\[1\]](#) (1998) 6 SCC 50
[\[2\]](#) (2011) 1 SCC (Cri) 381 : (2010) 12 SCC 324
[\[3\]](#) (2013) 3 SCC 462
[\[4\]](#) (2015) 9 SCC 588
[\[5\]](#) (2015) 4 SCC 749
[\[6\]](#) (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262