

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL APPEAL No.1510 of 2010

J U D G M E N T

(Per Hon'ble Sri Justice M. Seetharama Murti)

In this appeal under Section 374(2) CrPC, the appellants/ A1 to A3 assailed the judgment dated 25.10.2010 of the learned Judge, Family Court-cum-Additional Sessions Judge, Karimnagar holding Full Additional Charge of the post of the III Additional Sessions Judge, Karimnagar, in Sessions Case No.470 of 2009.

2. We have heard the submissions of *Sri H. Prahlad Reddy*, learned counsel appearing for the appellants/ A1 to A3 and the learned Public Prosecutor appearing for the respondent/ State. We have perused the material on record.

3. The learned Additional Sessions Judge framed the following charges against the appellants/ A1 to A3 and other accused, A4 to A10, who are not before this Court.

"FIRSTLY:-

That you A-1 to A-3 on 21.1.2008 at about 8 a.m., at Gajasingavaram village in furtherance of common intention of all of you went to the house of Jella Muthaiah armed sticks and rods, and did commit murder by intentionally causing the death of Jella Muthaiah, by beating him indiscriminately, dragging him into the street, beating him with sticks and rods and that you A-2 took a boulder and hit over his head, due to which he fell in a pool of blood and died, as you A-1 to A-3 in strong belief that Jella Muthaiah is responsible for all the bad incidents occurring in your house, and that you accused also suspecting him as a sorcerer as you A1 was suffering with mental illness since (20) years and earlier five years ago, your (A-1's) two calves and two cows were died, and that on 9.1.08 two goats were also died, and that after the death of Jella Muthaiah, you A-1 to A-3 tied his legs with a nylon rope and

dragged his dead body through the bazaar towards village tank (Oora Cheruvu), and further dragged the dead body into tank water and buried him in the mud, and thereby committed an offence punishable U/s.302 r/w 34 IPC and within my cognizance.

SECONDLY:-

That you A-1 to A-3 on the same date, time, place and during the course of the same transaction, mentioned in charge No.1 supra, in furtherance of common intention of all of you, did an act to wit, attempted to kill Jella Pochavva, by beating her with stick, resulting in simple and grievous injuries, with such intention or knowledge and under such circumstances, that if by that act you had caused the death of Jella Pochavva, you would have been guilty of murder, and thereby committed an offence punishable U/Sec.307 r/w.34 IPC and within my cognizance.

THIRDLY:-

That when you A-1 to A-3 on 21.1.2008 at about 8 a.m., at Gajasingavaram village in furtherance of common intention went to the house of Jella Muthaiah armed with sticks and rods, by beating him indiscriminately, dragging him into the street, beating him with sticks and rods, and that time you A-4 Muche Rajavva (wife of you A-1), A-5: Jajjari Devaiah, A-6: Jajjari Shanker @ Shankaraiah, S/o Dhakaiah, A-7: Jajjari Pentaiah, A-8: Jajjari Nadipi Rajaiah, A-9: Jajjari Shanker, A-10: Suthari Balaraju came there, and abetted you A-1 to A-3 to kill Jella Muthaiah, thereby you A-1 to A-3 beat him indiscriminately with rods and sticks and further took a boulder and hit over his head, due to which he died at the spot, which was committed in connection with abetment, and that you A-4 to A-10 thereby committed an offence punishable U/Sec.302 r/w.109 IPC and within my cognizance."

[Reproduced verbatim]

4. By the judgment under appeal, learned Additional Sessions Judge found A1 to A3 guilty of the offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo Rigorous Imprisonment for life and pay a fine of Rs.100/- each and undergo simple imprisonment for one month each in default thereof. The learned Sessions Judge also found A1 to A3 guilty of the

offence punishable Section 326 read with 34 IPC and sentenced them to undergo rigorous imprisonment for one year and pay a fine of Rs.100/- each and to suffer simple imprisonment for one month each in default thereof. Both the said substantive sentences imposed upon A1 to A3 are directed to run concurrently. However, A1 to A3 were found not guilty of the offence punishable under Section 307 read with 34 IPC. A4 to A10 were found not guilty of the offence punishable under Section 302 read with Section 109 IPC.

5. At trial, the prosecution examined PWs 1 to 16 and exhibited P1 to P34 and marked MOs 1 to 14. Exhibit D1, relevant portion of 161 CrPC statement of PW1, was marked on behalf of the defence. No other evidence was adduced in defence.

6. To begin with it is apposite to consider and evaluate the evidence that was adduced by the prosecution to bring home the guilt of the accused 1 to 3.

6.1 In the first place it is apt to refer to the gist of evidence of PW1, the wife of the deceased, which is as follows:

PW1, Jella Gangavva, is the wife of the deceased, Jella Muthaiah. Their son, Mahesh, was pursuing studies at Hyderabad, at the time of the incident of murder of Muthaiah. PW2, Battu Saroja (Sarojana), is their daughter. PW2, was given in marriage to a person of Domakonda village of Nizamabad District; and, she is residing at that place with her husband. PW1 knows all the accused, who belong to her village. The deceased, Muthaiah, is an agriculturist. There used to be quarrels between the deceased husband of PW1 and the locality people of the village on the ground that the deceased is a sorcerer and he is using his alleged powers to harm people including children. In connection with that dispute, several panchayats were held. On one occasion, the villagers took the deceased to the Hanuman deity and made him to swear that he is not a sorcerer. Afterwards, for about two or three years, there were no quarrels on that account between the deceased and the

villagers. On the day of the incident at about 8 AM, PW1 was attending to morning chores inside the house. Having sent his cattle along with a herd of cattle, the deceased returned to the house and sat on the pial of the house. His mother, PW4, Jella Pochavva, was sitting in the front verandah of the house to expose herself to morning Sun. While PW1 was attending to her works in the house, A1, Muche Gangaiah, and A2, Muche Ashaiah, & A3, Muche Madhu, who are the sons of A1, and some other villagers armed with iron rods and sticks came to their house. A1 called the deceased as Muthiga. When the deceased got up, A1 beat him with an iron rod and A2 and A3 who were holding sticks in their hands assaulted the deceased with sticks. On account of the injury inflicted by A1 with an iron rod, the deceased sustained a bleeding injury on his head. A1 to A3 dragged the deceased from out of the house. When PW1 went to his rescue, they obstructed her and A2 pushed her inside the house and bolted the doors of the house from outside. At that time, PW4, who was at the threshold of the house, was also beaten by A1. After tying the deceased with a rope, which is used for tethering the cattle, the deceased was taken away from that place. At about 10AM, PW8, Danaveni Lingarajam, Sarpanch of the village, and PW7, Pantham Ramaiah, who came to the house of PW1 opened the door of the house. PW1 observed bloodstains and marks of dragging from their house and followed the said marks to the tank of the village. However, she did not find her husband at that place. All the villagers and her relatives reached the spot and searched for her husband's body in the waters of the tank. Later, she went to Gambhiraopet P.S and presented a written report, Exhibit P1, which was written at her request.

6.2 The material and relevant points elicited in her cross examination are as under: "She got prepared the report with the help of Sarpanch and Sunkari of the village. She gave the report at 10:00 AM and police came to her house at 11:00 AM. Her house is situated in the midst of the village. All the residents of her locality were present when the incident of attack was going on but none of

them came to the place of assault. Though there are several houses in and around, no one came out when the incident of assault on the deceased was going on. It was A1 who had assaulted her mother-in-law. Five years ago they (her family) filed a complaint with the police stating that her husband was being threatened that he was sorcerer. The persons who were arraigned as accused therein, that is, A5 to A9 herein were acquitted in that case. It is true that in her locality there are many enemies to her husband for the reason that he is a sorcerer. It is true that Thupakula Mallaiah's son, aged 12 years, died one year prior to the incident of murder and Vadla Ashok's daughter, aged 15 years, died four years prior to the incident of murder. It is true that there are disputes between the son-in-law of PW1 and his family on one hand and the deceased on the other and that her son-in-law is not on visiting terms with them since five years. The deceased was an agriculturist. There are houses of people of 'Golla' caste at the end of the lane leading to the tank. There were bleeding injuries on head, face and legs of the deceased. The house of Sarpanch was ten houses away from her house." She further denied the suggestions given in line with the defence of the accused. Some such relevant suggestions are as under: "It is not true to suggest that I have not mentioned in my complaint that I was pushed into the room and locked from outside. It is not true to suggest that A1 to A3 had not assaulted and killed my husband, and, in fact, my husband has so many enemies in the village and that one of them had killed him but at the instance of Sarpanch I gave a false complaint against A1 to A3. It is not true to suggest that at the instance of Police I have involved A4 to A10. It is not true to suggest that A1 to A3 had not assaulted my mother-in-law, Pochavva. It is not true to suggest that I have not prepared Exhibit P1 and that somebody else prepared it and I had just put my thumb impression on it. It is not true to suggest that A1 to A3 did not kill my husband and that I am giving false evidence against them at the instance of Sarpanch and police."

6.3 To complete the narration of the evidence, it is necessary to now make a reference to the other and further evidence on record. PW15, the Sub Inspector of Police, received the Exhibit P1, report, at 11.30 hours on 21.01.2008 from PW1 and registered the crime and issued FIR. The copy of the FIR is Exhibit P24. He sent the original FIR to the Court of the learned Magistrate and recorded the statement of PW1. He handed over further investigation to the CI of Police, Srcilla.

6.4 PW2 is the daughter of PW1 and the deceased. She is not an eyewitness to the incident as she came to the village on receiving telephonic information from somebody while she was at the house of her parents-in-law. She only spoke about everybody in the village suspecting her father and thinking that he was responsible by his sorcery for the illness of anyone in the village.

6.5 PW3, Pantham Narsaiah is also not an eyewitness to the incident and according to his version, after knowing about the incident, he went to the village tank and that when a search was made in the presence of the police, they found the dead body in the water of the tank and that after the dead body was brought out he noticed injuries over the head of the dead body of the deceased.

6.6 PW4, mother of the deceased, is the injured eye-witness. The gist of her evidence is as follows: "The deceased is her son. PW1 is her daughter-in-law. She knows all the accused. The deceased is an agriculturist and he used to run a flour mill. Her son was killed about two years prior to her giving evidence. There were quarrels between her son and villagers. The villagers used to allege that her son is a sorcerer. Her son was taken to Hanuman temple by the elders of the village. On the date of the incident, her son, the deceased, was sitting on a pial in front of the house while she was sitting near him on the ground. PW1 was inside the house attending to the household work. She saw A1, Gangaiah, and his sons, A2 & A3, coming there armed with iron rod

and sticks. After coming over there, A1 assaulted her son with iron rod on his head and A1 to A3 assaulted her son with sticks. She was nearby her son when the incident took place. A1 beat her with sticks all over the body and caused fracture injury to her right hand and other injuries. A1 assaulted her on her left shoulder. On receiving such injury, she fell on the ground. Her son was dragged towards tank. She lost consciousness. By the time she regained consciousness about four days after the incident, she was in Sricilla Area Hospital. She learnt that her son was dragged towards tank and was buried in water and died.” In her cross-examination, she had admitted that there are disputes between her son and the villagers for the reason that her son was doing sorcery. She denied a few suggestions that were put to her in line with the defence and maintained her stand in cross examination. She specifically denied the suggestion that she was not assaulted by anybody and that because of her old age and inability to walk she fell from the pial and received injuries. Indeed, no points were at all elicited in her cross-examination to doubt her testimony.

6.7 PW5, Jella Venkatlaxmi, the younger sister of the deceased testified that her house is situated across the road opposite to the house of the deceased and that on hearing the sound of Ambulance, she came out of the house and rushed to the house of PW1 to know as to what had happened as the Ambulance stopped at that house. There, she found her mother, PW4, with injuries on her right hand. Therefore, she took her to the Government hospital in the said Ambulance. She later returned to her house at about 9 or 10 AM on the same day and on such return, she came to know that Muthaiah was beaten and killed. She is also not an eyewitness to the incident. PW6, Sunkari Rajaiah, is the brother-in-law of the deceased. He is also not an eyewitness to the incident. According to him, on receiving phone call in the morning regarding the death of Muthaiah, he reached the village at about 8 AM and found PW4, PW1 and PW5 at the house. He had also noticed blood stains, a

boulder, dragging marks and the presence of several people at the tank. PW7, Pantham Pamaiah is a retired village Sunkari of Gajasingavaram village. According to his version, at about 8 AM on the day of the incident, he having found commotion came to the house of PW1 and found PW4 with an injury on her hand and came to know about the incident from the enquiries made with PW1. He further deposed that an Ambulance was called and that PW4 was taken to the hospital and on arrival of police, they all went to the tank of the village and that some people got into the water and searched the dead body of Muthaiah and that they found the dead body of Muthaiah and that PW1 also came there and saw the dead body and that on following the dragging marks and blood stains from the house of Muthaiah, they went up to the Tank. PW8, Danavena Lingarajam, Sarpanch for Gajasingavaram village, also deposed that on the day of the incident, when he was about to take bath, he heard that Muthaiah was killed and that he immediately went to the village tank and found several people there and that on enquiries he came to know that Muthaiah was killed and that he informed the matter to the police over telephone and that before going to the tank, he went to the house of Muthaiah and found PW4 with an injury and that she was unable to speak and that he called an Ambulance over telephone and that in that Ambulance, PW4 was taken to the hospital and that he made enquiries with PW1 and came to know about the incident. PW9 is the photographer, who had taken photographs at the instance of the Inspector of Police. PW10 who is a sweeper of Primary Health Centre, Gambhiraopet, turned hostile to the case of the prosecution. PW11 is an inquest panch witness, who was said to have been present at the time of inquest held over the dead body of the deceased and preparation of Exhibit P7, inquest panchanama. According to his version, he was also present when the police examined the house of the deceased and the tank, viz., the two scenes of offence, and also at the time of preparation of Exhibits P8 and P9, rough sketches of the scenes related to the incidents at the house and the

tank respectively. He further deposed that MO1, blood stained boulder, and MO2, blood stained Lungi, of the deceased, Muthaiah, and MO3, blood stained earth, and MO4, control earth, were seized by the police at the time of observation of scene of offence at the house of the deceased and that he was present at the time of preparation of Exhibits P8 and P9, rough sketches. PW12 who was said to be a mediator present at the time of arrest of the accused and recovery of MO10, Nylon rope, MO11, iron rod, pursuant to the disclosure/ confessional statements of the accused 1 and 2 turned hostile to the case of the prosecution. So also PW13. PW14 is the doctor, who conducted postmortem examination and gave Exhibit P22, Post Mortem Report stating that the deceased sustained the following ante-mortem external and internal injuries:

External Injuries:

1. Lacerated wound over fore head 3x2x1 cm with bone deep;
2. Mid parietal region 2x2x1 cm;
3. Compression fracture left parietal region;
4. Multiple linear contusion over right side of chest/abdomen measuring approximately 15 X 0.5 C.M.C;
5. Laceration over left cheek;
6. Laceration over right side of lower lip right jaw fracture of mandible right side.

Internal injuries:

‘Left parietal bone fracture/right jaw; intracranial bleed left cerebral hemisphere due to fracture of left parietal bone; laceration over right side of lower lip fracture mandible.’

PW14 stated in his report and also in his evidence that in his opinion the deceased died due to head injury, intracranial hemorrhage caused by blunt weapon and that the head injury sustained by the deceased can be caused by the boulder like MO1. The said doctor also examined PW4, injured eye-witness, and gave Exhibit P23, injury certificate, certifying that she sustained the following injuries:

1. Lacerated wound over palmar aspect of left hand with bone deep 5x1x1 cm simple;
2. Pain swelling deformity right hand wrist fracture colles –grievous;
3. Blunt injury right hip joint- simple

The doctor further deposed that the injuries sustained by PW4 as mentioned in Exhibit P23 may be possible by a fall from a high place on to a hard surface. PW16 is the Investigating Officer who collected the evidence and filed the charge sheet.

7. We have thus carefully gone through the entire evidence and gave earnest consideration to the same.

8. Before we proceed further, it is apt to deal with the contentions of *Sri H.Prahlad Reddy*, learned counsel for the accused and also that of the learned Public Prosecutor. The learned Public Prosecutor contended that PW1, the wife of the deceased, and PW4, the mother of the deceased, who is an injured eye witness, are natural witnesses and that their evidence, which is cogent and credible coupled with the other evidence on record is sufficient by the required standards to come to a safe conclusion that the prosecution established the guilt of the accused 1 to 3 beyond all reasonable doubt and that therefore the well reasoned judgment of the trial Court finding the accused 1 to 3 guilty and convicting them for the two offences punishable under Section 302 read with Section 34 IPC and Section 326 read with Section 34 IPC is sustainable under facts and in law. *Per contra*, the learned counsel for the accused 1 to 3 raised the following contentions in support of the submission that the prosecution case is not established much less beyond reasonable doubt.

9. It is first contended on behalf of A1 to A3 that PW1 is not an eye witness and that she is not a truthful witness. In support of the said principal contentions, he would submit that going by the evidence of PW4, the mother of the deceased, at the time of the incident, the deceased was sitting on a pial

and PW4 was sitting on the ground by his side, outside the house, and that PW1 was attending to everyday activities inside the house and that the evidence further shows that the assailants on coming to the house of the deceased attacked him and that therefore no part of the incident had taken place inside the house and therefore there is no possibility for PW1 to witness the incident. He would also submit that even according to her version when she interfered, A2 pushed her into the house and bolted the door from outside and that on the arrival of PW8 at 10 AM, he opened the closed doors and that therefore her evidence to the effect that she followed the dragging marks and stains of blood on the way from her house to the Tank and reached the Tank is a false version and that in view of the bolting of the door from outside there is no possibility for her to follow the assailants upto the Tank when they dragged the deceased from the house of the deceased to the Tank and that in view of her false statements she is not a credible witness. However, the learned Public Prosecutor rightly contended that evidence of PW1 shows that part of incident, that is, the initial part took place in the house and that in Exhibit P8, rough sketch of the scene of offence at the house, the Investigating Officer has shown the blood stains both in the house and outside the house and that in any view of the matter, when the deceased, who is her husband, is being attacked at the house the possibility of her witnessing the incident by leaving her household work is not artificial and is quite natural. He would also submit that her further version that when she interfered during the course of attack by the accused on the deceased, A2 pushed her inside the house and bolted the door would also make it manifest that she is an eye witness to the incident. He would clarify that her evidence should be understood to mean that after opening the door bolted from outside, she followed the marks of dragging and blood stains and reached the Tank where the dead body was discarded in the muddy waters of the Tank by the accused. He would also alternately contend that the exaggeration or addition by embroidery perhaps for fear of being

disbelieved is no ground to throw her evidence overboard and that the maxim '*falsus in uno falsus in omnibus*' has no application in our country and that her evidence to the extent truthful can be taken into consideration, in any view of the matter. He would also submit that the evidence of PW4, the injured eye witness, who is no other than the mother of the deceased, sufficiently proves the complicity of the accused 1 to 3.

We have given earnest consideration to the submissions. When PW1's evidence is read as a whole, it appears to have a ring of truth; PW4 sustained injuries in the same incident is established by the evidence of the doctor, PW14. Though it is sought to be contended that the injuries sustained by PW4 are also possible by a fall from high position on to a hard surface, the said contention is of no avail as her evidence establishes that she was sitting on the ground by the side of the deceased, who was sitting on the pial, and that she sustained injury when she was beaten by A1. Hence, there is no possibility for her fall from a high position and the evidence on record does not support the said theory. Thus, on an analytical reading of the evidence of PW1 along with the evidence of PW4, we are satisfied that an opinion and impression can safely be formed that there is a ring of truth even in the evidence of PW1 and that the evidence of both PWs 1 and 4 cumulatively is sufficient by the required standards to safely hold that the prosecution is successful in bringing home the guilt of the accused 1 to 3 and for sustaining the conviction recorded against them and sentences imposed upon them by the Court below. According to settled position of law, the evidence of an injured witness like PW4 cannot easily be discarded and disbelieved because her presence at the time of occurrence cannot be doubted and as her presence at the scene being the mother of the deceased is natural. We find considerable force and acceptable merit in the submissions of the learned Public Prosecutor. On a careful analysis of the evidence, we are not impressed with the submissions of the learned counsel for the accused.

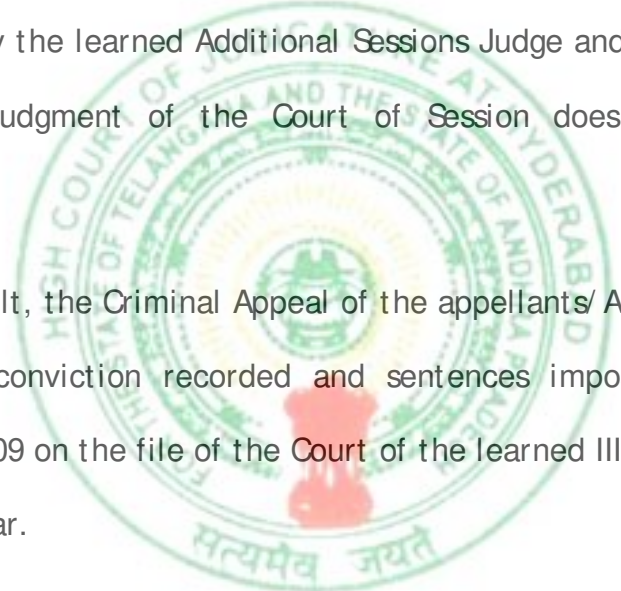
9.1 It is next contended that PWs 1, 2 and 4 are interested witnesses and there are discrepancies in their evidence and therefore, their evidence is not reliable. PWs 1 and 4 being the wife and the mother of the deceased are no doubt related witnesses; but, they cannot be dubbed as interested witnesses as interested witnesses are those who are interested in seeing that the accused are punished for no fault of the accused. Further, there is no reason for PWs 1 and 4 to falsely implicate the accused by leaving the real culprits, if any, other than the accused.

9.2 It is also contended that the doctor opined that the head injury can be possible by a boulder like MO1. But the evidence of PW1 is silent on the aspect that the assailants assaulted the deceased with a boulder and that PW4 also did not state that the assailants attacked the deceased with a boulder. However, the evidence of PWs 1 and 4 would show that A1 attacked the deceased with an iron rod while A2 and A3 attacked him with sticks. The Doctor also deposed that the head injuries are possible by blunt object. The medical evidence shows that the deceased sustained five external injuries and three internal injuries and there is no reason to disbelieve the ocular evidence of the direct witnesses as it is possible to accept that such injuries can also be caused by iron rods and sticks, which are blunt objects. Further, in the case on hand, there is direct evidence in regard to overt acts of A1 to A3 and also their participation in the criminal enterprise and their physical presence, promotion and facilitation of the crime. Section 34 IPC deals with vicarious liability of one accused for an act committed by another accused. The provision postulates that when a criminal act is done by several persons in furtherance of the contemplation of all, each such person is liable for the act in the same manner as if it were done by him alone. Thus in a case of this nature, the emphasis is also on physical presence and promotion or facilitation of the

crime. Hence, the evidence on record sufficiently reflects the complicity of the accused in the crime.

10. Having thus considered the contentions of the accused 1 to 3, we are of the view that none of the contentions advanced are sufficient to put out of place the well established case of the prosecution. To sum up in one sentence, there is a ring of truth in the evidence brought on record to bring home the guilt of the accused 1 to 3. Having regard to the reasons aforesaid, we are satisfied that there is adequate satisfactory evidence worthy of trust to safely hold that the prosecution sufficiently and beyond all reasonable doubt brought home the guilt of the accused for the offences for which they are convicted and sentenced by the learned Additional Sessions Judge and that therefore the well reasoned judgment of the Court of Session does not call for any interference.

11. In the result, the Criminal Appeal of the appellants/ A1 to A3 is dismissed confirming the conviction recorded and sentences imposed upon them in S.C.No.470 of 2009 on the file of the Court of the learned III Additional Sessions Judge, Karimnagar.


SANJAY KUMAR, J

M. SEETHARAMA MURTI, J

08th September, 2016
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