

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

* * * *

CRIMINAL APPEAL No.1542 of 2010

Between:

Mallela Omprakash,
Guntakal, Anantapur District.

..... Appellant

Vs.

\$ The State of A.P. rep. by its
Public Prosecutor, High Court of A.P.,
Hyderabad, through Inspector of Police,
Itikalapalli Circle.

.....Respondent

DATE OF JUDGMENT PRONOUNCED: 15-11-2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE SRI JUSTICE A.V. SESA SAI

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

C.V.NAGARJUNA REDDY, J

A.V. SESA SAI, J

* HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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> HEAD NOTE:

!Counsel for the appellant: Sri N. Aswartha Narayana

Counsel for Respondent: Public Prosecutor

?CASES REFERRED:

1. 2013 (12) SCC 236
2. (2007) 13 SCC 90
3. 2012 (11) SCC 205

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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.....Respondent

Counsel for the appellant: Sri N. Aswartha Narayana

Counsel for Respondent: Public Prosecutor



The Court made the following:

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

The sole accused in S.C. No. 214 of 2010 on the file of learned IV Additional Sessions Judge (FTC), Anantapur, filed this Criminal Appeal feeling aggrieved by judgment dated 10.11.2010, whereby he was convicted for the offence under Section 302 I.P.C and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months.

The case of the prosecution, as reflected from the preliminary charge sheet, is that one Julakanti Sreenivasa Reddy @ Moddu Seenu (hereinafter referred to as 'the deceased') was a native of Challagundal Village, Nakrekal Mandal, Guntur District. He was convicted in S.C.No.209 of 2006 on the file of learned Additional Metropolitan Sessions Judge, Cyberabad, and was sentenced to undergo rigorous imprisonment for seven years. As he was undergoing trial in S.C.No.178 of 2006 for the offences punishable under Sections 120(B) r/w 147, 148, 201, 212, 302, 307, 324, 326 and 397 r/w 149 I.P.C, Sections 25(1B)(a) and 27 of the Arms Act, 1959 and Sections 3 and 5 of Explosive Substances Act, 1908, on the file of learned Principal Sessions Judge, Anantapur, he was brought to the District Jail, Anantapur, on 28.08.2008 and was lodged in Yamuna barrack of the said jail. About 10 days prior to the occurrence, the accused was shifted to Yamuna barrack from Saraswathi barrack, as the latter was over crowded. Apart from the accused and the deceased,

P.Ws.12, 21, 22 and L.W.20-Shaik Mahaboob Basha, under trial prisoners, were also kept in Yamuna barrack.

While so, on 08.11.2008 at 9:00 p.m., the accused, who was in the habit of writing Ramakoti during night times, was writing Ramakoti. The deceased asked him to switch off the lights, as he wanted to sleep. The accused said that if the lights are switched off, he cannot write Ramakoti. Then, the deceased switched off the lights and asked the accused to sit near toilet and write Ramakoti. P.Ws.12, 21 and 22 and L.W.20 advised the accused to go to bed and allow the deceased to sleep. Then, the accused went to bed grumbling. On the same night at about 4:50 a.m, the accused took a dumbbell used by the deceased for his physical exercises and hit on his head while he was sleeping. On hearing the noise, P.Ws.12, 21 and 22 and L.W.20 woke up and saw the accused giving blows on the head of the deceased. When they raised alarm, L.W.11-B.L. Mallikarjuna, warden rushed to the spot, saw the deceased in a pool of blood and alerted the police staff. P.Ws.5, 7 and others rushed to the spot. L.W.15-A. Mallikarjuna went to the residential quarters of P.W.1, Jailor, and informed him about the incident. P.W.1 rushed to Yamuna barrack and with the assistance of P.Ws.12, 21 and 22 and L.W.20 and others shifted the deceased to the main gate of the District Jail. P.W.8-Medical Officer in the jail examined the deceased and declared him dead. The body was shifted to the Government Hospital, Anantapur.

On 09.11.2010 at 8:00 a.m., P.W.1 went to Bukkarayasamudram Police Station and lodged a complaint, based on which, a case in Crime No.124 of 2008 was registered for the offence under Section 302 I.P.C. On the same day at 12.00 Noon, L.W.27 – Gangadhar Reddy held inquest over the dead body of the deceased and sent it for post mortem examination.

P.W.23, who took up investigation, inspected the scene of offence, prepared an observation mahazar and seized the blood stained dumbbell and bloodstains from the ground under a panchanama in the presence of P.Ws.11 and 20. On 12.11.2008, he examined P.Ws.12, 21 and 22 and L.W.20 and recorded their statements. P.W.10 and L.W.29 - Dr. Venkateswarlu conducted post mortem examination over the dead body of the deceased and opined that the deceased died due to Craneo Cerebral injury. P.W.15 - the wife of the deceased filed a petition for conducting re-post mortem. In view of the order passed by the Sub Divisional Magistrate, Narasaraopeta, P.W.19 and L.W.32 – Dr. Madhusudhan Reddy conducted re-post mortem and opined that the deceased died due to head injury.

The accused was remanded to judicial custody on 10.11.2008. P.W.23 took the custody of the accused, interrogated him on 13.11.2008 in the presence of L.W.34 – M. Kula Shekar Reddy and P.Ws.13 and 14, recorded his confessional statement and sent him back to judicial custody. After completion of investigation, P.W.23 filed charge sheet.

In support of its case, the prosecution examined P.Ws.1 to 23, marked Exs.P.1 to P.32 and produced M.Os.1 to 5. On behalf of the accused, no oral evidence was adduced. However, Exs.D.1 to D.7, omissions/contradictions in Section 162 Cr.P.C statements of P.Ws.4, 7, 8, 21 and 22 were marked. On appreciation of the oral and documentary evidence, the trial Court has disposed of the Sessions Case in the manner as referred to above.

Sri N. Aswartha Narayana, learned counsel for the appellant, has advanced the following submissions:

- (1) The prosecution failed to establish the motive and that having rendered a finding that the prosecution could not fully establish the motive, the trial Court ought not to have convicted the appellant;
- (2) There is a long delay in registration of FIR as well as its reaching the Court of Jurisdictional Magistrate;
- (3) The prosecution failed to adduce proper evidence to show that the accused was lodged in Yamuna barrack where the deceased was lodged and found dead;
- (4) There are material contradictions between the evidence of P.W.4 and that of P.W.1 regarding the persons, who have opened the barrack on coming to know about the occurrence; and

- (5) The evidence of P.W.12, the alleged eyewitness having turned hostile, and the evidence of P.Ws.21 and 22, who are stated to be other eyewitnesses, suffers from mutual contradictions and that therefore, such an uninspiring evidence should not have been made basis for the conviction of the appellant by the trial Court.

Opposing the above submissions, the learned Public Prosecutor submitted that except the suggestion that the accused was not lodged in Yamuna barrack, no positive suggestion was made on behalf of the appellant that he was continued in Saraswati barrack on the date of occurrence. That apart, the official witnesses i.e., P.Ws.1, 2, 4 and 5, consistently spoke about the accused being lodged in Yamuna barrack. Even P.W.12, who turned hostile, and also P.Ws.21 and 22 corroborated the evidence of official witnesses. No suggestion in this regard was made to P.Ws.12, 21 and 22, in their cross-examination. The evidence of P.Ws.21 and 22 is very coherent and natural and no suggestion was put to these witnesses as to why they will falsely implicate the accused. Further, no motive was attributed to the official witnesses to foist the case against the accused.

As regards the alleged delay, the learned Public Prosecutor submitted that while the occurrence has taken place at around 4:30 a.m., P.W.1- Jailor came to know about the same through his staff at about 5:00 a.m. and that immediately thereafter,

steps were taken to shift the body to the hospital, which was the first priority and thereafter, P.W.1 has lodged the report, which was registered by P.W.16 around 8:00 a.m. P.W.16 in his evidence clearly stated that he sent the FIR to the Court of Jurisdictional Magistrate at around 8:30 a.m.

The learned Public Prosecutor further submitted that the deceased being accused in a high profile murder case, the news of his killing has created a huge law and order problem and that considering the situation, which was prevailing at that time, the delay was not substantial. He has also submitted that even if there is some delay, the same is insignificant, having regard to the fact that no suggestions worth mentioning were given to the prosecution witnesses pointing to the false implication of the accused.

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

As regards the motive, the evidence of P.Ws.12, 21 and 22 throws some light. All these three witnesses were lodged in Yamuna barrack along with the deceased. P.W.12, who was declared as hostile witness, in his chief-examination has stated that himself, the accused, the deceased, P.Ws. 21, 22 and L.W.20 were lodged in Yamuna barrack and that during their stay in Yamuna barrack, the incident had occurred. He has further deposed that the appellant always used to write Ramakoti from 6:00 p.m to 10:00 p.m. That the deceased

always used to harass the appellant by causing obstructions to him in writing Ramakoti by putting off the lights stating that he wanted to sleep, that the deceased always used to command other prisoners in the barrack by asking them to clean the cell and bath room, that on the previous night of the incident at about 8:30 or 09:00 p.m, the appellant and the deceased quarrelled with each other with regard to switching off the lights and the deceased always used to remove the bulb to switch off the light, as the switches were placed out side the barrack.

P.W.21 also deposed on the same lines as P.W.12 did. He has testified that there were quarrels between the deceased and the appellant over switching off the lights by the deceased. Even the evidence of P.W.22 is also consistent with that of P.Ws.12 and 21.

The learned counsel for the appellant has pointed out that in his cross-examination, P.W.22 has deposed that during the night previous to the occurrence no quarrel has taken place between the appellant and the deceased. Though there is a slight inconsistency on this aspect between the evidence of P.Ws.12 and 21 on the one side and P.W.22 on the other side, in our opinion, the same is wholly insignificant for the reason that in his chief-examination, P.W.22 has clearly deposed that there always used to be friction between the appellant on the one side and the deceased on the other side regarding the lights during night time as the deceased was obstructing the appellant from writing Ramakoti by switching off the lights.

Thus, the evidence produced by the prosecution as discussed above would show that there was a cold war going on between the appellant and the deceased over light during night time.

In a case based on direct evidence, motive plays secondary role. As regards the motive, the law is well settled that it is not possible for the prosecution to establish motive beyond reasonable doubts (See: Birendra Das vs. State of Assam¹, Ujjar Singh Vs. State of Punjab²). Though human mind is complex and complicated and more often even the deceased himself may not be knowing that the accused has developed grudge against him (See: Sunil Clifford Daniel vs. State of Punjab³).

On a holistic consideration of the case of the prosecution and the evidence available on record, we are in no doubt that the regular quarrels taking place between the appellant and the deceased might have been the reason for the former to kill the latter. At any rate, in view of the availability of evidence of the eyewitnesses, this aspect pales into insignificance.

Coming to the submission of the learned counsel for the appellant that there was delay in lodging the FIR and its reaching the Magistrate's Court, as explained by the learned Public Prosecutor, P.W.1 is stated to have reached the jail on being informed that the occurrence has taken place at about

¹ 2013 (12) SCC 236

² (2007) 13 SCC 90

³ 2012 (11) SCC 205

4:30 a.m.; immediately with the help of the staff he has shifted the body to the Government hospital; later the Superintendent of Jail has prepared Ex.P.1 report and handed over the same to P.W.1, who in turn lodged the same before P.W.16 at around 8:00 a.m. It is not in dispute that the deceased was an accused in a high profile murder case and the incident might have shocked everyone including the jail authorities. Considering the background of the deceased and the circumstances prevailing at that time, it cannot be said that the time lag between 5:00 a.m and 8:00 a.m can be termed as delay affecting the case of the prosecution.

Further, no reasons have been suggested to the prosecution witnesses for false implication of the appellant. Ordinarily, delay in lodging the FIR or its reaching the Magistrate Court is considered fatal where there is scope for false implications or improvements or embellishments in preparing the complaint. The facts and circumstances of the case do not suggest that there was any possibility for anybody else killing the deceased, who was lodged in a barrack in a Central Jail. Therefore, we do not find any possibility of the deceased having been falsely implicated during the time gap between 5:00 a.m and 8:00 a.m.

As regards the alleged delay in the FIR reaching the Magistrate Court, P.W.16 has stated that after receiving Ex.P.1-report, express FIR was issued and the same was sent to the Court of the Magistrate at around 8:30 a.m. Ex.P.12 - FIR

contains the endorsement but the same was received by the Court through PC 2327 of Bukkaraya Samudram Police Station on 09.11.2008 at 12.30 p.m. Though no specific explanation is offered by the prosecution for the delay in the FIR reaching the Court, for the reasons discussed while dealing with the delay in lodging the FIR, we are of the opinion that this delay is not proved to be fatal in the absence of any scope for false implications.

The submission of the learned counsel for the appellant that the prosecution failed to produce the evidence that on the night of occurrence, the appellant was lodged in Yamuna barrack, can be referred only to be rejected.

No doubt suggestions were put to P.Ws.21 and 22 that on the night of the occurrence, the appellant was not in Yamuna barrack. In our opinion, these suggestions are wholly vague and half-hearted. No specific suggestion was put to the said prosecution witnesses that the appellant, on the night of occurrence was lodged in Saraswathi barrack as was the defence of the accused in his Section 313 Cr.P.C examination. P.Ws.1, 2, 4 and 5, the official authorities, consistently spoke about the appellant, the deceased, P.Ws.12, 21 and 22 and L.W.20 being lodged in Yamuna barrack. P.Ws.12, 21 and 22 specifically deposed that they were all together lodged in Yamuna barrack on the fateful night as noted herein before. Except the half hearted suggestion that the appellant was not in Yamuna barrack during that night, no positive suggestions were put to

any of these witnesses that he was lodged in any other barrack including Saraswathi barrack. We have therefore no reason to disbelieve the case of the prosecution that the appellant was indeed lodged in Yamuna barrack along with the deceased and four others prior to and also at the time of occurrence.

As rightly submitted by the learned Public Prosecutor, the defence has not built up any credible theory either by way of suggestions to the prosecution witnesses or through Section 313 Cr.P.C examination of the appellant to probablise false implication.

The learned counsel for the appellant pointed out that P.W.1 in his evidence stated that on 09.11.2008 at about 4:45 or 5:00 a.m., one of his staff members by name A. Mallikarjuna (L.W.15) came and informed him that the deceased was found lying in a pool of blood as he was beaten by the appellant and that immediately he rushed to Yamuna barrack and found the deceased in a pool of blood and that with the assistance of his staff, he has shifted the deceased from the barrack up to the gate of the jail.

With regard to the alleged contradictions, as per Ex.D.1, P.W.4 has stated as under:

“I was on duty at 3 AM then I checked every barrack and the prisoners there then at about early morning 4:30 am heard cries from Yamuna barrack and saw the Julakanti Sreenivasa Reddy alias Moddu Seenu lying in pool of blood. Then I immediately informed to Head Warder through set. Then Deputy Jailer and Jailer and others came to Yamuna barrack. Then opened

barrack and went inside and Julakanti Sreenivasa Reddy having wounds on his head and laid down. Then immediately the jailer lifted Julakanti Sreenivasa Reddy alias Moddu Seenu to 108 Ambulance with the help of prisoner Boggu Ramuldu, Marati Maruthi, Boya Muthyalu and Shaik Mahaboob Basha. Then the District Jail Doctor Narendra Naik came to jail and examined pulse of Sreenivasa Reddy and told that he was died.”

Referring to the above evidence, the learned counsel for the appellant submitted that the evidence of P.W.1 is not in corroboration with the evidence of P.W.4 as regards the persons who have opened the barrack. We do not find any merit in this submission, as there is no contradiction in the evidence between P.W.1 and P.W.4 merely because P.W.1 did not mention the names of the persons, who have opened the barrack, and therefore, the same cannot be treated either as omission or contradiction in the evidence of P.W.4.

Apropos the occurrence, PW-21 deposed that at about 4.30 a.m. he heard some noise (paraphrased as “Dhaba! Dhaba!”) due to which his sleep got disturbed and he turned from one side to the other and again tried to sleep, that when he again heard similar sound, he got up and saw the accused beating the deceased with a dumbbell on his head, that he ran and caught hold of the accused by putting his hands around and pulled him backwards, that in the mean time other prisoners also got up, that PW-12 removed the bed sheet on the body of the deceased and tried to wake him up, but the deceased did not answer though he was moving his legs slightly, that having seen the deceased in a pool of blood, he left the accused, and that the

accused again went near the deceased and beat him again with the dumb bell. PW-22 deposed that at about 4.30 a.m., he heard some noise (paraphrased as Dhana! Dhana!), that he heard PW-21 raising cries as "Sami, Sami", that PW-22 got up and saw PW-21 holding the accused by keeping his hands around him, that at that time the accused was holding the dumb bell, that PW-12 removed the blanket over the body of the deceased, that there was little movement of legs of the deceased, and that on seeing the deceased in a pool of blood, he raised cries. In the cross-examination, PW-22 deposed that by the time he got up from the sleep, the deceased was in a pool of blood, that afterwards the accused again beat the deceased with the dumbbell twice.

The evidence of PW-21 amply corroborates with that of PW-22. Being the eye-witnesses, their evidence amply establishes that it was the accused who beat the deceased with the dumbbell. In the backdrop of the evidence of these two witnesses, PW-12 turning hostile pales into insignificance, more so because, he has not denied the occurrence as such. In tune with the evidence of PW-21 and PW-22, PW-12 deposed that at about 4.30 a.m. he got up from sleep after hearing some noise, that he saw the accused coming from the bathroom, that at that time the deceased was lying down in a pool of blood and that they raised cries on seeing the blood. What could be concluded from the evidence of PW-12, coupled with the evidence of PW-21 and PW-22, is that by the time he woke up from sleep upon hearing the cries of PW-21, the accused had completed the act

of attacking the deceased with the dumbbell. Therefore, we do not find any substance in the submission of the learned Counsel for the appellant that the evidence of PW-12, PW-21 and PW-22 is mutually contradictory and that therefore the same cannot form the basis for convicting the appellant.

In the light of the consistent evidence of P.Ws.1, 2, 4 and 5 and that of P.W.12 despite the fact that he was declared as hostile and also that of P.Ws.21 and 22, the prosecution was able to drive home the accusation against the appellant that he alone was responsible for the murder of the deceased. The prosecution has produced M.O.1 - blood stained cement dumbbell with which the appellant has attacked the deceased. P.W.10 - the doctor, who conducted autopsy on the body of the deceased, has issued Ex.P.3 - post mortem report and also Ex.P.5 - final opinion. Ex.P.3 - post mortem report reveals that there were six external injuries and four internal injuries. In the said post mortem report, the doctor has opined that the death was caused due to Cranio-cerebral injury (Head injury) as a result of heavy and blunt impact. In Ex.P.5 - final report, P.W.10 has opined that the deceased died due to the cause of death as given in Ex.P.3-post mortem certificate. Nothing material could be elicited from the cross-examination of P.W.10 to discredit both these certificates. Thus, the medical evidence fully corroborates with the case of the prosecution as regards the weapon used and the cause of the death.

For the aforementioned reasons, we do not find any merit in the appeal and the same is accordingly dismissed.

C.V.NAGARJUNA REDDY, J

A.V.SESHA SAI, J

Date: 15.11.2016

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