

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

CRIMINAL APPEAL NO.819 OF 2010

DATED:17-02-2016

Between:

Kummari Ramesh ... Appellant

And

The State of A.P.
Rep. by Public Prosecutor
High Court of A.P.,
At Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Smt. C. Vasundhara
Reddy

COUNSEL FOR THE 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.330 of 2009, on the file of the learned Principal Sessions Judge, Medak at Sangareddy, filed this appeal feeling aggrieved by his conviction under Section 302 of IPC and sentencing him to undergo imprisonment for life and also fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of two months.

2. The facts as projected by the prosecution in brief are that on 04.05.2009 at 11.15 hours, Sri Kummari Bakkaiah (PW.1) came to Sadasivpet Police Station and lodged a report in Telugu, in which, he has stated that he has two sons, by name, (1) Kummari Lingaiah (deceased) and (2) Kummari Ramesh (accused), that he performed their marriages, that about three years back, the accused demanded partition of agricultural lands with a view to live separately, that accordingly, he has divided and distributed the lands in the presence of the village elders and that two years back, the accused went to Isnapur for eking out his livelihood, while the deceased used to live at his village and built a house and purchased bullocks. That about twenty days back, the accused came back to the village and raised a dispute by saying that the lands were not distributed equally between him and the deceased, that the house and bullocks were given to the deceased and has demanded a share in the house and bullocks and started quarrelling with them. That the accused threatened PW.1 that if he does not give equal shares, he will be killed. That later the dispute was settled amicably in the presence of the village elders, that as per the settlement, the deceased paid a sum of Rs.20,000/- to the accused and that having not been satisfied, the accused developed grudge in his mind and wanted to kill his brother (deceased) with a view to enjoy the entire property and that accordingly, he has hatched a plan. That on 04.05.2009 at about 8.00 am, while the deceased was ploughing his land along with PW.6, the accused went to his agricultural land with an axe and asked PW.6 to plough his land. That when PW.6 has refused to plough his land, the accused

suddenly beat the deceased with the axe on his neck and head and killed him and that soon after PW.6 ran away from there and approached PW.3 and revealed him about the incident. That later, PW.1 reached the agricultural field and found the body of the deceased lying in a pool of blood.

3. On receipt of the report, P.W.13 has registered Ex.P.13 - FIR as Crime No.137 of 2009 for the offence under Section 302 of IPC, recorded the statement of P.W.1, proceeded to the scene of offence, informed the same to the Circle Inspector of Police - P.W.14 and handed over the case diary file to him, who has rushed to the scene of offence and prepared scene of offence panchnama in the presence of P.W.11. P.W.14 has also conducted inquest panchnama over the dead body and seized one pair of plastic chappals, control earth and bloodstained earth. He has also prepared a rough sketch and photographed the scene. Later, he sent the dead body to the Government Hospital, Sadasivapet, for post-mortem examination. After completion of the post-mortem, the clothes of the deceased were seized under a separate panchnama.

4. During the course of investigation, P.W.14 examined P.Ws.2, 3, 4, 6 and 10, and recorded their statements. Subsequently, he has also examined P.Ws.5, 7, 8 and 9 and recorded their statements. On 09.5.2009 the accused was apprehended at the Government Hospital, Sangareddy, and brought to the Police Station and during the interrogation, the accused confessed to the commission of the offence and his confessional statement was recorded (by P.W.14) in the presence of P.W.12 and another, and following the confession, the accused led the Police to the outskirts of Venkatapur Village where one axe was seized under the cover of panchnama in the presence of the same panchas. Thereafter, the accused was arrested and sent to the Court for judicial remand and the material objects were sent to Forensic Science Laboratory (FSL). After collecting the post-mortem report, a charge sheet was filed.

5. When the charge was read over and explained to the appellant-accused, under Section 228(2) of CrPC, he has pleaded not guilty and claimed to be tried.

6. In support of its case, the prosecution has examined P.Ws.1 to 15 and

marked Exs.P.1 to P.15 and also M.Os.1 to 7. No evidence was let in by the defence. On appreciation of the oral and documentary evidence, the Court below has convicted and sentenced the appellant, as noted above.

7. Smt. C. Vasundhara Reddy, learned counsel, representing Mr. P. Sriharinath, learned counsel for the appellant, submitted that the prosecution has failed to prove the motive for the appellant to kill his own brother. That it is the case of the prosecution that fifteen or twenty days before the murder of the deceased, a dispute between the appellant and his brother was amicably settled and therefore there was absolutely no motive for the appellant to kill the deceased. She has further argued that except the evidence P.W.6, who was an alleged eyewitness, the whole case of the prosecution is based on hearsay evidence which is not admissible and even with respect to the testimony of P.W.6, due to his prevarication he must be considered as a wholly unreliable witness and based on his solitary testimony, the appellant is not liable to be convicted. She has further argued that though M.O.7, which was alleged to be the weapon used for commission of the offence, was sent to Forensic Science Laboratory, its report has not been marked and thereby the prosecution failed to establish the crucial link in its case. That, even though in the charge sheet it was alleged that the accused has consumed poison and was admitted in hospital, no evidence whatsoever has been placed before the Court in that regard and this fact reveals that the prosecution has not placed the true facts before the Court.

8. Opposing the above submissions, the learned counsel representing the learned Public Prosecutor sought to support the judgment of the lower Court. He has relied upon the evidence of P.Ws.1 and 2, who are none other than the parents of the deceased, and also that of P.W.6, who was examined as eyewitness.

9. Having regard to the respective submissions of the learned counsel for the parties, the point that arises for consideration is whether the prosecution has proved the guilt of the appellant beyond reasonable doubt?

10. Let us first examine whether there is sufficient motive for the appellant to kill his own brother. As noted above, in the charge sheet it is specifically alleged that the appellant has grown jealous of the wealthy position of the

deceased and has developed greediness and hatched a plan to kill him in order to take the properties of his brother. In his evidence, P.W.1, father of the accused as well as the deceased, has not spoken a word of what is alleged in the charge sheet. On the contrary, his evidence clearly reveals that though the partition of the properties has taken place about three years prior to the death of the deceased, twenty days prior to the incident, the appellant came to the village and again demanded for partition and that with the intervention of the elders of the village, the dispute was amicably settled. He has further clearly deposed that about two or three days before the incident the appellant was moving with them. Thus, in the entire evidence, P.W.1 has not made any statement which is suggestive of any bad motive on the part of the accused to kill his own brother. The evidence of P.W.2, mother of the deceased, also does not establish any motive. Thus, the allegations in the charge sheet regarding the motive have not been supported by the evidence of P.Ws.1 and 2, being the parents and who are the crucial witnesses, to speak about motive. In a case where the evidence available on record proving the offence is not of high quality or unimpeachable, motive plays a vital part. During the Trial, P.Ws.5 to 9 have turned hostile.

11. The only witness who was examined as a direct witness is P.W.6. He has deposed that when he along with the deceased went to the field of Sathaiah, which was taken on lease by the deceased, for ploughing the land, the appellant has come to the field and asked the witness to plough his land on coolie basis, which was turned down by him and that while the bulls of the witness were ahead and the bulls of the deceased were on backside, the witness had heard a sound, he turned back and saw the deceased having fallen on the ground and the accused holding an axe, and due to fear the witness ran away from the place. He has also deposed in his chief examination that there are no differences between the appellant and the deceased with regard to the partition of the lands. He has stated before the Police that differences persisted between the accused and the deceased, as per his statement in Ex.P.4. The witness was treated as hostile. In his cross-examination, he has categorically admitted that near the land on which the incident has taken place, the lands of Banje Baswaraj, Peddapuram Manaiah and Gongloor Kistaiah are situated and some persons were

carrying on agricultural operations on these lands. However, for the reasons best known to them, the Police have not chosen to examine any of them. P.W.6 has further deposed in his cross-examination that the Police have not examined him and not recorded his statement under Section 161 of CrPC.

12. As rightly submitted by the learned counsel for the appellant, there is inconsistency in the evidence of P.W.6 and due to this fact, he was even treated as a hostile witness by the prosecution. The evidence of P.Ws.1 and 2 is undoubtedly hearsay. Unless their evidence is strongly corroborated by unimpeachable evidence of independent witnesses, their testimony cannot be accepted, though the fact remains that they are none other than the parents of the deceased. The lower Court was blindly carried away by the fact that the parents of the deceased would not falsely depose against their own son. However, as the burden heavily lies on the prosecution to establish the guilt of the accused beyond all reasonable doubt, the accused cannot be convicted on mere inferences, conjectures and probabilities. When the prosecution could not establish motive, it defies any logic or reason to conclude that the accused will go to the extent of killing his own brother. In the cross-examination, P.W.14 - the Investigating Officer has admitted that except P.W.6 he has not examined any other independent witness to the incident and that he has not examined any neighbouring landowners. If P.W.6 was at the scene of offence and witnessed the occurrence, police would not have failed to record his statement under Section 161 CrPC. Based on the very weak evidence in the form of P.W.6, who was stated to have been at the scene of offence and who alone was examined as a direct witness, coupled with the fact that no other independent witnesses were examined though there were many persons, who were admittedly available around the scene of offence, it is not safe to convict the appellant.

13. Further, the prosecution has not come out with any reason for not marking the FSL report, which is a crucial document to connect M.O.7 with the accused to prove his participation in the offence. P.W.14 – Investigating Officer has also admitted that the axe, like M.O.7, is available in open market.

14. Even though in the charge sheet it was specifically mentioned that immediately after the incident the accused consumed poison, came and fell down in front of the Police Station and was shifted to Government Hospital, Sangareddy, for necessary treatment, and that he was apprehended on 09.05.2009, at the Hospital, the prosecution has failed to place the medical report or any relevant facts in this regard, before the Court, which raises a serious suspicion in the mind of the Court that the offence would have taken place in the manner as pleaded by the prosecution. The trial Court has not appreciated the evidence on record in a proper perspective and erroneously convicted the appellant.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

17th February, 2016

VGB/BNR