

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

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.1488 of 2010

18.10.2016

Between:

The State of Andhra Pradesh,
represented by the Public Prosecutor, Hyderabad

..Appellant

And

Chinthalapati Madhu and others

..Respondents/accused Nos.1 to 7 and 9

Counsel for the appellant: Public Prosecutor (TS)

Counsel for the respondents: Mr.M.Karibasaiah

The Court made the following:



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

The State filed this appeal against judgment, dated 06.04.2009, in Sessions Case No.673 of 2007 on the file of learned II Additional Sessions Judge, Nalgonda, whereunder the respondents/accused Nos.1 to 7 and 9 have been acquitted of the charges for the offences punishable under Sections 147, 148, 302 read with Sections 149 and 109 I.P.C.

2. Briefly stated, the case of the prosecution is as follows:

On 02.01.2007 at 9.30 a.m., P.W.1 went to the Police Station, Suryapet and submitted a complaint stating that on the same day i.e., on 02.01.2007 - Tuesday at 8.30 a.m., while her husband was going to Suryapet on a motorcycle, when he reached near the house of accused No.1, T.D.P. workers – accused Nos.1 to 8 and some others have stabbed her husband with knives. Accused No.1 stabbed on his jaw with a knife, accused Nos.2 and 3 kicked, laid him down and threw boulders on his head and that when some persons interfered, those accused and others threatened them with knives. While her husband was struggling with last breath, P.W.1 took him to the Hospital at Suryapet and while shifting to the hospital, on the way, he died. Previously, when accused Nos.1 and 2 conspired to kill her husband, a case was registered in Town Police Station, *vide* Crime No.31 of 2006 and the same is pending in the Court of the Judicial Magistrate of First Class, Suryapet. P.Ws.3 to 6 and 8 and others witnessed the incident of the accused stabbing the deceased with knives. P.W.1, therefore, requested the Police to take legal action.

3. On receipt of the above complaint, P.W.16 registered a case in crime No.2 of 2007 for the offences punishable under Sections 147, 148, 302 read with Sections 149 and 109 I.P.C., issued Express F.I.Rs. and

sent the copies thereof to the concerned. Subsequently, P.W.15 took up the investigation.

4. During the course of investigation, P.W.15 examined and recorded the statement of P.W.1 - complainant at the Police Station. Later, he visited the Government Area Hospital at Suryapet, examined and recorded the statements of P.Ws.2 to 8, photographed the dead body of the deceased through P.W.9 – photographer, held inquest over the dead body in the presence of panchas – P.W.11 and L.W.12 – Nimmala Amrutha Reddy and subjected the dead body for postmortem examination. After conducting inquest over the dead body, P.W.15 proceeded to the scene of offence situated at Yerkaram Village, photographed the scene of offence through the same photographer – P.W.9, recorded the statements of P.Ws.9 and 10, conducted scene of offence panchanama in the presence of panchas – L.W.13 – Midde Eadaiah and P.W.12 and seized blood stained earth, control earth, blood stained boulder, blood stained knife and one knife's cap found at the scene of offence. P.W.15 also requested P.W.14 – Medical Officer to preserve the blood stained cloths of the deceased i.e., shirt, pant and banian, after the postmortem examination. P.W.14, who conducted autopsy over the dead body of the deceased, opined that the death was caused due to the head injury and issued postmortem report. The seized articles have been sent to the Forensic Science Laboratory (F.S.L.), Hyderabad for examination and report, whereupon, Dr.G.V.Jagadamba, Asst. Director, FSL, Hyderabad examined the same and opined that when item Nos.1 to 9 are examined, human blood is detected on item Nos.1, 3 to 9, that blood stains on item Nos.6, 7 and 8 are of "B" blood group, that blood group of blood stains on item Nos.1, 3, 4, 5 and 9 could not be determined and that blood is not

detected on item No.2, which is received as control for item No.1, and issued report, *vide* FSL file No.SER/72/2007.

5. On 10.01.2007, P.W.15 along with P.W.16 rushed to the agricultural well of Chinthalapati Chinna Veeriah situated at the outskirts of Yerkaram Village and arrested accused Nos.1 to 5 and accused Nos. 7 to 9, recorded the confessional statement of accused No.1 in the presence of panchas – P.W.13 and L.W.16 – Kotcherla Anjaiah, recovered a knife, which was used in the commission of the offence, from the bushes near the agricultural well at the instance of accused No.1 and remanded them to judicial custody. Accused No.6 was arrested and was remanded to judicial custody on 11.01.2007.

6. After completion of the investigation, the Police filed charge sheet. In support of its case, the prosecution examined P.Ws.1 to 16, marked Exs.P-1 to P-12 and produced M.Os.1 to 9. No evidence was adduced on behalf of the accused. On consideration of the oral and documentary evidence, the Court below acquitted the respondents/accused Nos.1 to 7 and 9 of all the charges for which they were charged. Feeling aggrieved thereby, the State filed the present appeal.

7. We have heard Mr.C.Pratap Reddy, learned Public Prosecutor for the State of Telangana appearing for the appellant - State and Mr.Karibasaiah, learned counsel for the respondents/accused Nos. 1 to 7 and 9.

8. P.W.1 - wife of the deceased, deposed that on 02.01.2007 at about 8.30 a.m., the deceased and P.W.3 were proceeding on a motorcycle in connection with the Police report pertaining to the attack on the workers

belonging to Congress-I party, to which the deceased also belonged, that when she heard the cries to the effect that the deceased was being murdered, herself and her father-in-law went to the scene of offence, where she found the deceased in a pool of blood and that when they were proceeding towards the scene of offence, she saw accused Nos.1 and 5 throwing boulders on the deceased.

9. P.W.2 – father of the deceased did not claim to have witnessed the incident. He deposed that on 02.01.2007 at about 8.30 a.m., the deceased and P.W.3 were proceeding on a motorcycle, that after sometime he and others heard cries from the corner of the road and that thereupon, himself and P.W.1 went to the spot and found the deceased in a pool of blood. That he was informed by P.W.3 that the accused attacked the deceased with knives and boulders. His evidence, thus, discloses that he was not an eyewitness to the incident and his evidence is hearsay.

10. P.Ws.3 to 8 and 10 are stated to be the eyewitnesses. Of these witnesses, P.W.3 was stated to have accompanied the deceased as a pillion rider when the alleged attack has taken place. However, P.W.1 who is the wife of the deceased, in Ex.P-1, the original Police report, has not even referred to his name. Added to this, the evidence of P.W.3 was full of omissions and contradictions. P.W.3 deposed that the deceased wore white pant and white shirt. But, in the inquest report and panchanama for seizure of the cloths of the deceased, which were marked as Exs.P-3 and P-4, clothes of the deceased were described as light blue colour checks full shirt and blue colour jeans pant. As rightly observed by the Court below, had P.W.3 accompanied the deceased and been present

at the time of the alleged incident, his name would not have been omitted by P.W.1 in Ex.P-1 report. Therefore, the Court below very rightly held that his presence at the scene of offence was highly doubtful. Except P.W.3, all other alleged eyewitnesses *viz.*, P.Ws.1, 2 and 4 to 8 are related to the deceased. Therefore, their evidence requires careful scrutiny.

11. A reading of the evidence of P.W.2 would disclose that neither he nor P.W.1 were eyewitnesses to the alleged attack on the deceased and that they reached the scene of offence after the deceased was attacked. As per the version of P.W.2 neither he nor P.W.1 seen any of the accused at the spot and accordingly, his evidence is based on hearsay of what P.W.3 informed him and P.W.1. Therefore, the Court below rightly concluded that P.Ws.1 and 2 were not eyewitnesses and their evidence did not inspire confidence.

12. The improbability of presence of all the alleged eyewitnesses is enhanced by the fact that none of the alleged eyewitnesses, who belong to rival party, including P.W.3, allegedly a pillion rider to the motorcycle on which the deceased was travelling, have tried to intervene and received any injuries whatsoever. When all the prosecution witnesses, who were the alleged eyewitnesses, belong to rival faction, it will be highly unnatural that the accused party have not caused any harm to any one of them, if they were really present at the scene of offence. It is equally unnatural that none of the eyewitnesses have ventured to prevent the attack on the deceased.

13. The above circumstances would clearly reveal that the alleged eyewitnesses were planted and their evidence does not inspire any confidence.

14. As regards the evidence of P.W.4, he also deposed that the deceased was wearing black colour jeans pant and blue colour full shirt, whereas as per Ex.P-4, the deceased was wearing light blue colour checks full shirt and blue colour jeans pant. The defence was able to elicit omission from the evidence of P.W.4 to the effect that he has not stated before the Police that accused Nos.1 and 2 stabbed the deceased on the stomach and that the accused have used three knives and they have taken away all the three knives along with them. However, P.W.15 – investigating officer, in his evidence deposed that he has seized only one knife from the scene of offence and two more knives from the accused later. According to the evidence of P.W.4, he has been running a kirana shop near the place of occurrence, while Ex.P-6 – rough sketch, did not show the existence of kirana shop at all near the scene of offence. Moreover, as per the medical evidence as reflected from the deposition of P.W.14 - the Doctor, who conducted postmortem, the deceased received lacerated injuries, but P.W.4 and also other witnesses have deposed that accused Nos.1 and 2 have stabbed the deceased on stomach and chest, which version, if true, would have caused incised injuries. Except injury No.6, the rest of the injuries were found to be lacerated injuries. The evidence of other alleged eyewitnesses is on the similar lines to that of P.Ws.3 and 4. All of them have deposed that accused Nos.1 and 2 have stabbed the deceased with knives several times, while as observed hereinabove except injury No.6 all other injuries are lacerated injuries, which would not have been caused by sharp edged weapon like knife as deposed by P.W.14. Thus, the oral evidence of the alleged eyewitnesses is not supported by the medical evidence and the Court below very rightly discarded their evidence holding that all the alleged eyewitnesses are

planted witnesses and their evidence is wholly incredible and does not inspire confidence. Added to this, P.W.3 clearly admitted that Ex.P-1 report was lodged after the local M.L.A. visited the Hospital, where the dead body of the deceased was shifted. This apart, while the incident took place at 8.30 a.m. and the Police report was given at 9.30 a.m., the F.I.R reached the jurisdictional Magistrate at 4.30 p.m. and the investigating officer – P.W.15 admitted that the distance between the Police Station, where the crime was registered, and the Court of the jurisdictional Magistrate is half a kilometer. Thus, admittedly there was delay of seven hours in the F.I.R. reaching the jurisdictional Magistrate, which, in our opinion, is fatal to the case of the prosecution. The Court cannot lose sight of the fact that there were factions between two leading political parties, the deceased and the accused belong to rival factions and the deceased was involved in as many as three murder cases. While the delay in lodging the Police report and the F.I.R. reaching the jurisdictional Magistrate may not be fatal in every case, but in a case of this nature, where there were serious factions, such delay is fatal. As held by the Supreme Court, the delay either in lodging the Police report or the F.I.R. reaching the Court of jurisdictional Magistrate may lead to confabulations, followed by embellishments and false implications. (See State of A.P v. Punati Ramulu and other¹)

15. For all the aforementioned reasons, we are of the opinion that the prosecution has failed to prove the guilt of the respondents/accused Nos. 1 to 7 and 9 beyond reasonable doubt and the Court below has rightly disbelieved the case of the prosecution extending the benefit of doubt to

¹ 1993 Crl.L.J 3684(1)

them. Therefore, we do not find any legally sustainable ground to interfere with the judgment of the Court below.

16. The Criminal Appeal is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

M.S.K.JAI SWAL, J

18th October, 2016
GHN



