

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

CRIMINAL APPEAL NOs.297 OF 2010 AND 1474 OF 2009

DATED:23-02-2016

Criminal Appeal No.297 of 2010

Between:

Narasapuram Balaiah ... Appellant

And

The State of Andhra Pradesh
Rep. by its Public Prosecutor ... Respondent

COUNSEL FOR THE APPELLANT: Smt. M. Suguna

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

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Criminal Appeal No.1474 of 2009

Between:

Vayyaturi Malyadri and others ... Appellants

And

The State of Andhra Pradesh
Rep. by its Public Prosecutor ... Respondent

COUNSEL FOR THE APPELLANTS: Mr. M. Ravindra

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT: (*per the Hon'ble Sri Justice C.V. Nagarjuna Reddy*)

These two appeals arise out of a common case, i.e., Sessions Case No.312 of 2006 on the file of the Court of Sessions, Nellore. Accused No.1 in the said case filed Criminal Appeal No.297 of 2010, feeling aggrieved by his conviction for the offences punishable under Sections 302 and 307 of the Indian Penal Code (IPC), and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to suffer rigorous imprisonment for one month, for the offence punishable under Section 302 of IPC; and also sentencing him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of one month, for the offence punishable under Section 307 of IPC.

2. Accused Nos.2 to 4 have filed Criminal Appeal No.1474 of 2009. They were convicted for the offence punishable under Section 324 read with Section 34 of IPC, and they were sentenced to suffer simple imprisonment for a period of one year and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for a period of one month each. Accused No.2 was acquitted for the offence punishable under Section 302 read with Section 34 of IPC and accused Nos.3 and 4 were acquitted for the offence punishable under Sections 307 and 302 read with Section 34 of IPC.

3. The gist of the prosecution case in brief is that the deceased Venkata Subbamma is wife of P.W.1, Ramanaiah, the defacto complainant. P.W.1 and accused No.1 are residents of Chabolu Village. Accused Nos.2 and 3 are brothers-in-law of accused No.1 and accused No.4 is son-in-law of accused No.3. Accused No.1 and P.W.1 are washermen by caste and were pursuing their profession. L.W.8, Bala Chennaiah, is a barber and was carrying on his

profession. A few months prior to the offence, Bala Chennaiah refused to extend his professional services to accused No.1, upon which accused No.1 asked P.W.1 not to wash the clothes of L.W.8. However, P.W.1 did not pay any heed to the words of accused No.1 and due to the same, accused No.1 has bore grudge against P.W.1. On 11.8.2005 accused Nos.1 to 4 attended their relative's marriage at 09.00 p.m. While P.W.1 and deceased were at their house, accused Nos.1 to 4 while going to their relative's house, abused P.W.1 in filthy language. The deceased intervened and protested the acts of accused Nos.1 to 4 and after a few minutes accused Nos.1 to 4 armed with knives, came to the house of P.W.1 in a drunken stage and stabbed P.W.1. In the meanwhile, the deceased tried to come to the rescue of P.W.1 upon which accused No.1 stabbed the deceased with knife. P.W.1 sustained bleeding injuries and the deceased succumbed to the injuries. On the report of P.W.1, the Police registered the same as Crime No.58 of 2005 for the offences punishable under Sections 302 and 307 read with Section 34 of IPC.

4. On 12.8.2005, at 08.00 a.m., P.W.10 took up the investigation, visited the scene of offence and seized the blood stained and control earth in the presence of P.W.7 and another, under the cover of observations mahazar duly attested by them. During the course of investigation, P.W.10 examined L.Ws.1 to 13 and recorded their statements under Section 161 of the CrPC. P.W.10 held inquest over the dead body of the deceased, at the house of the deceased in the presence of L.Ws.12 to 14 under cover of inquest report duly attested by them and sent the dead body of the deceased to P.W.3 for autopsy. P.W.3 conducted the post-mortem examination and issued the post-mortem certificate and opined that the deceased died due to asphyxia due to bleeding into pharynx and respiratory tract due to incised wound of neck. L.W.17 treated P.W.1 and issued the wound certificate and opined that the injuries were simple in nature. During the course of investigation on 17.8.2005 at about 04.00 p.m., L.W.20 arrested

accused No.1, at Krishnapuram Centre and recorded his confessional statement in the presence of P.W.8 and another. In pursuance of the confessional statement of accused No.1, on 17.08.2005 at about 05.30 p.m., L.W.20 seized one knife used for the commission of offence and bloodstained shirt and lungi of accused No.1 at his house in the presence of P.W. 8 and another under the cover of mediaternama duly attested by them and sent accused No.1 to judicial remand. During the course of investigation, on 26.08.2005 at 06.00 p.m., P.W.10 arrested accused Nos.2 and 3 at Brahmanapalli Centre and recorded their confessional statements in the presence of P.W.8 and another under the cover of mediaternama duly attested by them and sent them to judicial remand. On 13.10.2015, accused No.4 was surrendered before the Court of Judicial Magistrate of First Class, Atmakur, who has sent accused No.4 to judicial remand. During the course of investigation, P.W.10 sent blood stained and control earth, bloodstained clothes of the deceased (blouse, saree, petticoat), knife, and bloodstained clothes of accused No.1 to Regional Forensic Science Laboratory, for analysis. The analyst opined that human blood is detected on the clothes of the deceased and that of accused No.1 and the knife. After completion of the investigation, P.W.10 filed the charge sheet. During the trial, the prosecution examined P.Ws.1 to 10 and marked Exs.P.1 to P.11. M.Os.1 to 8 were also marked. The defence has not examined any witness and adduced any documentary evidence. On appreciation of the evidence, the trial Court has convicted the accused and sentenced them as stated supra.

5. We have heard the learned counsel for the appellants and the learned Public Prosecutor for the State of Andhra Pradesh. From the respective submissions of the learned counsel for the parties, the point that emerges for consideration is whether the prosecution has proved the guilt of the accused beyond reasonable doubt?

(i) Motive:

The prosecution has pleaded that one Bala Chennaiah (L.W.8)

was a barber by profession and he was rendering his professional services to accused No.1. That, said Bala Chennaiah has declined to serve accused No.1, who in turn asked P.W.1, who is a washer man, not to extend his services to the said Bala Chennaiah, and as P.W.1 did not oblige accused No.1, he bore grudge against P.W.1 and attacked his family. In our opinion, by its very nature, the case set up by the prosecution looks incredulous. Nothing has come out on record as to what was the authority of accused No.1 to command P.W.1 not to extend his services to the said Bala Chennaiah. If accused No.1 had differences with Bala Chennaiah, in ordinary course of events, there could be no reason for accused No.1 to ask P.W.1 not to extend his professional services to the said Bala Chennaiah. Unless the prosecution has adduced evidence proving position of dominance of accused No.1 over P.W.1, it is hard to believe that he would demand the latter not to extend his services to Bala Chennaiah and even if he made such a demand, he will go to the extent of attacking P.W.1 and his wife, for not obliging him. Even assuming that accused No.1 had any motive, accused Nos.2 and 3, who are brothers-in-law of accused No.1, and accused No.4, who is son-in-law of accused No.3, who have no enmity whatsoever with P.W.1 would go to the extent of supporting accused No.1 in attacking P.W.1 and the deceased. For these reasons, we hold that the prosecution has failed to establish sufficient motive for committing the offence as alleged against the accused.

(ii) First Information Report (FIR)

As per the contents of Ex.P.1, report, the alleged occurrence has taken place at around 9.00 p.m., on 11.08.2005. In his evidence, P.W.1 deposed that immediately after the death of the deceased, he has left to Marripadu Police Station, that he has found a person sitting at the Police Station and asked him to scribe the report and that on his request the said person has scribed the report on which he has put the thumb impression and gave the said report to the Police. We find a material contradiction between this version and that given out by

P.W.9, the Assistant Sub-Inspector of Police. In his cross-examination he has stated that P.W.1 got the report scribed at his village and gave the same to me. This variance in the versions of P.Ws.1 and 9 would give rise to any amount of doubt as to whether the report was prepared at the Police Station or at the appellants' village after confabulations. Further, a perusal of the original Ex.P.7 – Express FIR shows that it was received by the Court of the Judicial Magistrate of First Class at 12.00 noon on 12.08.2005.

In *Thulia Kali v. State of Tamil Nadu*^[1], H.R. Khanna, J, has highlighted the importance of the FIR in a criminal case. It was held that FIR is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and that the importance of the report can hardly be overestimated from the standpoint of the accused, that the object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence and that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further held that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation and that it is therefore essential that the delay in the lodging of the FIR should be satisfactorily explained.

In *Meharaj Singh v. State of U.P.*^[2], the Supreme Court held that with a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks; one of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate; if this report is received by the Magistrate late, it can give rise to an inference

that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate and that the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, weapons, if any, used, as also the names of the eyewitnesses, if any. If the report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate.

In the present case, the express FIR was received by the Magistrate more than 12 hours after it was purportedly registered by the Police and this gives rise to a serious suspicion that it may have been ante-timed. The prosecution has not explained this delay. The absence of any explanation offered by the prosecution for the delay gives rise to reasonable suspicion that the FIR was ante-timed, leaving the scope of embellishment and false implications in preparing the report.

(iii) Scene of offence:

The case of the prosecution, as reflected from the charge sheet, is that Accused Nos.1 to 4 on their way to attend the wedding of a close relative of accused No.1 started abusing; that when the deceased intervened and questioned as to whom they were abusing, accused No.1 replied that he will stab one person and went away from there; that after a few minutes, accused Nos.1 to 4 armed with knives came to the house of P.W.1 in a drunken state and on seeing the latter, accused No.1 stabbed him with knife on his left leg; that accused No.3 caught hold of P.W.1's tuft and bent him and accused No.4 stabbed P.W.1 with a knife on his back twice; that in the meantime the

deceased tried to rescue P.W.1; that in the process accused No.1 stabbed the deceased with a knife on her neck; that P.W.1 and the deceased sustained bleeding injuries and that the latter has succumbed at the spot. That on hearing the cries of P.W.2 and others, the neighbours, including P.W.4 and P.W.6, came to the place of occurrence and saw the accused; that on seeing them the accused fled away from there and that immediately thereafter, P.W.1 rushed to the Police Station and presented report to P.W.9. The charge sheet has not mentioned as to whether the deceased was allowed to remain in the house where the occurrence has allegedly taken place or she was shifted to any other place. However, in Ex.P.4 - inquest report, it is noted that the dead body was on a cot on the road side opposite to the house of Billupati Lakshmaiah, near the house of the deceased in Chabolu village. P.W.1 in his evidence has explained that there was a cot on the road in front of his house; and that he took the deceased and made her lie on the said cot where she breathed her last. Ex.P.8 is the rough sketch which shows that the place where the cot is shown to which the deceased was allegedly brought after the occurrence and laid on, is shown to be 35 ft. away from the place of occurrence. In his evidence, P.W.2, who is the son of the deceased, clearly stated that at the time of the alleged occurrence it was raining and electrical lights were also off due to rain and that the persons passing on the road were not visible.

When it is the case of the prosecution that the occurrence has taken place within the residential premises of P.W.1 and the deceased under a temporary shed (*pendal/pandiri*) it completely defies any reason or logic that the deceased who was allegedly stabbed with a knife on her neck will be taken outside her house and placed on a cot in the street when it was raining and electrical lights were off. No explanation whatsoever has been forthcoming from the prosecution to explain this unnatural conduct. When a person was stabbed and has received grave injury, it is the natural course of human conduct that the

nearest kith and kin will at the first instance attend to the person at the same place where he has received injuries, more so when such place happens to be his own house and shift him to a nearby hospital without any loss of time. P.W.1 and all his family members being the villagers, and in the absence of any Doctor, it is not possible to believe that they have concluded on their own that the deceased has died out of injuries without even trying to provide her with first aid by rushing her to a nearby hospital. Without taking these measures, nobody is expected to leave a seriously injured person to her fate by placing her on a cot on the street like an orphan.

Another chink in the prosecution's armoury in this regard is that as per Ex.P.8 – rough sketch, sprinkling of the blood of the deceased was allegedly found on the compound wall of the house of Marri Rajamma which is situated on the other side of the street, separating the house of P.W.1 and the deceased and that of the said Rajamma. From the rough sketch, it appears that the distance between the place of occurrence and the compound wall on which the blood was allegedly found is nearly 40 ft. and the distance between the cot on which the deceased was placed and the said compound wall is about 5 ft. to 6 ft. It is not the case of the prosecution that the deceased was attacked after she was placed on the cot. Therefore, it is impossible to believe that the compound wall of Marri Rajamma was found with blood marks if the offence has taken place 40 ft. away from it within the compound of the deceased. For all the above reasons, we are of the opinion that the offence has not taken place at the place projected by the prosecution.

(iv) Non-production of bloodstained clothes of P.W.1

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To recapitulate, it is the case of the prosecution that P.W.1 was injured not only by accused No.1 on his left leg with a knife, but also by accused No.4, with a knife on his back. Further, he has carried his seriously injured wife, after she was stabbed by accused No.1 with a knife on her throat, to the road in front of his house and made her lay

on a cot. If P.W.1 has come out with true version, his clothes would have got drenched with blood both of himself and of his deceased wife. The prosecution has not seized the bloodstained clothes and produced before the Court. This lapse makes a huge dent on the case of the prosecution rendering its version wholly untrustworthy.

(v) Non-seizure of the nawar (tape), the cot and the bloodstained and control earth underneath it:

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In his evidence P.W.10 deposed that he has seized bloodstained earth and control earth from the scene of offence. Going by the case of the prosecution, P.W.1 and deceased were attacked near a thatched house under pendal within the compound of P.W.1. Therefore, presumably, when we refer to the scene of offence, the same is referable to the said place. From Ex.P.8 - sketch it is clear that there was a pool of blood near the cot. P.W.10 has not explained whether he has seized the bloodstained earth and control earth at the place where the deceased was made to lie down on the cot on the street or not. If the deceased was attacked at the scene of offence as pleaded by the prosecution and she was immediately shifted to the cot on the street, there would have been profuse bleeding causing heavy bloodstains to the nawar (tape) and the cot. The prosecution has not seized the tape and the cot. Failure of the prosecution to explain whether the bloodstained earth and control earth were seized from the place under the cot and also its failure to seize the cot and send the tape to the Forensic Science Laboratory throw any amount of doubt on the truthfulness of its case.

(vi) Medical Evidence

In the post-mortem certificate, P.W.3 – Doctor has stated that the cause of the death is due to Asphyxia due to bleeding into pharynx and respiratory track due to incised wound of neck. In her chief-examination, the Doctor stated that the injuries are possible by a knife such as M.O.4. However, in the cross-examination, the witness stated that the injury found at the throat of the deceased cannot be caused

with a knife having one edge and that if a person falls on a bamboo stick, such injury could be caused. Ex.P.6 – seizure mahazar reveals that M.O.4 is described as *Churakathi* with a total length of 14 inches and fixed with wooden handle of 4 inches and its sharp end is stained with blood. Nowhere in the prosecution evidence it has come out that M.O.4 has two edges. It is common knowledge that a knife with pointed edge, which is otherwise called *Churakathi*, is used for domestic purposes and it contains only a single edge. In the face of admission by P.W.3, that it is not possible to cause the injury found on the body of the deceased with a single edged knife, the prosecution failed to establish that accused No.1 has attacked the deceased with M.O.4 and caused injury leading to her death. In this regard, the suggestion made by the defence to P.W.1 assumes significance. In his cross-examination P.W.1 admitted that there were wooden pillars and forest around the village. In this context, it was suggested to P.W.1 that himself and accused No.1 and others were fully drunk and had an altercation and the deceased, having come to that place fell on the bamboo stick and sustained injuries on her throat. The opinion of P.W.3 – Doctor that if a person falls on a bamboo stick can sustain such injury as caused to the deceased probabalizes the defence theory that the deceased would have accidentally fallen on a bamboo stick in the course of altercation and as a result thereof she would have sustained the injury.

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(vii) Oral Evidence

P.W.1 is the husband of the deceased. P.W.2 is their son. They are interested witnesses. Therefore, their evidence needs to be carefully scrutinized. Many lacunae in the case of the prosecution as pointed out hereinbefore render the evidence of P.Ws.1 and 2 somewhat untrustworthy and therefore it requires corroboration by independent witnesses.

P.W.4, a resident of the village, deposed that about four years ago on one day there was a slight drizzling and on hearing the cries from the house of P.W.1, she came out and at that time she found accused No.1 going away with a knife in his hand and she also found the deceased lying on a cot with injuries. In her cross-examination she has deposed that on the date of the incident due to drizzling, the electricity was off in their village. When the incident has taken place at 09.00 p.m., it is not possible for a person to notice knife being carried by a person in darkness and that too under rain.

Similarly, P.W.5, who is also a resident of the same village, deposed that about four years ago on one day at about 2.00 a.m., she was cleaning the utensils following the marriage of her sister's son performed on that day, that at that time accused No.1 came and asked the brother of her husband to give a beedi and that when the witness asked accused No.1 as to why he killed the deceased, he went away from that place without responding to her question. This witness has not explained as to how and through whom she came to know about accused No.1 killing the deceased and her evidence does not in any manner lend support to the case of the prosecution that accused No.1 had killed the deceased.

P.W.6, another villager, has also deposed that he saw the accused proceeding in the street by abusing in a loud voice by holding knives, that having seen the said incident he went into his house as it was raining and five minutes thereafter he heard the cries from the house of P.W.1, that he came out of his house and found the deceased lying with bleeding injuries on a cot on the road and that the persons who gathered at the place have stated that accused No.1 stabbed the deceased on her throat. The version of P.W.6 not only sounds unnatural, but also untrustworthy. Generally, in villages, if a group of persons was found behaving in a disorderly manner by holding dangerous weapons in their hands, a person noticing the same will not quietly go into his house. Even if he does not have the courage of

preventing them from intervening, curiosity will drive him to observe what the offenders may do and he may at least alert other nearby residents so as to stop the offenders from committing the crime. Further, in the darkness and under drizzling there was no possibility of this witness noticing the knives in the hands of the accused. Therefore, the evidence of P.W.6 does not inspire confidence at all and he is evidently a planted witness as P.Ws.4 and 5.

6. On a careful re-appreciation of the evidence discussed above, this Court is of the opinion that the case of the prosecution suffers from several loose ends and gaping holes casting heavy cloud on its credibility. We are of the further view that the alleged occurrence would not have taken place at the scene of offence set up by the prosecution and in the manner it has pleaded. The probability of the deceased sustaining injury in an altercation between two groups could not be ruled out and the prosecution failed to prove its case in a convincing manner to enable the Court to conclude without any element of doubt in its mind that accused No.1 has caused the death of the deceased and that accused Nos.1, 3 and 4 have also caused injuries to P.W.1 in the manner as propounded by it. Therefore, this Court feels that all the accused deserve benefit of doubt and accordingly, they are entitled to be acquitted.

7. In the result, both the Criminal Appeals are allowed. The conviction and sentence recorded against all the appellants/accused in judgment, dated 19.10.2009, in Sessions Case No.312 of 2006, on the file of the learned Judge, Family Court (Full Additional Charge) III Additional District and Sessions Judge (Fast Track Court), Nellore, for the respective offences are set aside and the appellants/accused are acquitted from all the charges of which they are charged with. Consequently, since appellants/accused Nos.2 to 4 have already undergone imprisonment and they are at large, appellant/accused No.1 alone shall be set at liberty forthwith, if he is not required in any other case or crime. Fine amount, if any, paid by the

appellants/accused shall be refunded to them.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

23rd February, 2016

bnr/am/ghn

[\[1\]](#) AIR 1973 SC 501

[\[2\]](#) (1994) 5 SCC 188