

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

Criminal Appeal No.633 of 2011

Between:

Pitchapati Ramana Reddy.

...Appellant/Accused No.1

And

The State of A.P., through S.H.O,
Inspector of Police, Atmakur, Nellore District
Rep by its Public Prosecutor,
High Court, Hyderabad.

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 17.02.2017

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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

*** THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

AND

*** THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

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! Counsel for Appellant : Sri Namavarapu Rajeshwara Rao

^ Counsel for Respondent : Public Prosecutor (Andhra Pradesh)

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> Head Note:

? Cases referred:

1) AIR 1981 SC 1390

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CRIMINAL APPEAL No.633 of 2011

JUDGMENT: (*per Hon'ble Sri Justice U.Durga Prasad Rao*)

This appeal is filed by A1 aggrieved by the judgment dated 28.04.2011 in S.C.No.19 of 2002 passed by the III Additional District and Sessions Judge (Fast Track Court), Nellore whereby the learned Judge convicted A1 for the offence punishable under Section 302 IPC and sentenced him to suffer RI for life and to pay fine of Rs.100/- in default to suffer SI for one month, while acquitting A2.

2) The prosecution case is thus:

a) A1 and A2 are interrelated and they are also distant relatives of deceased—Pichapati Venkata Subba Reddy and all of them are residents of Ramaswamypalli village of Atmakur Mandal, Nellore District.

b) The offence took place on 31.03.2006 at 1 PM at the cattle shed of the deceased in Ramaswamypalli village. Prior to this offence, A1 was involved in one murder case of his daughters. During his remand the deceased did not render financial help or service to A1 though deceased was capable. Further, there were boundary disputes between deceased and A1.

c) A2 is concerned, he suspected that deceased developed illegal intimacy with his wife. For the aforesaid reasons, A1 and A2 nurtured grudge against the deceased and colluded together to do with away him.

d) On 31.03.2006 at about 1 PM, while the deceased was sleeping in the cattle shed situated in front of his residential house, A1 and A2 went there and hacked the deceased with an axe on the right side of his head causing his instantaneous death. In the meanwhile, PW2—the mother of the deceased who came to the cattle shed to feed hens, witnessed the incident and raised cries. On hearing her cries, PW1 who is the son of the deceased, rushed to the scene of offence and on seeing him, A1 and A2 fled away from the scene of offence along with axe. PW1 chased for some distance to catch hold them but in vain. PW3—the wife of the deceased also rushed to the scene of offence on hearing the cries of PW2 and she too saw A1 and A2 running away and PW1 chasing them and returning to the scene.

e) Afterwards, PW1 went to Atmakur PS and presented Ex.P1—report to PW8 who was the Head Constable of Atmakur PS. He registered FIR in Cr.No.29 of 2006 under Section 302 r/w 34 IPC. Ex.P9 is the FIR. He submitted copies of FIR to all concerned. PW9—Inspector of Police on telephonic information of PW8, went to PS and secured the copy of FIR and proceeded to Ramaswamypalli along with PW1 and others; secured the presence of PW7, LW10—Yarramgunta Subba Reddy; observed the scene of offence and the dead body; prepared Ex.P10—scene of observation report; collected blood

stained earth and controlled earth; he also prepared rough sketch of scene of offence under Ex.P11 and got photographed the dead body through photographer. Ex.P12 are the bunch of photographs. On 01.04.2006 at about 7 AM, PW9 secured the presence of mediators—PW7, LW10—Yarramgunta Subba Reddy and PW5 and held inquest over the dead body in their presence and prepared Ex.P5—inquest report. During the course of inquest he examined the witnesses and thereafter, he sent the dead body to Government Hospital, Atmakur for post-mortem examination.

f) PW10—the Government doctor conducted post-mortem on the dead body of the deceased at Government Hospital, Atmakur and issued Ex.P16—post-mortem certificate. During the course of post-mortem examination the doctor found a chop wound on the right temporal region and depressed fracture with multiple pieces on the dead body. The doctor opined that death was due to cardio respiratory arrest due to head injury.

g) On 17.04.2006, PW9 arrested A1 and sent him to judicial custody. On 27.04.2006, A2 surrendered before Judicial Magistrate of First class, Atmakur. PW9 obtained police custody of A2 on 04.05.2006 and basing on the confessional statement of A2, he recovered MO1—axe under a seizure report. After completion of investigation PW9 laid charge sheet against A1 and A2 for the offence under Section 302 r/w 34 IPC. On appearance of the accused, the trial Court framed charge under Section 302 IPC against them and conducted trial.

h) During trial, PWs.1 to 11 were examined and Exs.P1 to P18 were marked and MOs.1 to 7 were exhibited on behalf of prosecution. On behalf of accused Ex.D1 was marked.

i) After completion of trial, the accused were examined under Section 313 Cr.P.C. and incriminating circumstances revealed in the prosecution evidence were put to them and the accused denied. The accused did not let in any evidence.

3) A perusal of the judgment of the Court below would show that trial Court considered PWs.1 to 3 as eye-witnesses, of which PW2 was the direct eye-witness and held that their evidence clearly established the presence of accused at the scene of offence and further, A1 hacking the deceased with axe. Due to the strong and cogent evidence of eye-witnesses, the trial Court did not give much importance to the motive which the prosecution could not establish convincingly. The defence plea was one of total denial and further, they attributed the death to two sons-in-law of the deceased on the allegation that they demanded shares in the property of the deceased to their wives which he refused and so, in the altercation they caused him injury and death at some other place and brought him to the cattle shed and laid on the cot and the family members of the deceased, in order to save the sons-in-law, foisted a false case against the accused. The trial Court did not believe the defence plea. The trial Court ultimately held that prosecution could establish the guilt against A1 alone but however, A2 is concerned, the trial Court held, though the presence of A2 was spoken by eye-witnesses, his

participation in the offence was not established and further, the alleged recovery of MO1—axe from A2 was also not established. Accordingly, the trial Court while acquitting A2 convicted and sentenced A1 as stated supra.

Hence the appeal.

4) Heard arguments of Sri Namavarapu Rajeshwara Rao, learned counsel for appellant/A1 and learned Public Prosecutor (AP).

5a) Remonstrating the conviction against A1, learned counsel for appellant firstly argued that in this case, PWs.1 to 3 were not direct eye-witnesses to the alleged incident, but they were dubbed so to secure conviction. PWs.1 and 3 admittedly did not witness the actual incident of A1 hacking the deceased. Even assuming that PWs.1 and 3 are eye-witnesses, they are none other than the blood relations of the deceased and hence, they are highly interested witnesses and therefore, it is not safe to base conviction on the un-corroborated evidence of such interested witnesses. Learned counsel pointed out that admittedly houses of V.Ramaiah and Subramanyam are situated opposite to the house of the deceased and they are independent witnesses. In spite of it, prosecution deliberately did not examine them which infers that it planted PWs.1 to 3 to suit its case. He further argued that none of the other independent witnesses of the prosecution did support its case on the crucial aspects of IO inspecting the scene of offence; collecting the blood stained earth and controlled earth; the so-called interrogation of

A2 and his admission of guilt and recovery of alleged crime weapon i.e. MO1 on his own admission etc. Hence, the trial Court ought to have rejected the un-corroborated testimony of PWs.1 to 3.

b) Secondly, he would argue that the motive projected by the prosecution is highly unnatural and unbelievable. As per prosecution, A1 killed deceased due to pathway dispute existing between them. The motive projected cannot be believed for the reason, admittedly, since 5 years prior to the date of offence A1 and A2 were not residing in their respective houses in the village and their houses become dilapidated. Hence, the existence of pathway dispute does not arise. Even otherwise, it is quite improbable that in view of a petty pathway dispute, A1 would commit a ghastly act of killing the deceased.

c) Thirdly, it is argued that the prosecution theory that A1 hacked the deceased with an axe as spoken by the eye-witnesses was not corroborated by medical evidence. The injury found on the body of the deceased was in the shape of 'w' and the same is not possible to be caused with an axe.

d) Fourthly, learned counsel argued that there was enormous delay in despatching original FIR to the concerned Magistrate though the Atmakur PS was adjacent to the Magistrate Court. Though prosecution claims that the FIR was registered at 4.30 PM on 31.03.2006 but the FIR was sent to learned Magistrate only on 01.04.2006 at 3.50 AM. This delay suggests that FIR was not registered at the time claimed and

thereby the prosecution manipulated the events and leisurely registered the FIR.

e) Fourthly, it was argued that as per defence plea, the sons-in-law of deceased claimed share in the properties of the deceased for their wives on the previous day of the incident and in that context, an altercation ensued between deceased and them which was witnessed by Ramaiah and Subramanyam who are residing opposite to the house of deceased and on the date of incident, the deceased and his sons-in-law went towards the barren land behind the cattle shed for consuming toddy and keeping the grudge against the father-in-law, his sons-in-law caused him injuries and brought him to the cattle shed and laid him on the cot and went away and to save them, their family members foisted a false case against the accused. In the wake of such defence plea, he vehemently argued, it was the duty of the prosecution to examine the daughters, sons-in-law and the neighbours such as Ramaiah and Subramanyam to establish that there was no such dispute between the deceased and his sons-in-law. The prosecution deliberately did not cite the sons-in-law of the deceased and Ramaiah and Subramanyam as witnesses and though the daughters were cited as witnesses they were not examined. This would imply that the prosecution suppressed the vital facts. He thus prayed to allow the appeal and set aside the conviction of A1.

6a) Per contra, learned Public Prosecutor while supporting the judgment, would argue, PWs.1 to 3 though are blood relations, they were not interested witnesses but they were natural witnesses because the

offence took place in the cattle shed situated in front of their house and the defence could not extract any valid point to impeach the credibility of PWs.1 to 3 who in one voice deposed about the offence committed by A1. Hence, the trial Court rightly believed their evidence. Commenting on some independent witnesses turning hostile, learned Public Prosecutor would submit that A1 was already involved in an offence of committing murder of his own daughters and facing trial and therefore, out of fear his co-villagers might not have ventured to depose against him. Despite their non-cooperation, the evidence of PWs.1 to 3 manifested the offence committed by A1.

b) Regarding motive, he argued that apart from pathway dispute, there was another reason for bad blood between A1 and deceased as the deceased did not render help to A1 when he was involved in the murder case and due to all those reasons, A1 killed the deceased. Learned Public Prosecutor alternatively argued that when the eye-witness account clearly shows an accusing finger towards A1 and their evidence was trustworthy, the motive though a weak one will not debilitate the prosecution case.

c) Nextly, learned Public Prosecutor argued that the medical evidence in fact supported the evidence of eye-witnesses to the effect that deceased was hacked by A1 with an axe. The post-mortem doctor never admitted the suggestion of defence that there was an injury in the shape of 'w' on the body of the deceased and hence the defence argument in that regard is preposterous.

d) Nextly, learned Public Prosecutor argued that when FIR was promptly lodged and registered, the subsequent delay caused by the investigating agency in submitting the same to the Magistrate cannot be taken into consideration.

e) Finally, he argued that the alleged altercation between the deceased and his sons-in-law for a share in the property was only a defence plea but not admitted by any of the prosecution witnesses and therefore non-examination of daughters, sons-in-law and neighbours—Ramaiah and Subramanyam will not affect the prosecution case. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the points that arise for determination in this appeal are:

1. Whether the deceased—Pichapati Venkata Subba Reddy met with homicidal death on 31.03.2006 in the cattle shed in Ramaswamypalli village?

2. If point No.1 is held in affirmative, whether A1 is responsible for his death and prosecution could able to establish his guilt beyond reasonable doubt?

8) **POINT NO.1:** The ocular evidence of eye-witnesses i.e. PWs.1 to 3, PW7—mediator to the inquest, PW10—doctor who conducted post-mortem and documentary evidence such as Ex.P5—inquest report, Ex.P12—photographs and Ex.P16—post-mortem report would all cumulatively show that death of the deceased was a homicidal one.

9a) We find in the evidence of PWs.1 to 3 that on 31.03.2006 at about 12' noon the deceased went to the cattle shed for sleeping and within short time thereafter he was hacked to death by A1 with an axe.

b) Then, the evidence of PW7 coupled with Ex.P5—inquest report would show that the inquest mediators found a hack injury on the right side of the head and the right ear was cut to the middle and the brain portion was protruding. As per Ex.P5, mediators opined that the deceased died due to head injury.

c) Then, Ex.P12—photographs produced by the prosecution would, correspond to the mediator's report and the evidence of PWs.1 to 3 and 7, show the hack injury on the right side of the head of the deceased. Above all, the evidence of PW10 would show that she found the following external injury on the body.

“A chop wound size 14.5 cms. with jig-jag manner including right upper ear and temporal region of scalp. Depressed fracture with multiple pieces right side temporal bone of scalp. The brain matter of temporal regional lacerated.”

The doctor opined that death was due to cardio respiratory arrest due to head injury. She deposed that injury could be possible with an axe. Thus, there is no demur that the deceased was done to death by the assailants with a weapon like axe and the nature of injury suggests an inference that whoever caused such an injury, caused with an intention to kill the deceased. Hence, the death of deceased is a homicidal one.

This point is answered accordingly.

It has now to be seen in the point infra, whether A1 was responsible for the murder of deceased.

10) **POINT No.2:** PW1—the son of deceased deposed that A1 and A2 were their distant relatives; on 31.03.2006 at about 12' noon his father went to cattle shed to sleep and ½ an hour later PW2 went outside to feed hens she raised loud voice “hacking hacking” and immediately he rushed there and saw A1 holding an axe and on seeing him A1 and A2 came out of the cattle shed and ran away from the scene of offence; he chased to catch hold them but he could not and then he returned to cattle shed and found PWs.2, PW3 and LWs.4 and 5—Sana Subbamma and Sana Lakshamma and he also noticed his father having received injury to his ear died in a pool of blood on the cot; at about 2.30 PM he boarded bus in his village and went to Atmakur PS and reported the matter to the police; the reason for the offence was that there was pathway dispute between deceased and A1 and further, A1 murdered his own daughters and when he was in jail, the deceased did not render any help and therefore, A1 bore grudge against his father. Ex.P1—report also was in tune with his evidence. During cross he stated that the distance between his house and cattle shed is about 100 feet. He stated, since 5 years prior to the offence, both A1 and A2 were not residing in their respective houses. He denied the suggestion that his grand-mother did not raise any cries and he did not hear such cries and his going to the cattle shed and chasing A1 and A2 were all false. He also denied the further suggestion that on the date of incident at about 10 AM his brothers-in-law and his

father went outside towards western side of the barren land to consume toddy and his brothers-in-law quarrelled with his father due to property dispute and they caused injuries to his father and brought him to the cot and laid him there. He denied the suggestion that the quarrel between his father and brothers-in-law was witnessed by Ramaiah and Subramanyam whose houses are situated opposite to their house.

11) So, a scrutiny of evidence of PW1 would show that he was not the direct eye-witness for A1 hacking his father but nonetheless, his evidence was not insignificant. On hearing the shouting of his grandmother “hacking hacking” he immediately rushed and saw A2 and A1 holding axe and he chased them to some distance to catch them but failed. That part of his evidence was not shattered in the cross-examination. The evidence of PW1 coupled with Ex.P11—rough sketch would confirm that the house of deceased and his cattle shed are within a distance of 80 to 100 feet only. The offence took place in the broad day light at about 1 PM and therefore, PW1 and for that matter the other two witnesses—PWs.2 and 3 who are the inmates of the house of deceased, had every possibility to rush to the scene of offence and witness the occurrence. Hence, the evidence of PW1 is relevant under the principle of *res gestae* as per Section 6 of Evidence Act.

12) Coming to evidence of PW2—the mother of deceased, she deposed that on the date of incident at about 12’ noon the deceased went to cattle shed to sleep on the cot and about 12.30 PM she went to cattle shed to feed hens and at that time she saw both A1 and A2 at the cot of

his son and she further witnessed A1 hacking the deceased on the right side of his ear; on seeing the same she raised cries loudly; in the meanwhile, PW1 came and chased the accused to some distance and meanwhile her family members came to the cot of the deceased and found him dead due to hacking injuries. Like PW1, she too denied the suggestion due to property dispute the sons-in-law of the deceased took him to barren land to consume toddy and caused injury and brought the dead body to the cattle shed and placed there and went away; all of them foisted a false case against the accused. PW2 is a direct witness to the incident proper. A close analysis of her evidence would show except putting the defence plea to her mouth which she denied, the defence could not extract any valid point to infer either she was not a eye-witness or the incident as narrated by her did not take place. As already stated supra, like PW1 this witness being an inmate of the house, had every possibility to rush to the scene and witness the occurrence. Hence, she was a natural witness. Her evidence unmistakably clinches that A1 indeed gave a death blow to the deceased.

13) Then, PW3—the wife of deceased deposed in tune with PWs.1 and 2 to the effect that at about 12' noon her husband went to cattle shed for sleep; ½ an hour later PW2 went to the cattle shed to feed the hens and she raised cries “hacking hacking”; on hearing her cries, PW1 rushed there and saw A1 and A2 were running from the scene of offence and this witness noticed her son chasing the accused to some distance and at that time A1 was holding an axe. She further deposed, herself and

her children went to the cot of the deceased and found him dead in a pool of blood due to injuries on the right side of the ear. Then, she explained the motive part of the offence similar to PWs.1 and 2 and admittedly, she specifically stated the motive for A2 to commit the offence. This witness was extensively cross-examined but nothing useful could be extracted. She admitted that by the time she reached the cattle shed her husband received a hacking injury on the head and right ear and died in a pool of blood. She denied the defence suggestion that her sons-in-law were responsible for the death of her husband. Thus, as can be seen, like PW1 she too had not seen A1 hacking her husband. However, immediately after the incident she rushed to the spot and saw her son chasing the accused and she also found her husband dead in a pool of blood with hacking injury and came to know about the incident through PW2. In that view, her evidence is also relevant under the principle *res gestae*.

14) So, the evidence of PWs.1 to 3 mutually corroborates each other and explained the offence. Their ocular evidence regarding the manner of occurrence of incident, the nature of injury and the weapon used was corroborated by the medical evidence.

15a) Coming to defence pleas, it was argued that PWs.1 to 3 were not eye-witnesses to the incident. However, in the light of above discussion, this argument does not hold water. PW2 is an eye-witness to the incident proper. PWs.1 and 3 rushed to the spot immediately. Their evidence thus establishes the guilt of A1.

b) The next attack on PWs.1 to 3 is that they are highly interested witnesses and in the absence of corroboration by independent witnesses it is not safe to rely on their evidence. We find this argument also does not hold water.

It must be said there is a lot of difference between “*related witness and interest witness*”. Drawing this distinction the Apex Court in **State of Rajasthan vs. Smt. Kalki and another**¹ observed:

“A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'.”

b) In the instant case, as already noted, PWs.1 to 3 though they are blood relations of the deceased, still they are natural witnesses because the offence took place in their cattle shed which is few feet away from their residential house. Further, the offence took place in the broad day light. Hence, their presence is intrinsic and suffered no infirmities.

c) It is true that as per Ex.P11—rough sketch the house of V.Ramaiah and Subramanyam are situated opposite to the house of the deceased. However, it is nobody's case that they witnessed the incident. Therefore, prosecution cannot be blamed for their non-examination.

16) The next attack is on the frivolity of motive projected by the prosecution. As per defence, when admittedly A1 and A2 were not

¹ AIR 1981 SC 1390

residing in the village since 5 years prior to the incident and their houses became dilapidated, the question of A1 having any pathway dispute does not arise. This argument though apparently sounds well but does not stand to scrutiny because A1 had another reason to nurture grudge against the deceased that he did not extend help to A1 when he was imprisoned on the allegation of causing murder of his own daughters. As rightly argued by learned Public Prosecutor, in the presence of strong evidence of eye-witnesses, motive gets relegated to back seat.

17) The next argument is with regard to injury. It was argued there was no consistency between ocular evidence and medical evidence because argued as per PWs.1 to 3, A1 hacked the deceased with an axe. If that were true, the resultant injury must be a sharp cut. However, the photos and evidence of post-mortem doctor would show that the injury was in a jag-jag manner. We perused the evidence. It is true that PW10 deposed that injury was in a jig-jag manner. However, by that count the prosecution case need not be doubted. Generally, when an injury is caused with sharp edge of an axe, the resultant injury will be a deep cut injury with clean edges. In this case, the injury was in a jig-jag manner. It must be noted that the witnesses have not specifically deposed whether the injury was caused with sharp edge or blunt edge of the axe. Hence, the discrepancy argued cannot be given much weight.

18) The next argument is with regard to delay in despatching the FIR to Magistrate. The endorsement on Ex.P9 would show that Magistrate received the original FIR on 01.04.2006 at 3.50 AM, whereas the FIR

was registered at 16.30 hours on 31.03.2006. Indeed, there is delay in despatching the FIR to learned Magistrate though the Court and police station are adjacent to each other. However, it must be noted that the FIR was promptly registered at 16.30 hours when the offence took place at 13 hours. The distance between the scene of offence and police station was 15 kms. A GD entry was also made in that regard. So, when it is established that FIR was promptly lodged and registered, the delay if any, on the part of investigating agency in despatching it to the Magistrate cannot have any adverse impact on the prosecution case.

19) The next argument of the appellant is that the sons-in-law and neighbours such as Ramaiah ad Subramanyam were deliberately not examined by the prosecution lest the dispute between deceased and his sons-in-law and their committing the offence should come out. This argument, it must be stated, is quite far-fetching. That the sons-in-law are responsible for the death of deceased is the proposition of the defence and not that of prosecution. None of the prosecution witnesses admitted the said defence plea. It was also not admitted that Ramaiah and Subramanyam witnessed the altercation between deceased and his sons-in-law regarding the shares demanded by them in the properties of the deceased. That being so, prosecution cannot be blamed for non-examination of the above persons. Since it is the defence plea, if advised, the defence has to examine the so-called Ramaiah and Subramanyam to establish the altercation allegedly took place between the deceased and

his sons-in-law on the previous day of incident. Therefore, this argument cannot be appreciated.

20) So, on a conspectus of evidence on record, the prosecution could establish the guilt of A1 beyond reasonable doubt and none of the arguments raised would shatter the credibility of the prosecution case. The trial Court thus rightly convicted and sentenced A1 for the offence under Section 302 IPC.

21) We find no merits in this Criminal Appeal and the same is accordingly dismissed.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.



SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

Date: 17.02.2017
Murthy