

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

AND

THE HON'BLE MS. JUSTICE J.UMA DEVI

CRIMINAL REVISION CASE No.1615 of 2009 and
CRIMINAL APPEAL No.1637 of 2010

17.07.2017

CrI.R.C.No.1615 of 2009:

Between:

Ummadaboina Suvernamma

..Petitioner

And

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

..Respondents

Counsel for the appellant: Mr.D.Goverdhanachary

Counsel for respondent No.1: Public Prosecutor (AP)

Counsel for respondent Nos.2 to 10: Mr.T.Pradyumna Kumar Reddy

CrI.A.No.1637 of 2010:

Between:

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

..Appellant

And

Ummadaboina Nagaiah and others

..Respondents

Counsel for the appellant: Public Prosecutor (AP)

Counsel for respondent Nos.1 to 7: Mr.T.Pradyumna Kumar Reddy

Counsel for respondent Nos.8 and 9: Mr.Virupaksha Dattatreya Gouda

The Court delivered the following:

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

The *de facto* complainant, who is the widow of the deceased, filed Criminal Revision Case No.1615 of 2009, and the State filed Criminal Appeal No.1637 of 2010, challenging the acquittal of all the accused *vide* judgment, dated 22.06.2009, in Sessions Case No.24 of 2008 on the file of III Additional Sessions Judge, Kurnool at Nandyal. Both these cases have been heard together.

2. The parties are hereinafter referred to as they are arrayed in Criminal Appeal No.1637 of 2010.

3. The case of the prosecution, in brief, is that one Ummadiboina Nageswara Rao (hereinafter referred to as 'the deceased') is the husband of P.W.1; that L.W.5 – U.Venkata Subramanyam and P.W.2 are the sons of P.W.1 and the deceased; that the deceased is the junior paternal uncle of P.Ws.3 and 4; that respondent Nos.1 and 6 are the junior paternal uncles of the deceased and that respondent Nos.2 to 5 are the cousins of the deceased. The deceased family and the respondents' family are the residents of Muthyalapadu Village, Chagalamarri Mandal. Due to the disputes about the hay-rick yard between respondent No.1 and his sons on the one side and the deceased family on the other side, no relationship existed and ill-feelings cropped up among them. That apart, the respondents had suspicion against the deceased as if he was responsible for drying up of the harvested paddy crop of respondent No.1 in the year 2006. Both the respondents' family and the deceased family lodged criminal cases against one another in Chagalamarri Police Station. The respondents' family, having developed enmity, were waiting for an opportunity to kill the deceased. Four days prior to the incident, P.W.5, the younger brother of the deceased, watching the movements of the respondents, advised the deceased family to be careful and vigilant. On

30.08.2007, at about 6.00 p.m., the deceased, with yoke and bulls, was returning home from the fields at the outskirts of Muthyalapadu Village and on his way, he reached near the houses of respondent Nos.2 and 3. At that point of time, respondent Nos.1 to 9 formed themselves into an unlawful assembly, armed with pattudu natu sticks, waylaid and in prosecution of their common object to kill the deceased, surrounded him and beat him on his head with those sticks. P.Ws.1 to 4 and L.W.7 – Ummadaboina Venkata Ramana, who witnessed the incident, went to rescue the deceased, on that respondent Nos.2 and 3 beat P.W.3 on his back with those sticks. Afraid of the respondents, P.W.2 ran away. Respondent Nos.1 to 5, while leaving the place of occurrence and uttering that they will kill one Obulesu, escaped from there by proceeding towards Cheruvu katta. Thereafter, P.W.1 and others found the deceased dead with head injury. On 30.08.2007, at about 8.00 p.m. basing on Ex.P-1 report, the Station House Officer, Chagalamarri Police Station registered a case in Crime No.58 of 2007 under Sections 147, 148, 324, 302 read with Section 149 I.P.C. and sent copies of F.I.R. to the Court and Officers concerned and investigated into. P.W.8, the Medical Officer, who conducted autopsy over the dead body of the deceased, opined that the deceased would appear to have died of shock and haemorrhage due to the head injury about 18 to 20 hours prior to the post-mortem examination and that the injuries sustained by P.W.3 are simple in nature and aged about 5 to 6 hours prior to the medical examination. On 17.09.2007 at about 7.30 a.m., the Inspector of Police, Allagadda, Sub-Inspector of Police, Chagalamarri Police Station with the supporting staff, effected arrest of respondent Nos.1 to 9 at Bramhamgari matam between Muthyalapadu and Chakravarthulapalli Villages, recorded their free and voluntary confession about the commission of murder of the deceased

and remanded them to judicial custody before the Court of the Judicial First Class Magistrate, Allagadda. Accordingly, charge sheet was prepared by the Inspector of Police, Allagadda. Based on the charge sheet, the Court below framed the following charges:

“Firstly: That you A1 to A9 on the 30.08.2007 at about 6.00 P.M., at Neravati Veedhi, were members of an unlawful assembly, the common object of which was to commit the murder of Nageswar Rao and in prosecution of the said common object of such assembly, committed the offence of rioting and thereby committed an offence punishable under Section 147 of Indian Penal Code and within my cognizance.

Secondly: That you A1 to A9 on the aforesaid date, time and place mentioned in charge No.1 supra, were members of an unlawful assembly, and did in prosecution of the common of such assembly viz., in committing the murder of Nageswar Rao committed the offence rioting with deadly weapons to wit., Pattudu sticks and thereby committed an offence punishable under Section 148 of Indian Penal Code and within my cognizance.

Thirdly: That you A1 to A9 on the aforesaid date, time and place mentioned in charge No.1 supra, did commit murder by intentionally causing the death of Nageswar Rao by beating with Pattudu natu sticks and thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.

Fourthly: That you A2 and A3 on the aforesaid date, time and place mentioned in charge No.1 supra, voluntarily caused hurt to LW3. U. Subba Rao by beating with Pattudu Natu sticks and thereby committed an offence punishable under Section 324 of Indian Penal Code and within my cognizance.”

As the plea of the respondents was one of denial, they were tried. In support of its case, the prosecution examined P.Ws.1 to 10, marked Exs.P-1 to P-9 and produced M.Os.1 to 6. On behalf of the defence, no oral evidence was adduced, but it got Exs.D1 and D2 marked. On appreciation of the oral and documentary evidence, the Court below has held all the respondents not guilty of any of the offences and

accordingly, acquitted them. Feeling aggrieved by the said judgment, the *de facto* complainant filed Criminal Revision Case No.1615 of 2009 and the State filed Criminal Appeal No.1637 of 2010.

4. The learned Public Prosecutor (AP) has submitted that the judgment of the Court below is perverse as it has arrived at conclusions contrary to the evidence on record. He has also submitted that though P.Ws.1 and 2 are interested witnesses, they are eyewitnesses, whose evidence has received corroboration by P.W.3, the injured witness, and P.W.4, his sister, who is also an eyewitness and that the Court below has wrongly acquitted the respondents despite the evidence of the eyewitnesses. The learned Public Prosecutor has further submitted that the medical evidence in the form of Ex.P-4, the wound certificate of P.W.3, and Ex.P-5, the post-mortem certificate, and the evidence of P.W.8, the Doctor, who conducted the post-mortem examination and issued Ex.P-5 post-mortem certificate, would clinchingly support the case of the prosecution regarding the cause of death as well as the guilt of the respondents.

5. Mr.D.Goverdhanachary, learned counsel for the *de facto* complainant/revision petitioner, has supported the submissions of the learned Public Prosecutor (AP).

6. Opposing the above submissions, Mr.T.Pradyumna Kumar Reddy, learned counsel for respondent Nos.1 to 7 and Mr.Virupaksha Dattatreya Gouda, learned counsel for respondent Nos.8 and 9, have sought to support the judgment of the Court below with reference to the evidence on record. They have submitted that the respondents having been acquitted, their acquittal is not liable for interference in the absence of definite evidence proving their guilt beyond reasonable doubts. They have referred to various aspects showing contradictions in the evidence of

the prosecution witnesses and also various shortcomings in the case of the prosecution, which would be referred to at appropriate place.

7. We have earnestly considered the respective submissions of the learned counsel for the parties and carefully perused the evidence on record.

8. The incident allegedly took place at about 6.00 p.m. on 30.08.2007 at Muthyalapadu Village of Chagalamarri Mandal. P.W.1, the widow of the deceased, allegedly presented Ex.P-1 report at Chagalamarri Police Station. P.W.9 has endorsed on Ex.P-1 that he has received report at 20.00 hours on 30.08.2007 and submitted express F.I.Rs to all the Officers concerned for taking up investigation. Ex.P-6 - F.I.R. prepared based on Ex.P-1 report was received by the Judicial First Class Magistrate, Allagadda at about 11.00 p.m. Though no direct suggestions were made on the delay in submitting the Police report and the F.I.R. reaching the Court, the prosecution witnesses were cross-examined on the aspect as to who scribed Ex.P-1. P.W.8 admitted that the contents of Ex.P-1 reveal that it was prepared by P.W.1 herself and that his enquiries with P.W.1 revealed that her son (L.W.5) scribed Ex.P-1. A perusal of Ex.P-1 does not show as to who scribed it. In her cross-examination, P.W.1 stated that her son (L.W.5) scribed Ex.P-1 and that she subscribed her thumb mark on it. She further stated that her son (L.W.5) took half an hour to scribe Ex.P-1 and she carried the same to the Police Station. P.W.2, the son of P.W.1 and the deceased, in his cross-examination denied the suggestion that he did not state to the Police that his brother (L.W.5) scribed Ex.P-1 on the dictation of his mother. He further stated that his brother scribed Ex.P-1 between 7.00 and 7.30 p.m.; that his brother was studying at Nandyal and that on the date of the incident, his brother came to their house from Nandyal after the murder of his father. He also stated

that nobody informed his brother about the murder of his father; that his mother did not telephone him about the death of his father; that one hour time is required for a person to reach Muthyalapadu from Nandyal; that there was no landline phone to their house, but they had a cell phone; that the said cell phone was with his father and that half an hour after the murder of his father, P.W.1 took that cell phone.

9. Through the evidence of P.Ws.1 and 2, the prosecution was unable to establish as to who informed L.W.5 about the murder of his father. It has come out in the evidence that Muthyalapadu Village is situated about 78 kilometers from Nandyal. No evidence is placed before the Court by the prosecution to show that he used private transport to reach the Village. Even if somebody informed L.W.5 about the murder, which allegedly took place at 6.00 p.m., it would have taken a minimum of two hours for L.W.5 to reach Muthyalapadu Village. In her evidence P.W.1 clearly stated that her son took half an hour for preparation of Ex.P-1 report. Assuming that L.W.5 reached Muthyalapadu Village by 8.00 p.m., he would not have been able to complete preparation of Ex.P-1 before 8.30 p.m. The distance between Muthyalapadu Village and Chagalamarri Police Station is about 12 kilometers as reflected from the evidence on record. Thus, if L.W.5 has scribed Ex.P-1, there was no possibility of it being received by the Police at 8.00 p.m. as endorsed on Ex.P-1. From the fact that the F.I.R. reached the Court of the Judicial First Class Magistrate at 11.00 p.m., one cannot rule out the possibility of Ex.P-1 having been received by the Police much later than 8.00 p.m. and the same having been ante timed. Once the Police report is ante timed, the scope for embellishments and false implications after confabulations cannot be ruled out. L.W.5 being the alleged scribe of Ex.P-1 was an important witness. For reasons best known to the prosecution, he was

not examined as a witness which throws a serious doubt as to who is the scribe of Ex.P-1. Keeping the above aspects in mind, we need to appreciate the evidence on record.

10. In Ex.P-1 report, P.W.1 stated that at around 6.00 p.m., on 30.08.2007, when she and her son - P.W.2 were on their way to cattle hut for feeding cattle, her husband - the deceased was found returning home along with bulls and yoke and that they also saw respondent No.1 and his four sons - respondent Nos.2 to 5, respondent Nos.6 to 9 and some others surrounding the deceased with sticks and beating him. That thereupon, P.W.2 went running to the scene of offence and P.W.3, L.W.7 and some others also reached the scene of offence. That as the head of the deceased was broken, he fell down and died and that when P.W.3 tried to intervene, respondent Nos.3 and 4 beat him with sticks on his shoulder. That when people have gathered, all the respondents fled away from the scene of offence.

11. P.W.1 in her evidence reiterated the contents of Ex.P-1. She stated in her cross-examination that she and her son saw her husband coming with bulls and yoke from a distance of 90 feet. She denied the suggestion that the deceased did not sustain injuries at the scene of offence as propounded by the prosecution; that the deceased sustained injuries somewhere else; that she foisted a false case against the respondents and that she chose a residential locality and came out with a false story that the deceased sustained injuries in front of the house of respondent Nos. 2 to 4. She admitted that she found the dead body of the deceased, lying intact at ratha in rain; that there was heavy rain during that night and that the dead body was in the ratha till such time as inquest was held.

12. Though P.W.1 in Ex.P.1 report stated that she and her son - P.W.2 witnessed the incident when they were crossing the street to reach the

cattle shed to feed the cattle, P.W.9 in his cross-examination admitted that P.W.2 did not state before him that P.W.1 accompanied him for feeding the cattle. This, in our opinion, is a serious omission. The learned Public Prosecutor argued that in Ex.P.1 itself, which is the earliest document, P.W.1 has referred to herself and P.W.2 as the eyewitnesses. This submission would have found acceptance in a case where Ex.P.1 was not under cloud. For the reasons discussed hereinbefore, there was every possibility of Ex.P.1 having been prepared after deliberations and confabulations. Therefore, her statement in Ex.P.1 referring to her presence does not enjoy high credence. Had P.W.1 been the eyewitness, P.W.2 would not have omitted to mention her presence in his Section 161 CrPC statement. Therefore, the claim of P.W.1 that she was an eyewitness to the occurrence cannot be accepted on its face value.

13. P.W.1 has deposed that on witnessing the attack on her husband, herself, L.W.7 and P.W.4 went to rescue her husband. She has not included the name of P.W.2, who was also a person who allegedly accompanied herself, and the other two persons to the scene of offence for rescuing the deceased. However, she added at the later part of her deposition that her son also came to the scene of offence. If we closely examine the version of P.W.1, it is clearly evident that she did not state that P.W.2 has tried to rescue his father. This conduct of P.W.2 is quite unnatural. The deceased being his father should have been the first person to go to the rescue of his father. As per the version of P.W.1, there was not even an attempt by P.W.2 to intervene in order to rescue his father. According to P.W.1, P.W.3 sustained injuries at the hands of accused Nos.3 and 4 when he tried to rescue the deceased. She also deposed that herself, L.W.7 and P.W.4 also went to the rescue of her husband. If that be so, the accused would have attacked them also. It is

not the case of the prosecution that any of these three persons were attacked by the accused. P.W.2 in his evidence merely stated that her mother, L.W.7 and P.W.4 were at the scene of offence. He did not state that the said three persons have gone to the rescue of the deceased. Had P.Ws.1 and 2 been the eyewitnesses and reached the scene of offence when the attack was taking place, they would not have been spared by the accused, more so, when they have allegedly attacked P.W.3. When L.W.7 has also witnessed the incident, we do not find any reason for the prosecution to give him up.

14. The evidence of P.W.2 also suffers from material contradiction with regard to the presence of his brother - L.W.5. In his chief examination he has stated that while he along with his mother, P.W.4 and L.W.7 reached the scene of offence, L.W.5 also came there. In his cross-examination, he has, however, deposed that his brother reached their house from Nandyal after the murder of his father. We also noticed serious contradiction between the charge sheet and the evidence of P.Ws.1 to 4. While it was alleged in the charge sheet that accused Nos.2 and 3 beat P.W.3, P.Ws.1 to 4 in one voice stated that accused Nos.3 and 4 have beaten P.W.3. Surprisingly even P.W.3 deposed that he was beaten by accused Nos.3 and 4.

15. The above mentioned contradictions throw a serious doubt on the whole case of the prosecution about their witnessing the alleged occurrence, the manner in which it has taken place and the place of occurrence. If we examine these contradictions in isolation, they may appear to be somewhat insignificant. However, they assume great relevance if we consider the serious lacunae in the case of the prosecution as to the scene of offence. It is the version of the prosecution witnesses that the offence has taken place on a rastha in front of the houses of

accused Nos.2 to 4. In order to prove the same, the prosecution has produced M.O.5 – bloodstained earth and M.O.6 – control earth. It has already been noticed by us that P.W.1 has admitted that there was heavy rain during the night of occurrence and the dead body was on the ratha till the inquest was held. A perusal of Ex.P.2 – inquest report shows that the inquest was held at 8.00 a.m. on 31.08.2007, i.e., the following day on which the murder has taken place. It was mentioned in Ex.P.8 letter of advice that M.Os 3 and 4, described as items 3 and 4 therein, were seized on 31.8.2007 during inquest over the dead body of the deceased. Thus, as per the prosecution version, M.Os.3 and 4, i.e, blood stained earth and control earth, were seized only after 8.00 a.m., on the following day of the murder. If the offence was committed at the place and the time as pleaded by the prosecution, there would not have been any possibility for the Police to seize the blood stained earth and control earth after heavy rain all through the night.

16. P.W.9 also admitted in his evidence that there was heavy rain during the night of occurrence and that some water was flowing in the Neravativari lane, where the offence allegedly took place, by the side of the body. He however sought to explain that the body was not drenched in the rain as it was covered with a plastic sheet, but he admitted that this fact was not written anywhere in the report and that even in the inquest report he did not mention that in the presence of panchayatdars the plastic cover was removed from the body. The prosecution failed to produce the plastic sheet before the Court. These circumstances, cast a serious doubt on the version of the prosecution regarding the scene of offence. This doubt is further firmed up by the evidence of P.W.8, the Doctor who conducted autopsy. He has stated in his cross-examination that due to the colour of the dead body and haemorrhage being more,

post-mortem stains were not visible, though they were formed. He has however admitted that if the body is moved before coagulation (clotting) the post-mortem stains will not be found. He has further admitted that he has not noted any post-mortem stains. From the evidence of P.W.8 it is clear that if the body was removed from one place to another place before clotting of blood, post-mortem stains will not be visible. Non-noting of the post-mortem stains by P.W.8 lends support to the defence version that it would have been quite possible that the offence may have taken place at a place different from the scene of offence pleaded by the prosecution and the body of the deceased might have been moved from that place to the alleged scene of offence before coagulation occurred. In the light of the above, if we examine the contradictions in the evidence of P.Ws.1 to 4 as discussed hereinbefore, we cannot refrain from concluding that the prosecution has planted P.Ws.1 to 4 as eyewitnesses.

17. The learned Public Prosecutor strongly urged that P.W.3 being an injured witness, his testimony cannot be disbelieved. The learned counsel for the respondents, however, argued that P.W.3, being son, and P.W.4, being daughter of one Oblesu, who was also killed on the same night after the deceased in the present case was killed, and the said Obulesu being brother of the deceased in the instant case, P.W.3 is a highly interested witness.

18. It is the version of the prosecution that having sustained injury, P.W.3 has accompanied P.W.1 to the Police Station. P.W.9 deposed that P.W.3 has accompanied P.W.1 to the Police Station and lodged a complaint and after registration of the crime P.W.3 was sent to the hospital for treatment. It was, however, suggested to P.W.9 that P.W.3 was sent to hospital before the case was registered and that because of that reason in Ex.P.4 - wound certificate of P.W.3, FIR number was not

mentioned. A perusal of Ex.P.4 shows that he (P.W.3) was seen by P.W.8, the doctor, at 11.30 p.m. If the FIR was registered at 8.00 p.m., the Police Station and the Hospital being situated at Chagalmarry itself, one does not find any reason as to why P.W.3 was not sent to the doctor till 11.30 p.m. Moreover, it was elicited from P.W.8 that in Ex.P.4 the nature of weapon used in commission of the offence has not been mentioned and that he did not also mention the colour and number of the contusions in Ex.P.4. He admitted that the colour of the contusion shall help to determine the age of the injury. The failure of P.W.8 to mention the colour and contusions would cast a serious doubt on the opinion given by P.W.8 on the age of the injuries that they must have been sustained 5 or 6 hours prior to his examination, and probablize the suggestion of the defence that the injuries may not have been received by P.W.3 at the time as pleaded by the prosecution. As regards the evidence of P.W.4, she appears to be a purely planted witness, as P.W.1 did not speak to her presence in Ex.P.1. P.W.9 admitted that P.W.1 in her statement did not state that P.W.4 witnessed the incident.

19. As held by the Supreme Court in *Satyavir Singh v. State of Uttar Pradesh*¹, *Govindaraju v. State, by Srirampuram Police Station*² and *State of Uttar Pradesh v. Atar Singh and others*³, being the appellate court, this Court is entitled to reappraise the entire evidence and arrive at its own conclusions. It was further held that the first appellate court is a court of both fact and law and as such it has jurisdiction to entirely reappraise the evidence.

20. Though the reasons assigned by the trial Court for disbelieving the evidence of P.Ws.1 to 4 do not appear to be sound, being the appellate

¹ (2010) 3 SCC 174

² (2012) 4 SCC 722

³ 2008(1) ALD (Crl.) 162 (SC)

court, this Court has re-appreciated the whole evidence, and it supports the conclusion of the trial Court that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt, albeit on the strength of its own reasons recorded hereinbefore.

21. For all the aforementioned reasons, we do not find any merit in the criminal appeal as well as the revision case and hence they are accordingly dismissed.

C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

17-07-2017

Ghn/bnr

Note: LR copies to be marked.
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