

CRIMINAL APPEAL NO.1648 OF 2010

Between:

And

COUNSEL FOR THE RESPONDENTS:-



THE COURT DELIVERED THE FOLLOWING:

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

This criminal appeal by the State is directed against judgment dt.15.5.2009 in S.C. No.9 of 2008, whereby the III Additional District and Sessions Judge, Kakinada, acquitted the respondents – accused, who were charged for the offences punishable under Sections 302 and 307 of Indian Penal Code (IPC).

2. The case of the prosecution in brief is that one Kondangi Vedachalam Raghu (hereinafter referred to as 'the deceased'), who was a resident of Chennai and working as Driver in Sreepak Logistics Transport Private Limited, Chennai, started from Chennai on 04.11.2006 on lorry bearing No.TN 04 M 8472, along with one Palaniswamy Manikyam, another driver on another vehicle - P.W.13, to transport Rig Cement to Kakinada. That they reached Kakinada on the night of 08.11.2006, and later they kept their vehicles at Coromandel Godowns, and that as the goods in their vehicles were not unloaded till 14.00 hours on 9.11.2006, the deceased and P.W.13 left the godowns informing Mr. Veeramani, cleaner of the aforesaid lorry - P.W.12, that they are going outside for consuming liquor. That they went to Dairy Farm area, purchased and consumed half of the liquor and proceeded to the pan shop of one Venkataramana - P.W.4, where they consumed the remaining liquor. That later with a view to fulfil their sexual desire, the deceased and P.W.13 went near the huts of the locality each from a different side in drunken state. That when P.W.13 was trying to enter into the hut of accused No.2, the latter grew wild against the former and shouted against him and hence he escaped from there with fear and took shelter in the hut of one Chintakayala Sathemma. That accused No.3 who heard the cries of accused No.2 went to the hut of the latter and they rushed to the hut where P.W.13 took shelter, caught hold of him, brought him out of the hut by beating with hands and P.W.13 stripped off his shirt,

escaped from their clutches and hid himself in between pan shop of P.W.4 and the hut of one Kundu Sathemma. That meanwhile, accused No.1 chased the deceased and when the latter reached near the pan shop of P.W.4, he fell down on the ground, and accused Nos.2 and 3 also reached the same spot. That accused No.1 told accused Nos.2 and 3 that the deceased in a drunken state was trying to catch hold of P.W.2 - Ms. Durga, a resident of the same locality, and when she raised cries, accused No.1 heard the same, came out of his hut and while trying to catch the deceased he ran away and fell down on the ground. That accused Nos.2 and 3 also informed accused No.1 about the incident involving P.W.13. That accused Nos.1 to 3 decided to kill the deceased and then accused No.1 took a big red metal stone, beat the deceased on his face and accused Nos.2 and 3 also beat the deceased with big stones on his face, as a result of which the deceased died instantaneously. That P.W.13, who noticed the killing of the deceased, heard the words of accused Nos.1 to 3 that they are planning to catch and kill him, then he skulk away from the spot towards Kumbhabhisekam temple centre. That on seeing the escaping of P.W.13, accused Nos.1 to 3 have attempted to catch him by chasing, but he managed to escape, and to save his life he entered the premises of Port Administrative Office by jumping the wall and in that process he sustained injuries.

3. That on the report of P.W.1 - Chokka Kasullamma informing that the dead body of the deceased was found in front of her shop near Kumbabhishekam Temple in Kakinada, the Police registered Crime No.162 of 2006 under Section 302 of IPC, in Port Police Station, Kakinada. The Inspector of Police, Kakinada Town Circle, who was examined as P.W.15, took up the investigation of the case, visited the scene of offence and got drafted the scene of offence observation report – Ex.P.3 by P.W.7 and

another, seized the material objects, and prepared the rough sketch of the scene of offence – Ex.P.16. Thereafter, the dead body was shifted to Government General Hospital, Kakinada where inquest was held in the presence of P.W.7 and others, and prepared Ex.P.6 inquest report, and post-mortem examination was conducted by P.W.10 - Dr. P. Sarat Kumr Babu, who issued post-mortem report, Ex.P.13. That initially the prosecution suspected P.W.13 as a person who killed the deceased and that on 15.11.2006, P.W.13 came to the Police Station and stated that three persons had attacked him and the deceased, that he managed to escape from the hands of the accused and in the process he received injuries. That basing on the statement of P.W.13, Police have first apprehended accused No.2, and later accused Nos.1 and 3 on 17.11.2006. In pursuance of the confession of the accused, M.Os.10 to 16 were seized by the Police. P.Ws.13 identified the accused in the Test Identification Parade. On completion of investigation, the Police filed charge sheet. The IV Additional Judicial First Class Magistrate, Kakinada, took the charge sheet on file as PRC No.23 of 2007 and committed the same to the Court of Sessions, East Godavari Division at Rajahmundry, on 18.12.2007.

4. As the plea of the accused was one of denial, they were made to stand trial, during which the prosecution examined P.Ws.1 to 15, got Exs.P.1 to P.20 marked and produced M.Os.1 to 16. On behalf of the accused, Exs.D.1 to D.3, contradictions in the portions of the statements of P.Ws.4 and 12 recorded under Section 161 of the Code of Criminal Procedure, were marked. On appreciation of the evidence on record, the Court below has held that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and accordingly acquitted them. Feeling aggrieved by the acquittal of the accused, the State filed this appeal.

5. Heard Mr. Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh, and perused the record.

6. As could be seen from Ex.P.1, report given by P.W.1, the body of the deceased was first seen by the informant lying near her shop in a pool of blood and a big stone was also found on the side of the body. It was also stated therein that P.W.1 came to know through somebody that on the previous night the deceased and another person were roaming around at the place and they were talking in a different language (from Telugu).

7. Ex.P.6 is the inquest report to which P.W.12 the cleaner of the lorry driven by the deceased and P.Ws.4 and 5 are the witnesses. In paragraph XV of the inquest report it was stated that P.W.12, the deceased and P.W.13 purchased liquor from a liquor shop for consuming at Kumbabhishekam Temple at the Beach Road (in Kakinada) and P.Ws.4 and 5 saw them quarrelling with each other in their own language upon which the said witnesses have warned and asked the three of them to go away from that place. That after P.Ws.4 and 5 left the place, the quarrel between the deceased and P.W.13 continued and in the scuffle between them, P.W.13 pushed the deceased and hit him with a red stone on his face and thereafter P.W.13 went away leaving the dead body of the deceased there. The panchayatdars to the inquest report assumed that the deceased died due to the injuries caused on his head. It was further mentioned that two cell phones were found at the scene of offence out of which one belonged to P.W.13. It was also stated that P.W.13 has come to the place where the lorry was parked at about 2.30 a.m. and told P.W.12 that he has gone to watch a movie and the deceased will come later. The panchayatdars have come to an unanimous opinion that P.W.13 has received scratches on the body due to existence of thorns at the scene of offence and that the

deceased died as he was attacked with a red stone by P.W.13 at or around 7.30 p.m. on 09.11.2006.

8. Quite contrary to the contents of Ex.P.6 – inquest report, the charge sheet alleged involvement of the accused. It was stated therein that during the course of investigation, P.W.15 arrested accused No.2 on 17.11.2006 at 5.00 p.m. at Beach Road, Kakinada and recorded his confessional statement before the mediators, that at the instance of accused No.2, P.W.15 seized bloodstained light blue colour with black and white colour stripes full hands shirt of P.W.13, and also blue colour with white and black colour stripes full hands shirt, and white and black colour short of accused No.2 at his thatched house. It was also alleged that P.W.15 arrested accused Nos.1 and 3 on 17.11.2006 at 9.30 p.m. inside Kumbhabhisekam Temple, Beach Road, Kakinada, in the presence of mediators, got their confessional statements recorded, and seized the bloodstained clothes of accused Nos.1 and 3 at their instance.

9. The sudden volte-face in the case of the prosecution which projected P.W.13 as a victim, and not an offender as initially shown, raises a serious doubt about the veracity of its case. If the offence has taken place in the presence of P.W.13 and that he was a victim, the question that comes to the mind of the Court is why he did not immediately approach the Police and inform as to the true events that have transpired, leading to the killing of the deceased. P.W.15, the Investigating Officer, deposed that while the incident has taken place on 11.11.2006, P.W.13 voluntarily came to the Police Station on 15.11.2006 and made a statement. There is a serious doubt about the disappearance of P.W.13 for four days. The version of the prosecution that after the incident P.W.13 went to Vizag and returned to Kakinada on 15.11.2006 appears wholly incredulous from the evidence of some of its own witnesses. P.W.1, the first informant, categorically deposed

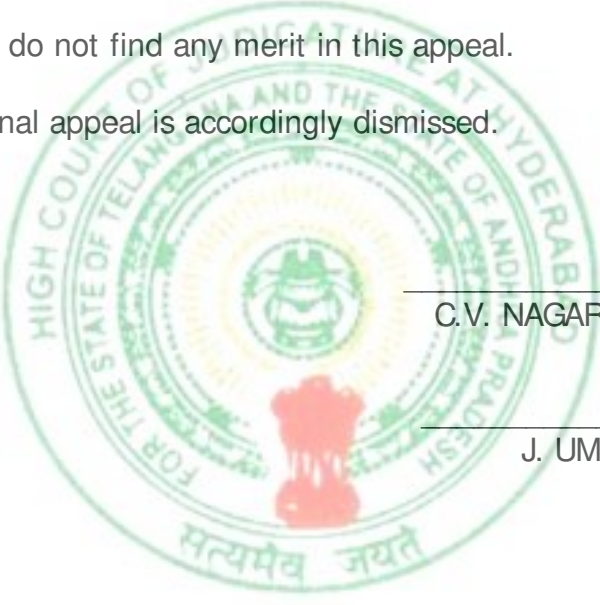
in her evidence that on the next day of the incident after the visit of the Chief Minister, “the other person who quarrelled with the deceased”, meaning, P.W.13, was brought by the Police near to her shop with handcuffs. P.W.12 in his chief examination testified that on the evening of the day following the incident the Police have taken him and P.W.13 to the Police Station and they were kept at the Police Station for over a period of one week. In his cross-examination, while reiterating the statement that after keeping himself and P.W.13 in the Police Station for a week, he further stated that the Police have not sent them to sub-jail, and they were set free. The prosecution has not contradicted this statement of P.W.12. This evidence thoroughly exposes the case of the prosecution and throws any amount of doubt on its credibility. This clearly proves that P.W.13 was in the Police custody by the time Ex.P.6 – inquest report was prepared. In spite of the said fact, for the reasons best known to them, the investigation agency has suspected P.W.13 as having caused the death of the deceased. If the accused persons were really involved in the murder and P.W.13 was innocent, he should have been the first informant. Instead, P.W.1, who runs a shop near the scene of offence, has given Ex.P.1 report.

10. A perusal of Ex.P.14 – wound certificate of P.W.13 shows that he was examined by P.W.11 on 15.11.2006, i.e., four days after the alleged incident has taken place. P.W.11 in his cross-examination did not rule out that the injuries on the person of P.W.13 may be of the age of seven days. This also raises a serious suspicion on the correctness of the version of the prosecution that P.W.13 has received injuries on 11.11.2006 when the deceased was done to death. The Court below has also expressed a doubt about the identification of the accused allegedly made by P.W.13. In this connection, it has relied upon the evidence of P.W.9, the Judicial Magistrate of First Class, who conducted the test identification parade and also that of

P.W.15, Investigating Officer, from whom it was elicited that P.W.13 did not give the descriptive particulars of the accused by which he was able to identify them.

11. On a careful consideration of the case of the prosecution in its entirety and having regard to the reasons assigned by the Court below, we have no reason to come to a conclusion different from the one arrived at by it. As the case of the prosecution suffers from serious contradictions, in that, the earliest version, suspecting P.W.13 was dramatically changed at later stage and it has also suppressed the fact that P.Ws.12 and 13 were in the Police custody for one week during which period they did not suspect the accused, we do not find any merit in this appeal.

12. The criminal appeal is accordingly dismissed.



C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

07-06-2017

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