

**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE MS JUSTICE J. UMA DEVI**

CRIMINAL APPEAL Nos.22 & 338 of 2011 and 571 of 2015

DATE: 19.06.2017

CRIMINAL APPEAL No.22 of 2011

Between:

Smt. N. Rama Devi

....Appellant

and

Katta China Venkambotlu and others

....Respondents

COUNSEL FOR THE APPELLANT : Smt. C. Vasundhara Reddy

**COUNSEL FOR RESPONDENTS 1 to 6, 8 & 9 : Sri C.B. Adarsh Kumar
For Sri N. Raviprasad**

COUNSEL FOR RESPONDENT No.7 : Sri Koti Reddy Idamakanti

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

These three Criminal Appeals arise out of a common judgment dated 08.11.2010 in S.C.No.201 of 2009 on the file of I Additional Sessions Judge, Ongole.

Criminal Appeal No.22 of 2011 was the earliest appeal instituted by the widow of the deceased. Criminal Appeal No.338 of 2011 was filed by P.W.1 – de facto complainant. Almost four years later, Criminal Appeal No.571 of 2015 was filed by the State. Indeed, there is a doubt as to whether the appeals filed by the widow of the deceased and the de facto complainant were maintainable as proviso to Section 372 of the Code of Criminal Procedure was inserted with effect from 31.12.2009 providing for right of appeal to a victim by Act No.5 of 2009 with effect from 31.12.2009 while the offence leading to the murder of the deceased took place on 21.10.2007, much prior to the said amendment having been brought into existence. However, as the State itself has preferred appeal, albeit belatedly, this aspect pales into insignificance.

At the hearing, the learned Public Prosecutor has taken the lead to argue the case, while Smt. C. Vasundhara Reddy and Sri T. Sreedhar, learned counsel for the appellants, in their respective appeals, have only adopted the submissions of the learned Public Prosecutor. With this preface, we would like to refer to the case of the prosecution.

A.1 and the deceased have political ill-feelings since long time as they belong to different political parties. A.3 and A.9 are close relatives and A.2 & A.4 to A.8 are the henchmen of A.1. The deceased took a major role in not supplying the canal water to the field of A.1 making it barren and thereby causing financial loss to the latter. Therefore, A.1 hatched a plan to kill the deceased in connivance with A.2 to A.9 on 19.10.2007. On the next day, A.1 to A.9 formed themselves into an unlawful assembly armed with lethal weapons i.e., axes, knives and iron rods, waylaid at Pulipadu Vagu, at about 3.00 p.m., the deceased along with his friend, P.W.1, as a pillion rider, was coming on a motor cycle and A.6 and A.8 hit the motor cycle of the deceased with their motor cycles bearing Nos.AP27 J 3950 and AP27 2219 in the opposite direction. When the deceased stopped the motor cycle, A.1 axed twice on his head, A.2 beat him with an iron rod, A.3 axed on his head and A.9 stabbed him with a knife indiscriminately, while A.4, A.5 and A.7 stood in support of them with criminal intention and were watching the same.

Due to the said injuries, the deceased died on the spot. When the accused tried to kill P.W.1, he escaped and rescued himself. While P.W.2 was passing on the road, A.2 attacked and beat him with an iron rod on his right shoulder. L.W.3 - Nidamanuri Ramanjaneyulu and P.W.3 witnessed the incident.

On 20.10.2007, P.Ws.1 and 2 lodged a report before P.W.10 - Assistant Sub-Inspector of Police, Mundlamur Police Station, against A.1 to A.8. Based on the said report, P.W.10 registered Crime No.97 of 2007 for the offences punishable under Sections 147, 148, 302 and 307 IPC read with Section 149 IPC. On instructions of P.W.11-in-charge Inspector of Police, P.W.10 along with P.Ws.1 and 2 proceeded to the scene of offence and took up investigation. P.W.11 visited the scene of offence, prepared rough sketch and seized the motor cycles belonging to A.1 and the deceased under a cover of panchanama. He conducted inquest over the dead body of the deceased and sent it to the Government Hospital, Darsi, for post mortem examination. P.W.13 took up the further investigation in the case. He examined and recorded the statements of L.W.6 – Madala Seshaiyah and P.W.4 under Section 161 Cr.P.C. and confirmed that A.9 also participated in the commission of offence. P.W.13 along with his staff arrested the accused and got them sent to judicial custody. He seized blood stained axe, iron rod, knife and towel at the instance of A.1 under a

cover of panchanama and sent material objects i.e., blood stained earth, control earth, blood stained full sleeves kakhi shirt of P.W.2, blood stained clothes of the deceased, blood stained towel, axe, knife and iron rod to the Regional Forensic Science Laboratory, Guntur, for analysis and report. L.W.21 – Dr. Rama Koteswara Rao, Medical Officer, conducted post mortem over the dead body of the deceased and issued Ex.P.14 - post mortem certificate opining that the deceased appeared to have died of shock and hemorrhage due to multiple injuries caused by heavy and sharp object. He also examined P.W.2 and issued Ex.P.15 – wound certificate. The Regional Forensic Science Laboratory, Guntur, issued Ex.P.20 - FSL report stating that the blood stains found on the clothes, axe, iron rod and knife are of human origin. After the completion of investigation, the police filed charge sheet against the accused under Sections 147, 148, 302 and 307 IPC read with Section 149 IPC.

Based on the charge sheet filed by the police, the Court below has framed the following charges against the accused.

Firstly:

That you A.1 to A.9 on 20.10.07 at 3 p.m. at Pulipadui Chapta were members of unlawful assembly with common object of committing murder of Nidamanuri Venkata Srihari committed the offence of rioting, and at that time you A.1 to A.9 are armed with axes, iron rods, and knives, and thereby committed offence punishable u/S.148 of IPC and within the cognizance of this Court.

Secondly:

At the same date, time and place mentioned above in charge no.1 supra that you A.1, A.2, A.3 and A.9 committed murder by intentionally causing the death of Nidamanuri Venkata Srihari and out of you A.1 axed twice on the head of the deceased, A.2 beat with iron rod, and A.3 axed on the head, and A.9 stabbed with knife indiscriminately, and thereby you committed an offence punishable u/S.302 of Indian Penal Code, and within the cognizance of this Court.

Thirdly:

At the same date, time and place mentioned above in charge No.1 supra that you A.6 and A.8 hit the motor cycle bearing No.AP27 ITR 3523 of Nidamanuri Venkata Srihari with your motor cycles bearing No.AP27 2210 of A.1 and AP27 J 3950 of A.4, and thus abetted A.1 to A.3 and A.9 to commit murder of the deceased which is punishable with death or imprisonment for life, and thereby you A.6 and A.8 committed the offence punishable u/S.302 read with Sec.114 of IPC, and within the cognizance of this Court.

Fourthly:

At the same date, time and place mentioned above in charge no.1 supra that you A.4, A.5 and A.7 were present at that place in support of A.1 to A.3, A.6, A.8 and A.9, and that A.1 to A.3 and A.9 committed murder of the deceased, and thereby you A.4, A.5 and A.7 committed an offence punishable u/S.302 read with Sec.114 of IPC, and within the cognizance of this Court.

As the plea of the accused was one of denial, they were made to stand the trial.

The prosecution has examined P.Ws.1 to 13 and marked Exs.P.1 to P.21 besides M.Os.1 to 11. On behalf of the accused, Exs.D.1 to D.4 were marked, while no oral evidence was adduced on their behalf. On appreciation of the oral and documentary evidence,

the trial Court has acquitted the accused of all the charges. Feeling aggrieved by the said acquittal, these appeals have been filed by the widow, the de facto complainant and the State.

The learned Public Prosecutor submitted that the Court below has committed a serious error in relying on the evidence of P.W.2, the hostile witness, examined by the prosecution, ignoring the evidence of P.W.1, another direct witness, and that of P.Ws.10 and 11, the Assistant Sub-Inspector of Police and the Investigating Officer, respectively, besides Ex.P.5 – inquest report, Ex.P.15 – wound certificate of P.W.2 and Ex.P.14 – post mortem certificate of the deceased. He has also argued that the Court below has committed an error in holding that the delay in sending the FIR to the jurisdictional Magistrate was fatal.

Sri Kotireddy Idamakanti, learned counsel for one of the accused i.e., A.7, opposed the above submissions and commended the correctness of the judgment of the Court below.

Though Mr. N. Raviprasad, learned counsel for the remaining accused, has entered appearance, he is not present at the hearing but someone represented him and informed the Court that he is not in station.

We have carefully considered the submissions of the above-mentioned counsel with reference to the material on record.

As per the case of the prosecution, due to the past enmity between the parties, on 20.10.2007, A.1 to A.9 formed themselves into an unlawful assembly armed with deadly weapons like, axes, iron rods and knives, waylaid the deceased and attacked him at about 3.00 p.m. when he was riding a motor cycle with P.W.1 as a pillion rider; that A.6 and A.8 hit the motor cycle of the deceased with their motor cycles bearing No.AP27 I 3950 and AP27 2219 in the opposite direction, that when the deceased stopped the motor cycle, A.1 axed the deceased twice on his head, A.2 beat him with iron rod, A.3 axed him on his head, A.9 stabbed him with a knife indiscriminately, while A.4, A.5 and A.7 were standing and watching the attack of the accused on the deceased and that with those injuries, the deceased died on the spot. In Ex.P.1, the report given by P.W.1, the presence of 8 out of the 9 accused was mentioned. A.9 was subsequently added by the police after investigation. However, P.W.1 made an omnibus allegation that all the eight accused were armed with axes and rods without specifically mentioning as to which of the accused was holding which weapon. Similarly, he has also not attributed specific overt acts to any of the accused. Though the law is settled that FIR cannot be treated as an encyclopedia, P.W.1 being the pillion rider was supposed to have watched the alleged overt acts of all the accused in close proximity,

and as such, he was expected to narrate the events in more detail both with reference to the factum of which accused held which weapon and which accused attacked the deceased in what manner and caused what injuries. It is evident from P.W.1's deposition given before the Court below that he has come out with a detailed version by attributing specific overt acts to different accused. Failure of P.W.1 to refer to the above mentioned aspects at least briefly in Ex.P.1, creates any amount of suspicion about his very presence at the scene of offence. Added to this, he has neither fallen down from the motor cycle along with the deceased nor received any injuries when as many as 9 accused have attacked the deceased. He being the nephew of the deceased could not have been spared unharmed by the assailants, more so, when it is the case of the prosecution that P.W.2, who was a passer-by on a motor cycle and was not a part of either of the two groups, was attacked by one of the assailants with an iron rod.

Coming to the evidence of P.W.2, an injured witness, he has admitted in his evidence that the police have examined him on the next date of the incident. While according to the prosecution, the incident took place on 20.10.2007 at 3.00 p.m., P.W.2 has allegedly reached the police station half an hour after P.W.1 has reached the police station. It has come out in the evidence that the distance between the scene of occurrence and Mundlamur Police Station is 15

kilometers. When P.W.1, who was only a pillion rider and who did not have his own transportation, could reach the Police Station at 5.30 p.m., P.W.2, who was having motor cycle, was expected to have reached the Police Station before P.W.1 reached it. However, P.W.2 had reached the police station half an hour after P.W.1 reached. P.W.2 in his cross-examination stated that immediately after the incident, he went to Darsi Police Station and stated as to what he has witnessed. This statement of P.W.2 remained uncontroverted as no suggestion was put to him that he has not gone to Darsi Police Station and reported about the incident. Based on this evidence, the Court below has observed, and in our view, rightly that information about the incident was first received by Darsi Police Station through P.W.2 and that therefore, Ex.P.1 cannot be treated as an FIR. At best, it can be treated as a statement made to a police officer and therefore the same is hit by the provisions of Sections 161 and 162 Cr.P.C.

One aspect which is more fatal to the case of the prosecution in this case is, the long and unexplained delay in Ex.P.1 reaching the Magistrate. While the incident occurred around 3.00 p.m., FIR was stated to have been registered at 5.30 p.m. But, there is a delay of nearly 14 hours in the FIR reaching the Magistrate. It has come in the evidence that the Inspector of Police, Darsi, who was the Investigating Officer, has reached the scene of offence by 6.00 p.m.

Had FIR been registered around 5.30 p.m. by P.W.10, it was expected to have been sent to the Magistrate at Kanigiri within a reasonable time of arrival of P.W.11. The distance between Darsi Police Station and Kanigiri, where the Magistrate was present and to whom FIR was sent, is about 70 kms. Therefore, an express FIR issued in the case of murder was expected to have reached the Magistrate, Kanigiri within two or three hours after its registration. Therefore, in ordinary course, the FIR should have reached the Magistrate latest by 9.00 p.m., if not earlier. The fact that FIR has reached the Magistrate at 7.00 a.m. on the next day, gives rise to a serious suspicion that the FIR may have been ante-timed. This is a case where there are two rival factions in the Village. The delay in FIR reaching the Magistrate gives rise to concoctions and false implications. Therefore, in a case of this nature, the long and unexplained delay in the FIR reaching the Magistrate is fatal to the case of prosecution.

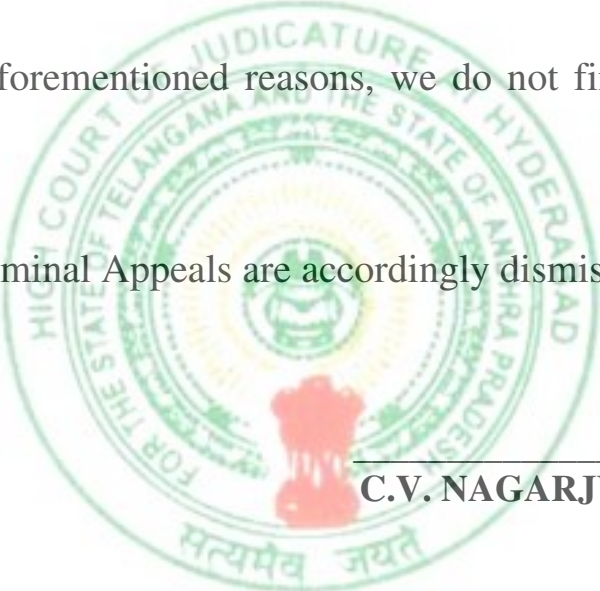
P.W.2, who is an injured witness, does not support the case of the prosecution and deposed that he did not identify the assailants. While in 161 Cr.P.C. statement, P.W.1 stated that he ran fast from the scene of offence in fear, he tried to improve his version by deposing in his evidence that he ran away from the scene of offence while watching the incident. His evidence does not inspire confidence as he has improved his version by coming out with the

stand that though he was fleeing from the scene of offence, he was watching the incident.

The Court below has rightly extended the benefit of doubt to the accused as there was every possibility of false implication in view of the existence of factions in the Village. Where two views are possible and the trial Court has taken one view, exercising the appellate jurisdiction, it is not permissible for this Court to reverse the view taken by the Court below when such a view is a possible view to have been taken from the evidence available on record.

For the aforementioned reasons, we do not find any merit in these appeals.

These Criminal Appeals are accordingly dismissed.



C.V. NAGARJUNA REDDY, J

J.UMA DEVI, J

19th JUNE, 2017.

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