

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE P. KESHA VA RAO**

**CRL.A.M.P.No.2012 of 2017
in/and
CRIMINAL APPEAL No.986 of 2017**

COMMON ORDER: (ORAL)

(Per Suresh Kumar Kait, J)

Vide Crl.A.M.P.No.2012 of 2017, petitioner seeks direction, thereby to condone the delay of 892 days in presenting appeal against order of acquittal of the respondents herein, in S.C.No.355 of 2012 on the file of the VIII Additional District & Sessions Judge, Medak, dated 28.11.2004.

While acquitting the respondents, the court below has recorded finding that regarding recovery of M.Os.6 & 7 – sticks, P.W.11 stated in his evidence that accused persons surrendered before the Magistrate, he has taken custody of accused from the court on 21.08.2010, interrogated them in the presence of P.W.8 and another *panch* witness and recorded the confessional statement of A.1 under Ex.P.8 and accused persons showed the place of offence and A.1 produced one stick which was seized by him under *cover* of Ex.P.8. P.W.11 only stated about seizure of one stick. P.W.8 stated that 3 ½ years ago, in the afternoon, he went to village to fetch rice; police came there and A.1 to A.3 were present and when the police had questioned the accused, they told them that they beat Narayana with sticks 15 days back and panchanama was prepared by the police, but he did not know about seizure of any article. In cross-examination by the Addl. Public Prosecutor, he stated that A.1 had shown M.Os.6 & 7 – sticks, picking out from bushes near the shop of Kummari Narsimulu and the police seized them.

The court below observed that the evidence of P.W.9 is shabby and not convincing and recovery of M.Os.6 & 7 – sticks is not reliable as it appears to be artificial in nature. The court below further recorded in the impugned order that report was not given by P.W.2 immediately. P.W.1 also did not give report

immediately after knowing at Sangareddy about the injuries received by Narayana knowing from P.W.2. According to P.W.2, he informed about the incident to P.W.1 at Govt. Hospital, Sangareddy. The case projected by P.W.1 that he was in dark and did not know as to how his father received injuries till he reached village and after the death of his father, after enquiry with P.W.2, he came to know about it, gives rise to a doubt about the complicity of any person causing injuries to Narayana. The court below further observed that had Narayana sustained injuries in the hands of known person, P.Ws.1 and 2 must have reacted sharply and must have started action against them by giving a report. P.W.2 has also not examined himself by a Doctor. According to P.W.2, each accused gave one stick blow on the head of Narayana. Ex.P.13 does not disclose three injuries on the head of Narayana. The story narrated by P.W.2 that when his father fell down unconscious, people gathered there and he ran away from the place is very unnatural. He was not lonely person there. He himself, P.W.5, his friend and other neighbours were there. The natural conduct of a son when he saw his father being beaten must be to rescue his father with the help of others. The story set out by P.W.2 that he was present at that time is not believable. The evidence of P.W.6 also in that regard is quite unnatural.

As regards the motive, the court below observed that motive for starting the offence is something more artificial. According to P.W.2 and P.W.5, because P.W.5 stopped working under A.1 six months ago, A.2 came first and quarrelled with P.W.2 and beat him in that regard, thinking that he is responsible for P.W.5 discontinuing the employment. Had A.1 was having any grouse, he must have had it against P.W.5 and not against P.W.2. There is no sufficient motive in this case to commit the offence. According to Ex.P.1, the motive was previous grudge. The root cause that discontinuation of employment by P.W.5 under A.1 at the instance of P.W.2 is not motive mentioned in Ex.P.1.

Regarding the place of offence, the court below observed that P.Ws.2 & 5 stated that P.W.2 was beaten and Narayana was also beaten at that time in front of the house of P.W.2. It is not the case of P.Ws.2 and 5 that Narayana was beaten in front of house of Ganesh, which is in a different street. It appears in the case, the prosecution has not come with true genesis of the case and it has come with artificial stories. P.W.6 also has given evidence in a half-hearted manner. He stated that he has not witnessed beating Narayana and he saw only Narayana with injuries. He further deposed that accused were following P.Ws.2 and 5. The very presence of P.Ws.2 and 5 is doubtful because of their conduct. So, every doubt arises about accused causing injuries to Narayana as alleged by the prosecution when he intervened. It is not the case of the prosecution that the accused are having grouse against Narayana. The injuries found on Narayana such as abrasions were already with scab formation which means that the injuries are somewhat older than what has been stated by the prosecution. According to the prosecution, the deceased died within 18 hours after receiving injuries and in such a time gap, injuries will not have noticeable scab formation to the abrasions.

Being aggrieved by the aforesaid judgment, the petitioner/appellant has filed the appeal with CrI.A.M.P.No.2012 of 2017, seeking to condone the delay of 892 days in presenting the appeal.

It is not in dispute that judgment was pronounced on 28.11.2014. Certified copy of the judgment was made ready on 30.12.2014. The Superintendent of Police, Medak, received opinion of Addl. Public Prosecutor on 03.02.2015 and thereafter sent proposal to the Public Prosecutor of this Court, who received it on 05.02.2015. We note, the appeal – CrI.A.No.986 of 2017 with CrI.A.M.P.No.2012 of 2017, was filed on 30.08.2017 with delay of 892 days. There is no explanation for the period between 05.02.2015 to 30.08.2017, i.e., for a period of two and half years.

Law is well settled that day-to-day delay has to be explained. The petitioner has miserably failed to explain inordinate delay in filing the appeal. We find no reasons to condone the inordinate delay of 892 days in filing the appeal.

Accordingly, Crl.A.M.P.No.2012 of 2017 is dismissed. Consequently and also in view of the observations of the court below, Crl.A.No.986 of 2017 is dismissed on the ground of delay, laches and merits as well.

As a consequence, miscellaneous petitions if any pending in the appeal stand closed.

SURESH KUMAR KAIT, J

P. KESHAVA RAO, J

November 6, 2017
MRR

