

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

CRIMINAL APPEAL Nos.33 & 362 of 2011

CRIMINAL APPEAL No.33 of 2011

Between:

Nakka Sreenivasa Rao @ Sreenu,
Sanyasinaidu

... Appellant/
Accused No.1

And

State of A.P., repled by Public
Prosecutor, Hyderabad.

... Respondent

CRIMINAL APPEAL No.362 of 2011

Between:

Karri Laxmi,
W/o Late Maha Laxmi Naidu

..... Appellant/
De facto complainant

And:

Nakka Srinivasa Rao @ Sreenu
and three others.

..... Respondents

JUDGMENT PRONOUNCED ON 04.7.2017

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes/No

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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Counsel for appellant: Mr. V.Ravi Kiran Rao

Counsel for the respondent: Public Prosecutor (AP)

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Counsel for appellant: Mr. Lasetty Ravinder

Counsel for respondent No.1: Mr. V.Ravi Kiran Rao

Counsel for respondent No.4: Public Prosecutor (AP)

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> Head Note:

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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Counsel for appellant: Mr. V.Ravi Kiran Rao

Counsel for the respondent: Public Prosecutor (AP)

AND

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And three others.

.....Respondents

Counsel for appellant: Mr. Lasetty Ravinder

Counsel for respondent No.1: Mr. V.Ravi Kiran Rao

Counsel for respondent No.4: Public Prosecutor (AP)

The Court made the following:

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

Criminal Appeal No.33 of 2011 is filed by accused No.1 in Sessions Case No.215 of 2008 on the file of the VII Additional District & Sessions Judge, (Fast Track Court), Visakhapatnam, challenging his conviction for the offence punishable under Section 302 I.P.C. and sentencing him to rigorous imprisonment for life and also to pay a fine of Rs.50/-, in default, to suffer simple imprisonment for fifteen days, *vide* judgment, dated 05.01.2011, passed in the aforesaid Sessions Case.

Criminal Appeal 362 of 2011 is filed by the *de facto* complainant against the acquittal of accused No.1 of the charge under Section 341 read with Section 34 I.P.C., and of accused No.2 and 3 of the charges under Section 341 read with Section 34 and Section 302 read with Section 34 I.P.C. The *de facto* complainant also prayed for imposing on all the accused, the maximum punishment prescribed by law for the aforementioned respective offences.

For the sake of convenience, the parties are hereinafter referred to as accused Nos.1 to 3, the *de facto* complainant and the State.

Before proceeding further, it requires to be mentioned that the alleged offence took place on 27.02.2008 and the proviso to Section 372 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

conferring a right of appeal on the victim was introduced with effect from 31.12.2009 by Act No.5 of 2009. Since the said provision was not in force as on the date of commission of the offence, the *de facto* complainant had no right to file appeal as a 'victim'. In our opinion, the Registry has wrongly numbered the case filed by the *de facto* complainant as "Criminal Appeal" instead of numbering the same as "Criminal Revision Case" under Section 397 read with Section 401 Cr.P.C. Therefore, we treat Criminal Appeal No.362 of 2011 as the Criminal Revision Case.

We have heard Mr.V.Ravi Kiran Rao, learned counsel for accused No.1, Mr.Lasetty Ravinder, learned counsel for the *de facto* complainant and the learned Public Prosecutor (AP) appearing for the State.

The case of the prosecution, in brief, is as follows:

The deceased-Karri Mahalaxmi Naidu is the junior paternal uncle of accused No.3. Accused Nos.1 and 2 are the maternal uncles of accused No.3. The mother of the deceased was the actual Sarpanch of Kattubolu village. The deceased was acting as a *de facto* Sarpanch. The father of the deceased had Acs.30.00 of land at the time of the marriage of the mother of accused No.3 with Karri Ramu-the elder brother of the deceased. The deceased acquired certain lands on his own by

doing real estate business. As Karri Ramu-the elder brother of the deceased, the father of accused No.3 and L.W.3-Rameswara Rao and another brother of the deceased, were not worldly wise, the deceased used to maintain the entire family. Due to family differences, accused No.3, his sister and their parents were residing separately in the same village for nine years and their maintenance was being looked after by the deceased. As the money given by the deceased was not sufficient for running the family of the parents of accused No.3, his maternal grandfather (father of accused Nos.1 and 2), used to support the family by providing rice, dal etc. In the year 2004, accused No.3 joined Indian Army. Two years prior to the date of occurrence, the mother of accused No.3 died due to her ill-health. The father of accused No.3 and the deceased did not look after the needs of the sister of accused No.3 and therefore, the father of accused Nos.1 and 2 took her to his house and later, he along with accused Nos.1 and 2 raised dispute demanding the deceased to allot shares in the landed property to accused No.3 and his sister. In connection with the same, P.W.3 held a panchayat, during which, the deceased at the first instance, agreed to give Acs.5.00 of land as share, but later, he went back by saying that all the properties were acquired with his own earnings. In the month of May, 2006, an altercation took place between the

deceased and the father of accused Nos.1 and 2, during which, the deceased and his followers beat the father of accused Nos.1 and 2 and his family members with iron pipes and sticks and caused grievous injuries to them, for which, a case in Crime No.34 of 2006 was registered for the offences punishable under Sections-147, 148, 326, 324 and 506 read with 34 I.P.C. against the deceased and his followers and the same is pending before the Additional Judicial First Class Magistrate, Yellamanchili as C.C.No.539 of 2006; that since the said incident, the father of accused Nos.1 and 2 became physically challenged with inability to walk; that during the said altercation, the deceased also chased accused No.1, who managed to escape and that since then, accused No.1 is residing with his wife at Yellamanchili due to the fear of the deceased. In the Sarpanch elections held on 02.08.2006, the mother of the deceased contested with the support of Telugu Desam party; that in that election, accused Nos.1 and 2 and their father supported the rival group of Congress-I party and both the parties tried to cause breach of peace and public tranquility in the village and in that connection, a case in Crime No.50 of 2006 was registered for the offence under Section-107 Cr.P.C. by arraigning the deceased as R-1 of A-party and the father of accused Nos.1 and 2 as R-6 of B-party, which is also pending in

the Court of the Mandal Executive Magistrate, Rambilli, *vide* M.C.No.10 of 2006. In view of the afore-mentioned incidents, accused Nos.1 to 3 and the father of accused Nos.1 and 2 bore grudge against the deceased and openly proclaimed that they will do away with the life of the deceased. While so, accused No.3, who is working in Indian Army, came to the house of accused No.1 at Yellamanchili on thirty days annual leave from 20.02.2008. All the accused hatched a plan to do away with the life of the deceased and according to their plan, they waited for an opportunity during nights in the hut of one Agraharapu Ammannathalli situated by the side of mud road running from Kattubolu Village to the house of the deceased. On the day of the occurrence, *i.e.*, on the evening of 27.02.2008, accused Nos.1 and 3 left Yellamanchili Village on their mother cycle, went to Kattubolu village, hid their motor cycle in the outskirts, both of them went to the house of accused No.2 and there, accused Nos.1 and 2 picked up knives and all the three accused lurked in the hut of Ammannathalli situated by the side of mud road running from Kattubolu Village to the house of the deceased.

On 27.02.2008 at about 8.00 a.m., the deceased went to Yellamanchili village and in the evening, he attended one party at Pothireddipalem junction by the side of NH-5 road at a hotel, along with P.Ws.4, 8 and 9 and L.W.15–Karanam Eswara Rao,

for his successful land purchase transaction. They all consumed alcohol up to 10.45 p.m. After the party, the deceased along with P.W.4 and L.W.15 left Yellamanchili village and on the way, L.W.15 got down from the car at Dimili village and the deceased along with P.W.4 came to his cattle shed in his car and there, the deceased parked his car in that cattle shed. The deceased started on his motor cycle along with P.W.4 and on the way, near the house of the deceased, P.W.4 got down from the motor cycle and went to his house.

At about 11.30 p.m., on that night accused Nos.1 to 3, who lurked in the hut, noticed the deceased coming alone on his motor cycle through the mud road, while accused No.3 was watching the surroundings, accused No.2, who was armed with knife, went onto the road, stopped the motor cycle of the deceased and hacked him on his hands, throat, chin and head with a knife. When the deceased fell down on the road with his motor cycle, accused No.1 hacked him on the back side of head, shoulders and caused severe cut injuries and on hearing the cries of the deceased, P.W.4, who was about to reach his house, returned to the corner of the road turning and witnessed the accused. On hearing the cries of the deceased, P.W.1 came to the spot and took the head of the deceased into her lap and at that time, the deceased disclosed the name of accused No.1 to her

and while disclosing the names of others, he succumbed to the injuries in the lap of his wife—P.W.1.

After attacking the deceased, all the accused ran away into the agricultural fields. Thereafter, accused No.2 went to his house, changed his dress and then, they went to the village outskirts. The two knives used by accused Nos.1 and 2 and the blood stained clothes of accused No.2 were concealed in the bushes and thereafter, they left the village on their motor cycle and came to Yellamanchili Railway Station during that night. Accused No.1 went to his house in Yellamanchili village and changed his clothes, kept them in his house and then brought his wife to Yellamanchili Railway Station in the morning and sent her to Visakhapatnam by train and later, all the accused came to the house of accused No.1 and there, accused No.3 collected his luggage and then, all of them went to Visakhapatnam, where they have dispersed. On the report given by P.W.1, P.W.9 drafted the same and P.W.14 registered F.I.R. as Crime No.12 of 2008 for the offences punishable under Sections-302 and 341 read with 34 I.P.C. of Rambilli Police Station at 8.00 a.m. on 28.02.2008 and P.W.16 took up further investigation.

During the course of investigation, P.W.16 visited the scene of offence, prepared a rough sketch and drafted an

observation report for examination of the scene of offence in the presence of the mediators –L.W.15 and P.W.12. The dead body of the deceased and the scene of offence were got photographed through P.W.11. P.W.16 conducted inquest over the dead body of the deceased on 28.02.2008 in the presence of the panchayatdars–L.W.15, L.W.16–Vaddipenti Venkata Rao and three others, P.Ws.1 to 3 and L.Ws.2, 4 and 5–Karri Chellayamma, Thetakallu Ramu and Thetakallu Somaraju and sent the dead body for post-mortem examination to P.W.15. Thereafter, P.W.16 examined P.Ws.4 to 9 and L.Ws.8 and 12–Kanthamreddi Pentayya Naidu and Selamsetti Surya Prakasha Rao, and recorded their statements. Accused No.1 surrendered himself before the Court on 05.03.2008 and he was sent for remand. P.W.16 took accused No.1 into custody for six days from 13.03.2008 to 18.03.2008 by filing a memo. On 16.03.2008 at 11.00 a.m., P.W16 secured two mediators–P.W.13 and L.W.19 –Senapathi Ramana @ Pala Sreenu and in their presence, he interrogated accused No.1 and recorded his confessional statement under the cover of the mediators report on 16.03.2008, in which, accused No.1 confessed his killing of the deceased and in pursuance of the said confession, P.W.16 seized blood stained shirt and pant belonging to accused No.1 from his house in the presence of the mediators – P.W.13 and

L.W.19 under the cover of the mediators report. On 16.03.2008, accused No.2 surrendered himself at Yellamanchili Rural Police Station, and thereupon, he was arrested by P.W.16 and his confessional statement was recorded in the presence of the afore-mentioned mediators under the cover of the mediators report. In pursuance of the confession of accused Nos.1 and 2, P.W.16 seized one pair of blood stained clothes, viz., pant and shirt of accused No.2 and two blood stained knives used by accused Nos.1 and 2 from the bushes situated near Kattubolu village in the presence of the afore-mentioned mediators under the cover of the mediators report, produced accused Nos.1 and 2 before the Court concerned and forwarded the Material Objects to L.W.24–N.Adinarayana, Assistant Director, Regional Forensic Science Laboratory, Visakhapatnam, for lab test. On deputation by P.W.16, P.W.14 and his staff went to Rajasthan State, where accused No.3 was working, and there, L.W.22–Captain Raveendran, handed over accused No.3 to them. Then, P.W.14 and his staff brought accused No.3 to Yellamanchili village and produced him before P.W.16 on 17.05.2008. P.W.16 arrested accused No.3 on the same day, recorded his confessional statement in the presence of the mediators–P.Ws.10 and 11 under the cover of the mediators report and sent him for judicial custody. P.W.15–the Medical Officer of the Government

Hospital, Yellamanchili, who conducted autopsy over the dead body of the deceased, issued Ex.P-8 post-mortem certificate, opining that the deceased appeared to have suffered an instantaneous death due to the injuries to the neck and head about 12 to 24 hours prior to the post-mortem examination. L.W.24, who conducted analysis, issued Ex.P-16-Analysis report opining that, when item Nos.1 to 11 were examined, human blood is detected on item Nos.1, 3 to 7 and 9 to 11, blood stains on item Nos.3 to 5 and 10 are of 'A' group blood, blood stains on item Nos.1, 6, 7, 9 and 11 could not be established and blood is not detected on item Nos.2 and 8, of which item No.2 is received as control for item No.1. On completion of the investigation, P.W.16 filed the charge sheet in the case.

All the accused pleaded not guilty and hence, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 16, marked Exs.P-1 to P-19 and produced M.Os.1 to 11. On behalf of the defence, no oral evidence was adduced. However, Exs.D-1 to D-4 were marked on its side. On appreciation of the oral and documentary evidence, the Court below, while acquitting accused Nos.2 and 3 of all the offences punishable under Section-341 read with Section 34 I.P.C. and Section 302 read with Section 34 I.P.C., however, convicted accused No.1 for the offence punishable under Section 302 I.P.C.

At the hearing, Mr. A.Ravi Kiran Rao, learned counsel for accused No.1, has submitted that the prosecution failed to establish the motive on the part of accused No.1 and also the identity of the person, who gave Ex.P-1 report to the Police; that there was a long delay of 8 hours in giving Ex.P-1-report to the Police, which gave scope for false implications by the investigating agency; that even as per the prosecution case, there were no eye-witnesses and that all the witnesses are either hearsay or circumstantial witnesses and their evidence is highly artificial. He has further argued that it has come out on record through the evidence of the witnesses such as P.W.4 that the deceased had many enemies as, he had a long criminal background; that in the absence of any motive, there was no reason for accused No.1 to commit the offence and that the Court below has completely erred in convicting accused No.1 for the offence punishable under Section 302 I.P.C.

While opposing the above submissions, the learned Public Prosecutor (AP) appearing for the State has submitted that the evidence of P.W.1, who conveyed the words uttered by the deceased, shall be treated as a dying declaration; that as accused No.1 was clearly named by the deceased at the time of his death, the prosecution was able to drive home the guilt of the said

accused and that therefore, the Court below has rightly convicted and sentenced him to suffer imprisonment for life.

Mr. Lasetty Ravinder, learned counsel for the *de facto* complainant, while supporting the submissions of the learned Public Prosecutor (AP), has argued that as the involvement of accused Nos.2 and 3 is also proved by the circumstantial witnesses such as P.W.5, the Court below has wrongly acquitted them. He has further submitted that as the act of the accused in stopping the deceased before doing away with his life amounted to wrongful restraint, the Court below has committed an error by not convicting them for the offence punishable under Section 341 read with Section 34 I.P.C. along with Section 302 read with Section 34 I.P.C. He has further argued that the life sentence imposed on accused No.1 is not adequate having regard to the brutal nature of murder committed by him along with accused Nos.2 and 3 and hence, all the accused are liable to be sentenced to death.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

From the narration of the prosecution version made hereinabove, it is evident that the case is based on circumstantial evidence. No witness including P.W.1 witnessed the actual

attack on the deceased. The law is well settled that when the case is based on the circumstantial evidence, motive assumes pivotal role in establishing the guilt of the accused.

In *Shivaji Genu Mohite v. State of Maharashtra*¹, the Supreme Court held that evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence, that such evidence would form one of the links in the chain of circumstantial evidence in such a case, but, that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if motive is properly proved such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion.

In *Suresh Chandra Bahri v. State of Bihar*² the Supreme Court held that motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention, that in a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the court that the accused was guilty of the offence charged with. (See *Subedar Tewari v. State of Uttar Pradesh*³ and *Ujagar Singh v. State of Punjab*⁴).

¹ AIR 1973 SC 55

² 1999 SCC (1) Supp. 80

³ 1989 Supp (1) SCC 91

⁴ (2007) 13 SCC 90

The prosecution pleaded two-pronged motive; (1) that the deceased refused to give away the share to accused No.3, who is the nephew of accused Nos.1 and 2; and (2) that the deceased attacked the father of accused Nos.1 and 2 in the year 2006, in connection with which a criminal case has been pending, wherein the deceased is shown as the accused. The prosecution also alleged that in the Sarpanch elections, the accused supported Congress-I candidate against the candidature of the mother of the deceased, who is of Telugu Desam party.

As regards the alleged refusal of the deceased to partition the properties and allot the shares to accused No.3 and his sister, P.Ws.1 and 2 spoke about the fact of the father of accused Nos.1 and 2 demanding the share of his grand children, *i.e.*, accused No.3 and his sister. P.W.3 – the Ex-Sarpanch of the Village, who claimed that he tried to mediate the dispute, deposed that during the mediation, the deceased agreed to partition Acs.8.00 of the joint family properties, while declining to partition the remaining property claimed to have been acquired by him. In his cross-examination, he denied the suggestion that he never acted as a mediator, he could not remember the date, month and year when the father of accused Nos.1 and 2 raised dispute and that, he does not know the patta and Survey numbers of Acs.8.00 of the joint family properties.

Neither P.W.1 nor P.W.2 had specified the time around which the alleged mediation was held. Except the *ipsi-dixit* of P.Ws.1 to 3, the prosecution has failed to produce any material to show that a serious dispute, over partition of the properties, between the deceased on the one side and accused No.3 and his sister on the other side, was subsisting. We are, therefore, of the opinion that the prosecution failed to establish the alleged dispute over partition as the motive for the accused to commit the offence.

As regards the second part of the motive alleged by the prosecution, *namely*, that the deceased caused injury to the father of accused Nos.1 and 2, which made him immobile and that, since then, they were inimical towards the deceased, P.W.1 categorically deposed that after 2006 till the death of the deceased, neither there were disputes between her family and accused No.1's family nor they were on visiting terms. Though P.W.1 has denied the suggestion that after the attack on the father of accused Nos.1 and 2 by the deceased in the year 2006, accused No.1 left the village and settled at Gajuwaka, it is the specific case of the prosecution, as reflected in the charge sheet, that accused No.1 shifted his residence to Yellamanchili, which clearly shows that he was not living in Kattubolu Village, where the deceased was living. Though the undisputed facts show that

the relationship between the families of the deceased and accused Nos.1 and 2 was not cordial, the prosecution has failed to establish that the disputes between the two families have taken such an ugly turn so as to provoke the accused to the extent of taking away the life of the deceased. In this view of the matter, we are of the opinion that the prosecution failed to establish the alleged motive for the accused to commit the offence.

Coming to Ex.P-1-report, a perusal of the same reveals that it was drafted by P.W-9-Panchayat Secretary of Komanapalli Village, who was also in-charge of Kattubolu Village. P.W-9 in his evidence deposed that he drafted Ex.P-1-report, obtained the signature of P.W-1 on it and submitted the same to the Police. P.W-14 deposed that on 28.02.2008 at about 8 am., P.W.1 herself came to Rambilli Police Station and presented Ex.P-1-report, basing on which, he has registered a case in Crime No.12 of 2008. Interestingly, in her evidence, P.W.1 denied her going to the Police Station and presenting Ex.P-1-report. She has categorically stated that she has never gone to the Police Station. Thus, there is a material contradiction in the evidence of P.Ws.1, 9 and 14 as to the person who gave Ex.P-1-report.

As rightly argued by Mr. V.Ravi Kiran Rao, learned counsel for accused No.1, since Ex.P-1 is a crucial document, which has set the law into motion, failure of the prosecution to establish with certainty as to the person who gave the first information to the Police about the alleged murder throws any amount of doubt on the creditability of the whole case of the prosecution.

As regards the submission of the learned counsel relating to the delay in furnishing the information to the Police and the FIR reaching the Court, it is to be noted that the alleged occurrence took place at 11.30 pm on 27.02.2008. According to P.W.14, he has received Ex.P-1-report at 8 am on the following day, *i.e.*, 28.02.2008. It is evident from Ex.P-7-F.I.R. that the distance between Kattubolu Village and Rambilli Police Station is only 18 kms. As per the evidence of P.W-5, a driver, the deceased owned a car apart from a motor cycle and the car was kept in a cattle shed near Kattubolu Village. When a murder has taken place around 11.30 pm on 27.02.2008 and P.Ws.1 to 4 have allegedly arrived at the scene of offence in a few moments thereafter, it is not possible to believe that no one has thought of going to the Police Station and reporting the occurrence to the Police on that night itself.

P.W.14 has admitted in his evidence that the Village has landline telephone facility besides many people in the Village having cell phones. If the offence had taken place at the time and in the manner, as alleged by the prosecution, it is surprising that the Police were kept dark till 8 am on 28.02.2008. In this regard, P.W.1 has initially stated that as she was in a shock, she does not know whether her brother-in-law (P.W.2) informed the occurrence to the Police or not. Immediately in her next statement, she deposed that P.W-2 informed the occurrence to the Police by phone. This statement gives rise to a serious suspicion as to whether the claim of the Police that they received information about the alleged occurrence at 8 am on 28.02.2008 is correct or whether they had information about the occurrence during the night of 27.02.2008 itself, prior to their receiving Ex.P-1-report. Even assuming that Ex.P-1-report was given to the Police at 8 am on 28.02.2008, in our opinion, the prosecution failed to explain the long delay of 8 hrs, *i.e.*, the time gap between 8 am and 4 pm on 28.02.2008, in Ex.P-7-F.I.R. reaching the Court of the jurisdictional Magistrate. The distance between Rambilli Police Station and the Court of the jurisdictional Magistrate being 22 kms, we find no justifiable reason or any such reason having been put forth by the

prosecution for the long delay in the Ex.P-7-FIR reaching the Court of the jurisdictional Magistrate.

In order to overcome this lacuna in the case of the prosecution, the learned Public Prosecutor argued that the prosecution witnesses were not subjected to cross-examination on this count. Indeed, the defence has suggested to the prosecution witnesses-P.Ws.1 and 2 that the accused were falsely implicated in the case. Even otherwise, in our opinion, mere failure of the defence to subject the prosecution witnesses to cross-examination on the delay does not improve the case of the prosecution as, the law is well settled that the long and unexplained delay in lodging the police report and the same reaching the Court of the jurisdictional Magistrate is fatal to the case of the prosecution as, it give rises to false implications and embellishments in the case of the prosecution.

In *Thulia Kali v. State of Tamil Nadu*⁵, H.R. Khanna, J, has highlighted the importance of the FIR in a criminal case. It was held that FIR is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and that the importance of the report can hardly be overestimated from the standpoint of the accused, that the object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early

⁵ AIR 1973 SC 501

information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence and that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further held that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation and that it is therefore essential that the delay in the lodging of the FIR should be satisfactorily explained.

In *Meharaj Singh v. State of U.P.*⁶, the Supreme Court held that with a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks; one of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate; if this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate and that the object of insisting upon

⁶ (1994) 5 SCC 188

prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, weapons, if any, used, as also the names of the eyewitnesses, if any. If the report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate.

In *Gajanan Dashrath Kharate Vs. State of Maharashtra*⁷, the Supreme Court held that the delay in setting the law into motion by lodging the compliant and registration of the First Information Report is normally viewed by the Courts with suspicion because there is a possibility of concoctions and embellishments of the occurrence and that, therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. It was further held that the object of insisting on prompt reaching of the report is to obtain early information not only regarding the assailants but also about the part played by them, the nature of the incident and the names of the witnesses. This view is taken by the Supreme Court consistently.

⁷ (2016) 4 SCC 604

It could be gathered from the record that while Ex.P-4-inquest report was prepared at around 10.30 am and the post-mortem was commenced at 2.30 pm and completed by 4.30 pm, Ex.P-7-F.I.R. reached the Court of the jurisdictional Magistrate at 4 pm on 28.02.2008. Thus, the unexplained delay of 8 hours in Ex.P-7-F.I.R. reaching the Court of the jurisdictional Magistrate gives rise to a serious suspicion as to whether Ex.P-1-report was really given to P.W-14 by P.W-1 at 8 am on 28.02.2008.

In the light of the above discussion, we are of the opinion that the prosecution failed to explain the long delay in lodging Ex.P-1-report in the Police Station and Ex.P-7-F.I.R. reaching the Court of the jurisdictional Magistrate, which might have given room for false implication of the accused.

As regards the credibility of the evidence of the prosecution witnesses, we find a serious material discrepancy in the version of P.W-1, between Ex.P-1-report, her earliest version, and her evidence given as P.W-1.

In Ex.P-1-report, P.W-1 has stated that when she was watching T.V. in her house, at around 11.30 pm on 27.02.2008, she heard the pangs of her husband that "I am dead"; that she came out immediately and saw her husband lying on the country road in a pool of blood at a distance of 150 feet from

their house; and that she saw three persons along with knives running away in the darkness. In her evidence as P.W-1, she came out with an improved version. She has deposed that when she was watching T.V., she heard a vehicle sound along with the cry of her husband that he was being murdered and that thereupon, she came out and observed accused Nos.1 to 3 escaping, while her husband was in a pool of blood. Therefore, her deposition that she heard a vehicle sound and cry of her husband that he was being murdered are pure improvements as, they were never stated by her in Ex.P-1-report. Similarly, she has not stated in Ex.P-1-report that she observed accused Nos.1 to 3 escaping from the scene of offence as, she merely stated therein that she saw three persons along with knives running away in the dark. Therefore, her evidence given before the Court that she has seen the accused escaping from the scene of offence cannot be viewed with any credibility.

The most crucial part of the evidence of P.W-1 lies in the deceased allegedly informing her that accused No.1 and two others hacked him with knives and ran away. In Ex.P-8-Post-mortem Certificate, P.W-15 has given his opinion to the effect that the deceased appears to have suffered an instantaneous death due to the injuries to the neck and head about 12 to 24 hours prior to the post-mortem examination. In his chief-

examination, P.W-15 reiterated the said opinion. In his cross-examination, he has deposed that as the deceased died instantaneously, there was no possibility of his speaking prior to his death.

In Ex.P-8-Post-mortem Certificate, injury No.2 on the deceased was described as under:-

“A cut injury 10 cm x 2 cm x bone deep is present obliquely on left occipital area. Brain matter exposed through the injury, edges clear cut.”

A perusal of Ex.P-4-Inquest report shows that the deceased suffered severe injuries on the forehead, grievous laceration on the back side of the head on left portion and the brain matter protruding. Exs.P-4 and 8, thus, clinchingly establish that the injury on the head of the deceased was so serious that even the brain matter got exposed, which caused his instantaneous death, as opined by P.W-15. As such, it is not possible to believe the version of P.W-1 that the deceased has uttered the name of accused No.1 and also spoke about the involvement of two others to her. It is, thus, evident that P.W-1 was not coming out with a true version and her evidence lacked credibility. It is her specific case that as soon as she reached the scene of offence, the deceased kept his head on her lap. When the deceased has received serious lacerated injuries on his head and neck, there would have been profuse bleeding and her saree

might have been drenched in blood. The prosecution, admittedly, failed to seize the saree of P.W-1. In her evidence, P.W-1 has admitted that she has not handed over her saree to the Police as, they did not ask for it. In our opinion, if the incident had taken place in the manner it was spoken to by P.W-1 and if she had really reached the scene of offence immediately after the occurrence, the Police would not have failed to seize her saree. This, coupled with the fact that the information was not sent to the Police till 8 am on 28.02.2008 would cast a serious doubt about the very presence of P.W-1 at the scene of offence immediately after the alleged occurrence.

P.W-5 is examined as a circumstantial witness to prove the involvement of the accused in the occurrence. It is his version that he knows the deceased and all the accused. He deposed that he is a resident of Dimili Village, which is at a distance of 1 km from Kattubolu Village; that at about 11.30 pm., when he went to attend the calls of nature, he observed the accused proceeding on a motor cycle; and that on the next day morning, he came to know about the occurrence. In his cross-examination, to a question put by the defence, he deposed that he cannot say in which direction he saw the accused proceeding. He admitted that if one proceeds towards right side, he can reach Kattubolu and if one proceeds towards left side, he

can reach Cherukupalli Village; that he did not state before the Police in which direction he saw the accused proceeding; and that he also could not say the registration number of the motor cycle. Thus, it is clear from his evidence that he did not notice the accused proceeding whether to or from Kattubolu Village. In our opinion, P.W-5 is a planted witness, whose evidence does not in any manner help the prosecution to establish the involvement of the accused in commission of the offence.

In addition to the evidence of P.Ws.1 to 4, the prosecution has relied upon Ex.P-10-admissible portion in the confessional statement of accused No.1, Ex.P-11-seizure report, Ex.P-12-admissible portion in the arrest mahazar and Ex.P-13-seizure report under which clothes-M.Os.6 and 7 and knives-M.Os.5, 8 and 9 allegedly used by the accused in commission of the offence were seized by the Police. P.Ws.12 and 13 were cited as witnesses to Exs.P-10 to P-13.

P.W-12-Village Revenue Officer of Purushotampuram, deposed that on 16.3.2008, police called him to the Police Station, where they have brought accused No.1 and 2 after their arrest; that accused Nos.1 and 2 confessed their guilt and he was asked to sign on the mediators report,. When questioned by the Public Prosecutor, whether accused Nos.1 and 2 handed over anything, he replied in the negative and stated that nothing was

seized from the accused in his presence. Though he was subjected to cross-examination by the Public Prosecutor by treating him as hostile, nothing could be elicited from him which could prove the case of the prosecution that any seizure was effected from accused No.1 in pursuance of his confession.

P.W-13-the Panchayat Secretary of Shaiklapalem Village deposed that he has prepared the mediators report, at the request of the Police, in pursuance of the confession of accused No.1. He has, however, denied seizure of any clothes and knife from accused No.2. He was also treated as hostile witness. But, the prosecution failed to elicit anything from him supporting its case regarding the alleged seizure.

Being the responsible Government officials, we cannot disbelieve the version of P.Ws.12 and 13 to the extent that seizure has not taken place in their presence. Under Section-27 of the Indian Evidence Act, 1872, mere confession which did not lead to discovery of a fact is not admissible in evidence. As both P.Ws.12 and 13 have not supported the case of the prosecution regarding seizure, the alleged confession of accused Nos.1 and 2 does not help the prosecution in establishing their involvement in commission of the alleged offence.

The Court below has not properly appreciated the evidence on record, as a result, it has wrongly convicted accused

No.1. The *de facto* complainant-the appellant in Criminal Appeal in CrI.A.No.362 of 2011 could not make out any case for reversing the judgment of the Court below *qua* accused Nos.2 and 3.

On a careful scrutiny of the entire evidence on record, we are of the opinion that the prosecution has failed to establish the links in the chain of circumstances, *namely*, motive and the participation of the accused in commission of the offence through the circumstantial evidence. Therefore, all the accused including accused No.1 are entitled to the benefit of doubt.

In the result, Criminal Appeal No.362 of 2011 (which is treated as Criminal Revision Case) is dismissed and Criminal Appeal No.33 of 2011 is allowed and the impugned judgment of the Court below to the extent of the conviction and sentence of accused No.1 is set aside. Accused No.1, who is on bail, must surrender himself before the Jail Superintendent for his formal release from the custody, after completion of the required formalities.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

04th July 2017

Note:

LR copies to be marked.

B/o

GHN/DR

