

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

CRIMINAL APPEAL No. 1142 OF 2011

Between:

Leburu Polaiah @Poluga @Gowdu

.. Petitioner

and

The State of A.P.,
Rep. by Public Prosecutor,
High Court of A.P., Hyderabad.

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 01.11.2017

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON' BLE SRI JUSTICE AMARNATH GOUD

1. Whether Reporters of Local newspapers may be allowed to see the judgments? YES/ NO
2. Whether the copies of judgment may be marked to Law Reporters/ Journals? YES/ NO
3. Whether Their Ladyships/ Lordships wish to see the fair copy of the judgment? YES/ NO

* THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

* THE HON' BLE SRI JUSTICE AMARNATH GOUD

+ CRIMINAL APPEAL No.1142 OF 2011

%01.11.2017

Between:

Leburu Polaiah @Poluga @Gowdu .. Petitioner/ appellant

and

The State of A.P.,
Rep. by Public Prosecutor,
High Court of A.P., Hyderabad. .. Respondent

! Counsel for Petitioner : Mrs.G.Jaya Reddy

^ Counsel for Respondents : Public Prosecutor.

< Gist:

> Head Note:

? Cases referred:

NIL



HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.1142 of 2011

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

The sole accused in Sessions Case No.153 of 2007 on the file of III Additional District and Sessions Judge, (FTC), Nellore, is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Banala Venkateswarlu, S/o. Masthanaiah at Peddacherukuru Arundathlyavada, Nellore, on 26.06.2006 at 10.30 PM. Vide its judgment dated 06.09.2011, the learned Sessions Judge found the accused guilty for the said offence and sentenced him to undergo rigorous imprisonment for life and also to pay fine of Rs.500/-, in default to suffer simple imprisonment for one month.

2. The facts as culled out from the prosecution witnesses are as under:

PWs.1 to 4 were examined as eye witnesses to the incident. PW5 is the brother of the deceased. As per their version, on the date of incident, PW.1 went to Mahatma Rachabanda, which is situated in front of Mahatma temple and slept there along with PW.2, deceased and PW.3. At about 09.00 or 09.30 PM, PW.1 heard a sound of knife falling on the floor of Rachabanda. He woke up and saw the accused cutting the throat of the deceased. The persons, who slept on the Rachabanda, tried to catch hold of the accused, but the accused ran

away, threatening PW.1 and others with the knife. The deceased fell down on the Pachabanda and died instantaneously. Thereafter PW.1 is said to have gone to his house. While proceeding towards his house, he saw PW.5, who is the brother of the deceased and informed him about the incident. On receiving the said information, PW.5 raised cries, rushed to the scene of offence and saw the deceased in a pool of blood. According to him, there were some disputes between the accused and the deceased and about two days prior to the incident, the accused quarreled with the deceased for not paying the toddy amount. On 26.06.2016, at about 12.00 p.m., PW.9, the SI of Police received information about the incident, pursuant to which, he along with his staff proceeded to the scene of offence and saw the dead body. He recorded the statement of PW.1 at about 01.00 a.m., which is marked as Ex.P.1. Basing on the same, a case in Crime No.180 of 2006 of Nellore Rural Police Station came to be registered by PW9, under Section 302 of IPC. Ex.P.7 is the original FIR. PW.11, the Inspector of Police took up further investigation. After receiving a copy of FIR, PW11 along with PW.10, proceeded to the scene of offence and conducted an observation report of the scene, which is marked as Ex.P.8. He seized blood stained bed sheet – MO.5, blood stained earth - MO.3 and controlled earth - MO.4, under the said report. Thereafter, he prepared a rough sketch of the scene which was produced on record as Ex.P.9. He also got the scene of offence photographed through PW.8. Ex.P.6 is the bunch of photographs with corresponding negatives. Later, PW11 secured the presence of the mediators and conducted inquest over the dead body. Ex.P.2 is the

inquest report. During inquest, PW.11 examined PWs.1 to 4 and 5 and later he sent the body to Government General Hospital, Nellore for post mortem examination. PW.7 the Civil Assistant Surgeon conducted autopsy over the dead body and issued Ex.P5, the post mortem certificate. According to her, the cause of death was due to hemorrhage and shock due to head injury. On 27.06.2006 at about 09.00 pm., the CI of police arrested the accused at New Bridge of Peduru canal, in the presence of said mediators. His confession lead to recovery of a knife (MO1), Exs.P3 and P4 are the confession and seizure reports.

After completing the investigation, PW11 filed the charge sheet, which was taken on file as PRC No.76 of 2006 on the file of IV Additional Judicial Magistrate of First Class. On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal to the Court of Sessions, the case came to be numbered as S.C.No.153 of 2007. On appearance, a charge under Section 302 of IPC came to be framed against the accused, which was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

In support of their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P11 and M.Os.1 to 5. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf by

the accused in support of his defence. On appreciation of entire evidence on record, the Sessions Judge convicted the accused under Section 302 of IPC. Challenging the same, the present appeal came to be filed.

3. The main ground urged by the learned counsel for the appellant/ accused is that the evidence on record does not inspire confidence to base a conviction. According to him, there were two political parties in the village, one lead by Shankar Reddy and another by one Sheshu Reddy. It is stated that there were disputes between them and because of the disputes, the accused was implicated in the case by setting up PW1 as an eye-witness, who was admittedly an employee of Shankar Reddy. It is the case of the learned counsel for the appellant that the present incident occurred during the MPTC Elections and taking advantage of the situation, the appellant has been implicated in the case. It is further contended that the evidence of the two investigating officers, demolish the entire prosecution case. Since none of the witnesses stated in their statement about the manner in which the incident took place, it is urged that the entire case has to be thrown out as false.

4. On the other hand, learned public prosecutor would submit that because of the minor lapses on the part of the investigating agency, the entire case cannot be thrown out on the said ground. He submits that since the evidence of PWs. 1 to 4 is consistent with regard to the manner in which incident happened, the same can be made the basis for conviction.

5. As seen from the record, the entire case rests on the evidence of PWs.1 to 5. The fact that it was a case of homicidal death stands established through the evidence of PW7, the Deputy Civil Surgeon in T.B.Hospital, Nellore, who conducted post mortem on the deceased, wherein he stated that the cause of death appears to be due to injury to head.

6. Now the point that arises for consideration is whether the accused is responsible for said injury. Before proceeding further, it would be appropriate to refer to the evidence of PWs.1 to 5, which is as under:

PW1 in his evidence deposed that on the date of incident at about 9.30 p.m., he heard a sound of knife falling on the floor of Rachabanda. On hearing the same, he opened his eyes and saw the accused cutting the throat of the deceased. PW1 along with others present there, tried to catch hold of the accused, but he escaped by threatening them with a knife. After the incident, PW1 started proceeding towards his house and on the way he is said to have met PW5, who is the brother of the deceased. He informed him about the incident. On receiving the information, PW5 rushed to the scene and found the deceased in a pool of blood.

PW2, who was also examined as an eye witness to the incident deposed that on the date of incident, himself along with others were sleeping on the rachabanda near Mahatma temple. At about 9 or 09.30 p.m., PW1 woke him up by touching his body and when he woke up, saw the accused with knife in his hand. Immediately

himself and PW1 tried to catch hold of the accused, but he ran away by threatening them. At that time, he noticed blood stains on the knife. Without giving any report and without informing anyone, PW2 claims to have gone to his house.

7. PW3, who was also examined as an eye witness to the incident deposed that on the date of incident at about 09.30 p.m., he along with others were sleeping on the rachabanda. At that time, the deceased was singing a song. At 09.30 p.m., himself along with two others went to Donkaputta to attend nature's call. At about 10.30 p.m., on hearing the cries of PW1, PW3 woke up and saw the accused cutting the throat of the deceased with knife. PWs.1,2,3 and LW4 tried to catch hold of the accused, but he threatened them by showing a knife. According to PW3, the brother of the deceased came to the scene of offence by raising cries, which attracted the attention of others.

8. PW4 was also examined as an eye witness to the incident. According to him, they used to go to sleep on the pial near Mahatma temple, in the village. On the date of incident, at about 09.30 p.m., himself along with others were sleeping at the pial. At that time, the deceased was singing a song. Thereafter, himself along with three others went to Donkapattu to attend the nature's call and while they were returning back, the accused came opposite to them, in a hurried manner. They enquired the accused as to what happened and also observed the accused holding a knife in his hand. The accused is said to have replied that he cut the throat of the deceased. In the

meanwhile, they heard cries from pial and the accused ran away from that place. PW4 went to the scene of offence and found the deceased in a pool of blood.

9. PW5, in his evidence deposed that on the date of incident, while he was proceeding towards rachabanda, PW1 met him on the way and told him about the incident. Immediately, he proceeded to the scene and found the accused in a pool of blood. He deposed about some petty disputes between him and the deceased. He is not an eye-witness to the incident.

10. In the cross examination, it was suggested to all the witnesses that there were two groups in the village, one headed by Sankar Reddy and another by Sheshu Reddy and because of disputes between them, PW1 and others were set up as witnesses; that they deposed against the accused, as he belongs to the rival group headed by Sheshu Reddy.

11. In the cross examination of PW1, it has been elicited that PW1 was working as a watchman at the prawn tanks of Sankar Reddy. PW1 further admits that a hut was erected in the fields of Sankar Reddy, for the purpose of staying there as a watchman. PW1 also admits that the watchman should keep watching the prawn tanks, 24 hours, to avoid any contingencies. Though a hut was raised and he was supposed to stay there, he states that on the date of incident, he came to his house from the prawn tank by evening and that on that day night, he saw the incident while he was sleeping on the rachabanda near the temple. Similar such suggestions were put to

PWs.2 to 4, stating that because of two rival groups in the village and due to MPTC Elections, which were scheduled to be held shortly, the accused, who is the supporter of Sheshu Reddy, has been implicated in the case, at the instance of Shankar Reddy, with whom, PW1 was working.

12. There is no dispute about the existence of rivalry between Sankar Reddy and Sheshu Reddy in the village. Both of them belong to two different political parties. It has come on record that MPTC elections were scheduled to be held. It is also not in dispute that a hut was erected near the prawn tank and the watchman was supposed to stay there throughout the day, to avoid any contingencies. That being the position, a doubt arises as to why PW1, being watchman, came to his house that evening. Having come to his house, why he should sleep at the rachabanda on that night? No reasons are forthcoming as to why he slept at rachabanda and overstayed in the village for that night instead of going back to the prawn tanks. Hence, a doubt arises as to whether PW1 was really present at rachabanda and saw the incident.

13. Further, the evidence of investigating officers, who were examined as PWs.9 and 11, totally falsifies the prosecution case. As seen from the record, pursuant to receiving the information about the incident, PW9 proceeded to the village, recorded the statement of PW1 at about 01.00 p.m., and basing on that, registered a case in Crime No.180 of 2006 of Nellore Rural Police Station. PW9 is alleged to have recorded the statement of PW1 at about 01.00 p.m. But the

evidence of PW1 is otherwise. According to him, the police examined, recorded the statement and obtained the thumb impression at about 01.00 a.m., and thereafter, he left for the prawn tanks. Even otherwise, it is to be noted that PW9, in his cross examination, admits that Ex.P1, which is the statement said to have been given by PW1, is silent about hearing the sound of knife touching the pial and about he seeing the accused cutting the throat of the deceased. It would be relevant to extract relevant portion of depositions of PW9, which is as under:

Cross examination:

“It is true that it was not mentioned in Ex.P1 that at about 09.30 p.m., while PW1 was sleeping on the pial, on hearing the sound of knife touching the pial, he woke up, cried loudly and saw the accused person cutting that throat of the deceased.”

Further, the evidence of PW11, the Investigating officer, totally destroys the prosecution case. His evidence shows that in the earlier statements, recorded under Section 161 of Cr.P.C., none of the witnesses spoke about the version as stated by them before the Court. It would be relevant to extract the improvements made by the witnesses from what they have stated in the earlier statements, which are as under:

“..PW1 did not state before me on the date of incident PW1, 2, 3 and LW4 and some others were also sleeping on the pial on that day. PW1 did not state before me that at about 9 or 09.30 p.m., he heard a sound knife on the floor of rachabanda then woke up and cried loudly

and that the accused cut the throat of the deceased then ran away from that place. PW1 did not state before me after this offence he tried to go to his house. PW1 did not state before me that the deceased was fell down in a pool of blood on the rachabanda. PW2 did not state before me that PW1 make him woke up by touching his body at about 9 or 09.30 p.m. Then he woke up. PW2 did not state before me that himself and PW1 tried to caught hold of accused. PW2 did not state before me that the knife in the hands of the accused was having blood stains. PW2 did not state before me due to fear he went to his house. PW3 did not state before me that he, PW1, LW4, K.Ragaiah, PW2 and the deceased were sleeping on the pial at about 09.30 p.m. PW3 did not state before me that at about 09.30 p.m., LW5 M.Subramanyam, LW6 C.Penchalaiah, LW7 K.Nagendra and K.Janardhan also came to the pial for sleeping on that day and the above said persons went to Donkaputta for attending nature calls. PW3 did not state before me that at about 10.30 pm he heard cries of PW1, then he woke up and saw that the accused cutting the throat of deceased with Machukatthi. PW3 did not state before me that after the offence LW10 Babu the brother of the deceased came to the scene of offence by raising the cries. PW3 did not state before me that he came to know that previously the accused stabbed the deceased. PW4 did not state before me that at about 09.30 p.m., himself, LW5 M.Subramanyam, LW7 K.Nagendra, LW8 K.Janardhan and LW9 C.Subaiah went to the pial for sleeping and by the time PWs.1 to 3 and LW4 K.Ragaiah were sleeping on the pial. PW4 stated before me as in Ex.D1. PW4 did not state before me that

they observed the accused holding a knife in his hand. PW4 did not state before me that due to fear of accused they came back upto certain distance and in the meanwhile they heard cries from the pial, and then the accused ran away from that place. PW4 did not state before me that they went to PW1 and asked about the incident. PW5 did not state before me that about 5 years back, on one day, the deceased quarreled with his wife as she did not make fish curry and therefore he had taken meals in PW5 house. PW5 did not state before me that at about 10.30 p.m. he started from his house in order to go to rachabanda, then PW1 came in opposite side in a hurried manner. PW5 did not state before me that prior to this offence the accused also stabbed the deceased. Likewise PW5 did not state before me that two days prior to this offence, the accused quarreled with the deceased for non payment of toddy."

From the admissions made by the investigating officer, it is clear that the version spoken to by PWs.1,2,3,4 and 5 in the Court, were never spoken to by them in their earlier statements. As stated earlier, neither PW1, PWs.2 and 3 stated in their earlier statements about they witnessing the accused attacking the deceased nor did they say PW1 waking up PW2 and then he along with PW1 making an attempt to catch the accused. Nor did PW3 speak about hearing the cries at about 10.30 p.m. and seeing the accused cutting the throat of the deceased with a knife. Similarly, PW4 in his earlier statement recorded under Section 161 of Cr.P.C., never stated that he noticed the accused having a knife in his hand. Even PW5 did not state in his earlier statement about the earlier quarrels and also about PW1

informing him about the incident, when he was approaching the rachabanda. That being the position, their evidence cannot be made a basis to convict the accused.

14. At this stage, we are inclined to point out the nature of investigation done by the investigating officer. If the statement of the witnesses recorded by the police during the course of investigation under Section 161 Cr.P.C., does not anywhere indicate the presence of the witnesses and they seeing the incident, as per the admission made by PW11 in his evidence before the Court, it is strange as to how the police officer (PW11) could have filed a charge sheet against the accused narrating the manner in which the incident took place. No explanation is forthcoming from any quarters. We feel that if situations of this nature are allowed to continue, the victims of the incident would be put to irreparable loss. The intentional or faulty acts of the investigating officers need to be curbed by the prosecution agency. Further, the public prosecutors, who are conducting the Sessions Cases, should be more vigilant when the crucial witnesses are in the box. Any laxity on their part will cause irreparable loss to the victims and their family members who are virtually dependant on the prosecution agency while prosecuting their case. This aspect requires to be looked into not only by the Director General of Police, but also by the Director of Prosecution or by the appropriate authority.

15. Having regard to the findings arrived at, the Criminal Appeal is allowed. The conviction and sentence awarded against the

appellant/ accused by name Leburu Polaiah, in the judgment dated 06.09.2011, in Sessions Case No.153 of 2007, on the file of the III Additional District and Sessions Judge (FTC), Nellore, for an offence punishable under Section 302 of IPC, is set aside and the accused is acquitted for the said offence. Consequently, the appellant/ accused shall be set at liberty forthwith, if he is not required in any other case.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

01.11.2017

Note:

1. The Registry shall send a copy of the judgment to the Director of Prosecution, State of Andhra Pradesh.
2. Copy to the Director General of Police to the State of A.P.
3. L.R. Copy to be marked.

B/ o.
vhb/ kvrm