

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL APPEAL No.506 of 2012

Date: 24.09.2018

Between:

Anthapalli Kistaiah and 6 others

....Appellants/ Accused Nos.2 to 8

And:

State of A.P.rep.by the
Public Prosecutor,
High Court, Hyderabad

...Respondent

Counsel for the Appellants Nos.1 to 5 & 7: Smt.C.VASUNDHARA REDDY

Counsel for the Appellants No.6 : Sri P.PRABHAKAR REDDY

Counsel for Respondent : PUBLIC PROSECUTOR (TG)

The Court made the following:



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

Accused Nos.2 to 8, in Sessions Case No.119 of 2010, on the file of the III Additional District & Sessions Judge (FTC), Medak, are the appellants in this appeal. By judgment, dated 10.05.2012, they were convicted for the offence punishable under Section 302 r/w.34 IPC. Accused No.2 was also found guilty for the offence punishable under Section 201 IPC. Accused Nos.2 to 8 were however found not guilty for the offence punishable under Section 109 IPC. Accused Nos.2 to 8 were sentenced to undergo imprisonment for life and also to pay a fine of Rs.500/- each, and in default of such payment, to undergo simple imprisonment for two months each for the offence punishable under Section 302 r/w.34 IPC. Accused No.2 was further convicted and sentenced to undergo rigorous imprisonment for two years and also to pay a fine of Rs.500/-, and in default of such payment, to undergo simple imprisonment for two months for the offence punishable under Section 201 IPC. All the sentences were directed to run concurrently in respect of Accused No.2.

2. The sum and substance of charge sheet is that on 07.08.2009 at 16.00 hours, at the land of Begari Ramaiah, Accused Nos.2 to 8, in furtherance of their common intention, caused the death of one Pathigari Venkat Goud (hereinafter referred to as "the deceased") by hacking him while Accused No.1 abetted them.

3. At the hearing, learned counsel for both the parties submitted that during the pendency of the appeal, appellants Nos.2 to 4 (Accused Nos.3 to

5) have died. Accordingly, the Criminal Appeal abated in respect of these three appellants.

4. Basing on the charge sheet filed and the material collected during the investigation, the court below has framed the following charges:

FIRSTLY: That you A1 to A8 hatched up a plan to kill the deceased Pathigari Venkat Goud since he is dominating in the village by involving in the village matters and disputes. Earlier also the deceased threatened to you A2, A3. Further, he beat you A3 and A4 and recently he made allegations against A1 for misusing Gram Panchayat funds and got recovery of Rs.63,000/-. Accordingly, you A2 to A8 on 07.08.2009 at 1600 hours way laid in the land of Begari Ramaiah, when the deceased reached the spot on his motorcycle bearing No.AP-23-L-5839 you A2, A3, A6 and A8 stabbed and beat with knife and axe with an intention to kill him and you A5 caught hold the deceased at the time of offence and you A4 and A7 guarding the scene see that outside persons are not entered into the scene and thereby you A2 to A8 killed the deceased in furtherance of your common intention and thereby you A2 to A8 committed an offence punishable U/s.302 R/W 34 IPC and within my cognizance.

SECONDLY: That after killing the deceased Pathigari Venkat Goud as mentioned supra, you A2 to A8 poured petrol and set fire with a view to disappear the evidence and to screen away the evidence from legal punishment and thereby committed an offence punishable U/s.201 R/W 34 IPC and within my cognizance.

THIRDLY: That you A1 on 07.08.2009 at about 1600 hours when the deceased P.Venkat Goud came to the fields of Begari Ramaiah, you A1 abetted A2 to A8 to commit the above said offence and the said offence was committed in consequences of your abetment and that you A1 committed an offence punishable U/s.109 IPC and within my cognizance.

The above charges were read over and explained to all the accused in Telugu, for which they pleaded not guilty.

5. As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution has examined PWs 1 to 13, got Exs.P1

to P13 marked and produced M.Os.1 and 22. On behalf of the defence, DW 1 was examined.

6. On appreciation of both oral and documentary evidence, the court below has acquitted Accused No.1 of all the charges, and convicted and sentenced Accused Nos.2 to 8, in the manner, as stated hereinbefore.

7. At the hearing, Smt.C.Vasundhara Reddy, learned counsel for the appellants, has submitted that Ex.P1 report given by PW 1, the widow of the deceased, did not refer to the names of Accused Nos.6 to 8, i.e., Appellants Nos.5 to 7, and that therefore, the prosecution has failed to prove their participation in the offence. She further argued that though the prosecution has projected PWs.2, 6 and 7 as eyewitnesses, in Ex.P1 report, PWs 2, 3 and 5 are mentioned as eyewitnesses, that if the evidence of these witnesses is carefully scrutinized, it would be evident that none of these persons have witnessed the occurrence. As regards PWs 6 and 7, the learned counsel submitted that their names were not referred as eyewitnesses in Ex.P1, and that a careful scrutiny of their testimony also shows that they were planted witnesses. The learned counsel further argued that the overt-acts attributed by PW 2, the alleged eyewitness, are not corroborated by the medical evidence, and that various omissions extracted in the statement of the said witness would render his testimony as eyewitness unacceptable. She further submitted that when the evidence of PWs 2, 3, 6 and 7 is discarded, the appellants cannot be convicted merely based on the recoveries.

8. Mr.P.Prabhakar Reddy, learned counsel, appearing for Appellant No.6 (Accused No.7), has submitted that the prosecution did not bring out any evidence to convict the accused for the offence punishable under Section 302 R/w.Sec.34 IPC, as no witness spoke about the meeting of minds of the accused to cause death of the deceased. He further argued that in the

absence of any circumstances proved by the prosecution that Accused Nos.4 and 7 had any motive to collaborate with the other accused in killing of the deceased, they should not have been convicted merely based on the evidence of PWs 6 and 7 to the effect that they have seen them half a kilometer away from the scene of offence.

9. Opposing the above submissions, the learned counsel, representing the Public Prosecutor (TG), supported the judgment of the court below.

10. We have carefully considered the respective submissions of the learned counsel for both the parties and perused the record.

11. As the case of the prosecution is rested on the eyewitnesses account, motive pales into insignificance. Therefore, it is not necessary for us to discuss the said aspect.

12. As regards the eyewitnesses, in Ex.P1 report, PW 1 stated that PW 3, her mother-in-law and PWs 2 and 5 allegedly watched the occurrence, and that the said fact was informed by PW 3 to PW 1. As rightly submitted by the learned counsel for appellants, the names of PWs 6 and 7 were not mentioned in Ex.P1 as eyewitnesses. But, in their respective testimonies, PWs 6 and 7 claimed to have watched the occurrence. PW 6 deposed that while he was grazing the cattle near the land of Ramakrishna Reddy at about 3.30 p.m he saw the occurrence. However, in his cross-examination, he admitted that one cannot see the scene of offence from the land of Ramakrishna Reddy. He also stated that his sons used to attend coolie work for the deceased.

13. PW 7 is a farm servant of Ramakrishna Reddy. He claimed that on the date of incident, he was irrigating the crop of his master at about 3 p.m, and that he allegedly watched the occurrence from there. In the face of the candid admission of PW 6 that the scene of offence from the lands of

Ramakrishna Reddy is not visible, it would not be possible for PWs 6 and 7 to witness the occurrence from the place where they were present at the time of occurrence. This admission coupled with the fact that PW 1 did not refer to their names as eyewitness in Ex.P1 renders their testimony as eyewitnesses wholly untrustworthy and unacceptable.

14. Coming to PW 1's evidence, she has deposed that the deceased had taken the land of Ramakrishna Reddy on lease and that while she was returning from the said lands, PW 3 came and informed her that the deceased was killed, and that thereafter, she went to the scene and saw the dead body of the deceased with stab injuries. Though in Ex.P1 it was noted that PW 3 has allegedly witnessed the occurrence, in her own evidence, she has not claimed that she was an eyewitness. But on the contrary, she has claimed that PW 3 came and informed her that the deceased was killed. Therefore, it can safely be concluded that PW 3 is not an eyewitness.

15. Similarly, PW 5, in her chief-examination, deposed that when she went to attend the agricultural coolie works in Ramakrishna Reddy's land, which was cultivated by the deceased, and when she was returning to her house in the evening, she saw the dead body of the deceased in pool of blood near the land of Begari Ramaiah. Even according to her own version, she has not witnessed the occurrence. Thus, PWs 3, 5 to 7, who were projected as eyewitnesses, are not eyewitnesses at all.

16. The other witness, who remains to be considered, is only PW 2. His name consistently figured in all the documents commencing with Ex.P1 report given by PW 1 to police. He deposed that he was working as tractor driver for the deceased. That on the date of incident, he was returning from agricultural land with cattle, that when he reached near the land of Begari Ramaiah, at about 4.30 p.m, A2 caught hold of the hair of the deceased, A6

inflicted stab injuries on both the shoulders, A3 gave stab injuries on shoulders with Kamma Kathi, A8 cut the throat with sickle, and that A4 and A7 were guarding the scene. He further deposed that due to fear, he was hiding nearby bushes and that after killing the deceased, Accused No.2 poured kerosene on the head and set fire to the body of the deceased.

17. No doubt, the defence was able to elicit certain omissions from PW 13, the Investigating Officer, to the extent of overt-acts. PW 13 admitted that PW 2 did not state to him that Accused No.2 caught hold the hair of the deceased, Accused No.6 inflicted stab injuries on both the shoulders, Accused No.3 gave stab injuries on the shoulders with Kamma Kathi and Accused No.8 cut the throat with sickle. It could also be seen from the postmortem report, as spoken to by PW 12, as many as 22 injuries were found on the body of the deceased while only few of those injuries were spoken to by PW 2. The learned counsel for the appellants argued that in the absence of any other corroborative evidence, it is wholly unsafe to rely upon the solitary testimony of PW 2, when all the overt-acts spoken to by him related only to a few injuries found on the body of the deceased, while the remaining injuries left unexplained. However, the prosecution was able to recover MO.14 Axe from appellant No.1 (Accused No.2), M.O.2-bloodstained Kamma Kathi at the instance of Appellant No.2 (Accused No.3), M.O.3-bloodstained Madiga Kathi at the instance of Appellant No.5 (Accused No.6) and M.O.4-bloodstained sickle at the instance of Appellant No.7 (Accused No.8). The police also seized M.Os.15 and 16-bloodstained clothes of Accused No.2, M.Os.17 and 18-bloodstained clothes of Accused No.3, M.Os.19 and 20-bloodstained clothes of Accused No.8 under Ex.P12 panchanama. PW 10 was a panch witness, who spoke about the seizure of material objects. All the seized material objects were sent to the Forensic

Science Laboratory for its opinion. Ex.P13 is the FSL report, wherein it was opined that blood was detected on items 1, 3 to 18, the wearing apparels. It was further opined that while origin of bloodstains on Items 1, 3 to 6 is of the human origin, bloodstains on Items 7 to 18 could not be determined. Recovery of material objects was effected from the sugarcane fields at the instance of above noted accused. The doubt that may arise on account of PW 2's inability to attribute detailed overt-acts to the above mentioned accused with reference to the injuries found on the body of the deceased would stand cleared by Ex.P13 FSL report. Not only that, M.Os.2 to 4 weapons were recovered from the respective accused, the bloodstained clothes belonging to them were also recovered. None of these accused from whose possession the weapons and bloodstained clothes were seized offered any explanation in their examination under Section 313 Cr.P.C. Thus, appellant No.1 (Accused No.2), Appellant No.2 (Accused No.3), Appellant No.5 (Accused No.6) and Appellant No.7 (Accused No.8) failed to explain the blood on M.Os.2 to 4 weapons and also on their clothes.

18. Considering the oral testimony of PW 2 and the recoveries made, as discussed above, we are of the opinion that the prosecution was able to prove the guilt of appellant No.1 (Accused No.2), Appellant No.2 (Accused No.3), Appellant No.5 (Accused No.6) and Appellant No.7 (Accused No.8) beyond all reasonable doubt.

19. As regards Appellant No.3 (Accused No.4), as noted hereinbefore, he has already died. With regard to Appellant No.6 (Accused No.7), the prosecution could not make out any case against him that he was sharing common intention with other accused to do away with the life of the deceased. PW 6 has stated that while Accused No.4 was guarding earthen road, Accused No.7 guarding the scene towards western side. In his cross

examination, he has admitted that Accused No.4 was present half kilometer away from the scene and Accused No.7 was present one kilometer away from the scene. PW 7 has deposed that Accused No.4 was present towards eastern side about 2 or 3 furlongs from the scene of offence and the distance between Accused Nos.4 and 7 is 20 yards. When PWs 6 and 7 were held to be not eyewitnesses, the presence of Accused Nos.4 and 7 spoken to by them becomes irrelevant. Even if we take their testimony on their face value, it is clear that Accused Nos.4 & 7 stood at places far away from the scene of offence. Indeed, PW 2, whose evidence alone was found credible, also deposed that Accused No.4 was guarding old passage and Accused No.7 was guarding new passage, and they were observing the scene at a furlong distance.

20. On a careful appreciation of the evidence of the prosecution witnesses, as discussed above, we are of the opinion that the prosecution failed to prove the theory of common intention against Accused Nos.4 and 7 and it also failed to establish any nexus between these two accused and murder of the deceased. Hence, we are of the opinion that the Appellant No.6 (Accused No.7) was wrongly convicted.

21. The learned counsel for the appellants has vehemently submitted that in Ex.P1, the names of Accused Nos.6 and 8 were not mentioned and that therefore, they are entitled to the benefit of doubt. We are afraid, we cannot accept this submission, as the first information report given to the police is not an encyclopedia. Even if the names of some of the assailants are not mentioned in the earliest report, they could still be convicted, if the evidence let in by the prosecution proves their participation in the commission of the offence.

22. In the light of the discussion undertaken hereinbefore, we have no reason to doubt the case of the prosecution regarding participation of Accused Nos.6 and 8.

23. For the aforementioned reasons, the Criminal Appeal is allowed to the extent of Appellant No.6 (Accused No.7). The judgment under appeal is set aside as regards Appellant No.6 (Accused No.7). The fine amount, if any, paid by him shall be refunded to him. He shall be set at liberty forthwith, if he is no longer required in any other case. As he was on bail, he is directed to surrender himself before the Superintendent, Central Prison, Cherlapally, Ranga Reddy District, for completing the formalities for his release, if he is not required in any other case or crime. The Criminal Appeal is dismissed as abated with respect to Appellants Nos.2 to 4 (Accused Nos.3 to 5).

24. The Criminal Appeal is dismissed as regards Appellants Nos.1, 5 & 7 (Accused Nos.2, 6 and 8). The conviction and sentence recorded against them shall stand confirmed. Their bail bonds shall stand cancelled. They shall surrender themselves before the Superintendent, Central Prison, Cherlapally, Ranga Reddy District for serving the remaining sentence.

(C.V.NAGARJUNA REDDY, J)

(GUDI SEVA SHYAM PRASAD, J)

Date: 24.09.2018
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