

**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

CRIMINAL APPEAL No.866 of 2011

Date : 31-07-2018

JUDGMENT: (per the Hon'ble Sri Justice Gudiseva Shyam Prasad)

This criminal appeal arises out of Judgment dated 15-7-2011 in S.C.No.452 of 2009 on the file of the learned III Additional District & Sessions Judge (Fast Track Court) at Medak, whereby the appellants/accused were convicted for the offence punishable under Section 302 r/w. Section 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default to undergo simple imprisonment for two months.

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

A-1 and A-2, natives of Borpatla village, were related to the deceased. A-1 is the brother-in-law of the complainant/PW-1. The deceased was a resident of Shivanagar village. About 30 years back, the mother of A-1 came to Shivanagar village from Borpatla along with her five children and settled there. There were grudges between the family of the accused and that of the deceased family over petty issues and they used to quarrel frequently. That on 26-3-2009 at about 10.30 P.M., the deceased went to the house of A-1 and asked his mother, who used to sell liquor, for a quarter bottle of liquor. As she stated that

liquor was not available, the deceased abused her in filthy language, that when A-1 questioned the deceased about the deceased abusing his mother, the deceased abused A-1 also in filthy language, upon which A-2 who is the nephew of A-1 attacked the deceased with a stick on his head, that when the deceased tried to escape from there, A-1 attacked the deceased with an axe and caused serious bleeding injuries on his head and thigh, that on hearing the cries of the deceased, PW-2, PW-3 and PW-4 came there and rescued the deceased and that while PW-2 and PW-3 were shifting the deceased to the hospital at Patancheru in 108 Ambulance, he died on the way. PW-1, the brother of the deceased learnt about the incident at 11.00 P.M and lodged Ex.P-1-complaint on the following day i.e., 27-3-2009 at 7.30 Hours. The Sub-Inspector of Police – PW-8, recorded the statement of PW-1 in detail and registered a case against the accused for the offence punishable under Section 302 r/w. Section 34 IPC and issued express FIRs to all the concerned. PW-9 – the Circle Inspector of Police, Narsapur, rushed to the scene of offence, recorded the statements of LW-2 to LW-4 and PW-2 to PW-4, secured the presence of PW-5 and LW-10, observed the scene of offence minutely, conducted the scene of offence panchanama and drafted rough sketch – Ex.P-2. He has conducted inquest over the dead body of the deceased – Ex.P-3 and sent the dead body to the Government Hospital, Narsapur for autopsy. PW-10 –

Civil Assistant Surgeon, Government Hospital, Narsapur, held autopsy over the dead body of the deceased and opined that the deceased died of head injury and cardio respiratory failure due to skull fracture and issued Ex.P-14 - post mortem report. On reliable information, PW-8 and PW-9 sent to Shivanagar village and took the accused into custody on 2-4-2009 at 8.00 A.M. at their house. During the interrogation, the accused voluntarily confessed the offence and the individual confessional statements of the accused viz., Exs.P-7 and P-8, were recorded in the presence of PW-6 and PW-7. In pursuance of their confession, the accused led PW-9 and PW-6 and PW-7 to their fields and produced the stick – MO-1 and axe – MO-2 used in the commission of the offence which were seized under Ex.P-13 – seizure panchanama. After completion of the investigation, PW-9 filed the charge sheet.

The learned Sessions Judge framed a charge under Section 302 r/w. Section 34 IPC against the accused. The accused denied the charge and claimed to be tried. In support of its case, the prosecution examined PWs.1 to 10 and marked Exs.P-1 to P-14. M.Os.1 and 2, the stick and the axe, respectively, used in the commission of the offence were also marked. No oral or documentary evidence was adduced on behalf of the defence. However, Ex.D-1 – Section 161 Cr.P.C. statement of PW-2, was marked on behalf of the accused. After

closure of the evidence, the learned Sessions Judge confronted the accused with the incriminating evidence under Section 313 Cr.P.C., which they denied. On considering the arguments and evidence on record the learned Sessions Judge convicted and sentenced the appellants/accused as mentioned hereinbefore.

Heard the arguments of learned counsel for the appellants and the learned Public Prosecutor.

This is a case of homicide. PW.10, the Civil Assistant Surgeon, who conducted post-mortem examination and issued Ex.P14-report noted the following injuries :

1. A deep incised wound of 4" length 1" width on (L) Parietal region of scalp (Head).
2. A deep incised wound of 2" length 2" width over (L) anterior side of thigh.
3. A linear abrasion over (L) lower leg.

He opined that the deceased died of "Head injury (Partial Bone Fracture) and cardio respiratory failure due to skull fracture." In his cross-examination, PW-10 stated that injury No.1 is possible due to a fall on steep edged cement and that injury No.2 can be caused with a sharp edged weapon of one inch in length.

The incident allegedly occurred at 10.30 PM on 26.03.2009 at the house of Sathemma, the mother of A1. She is an important witness in this case, but the prosecution has not examined her to prove the incident though her Section 161 Cr.P.C. statement was recorded and shown her as LW.8 in the list of witnesses in the charge sheet. The prosecution has failed to produce the best evidence available about time of incident. Ex.P1 is the complaint given by PW.1 on 27.03.2009 at 7.30 AM. Which shows that the criminal law was set in motion about nine hours after the incident. However, the testimony of the Investigating Officer - PW.9, does not disclose any reason for the delay in lodging of the FIR by PW.1. As a matter of fact, the scene of offence at Shivanagar is at a distance of 12 KM from the police station. However, there was delay of about nine hours in lodging of the complaint. When the alleged incident occurred on 26-3-2009 at 10.30 P.M., there is no reason forthcoming from PW.1 to lodge complaint only on the next day morning at 7.30 AM. Therefore, there is every possibility of tampering with the evidence for implicating the accused.

According to the version of prosecution, PWs.2 to 4 are the eyewitnesses to the incident. As far as PW2's testimony is concerned, there is a contradiction in his evidence which is marked as Ex.D-1 in his Section 161 Cr.P.C. statement. He did not state in his Section 161 Cr.P.C. statement, the reason for his going to the house of A-1's

mother at 10.30 PM. In his evidence, he stated that he went to the house of PW1's mother for consuming liquor. However, it is the case of the prosecution that the mother of PW1 was not selling liquor in the village and that she used to sell liquor earlier. He speaks about the presence of PWs.3 and 4 at the scene of offence. He did not state why PWs.3 and 4, who are not the residents of that village, were there at that time. The testimony of PW.2 in his cross examination reveals that he saw A1, A2 and PW-3 and PW-4, coming towards the house of Satyamma, the mother of A-1. He further stated that at first he went to the house of Sathemma, and that P.Ws.3 and 4 came there at 9.00 or 9.30 PM. The alleged incident occurred at 10.30 PM as per the Ex.P.1 complaint. When A1, A2 were there from 9.00 or 9.30 p.m., it is not known what were they doing when deceased was quarrelling with Sathemma. In fact, P.W.2 denied that he went to the house of Sathemma on hearing the quarrel, as in Ex.D.1. The entire case of the prosecution is hit by Ex.D.1 contradiction in the Section 161 Cr.P.C. statement of P.W.2. The case of prosecution is that on hearing the quarrel, P.W.2 went to the house of Sathemma. P.W.2 has stated to the police that the incident occurred while he was going to the house of Sathemma to take liquor. The prosecution could not explain the contradiction in Ex.D1 in the Section 161 Cr.P.C. statement of P.W.2. Therefore, the presence of P.W.2 at the scene of offence is doubtful.

P.W.3 is said to be another eyewitness. He stated in his cross-examination that he was coming back to the village along with P.W.2 and P.W.4 after attending to their coolie work. He further states that they attended to coolie work from 10.00 a.m. to 5.00 p.m. But he did not state whether they were there at 10.30 p.m. on that day. He further stated that the distance between his place of work and A.1's house is 1 KM. When they completed coolie work by 5.00 p.m., the prosecution has not explained as to why it took four and a half hours for them to reach near the house of Sathemma. He did not even state that PW.2 went to the house of Sathemma to consume liquor. He further stated that he heard the cries from a distance of 15 to 20 yards from the scene of offence. Surprisingly, he stated that by the time he went to the scene of offence, about 50 persons were present there. The whole testimony of PW.3 is highly inconsistent and so it is unreliable. The testimony of P.W.4 is also on the similar lines as that of P.W.3. According to P.W.3 and 4 they were all coming to the village after attending coolie work. According to P.W.2, the coolie work would be over by 5.00 p.m. The distance between their place of work and the scene of offence is 1 KM. Therefore, their presence at scene of offence at 10.30 PM is highly doubtful. Since PW.3 spoke about the presence of P.W.2 and 4 at the scene of offence, and in the light of the discrepancy in the testimony of P.W.2 and 3, the evidence of P.W.1

becomes highly doubtful. Therefore, P.Ws.2, 3, and 4, the so called eyewitnesses might have been planted. There is no direct evidence in this case. The mother of A.1, namely, Sathemma, was not examined by the prosecution.

The prosecution has only relied on the recovery of M.Os.1 and 2 made from the accused. To place reliance on recovery, the prosecution must establish strong motive for commission of offence. The Investigating Officer - P.W.10, stated that the witnesses did not state to him the reason for their old enmity between the families of the accused and the deceased. It is therefore obvious that there is no proximity of enmity or reasons for the enmity for A1, A2 in killing the deceased. When the motive is not established, there is no material to connect the accused with the crime. The alleged recovery of M.Os.1 and 2 also cannot be believed as they have not been forwarded to Forensic Science Laboratory to know whether there were any bloodstains on them, and if so, whether the blood group matches with that of the deceased, or not. It is a well settled principle that conviction cannot be based on the sole ground of recovery of material objects. Therefore, the prosecution has failed to bring home the guilt of the accused beyond reasonable doubt. For the aforementioned reasons, we are of the considered opinion that the trial court has not appreciated the

evidence on record properly in holding the appellants/accused guilty of the offence they are charged with.

In the result, the appeal is allowed, and the conviction and sentence passed by the trial Court against the appellants/accused in the judgment dated 15.07.2011 in S.C. No.452 of 2009 are set aside. The bail bonds furnished by the appellants/accused pursuant to the order of this Court in Crl.A.M.P.No.2246 of 2016, dated 28.12.2016, shall stand cancelled. The appellants/accused are directed to be released forthwith, if they are not required in any other case.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

31st July, 2018

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