

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

Criminal Appeal Nos.634 of 2011 and 1088 of 2014

DATED:02-07-2018

Criminal Appeal No.634 of 2011

Between:

Gulladurthi Sambasiva Reddy ... Appellant

And

Kuppannagari Subba Reddy
and others ... Respondents

COUNSEL FOR THE APPELLANT: Mr. D. Kodanda Rami Reddy
COUNSEL FOR RESPONDENT NOS.1 to 16: Mr. Kiran Palakurti,
for, Mr. V. Ramesh Reddy
COUNSEL FOR RESPONDENT NO.17: Public Prosecutor (AP)

Criminal Appeal No.1088 of 2014

Between:

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

And

Kuppannagari Subba Reddy
and others ... Respondents

COUNSEL FOR THE APPELLANT : Public Prosecutor (AP)
COUNSEL FOR THE RESPONDENTS: Mr. Kiran Palakurti,
for, Mr. V. Ramesh Reddy

THE COURT MADE THE FOLLOWING:

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

Criminal Appeal No.1088 of 2014 is filed by the State while Criminal Appeal No.634 of 2011 is filed by the de facto complainant. The cases involve a double murder wherein the respondents - accused along with two others (accused Nos.5 and 11), who are stated to be absconding, were charged for various offences. For convenience, the respondents - accused in these appeals will be referred to as they are arrayed in the Court below.

2. The charges framed by the Sessions Court are self-explanatory which read as under.

“Charge No.1:

That you A.1 to A.4, A.6 to A.10, A.12 to A.18 along with A.5 and A.11 on 16-5-2007 at about 8.15 a.m. at Kanchana Vanka Culvert, near Malepadu village, were members of an unlawful assembly, with an intention of committing murder of G. Jayaramireddy and G.V. Subbareddy, committed the offence of rioting, and thereby committed an offence punishable u/s.147 I.P.C. and within my cognizance.

Charge No.2:

That you A.1 to A.4, A.6 to A.10, A.12 to A.18 along with A.5 and A.11, on the same day, and place and during the course of same transaction as stated in charge No.1, supra, were members of an unlawful assembly, and did in prosecution of which, committed murder of G. Jayaramireddy and G.V. Subbareddy, committed the offence of rioting, and at that time you were armed with deadly weapons like hunting sickles and eethapululu, and thereby committed an offence punishable u/s.148 I.P.C. and within my cognizance.

Charge No.3:

That you A.1 to A.4 and A.6 to A.10 along with A.5 on the same day, time and place and during the course of same transaction as stated in charge No.1 supra did commit murder by intentionally

or knowingly, causing the death of G. Jayaramireddy, and thereby committed an offence punishable u/s.302 I.P.C. and within my cognizance.

Charge No.4:

That you A.12 to A.18, along with A.11, on the same day, time and place and during the course of same transaction as stated in charge No.1 supra, did commit murder by intentionally or knowingly, causing the death of G.V. Subbareddy, and thereby committed an offence punishable u/s.302 I.P.C. and within my cognizance.

Charge No.5:

That you A.1 to A.4, A.6 to A.10, A.12 to A.18, with A5 and A.11, on the same day, time and place and during the course of same transaction as stated in Charge No.1 supra, were with the common object of causing death of G. Jayaramireddy and G.V. Subbareddy, and in prosecution of which, A.1 to A.4 and A.6 to A.10 along with A.5 caused the death of G. Jayaramireddy, A.12 to A.18 along with A.11 caused the death of G.V. Subbareddy, and thereby committed an offence punishable u/s.302 r/w.149 I.P.C. and within my cognizance.

Charge No.6:

That you A.1 to A.4, A.6 to A.10, A.12 to A.18 along with A.5 and A.11 on the same day, time and place and during the course of same transaction stated in charge No.1, supra, did an act to wit G. Sambasivareddy, G. Ramalinga Reddy and G. Basireddy (L.Ws.1 to 3) with such intention or knowledge, under such circumstances viz., that if by that act you had caused the death of them, you would have been guilty of murder and thereby committed an offence punishable u/s.307 IPC and within my cognizance.”

2. In support of its case the prosecution examined P.Ws.1 to 17, got Exs.P.1 to P.18 marked and produced M.Os.1 to 24. On behalf of the defence, D.W.1 was examined and Exs.D.1 to D.11 were marked. On a close scrutiny of the evidence and detailed analysis of the facts, the trial Court has convicted all the respondents - accused of all the charges. Feeling aggrieved

by the same, the State and the de facto complainant filed the aforementioned appeals.

3. We have heard Mr. D. Kodanda Rami Reddy, learned counsel for the de facto complainant in Criminal Appeal No.634 of 2011 apart from the learned Public Prosecutor appearing for the State of Andhra Pradesh in Criminal Appeal No.1088 of 2014 and also Mr. Kiran Palakurthy, learned counsel for the respondents – accused.

4. The learned counsel for the respondents – accused placed reliance on **Syed Ibrahim v. State of Andhra Pradesh**¹ **Ghurey Lal v. State of Uttar Pradesh**², **Shyamlal Saha v. State of West Bengal**³, and **Muralidhar, alias, Gidda v. State of Karnataka**⁴ in support of his submission that if the trial Court's is a possible or plausible view, High Court should not substitute its own view with that of the trial Court.

5. As the trial Court has extensively referred to the case of the prosecution, it bears repetition to narrate the same once over. On a careful scrutiny, the whole case could be summarized as under.

¹ 2007 (1) ALT (Crl.) 183 (SC)

² (2008) 10 SCC 450

³ (2014) 12 SCC 321

⁴ (2014) 5 SCC 730

6. Deceased No.1 contested for the office of Sarpanch of the Gram Panchayat, Malepadu Village, in the years 2001 and 2006 and was elected as such and he was the Sarpanch of the said village at the time of the occurrence. The respondents – accused belong to the opposite faction. During 2001 panchayat elections, the group of accused No.1 took away the ballot boxes from the polling group members and in the criminal case registered at the instance of deceased No.1, they were acquitted. After deceased No.1 won as President of the Gram Panchayat, in the panchayat elections held in 2006, he provided water facility to the village, and subsequently the accused damaged the pipelines, motor and starter which led to registration of Crime No.40 of 2006 of Kalamalla Police Station in which both the deceased gave evidence against the accused, but the case ended in acquittal. The accused therefore bore grudge against the deceased and decided to take revenge. On 16.05.2007 at about 8.30 a.m. when both the deceased were proceeding from their native village, i.e., Malepadu, to the office of the Mandal Development Officer at Yerraguntla, on motor cycle, accused Nos.1 to 10 formed into an unlawful assembly armed with deadly weapons, and hacked deceased No.1 indiscriminately resulting in his instantaneous death. Deceased No.2, who

witnessed the incident, left the vehicle and started running towards his village. Accused Nos.11 to 18 also formed into an unlawful assembly armed with deadly weapons and attacked deceased No.2, as a result of which he sustained severe bleeding injuries and later succumbed to the injuries around 9.20 a.m. on 16.05.2007.

7. The prosecution examined P.Ws.1, 2, 4 and 5 as direct witnesses and P.W.3 as circumstantial witness. The lower Court has thrown out the case of the prosecution mainly on the grounds (i) that the prosecution failed to explain the long delay in the First Information Report (FIR) reaching the Court; (ii) that P.Ws.1, 2 and 4, being the nearest relatives of the deceased, are highly interested witnesses and P.W.5 owing allegiance with the deceased, is a partisan witness; (iii) that the weapons statedly used in the commission of the offence by the accused were recovered from a public place and (iv) that the prosecution failed to prove the nature of the weapons recovered from the possession of the accused and those produced in the Court.

8. Admittedly the alleged offence has taken place at 8.30 a.m., while the FIR reached the Court at 5.30 p.m. P.W.15 – the Station House Officer, Kalamalla Police Station, deposed

that on 16.05.2007 at about 12.00 noon one Police Constable No.1896 has handed over a written report of P.W.1 with the endorsement of P.W.16 – Inspector of Police, Yerraguntla, that based on the same he has registered the case and forwarded one express FIR along with the said Police Constable to P.W.16 for the purpose of investigation, that he has also sent copies of the FIR to all the concerned, through P.C.303 of Kalamalla Police Station and that copy of the FIR was received by the Principal Junior Civil Judge, Kadapa, in-charge of the Court of Judicial Magistrate of First Class, Kamalapuram. It was specifically suggested to P.W.15 that he has not received Ex.P.1 at 12.00 noon, that Ex.P.1 was prepared in Kalamalla Police Station after securing the presence of P.Ws.1 and 16 and others and that Ex.P.1 was manipulated at one or one-and-a-half hours prior to the receipt of Ex.P.11 - FIR by the Court.

9. The law is well-settled that long and unexplained delay in registering the FIR is fatal to the case of the prosecution, for, it gives scope for confabulations leading to false implications, embellishments and exaggerations (See **Thulia Kali v. State of Tamil Nadu**⁵, **State of Andhra Pradesh v. Punati Ramulu**⁶,

⁵ AIR 1973 SC 501

⁶ 1993 CrLJ 3684

Gajanan Dashrath Kharate v. State of Maharashtra⁷ and Ummadaboina Suvernamma Vs. State of A.P. and others⁸).

When a specific suggestion was put to the prosecution witness concerned that the FIR was ante-timed, the burden lies on him to explain the delay. The prosecution failed to examine P.C. 303 to whom the express FIR was stated to have been entrusted. The learned Public Prosecutor submitted that though Kamalapuram is at a distance of about 34 Kms., as the Magistrate of Kamalapuram was not available, the Magistrate of Kadapa was in-charge and therefore the Constable had to travel about 54 Kms. to produce the FIR before the Magistrate and this process must have consumed substantial time. We are afraid, we cannot accept this explanation as it has not come forth from the person who is competent to depose. No explanation was offered from the prosecution side as to the reason for not examining P.C. 303 to explain the alleged delay. Except their *ipse dixit* that Ex.P.1 report was received by P.W.15 at 12.00 noon, no evidence was placed by the prosecution before the Court in this regard. P.W.15 himself admitted that by 9.00 a.m. itself he came to know about the murder through an anonymous call. P.W.16 deposed that he went to the scene

⁷ (2016) 4 SCC 604

⁸ 2017(3) ALT (Crl) 239 (AP) (DB)

of offence at 11.20 a.m. It is thus apparent that the prosecution group had the opportunity of confabulations and consultations immediately after the incident and in the absence of specific evidence that Ex.P.1 was prepared by 11.20 a.m., the possibility of Ex.P.1 being ante-timed cannot be ruled out. In a faction case, such as the present one, there is every possibility of false implications due to long and unexplained delay. Therefore, as rightly found by the Court below, the unexplained delay of more than six hours is fatal to the case of the prosecution.

10. Keeping in view the unexplained delay in registering the FIR and sending the same to the Court, if we closely scrutinize the evidence of P.Ws.1, 2, 4 and 5, it does not inspire confidence. Both P.Ws.1 and 4, who are brothers of deceased Nos.2 and 1 respectively, have stated that they were not in the habit of accompanying their brothers. Therefore, there is very little probability of these two witnesses accompanying the deceased. The learned Public Prosecutor submitted that the veracity of these witnesses could be tested with reference to the overt acts referred in Ex.P.1 report. In our opinion, in view of the long delay in the registration of the FIR, it is not safe to rely upon the testimony of the witnesses, based on overt acts, for, the delay would have facilitated the witnesses to note the

number and nature of the injuries and incorporate the same in the report. Once the evidence of P.Ws.1, 2 and 4, who are highly interested witnesses, is eschewed from consideration, we are left with only the evidence of P.W.5 to whom it was suggested that he was being supported by P.Ws.1, 2 and 4 in protecting his possession of the endowments property allegedly encroached by him. Apart from the same, in his cross-examination he has admitted that to a person standing in the land of one Ramana Reddy, where he was allegedly working as coolie at the time of the occurrence, people at the scene of offence are not visible. From this admission, there is any amount of doubt whether P.W.5 has witnessed the incident. The Court below, in our opinion, has rightly discarded the evidence of these witnesses.

11. As regards alleged recovery, in **Pandurang Kalu Patil v. State of Maharashtra**⁹, while dealing with Section 27 of the Evidence Act, the Supreme Court held, at para-5, as under :

“The object of making a provision in Section 27 was to permit a certain portion of the statement made by an accused to a police officer admissible in evidence whether or not such statement is confessional or non-confessional. Nonetheless the ban against admissibility would stand lifted if the statement distinctly related to a discovery of fact. A fact can be discovered by the police (investigating officer) pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery

⁹ AIR 2002 SC 733

of an object is only one such cause. Recovery, or even production of object by itself need not necessarily result in discovery of a fact. That is why Sir John Beaumont said in *Pulikuri Kottaya Vs. Emperor* (AIR 1947 PC 67) that **"it is fallacious to treat the fact discovered in the Section as equivalent to the object produced"**. The following sentence of the learned law lord in the said decision, though terse, is eloquent in conveying the message highlighting the pith of the ratio.

"Information supplied by the person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. **It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge and if the knife is proved to have been used in the commission of the offence the fact discovered is very relevant.**"

(Emphasis added)

12. In the present case, based on the alleged confessional statement of the accused, the prosecution has allegedly recovered as many as 18 nos. of weapons (Ethapululu) vide Ex.P-6-seizure panchanama. However under Ex.P-13-letter of advice, only 11 weapons were sent for forensic analysis, which correspond to item Nos.13 to 23 of Ex.P-16-RFSL Report. Among the said items of weapons, while blood was detected on item Nos.13 to 15, 18, 19 and 22, no blood was detected on item Nos.16, 17, 20, 21 and 23. When 18 nos. of weapons were allegedly used by the accused for murdering the two deceased persons, the prosecution has not explained why it has not sent the remaining 7 weapons allegedly recovered at the instance of the accused for forensic analysis.

13. In **Ghurey Lal** (2 supra) the Supreme Court upon considering the case law relating to appeals against acquittal, held as under:

“70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.”

The aforesaid principles were reiterated by the Supreme Court in its subsequent judgments on the subject. On careful scrutiny of the judgment under appeal, we are of the opinion that none of the grounds referred in the judgment in **Ghurey Lal** (2 supra) exist in the present cases for our interference.

14. On the analysis as above, we do not find any merit in these appeals and the same are accordingly dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

02-07-2018

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