

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY
&
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD**

CRIMINAL APPEAL No.184 of 2012

Date: 04.09.2018

Between:

Alugu Karunakar and another

... Appellants/Accused Nos.1 & 2

And

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

... Respondent

Counsel for the Appellants: Sri C.VASUNDHARA REDDY

Counsel for respondent : PUBLIC PROSECUTOR (AP)

The Court made the following:

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

This Criminal Appeal arises out of the judgment dated 27.01.2012 in Sessions Case No.166 of 2010, on the file of the VI Additional District & Sessions Judge (FTC), Narsapur, whereby the appellants/Accused Nos.1 and 2 were convicted for the offence punishable under Section 302 IPC, and sentenced to undergo Imprisonment for Life and to pay a fine of Rs.2,000/- each, and in default of payment of fine amount, to suffer Simple Imprisonment for six months. Accused Nos.3 to 5 were acquitted by the trial Court.

2. The case of the prosecution in brief is that accused Nos.1 to 5 were residents of Jonnalagaruvu village, Bhimavaram Mandal and belong to Scheduled Caste. A-1 and A-2 are own brothers, A-4 is the wife of A-1, A-5 is the mother of A-1 and A-2. One Alugu Anandarao (hereinafter referred to as the deceased) was a resident of Tundurru village. The father of the deceased and the father of A-1 and A-2 were own brothers. They partitioned their joint family properties in Jonnagalaguvu village a long time ago. In the said partition, out of Ac.0-18 cents, the father of A-1 and A-2 got Ac.0-09 cents, and the deceased got Ac.0-09 cents covered by R.S.No.740, situated in Jonnalagaruvu village. In the

year 1986, the father of A-1 and A-2, who was the brother of the deceased, expired. After the death of the father of A-1 and A-2, the accused tried to encroach the land of the deceased due to which disputes arose with respect to the boundaries of their lands, upon which they approached Narsapur Rural Police Station, but elders intervened and settled the dispute as it was a civil dispute. The accused, having not satisfied with the settlement arrived at before the elders developed ill-will against the deceased and wanted to do away with the life of the deceased and were waiting for a better opportunity.

3. On 21-1-2008 at about 3 p.m. when the deceased was attending to work in his land with the help of PW-2, his son/complainant-PW-1 was attending to agricultural work at some distance. On seeing the deceased, the accused came towards the deceased with deadly weapons i.e., A-1 was armed with stick, A-2 was armed with a sickle and A-3 and A-4 with chilly powder. A wordy quarrel ensued between the accused and the deceased with exchange of heated discussions. During the quarrel, A-3 and A-4 sprinkled chilli powder in the eyes of the deceased and A-5 instigated the other accused to beat the deceased to death. Having been instigated by A-5, A-1 beat the deceased with the stick on his head and A-2 hacked the deceased

with sickle twice saying “Ee debbatho peeda viragadaindhi”. Due to the bleeding injuries suffered by the deceased, he fell down on the ground and became unconscious. On seeing the said acts of the accused, PW-2 rushed towards PW-1 and informed him about the occurrence and that PW-5 and PW-7 to PW-9 also came there and all of them have rushed to the spot and upon seeing them, the accused left the place. Later, PW-1 called 108 Ambulance and shifted the deceased to Bhimavaram Hospital for treatment and from there to Government General Hospital, Vijayawada, for better treatment. The deceased succumbed to the injuries on 21-1-2008 at 7.30 A.M.

4. On the information received from the hospital, the S.I. of Police, Narsapur (Rural), registered FIR in Cr.No.9/2008 under Section 307 r/w Section 34 IPC on 21-1-2008. The statement of PW-1 was recorded by PW-12 – Police Constable of Bhimavaram II Town Police Station. PW-14, the Sub-Inspector of Police, inspected the scene of offence and got prepared the observation of scene of offence report by mediators, collected evidence from the witnesses, seized the crime weapons i.e., stick and sickle, arrested A-3 and A-4 and produced them before the Court. On receiving the intimation of the death of the deceased, the provision of law was altered to Section 302 r/w. Section 34 IPC.

5. PW-15, the Inspector of Police took up the investigation, held inquest over the dead body of the deceased in the presence of panchayatdars and sent the dead body to Siddhartha Medical College, Vijayawda for autopsy. He arrested A-1 and A-2 and produced them before the Court. PW-6, the Assistant Professor, Department of Forensic Science, Government of Andhra Pradesh, conducted the Post Mortem examination and issued Ex.P-4 report opining that the deceased died due to the head injury. Since A-5 was absconding, the charge sheet was filed against A-1 to A-4 for the offence under Section 302 r/w. Section 34 IPC and under Sections 109 and 302 IPC against A-5.

6. The prosecution, in order to prove its case, has examined PWs.1 to 15 and marked Exs.P1 to P16, and M.Os.1 and 2. On behalf of defense, no evidence was adduced, except the contradictions Exs.D-1 to D-3 in the statements of PW-1 recorded under Section 161 Cr.P.C. On appreciation of the oral and documentary evidence, the Court below convicted the appellants/Accused Nos.1 and 2 for the offence under Section 302 IPC, and acquitted the Accused Nos.3 to 5, for the offence under Section 302 r/w Sections 34 and 109 IPC and sentenced them as noted above. Aggrieved by their conviction, the appellants filed this appeal.

7. We have heard the learned counsel for the appellants and the learned Public Prosecutor.

8. The learned Counsel for the appellants submitted that the trial Court relied on the evidence of PW-1 and PW-3 and being the sons of the deceased, they are interested witnesses, that PW-2 is a planted witness and that there are discrepancies in the testimonies of these witnesses in material particulars. He further submitted that PW-4, PW-5 and PW-7 to PW-9, who allegedly shifted the deceased to the hospital, did not support the case of the prosecution. The learned Counsel also submitted that in Ex.P-1, PW-1 stated that the incident was informed to him by PW-2, but in his evidence before the Court, he deposed that when he ran towards the scene of offence, the appellants/accused left the scene of offence and therefore PW-1 is not an eye-witness to the occurrence. He has also further submitted that there is discrepancy in the number of injuries suffered by the deceased and the same is evident from the testimony of the Medical Officer-PW-6, Ex.P-12 – case sheet and Ex.P-4 – Post Mortem examination report, that while Ex.P-12 - case sheet of Bhimavaram Hosplital, revealed only three injuries, as per the evidence of PW-6 and Ex.P-4 – Post Mortem examination report, the deceased suffered as many as eight injuries and that the said

discrepancy strikes at the root of the prosecution case. The learned Counsel for the appellants further submitted that PW-2 was only a worker engaged in the agricultural fields on the date of the incident and he has no prior acquaintance with the accused and therefore there is no possibility for PW-2 to identify the accused persons and that the trial Court erroneously placed reliance on the evidence of PW-2. Thus, submitted the learned Counsel, the prosecution failed to prove the identification of the accused. He has also submitted that except the evidence of PW-2 there is no cogent evidence to come to the conclusion that it is the appellants/accused who committed the offence. He has finally submitted that the appellants are innocents and they were falsely implicated in the case due to the boundary disputes between the two families and that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt.

9. The learned Public Prosecutor submits that the presence of PW 2 at the scene of offence was spoken by PW.1, who was the *de facto* complainant. He submitted that evidence of PW-2 who was an independent eye-witness cannot be disbelieved merely because he was not acquainted with the accused. He further submitted that PW-1 denied the suggestion that there are no boundary disputes between the accused and the deceased and

therefore the prosecution could prove the motive for the accused to attack the deceased. He further submitted that the deceased was first taken to Bhimavaram Hospital and from there to the Government Hospital, Vijayawada and that the alleged discrepancy in the number of injuries on the body of the deceased as noted in Ex.P-12 – case sheet issued by Bhimavaram Hospital cannot be given weight over the Ex.P-4 – Post Mortem examination report. He further submitted that the learned Sessions Judge considered all the aspects in the right perspective and convicted the appellants and hence there are no grounds to interfere with the Judgment under appeal.

10. The point for consideration is whether the Judgment of the trial Court is liable to be interfered with ?

11. It is the case of the prosecution that the accused attacked the deceased due to the disputes with regard to boundaries with regard to their lands. PW-1 in his evidence deposed that the partition of properties between the families of the accused and the deceased took place 25 years ago. When the partition of properties between the family of the accused and that of the deceased took place 25 years ago, it is highly difficult to believe that the disputes with regard to the boundaries of those lands are continuing, in the absence of any documentary evidence brought

on record to prove the same. Therefore, the prosecution could not prove the alleged boundary disputes between the families of the accused and that of the deceased as the motive for the occurrence.

12. The prosecution mainly relied upon the evidence of PW.2 on the ground that he was present at the time of the occurrence, witnessed the occurrence and narrated the incident. In his cross-examination, PW-2 revealed that he went to the land of the deceased to work as a coolie for one day. Therefore, it is not possible to believe that PW-2 is aware of the alleged disputes between the accused and the deceased as spoken to by him in his testimony before the Court. He stated that he does not know the names of the accused present in the Court and that it was PW-3 who gave the names of the accused to him. PW-2 further stated that he had never seen the accused prior to the alleged incident and that he saw the accused for the first time at the time of the incident. It is obvious from this statement that PW-2 had no prior acquaintance with the accused. Further, he did not give any descriptive particulars of the accused for their identification. The testimony of PW.2 in his cross examination shows that he was not familiar with the faces of the accused. The prosecution has also not conducted any test identification parade for identification

of the accused by PW-2. It is the testimony of PW-2 that there were 10 persons working in the nearby lands at the time of the incident. In fact, some of them were examined as PWs.4, 5, 7, 8 and 9, but they did not support the case of the prosecution. Therefore, there is no corroboration to the testimony of PW.2 about his witnessing the arriving of the persons working in the neighboring lands at the time of the incident and taking the deceased to the hospital in 108 Ambulance. In the absence of the test identification parade conducted by the prosecution for identification of the accused by him, it is not safe to rely on the testimony of PW-2 that he identified the accused. As rightly submitted by the defense counsel, these circumstances clearly prove that PW-2 was a planted witness to support the version of the prosecution.

13. In his chief-examination, PW-1 deposed that when the accused allegedly attacked the deceased, he was working in the adjacent land. In his cross-examination, PW-1 denied the suggestion that one cannot view or hear from one land to the other land due to the distance between them. However, interestingly, PW-1 stated that he does not know for how long the altercation between the accused and the deceased took place. If the lands in the question were within the audible range as deposed

by PW-1, he would have rushed to the alleged scene of offence immediately after hearing the alleged altercation and averted the occurrence. Further, PW.1 came out with two different versions about his witnessing the incident. He deposed that A-3 and A-4 sprinkled chilli powder over the deceased, that A-1, A-2 and A-5 also came there and A-5 encouraged all the accused to beat the deceased, that A-2 hacked the deceased on his head with a knife and that A-1 Karunakar beat the deceased with a stick on the head. This version shows that he actually witnessed the incident of the accused causing injuries to the deceased. But in Ex.P-1 report given to the police, PW-1 stated that he was informed by PW-2 about the accused causing injuries to the deceased. Therefore, the testimony of PW-1 cannot be believed in the light of the said inconsistency. PW-1 being a natural son of the deceased, there is every possibility of his being planted as a witness to support the case of prosecution.

14. PW.3 is no other than the son of the deceased. His testimony reveals that on 21.01.2008 at about 4.00 p.m., he received information from PW.1 that the accused beat his father, that he came to the hospital and saw his father having knife injury and a stick injury on his head and that his father died on 27.01.2008 in the Government Hospital, Vijayawada. In fact, this

witness does not know anything about this incident until he received the phone call from PW.1.

15. As rightly pointed out by the learned Counsel for the appellants, the trial Court simply brushed aside the discrepancy in the injuries allegedly suffered by the deceased. PW-6 – Medical Officer, who conducted the post-mortem examination and issued Ex.P-4 report categorically stated that there were eight injuries and that except the sixth injury all other injuries were on the head of the deceased. However, in ExP-12 – case sheet of the deceased issued by the Bhimavaram Hospitals, only three injuries were mentioned to have been suffered by the deceased. The only reason given by the trial Court for the said discrepancy was that the injuries might have been sutured when the deceased was first taken to the Bhimavaram Hospital. In fact, this explanation does not clarify the discrepancy in the number of injuries on the dead body of the deceased. Even assuming that certain injuries might have been sutured at the Bhimavaram Hospital, PW-6 would not have omitted to mention the same in Ex.P-4 – post mortem examination report. The discrepancy in the number of injuries actually suffered by the deceased raises any amount of doubt with regard to the version of the prosecution. The submission of the learned Public Prosecutor that Ex.P-12 – case sheet of the

deceased at Bhimavaram Hospital, cannot be believed and that Ex.P-4 – being the post mortem examination report shall be taken into consideration for answering the discrepancy in the number of injuries suffered by the deceased cannot be accepted because the prosecution has not taken the stand that the Ex.P-12 issued by Bhimavaram Hospital was a fabricated one.

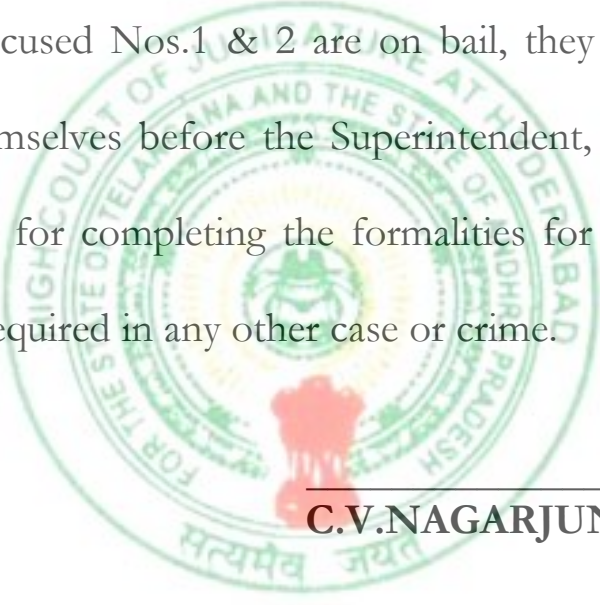
16. It is pertinent to note that the prosecution has not given any reasons for not getting the statement of the deceased recorded by the Magistrate though the deceased was in hospital for six days.

17. The prosecution has placed reliance on the recovery of material objects to connect the accused with the crime. PW.14 is the Investigation Officer, who received the hospital intimation on 21.01.2008 at 23:00 hours. The material objects MOs.1 and 2 were not sent to the Forensic Laboratory. There is no evidence to show that there are bloodstains on the said material objects. Neither the control earth nor bloodstained earth was seized from the scene of offence and forwarded to the Forensic Laboratory to prove the scene of offence. The scientific evidence is lacking in this case. However, the trial Court has brushed aside the defects in the investigation, which greatly caused prejudice to the accused. Therefore, the findings of the trial Court are erroneous as they go

to the root of the case of the prosecution with regard to the use of the material objects at the time of the commission of the offence. The trial Court assumed that there is no necessity for PW.1 to implicate the accused leaving the actual culprits that killed the deceased, which is an erroneous assumption, given the serious lapses in the investigation.

18. The burden is on the prosecution to prove the guilt of the accused beyond reasonable doubt. The prosecution has to take all the care to bring all the material evidence on record to prove the guilt of the accused. The investigation itself is highly defective. The assumptions made by the trial Court are incorrect. The trial Court has convicted the accused without there being any evidence, which is acceptable in the eye of law. The prosecution, basing on the suspicion that the accused might have committed the offence, has implicated them in this case. On consideration of the entire evidence and the judgment of the trial Court, we are of the considered view that the trial Court went wrong in finding the A.1 and A.2 guilty for the offence punishable under Section 302 IPC and sentencing them to Imprisonment for Life. The impugned judgment of the trial Court is liable to be set aside and the accused are entitled to be acquitted.

19. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/Accused Nos.1 & 2 by the VI Additional District & Sessions Judge (FTC), Narsapur, by judgment dated 27.01.2012, in Sessions Case No.166 of 2010 for the offence punishable under Section 302 I.P.C., are set aside. The appellants/Accused Nos.1 & 2 shall be set at liberty forthwith, if they are not required in any other case. The fine amount, if any, paid by them shall be refunded to them. As the appellants/Accused Nos.1 & 2 are on bail, they are directed to surrender themselves before the Superintendent, Central Prison, Rajahmundry, for completing the formalities for their release, if they are not required in any other case or crime.



C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

Date: 04.09.2018

Msr

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
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