

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

Crl.A.Nos.261 and 275 of 2012 and 1083 of 2013

Date: 21.08.2018

Crl.A.No.261 of 2012

Between:

Thota Panakalu @ Panaiah

..... Appellant/Accused No.2

And

The State of Andhra Pradesh,
rep., by the Public Prosecutor

....Respondent

Counsel for the appellant: Mr. K.Suresh Reddy

Counsel for the respondent: Public Prosecutor for the State of A.P.

Crl.A.No.275 of 2012

Between:

Rudru Hanumantha Rao

.....Appellant/Accused No.3

And

The State of Andhra Pradesh,
rep. by the Public Prosecutor

....Respondent

Counsel for the appellant: Mr. K.Suresh Reddy

For Smt C.Vasundhara Reddy

Counsel for the respondent: Public Prosecutor for the State of A.P.

AND

Crl.A.No.1083 of 2013

Between:

Munukonda Siva Naga Raju
@ Raju

**.....Appellant/
Accused No.1**

And

The State of Andhra Pradesh,
rep. by the Public Prosecutor

....Respondent

Counsel for the appellant: Mr. K.Suresh Reddy
For Mrs. A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor for the State of A.P.

The Court made the following:



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

These Criminal Appeals by accused Nos.2, 3 and 1, respectively, arise out of judgment, dated 13.3.2012, in Sessions Case No.473 of 2011 on the file of the II Additional Sessions Judge, Guntur. By the said judgment, the Court below has convicted the appellants for the offence punishable under Section-302 read with Section-34 IPC and sentenced to suffer imprisonment for life and also to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo simple imprisonment for three months.

The case of the prosecution, as reflected in the charge sheet, is briefly stated hereunder:

All the accused and the deceased were natives of Navulur Village and lived by cultivation. While so, accused No.1 developed suspicion against the deceased on the ground that he used to visit their house and misbehave with his mother by abusing her in filthy language. That on the complaint given by his mother, when accused No.1 questioned the deceased about the same, the latter threatened the former with dire consequences on the point of death. That about a month prior to the occurrence, a petty quarrel took place between the deceased and L.W-10-Rudru Srinivasa Rao @ Tiger in connection with street gambling; that the deceased intervened in the dispute and supported P.W-9; that during the wordy quarrel, L.W-10 made an attempt to beat the deceased with a stick, but it mistakenly hit the hand of P.W-5; that

when the victims tried to report the matter to the Police, P.W-3 and others, who are the Village elders, intervened and pacified the matter; that on the same day, L.W-10 and his children, viz., accused No.3 and L.W-12, went to the house of the complainant/P.W-1 along with L.W-13-Murakonda Vijay Kumar and accused No.1, and used criminal force against the deceased; and that on coming to know about the hasty behaviour of the said persons, the Village elders once again intervened and pacified the matter. That about 10 days after the said incident, all the above persons met together and sent some local bad hats to the house of the deceased by instigating them to attack the latter, but the same failed. That after the said incident, the deceased warned the accused and some other boys while they were playing cricket in front of his house.

That accused Nos.2 and 3 are the close associates of accused No.1 and they used to move together; that on the ground that the deceased threatened accused No.1 with dire consequences on the point of death, accused No.1 secured the assistance of accused Nos.2 and 3, and armed with deadly weapons, they way laid on the road, attacked and stabbed the deceased with knives and beat him with an iron rod over his head, and brutally chased the deceased right from the house of Murakonda Jyothi up to the house of P.W-3; and that the deceased knocked the doors of the house of P.W-3, narrated the occurrence and the reasons behind the attack of the accused to him, fell on the ground

and lost his conscious. That immediately, P.Ws.1 to 3 shifted the deceased to the NRI Hospital, Chinakakani, in an auto, where the Medical Officer examined and declared him as dead.

That on 21.01.2011 at 8.30 pm., P.W-12-Head Constable, Mangalagiri Rural Police Station, on receiving the death intimation of the deceased, rushed to the hospital, found the dead body of the deceased, recorded the statement of P.W-1 and forwarded it to P.W-13-Sub-Inspector of Police, Mangalagiri Rural Police Station for necessary action. That P.W-13 registered the said statement as a case in Crime No.17 of 2011 under Section 302 read with Section-34 IPC, and submitted the copies of the express F.I.Rs to all the officers concerned. That P.W-15-Inspector of Police, Mangalagiri rural Police Station, who received the copy of the express FIR on 21.01.2011 at 10.30 pm., visited the NRI Hospital, Chinakakani, secured the presence of P.W-1, examined and recorded his detailed statement, visited the scene of offence, seized the incriminating material under the cover of observation report duly attested by P.W-11 and L.W-17-Rudru Babu Rao. That P.W-10 photographed the scene of offence as well as the dead body of the deceased and submitted the same to the SHO, Mangalagiri Rural Police Station. That on the same day, at about 9 am., P.W-15 returned to the NRI Hospital, Chinakakani, secured the presence of P.W-11 and L.Ws-18 and 19 as well as the blood relatives of the deceased, *viz.*, P.Ws.1 to 6 and L.W-3-Katta

Vijayalakshmi, held inquest over the dead body of the deceased, during which he examined P.Ws.1 to 6 and L.W-3, recorded their detailed statements and sent the dead body of the deceased to the Government Hospital, Mangalagiri for autopsy. That in continuation of his further investigation, P.W-15 examined P.Ws.7 to 10 and L.Ws-10 and 12 to 14, recorded their detailed statements, arrested the accused on 25.01.2011, interrogated them in presence of P.W-11 and L.W-20- Chittibomma Rama Subbaiah and produced them before the Court. That thereafter, on receipt of the post-mortem report, the report of the Regional Forensic Science Laboratory and on completion of the investigation, the charge sheet was filed.

Based on the charge sheet and the material collected and placed before it by the Investigation Officer, the Court below has framed the following charge:

“That you A-1 to A-3 on 21st day of January, 2011 at about 6.30 pm at Anjaneya Swamy Temple street, Navuluru Village, Mangalagiri Rural Mandal within the jurisdiction of the Mangalagiri Rural P.S., all of you armed with deadly weapons, way laid on the road, attacked and stabbed Katta Sambasiva Rao @ Sivaiah with knives and beat him with an iron rod over his head thus murdered and thereby, committed an offence punishable under Section-302 read with Section-34 IPC and within my cognizance.”

The accused pleaded not guilty and claimed to be tried. During trial, the prosecution examined P.Ws.1 to 15, got Exs.P-1 to P-18 marked and produced M.Os.1 and 7. On behalf of the accused, no evidence was let in.

On appreciation of the oral and documentary evidence, the lower Court has disposed of the case in the manner as indicated above.

At the hearing, Mr. K.Suresh Reddy, learned counsel appearing for the appellant in Crl.A.No.261 of 2012, and also representing Mrs. C.Vasundhara Reddy and Mrs. A.Gayatri Reddy, learned counsel appearing for the appellants in Crl.A.Nos.275 of 2012 and 1083 of 2013, respectively, submitted that neither P.W-1 nor P.W-6 are eye-witnesses to the occurrence and therefore, the lower Court fell into a serious error in basing the conviction of the accused on their evidence. He has further submitted that the alleged recoveries of MOs.4 to 7 from a public place ought not to have been believed by the lower Court and that the medical evidence does not support the case of the prosecution that MOs.4 and 6 were used in commission of the offence by the accused.

Opposing the above submissions, Mr. Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh, submitted that P.W-6, who was aged about 60 years, was a truthful witness and that the defence was unable to put forth acceptable reasons to reject her evidence. He has further submitted that even to reject the evidence of P.W-1, no convincing reasons have been advanced on behalf of the defence and that therefore, the lower Court has rightly believed their evidence. He has also submitted that though recovery of Material

Object Nos.4 to 7 was made from a public place, the same was proved through the evidence of P.W-11-one of the panch witnesses to the said document and PW.13, the Sub-Inspector of Police and added to the same, M.O-5-T-shirt recovered from accused No.1 contained blood of human origin and that accused No.1 could not explain as to how his T-shirt contained human blood. Learned Public Prosecutor has, accordingly, strongly supported the judgment of the lower Court and urged the Court to dismiss the Criminal Appeals.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

Since the learned counsel for both parties have not laid much emphasis on the aspect of motive, as the case is based on the evidence of the purported eye-witnesses, it is unnecessary for us to deal with the said aspect.

The lower Court has mainly relied upon the ocular evidence of P.Ws.1 and 6, who were examined as eye-witnesses. We shall, therefore, deal with their evidence. The statement of P.W-1 was recorded by P.W-12-Head Constable, Mangalagiri Rural Police Station, in the NRI Hospital, when he visited the hospital on receiving the death intimation of the deceased. The said statement (Ex.P-1) was treated as report, based on which, P.W-13 registered Ex.P-15-First Information Report.

Learned counsel for the accused pointed out a serious discrepancy between Ex.P.1 and the evidence of PW.1 on the aspect of his seeing the accused running away after seeing himself and PWs.4 and 5. It is, therefore, necessary for us to go through the relevant portions of Ex.P.1 and the testimony of PW.1.

In Ex.P.1, PW.1 has stated that when himself and PWs.4 and 5 were talking at the corner of the house of PW.3 – Kolli Lakshmaiah, the deceased came running from Anjaneyaswamy Temple road side to the house of the Sarpanch, that due to the confusion, himself and PWs.4 and 5 also ran and that the deceased informed that all the 3 accused have stabbed him at Anjaneyaswamy Temple and he then fell down. He further stated that thereafter he and others have together shifted the deceased in Auto to NRI Hospital for treatment and the Causality Doctor informed them that his father died.

In his evidence, PW.1 has come out with an improved version. He stated that when he and PWs.4 and 5 were on the street corner of PW.3's house, they found the deceased running with bleeding injuries on his stomach from Anjaneyaswamy Temple Bazar side towards them and he was being chased by A.1 and A.2 armed with knives, and A.3 armed with an iron rod, that PWs.1, 4 and 5 went opposite to the accused and on seeing them, A.1 to A.3 turned back and ran away.

Thus, in his earliest version, PW.1 has not claimed to have seen the accused at all. If he had really seen the accused chasing his father,

there was absolutely no reason for him to omit to state the said material fact in Ex.P.1.

The improbability of PW.1 being an eye witness could also be noticed from the fact that contrary to his claim that he along with PWs.4 and 5 shifted his father to the NRI Hospital, in Ex.P.14 – Death Intimation, the name of Mr. Kolli Rambabu, brother-in-law of the deceased (LW.18) was mentioned as the person, who brought the deceased to the Hospital. Significantly, PW.1 did not refer the name of Kolli Rambabu as one of the persons present at the time of incident or as the person accompanying PW.1 and others while taking the deceased to the Hospital. The very fact that the said Kolli Rambabu has brought the deceased to the Hospital evidently shows that PW.1 was nowhere in the picture when the offence was allegedly committed. Interestingly, the said Kolli Rambabu, though cited as an Inquest Panchayatdar and shown as LW.18 in the charge sheet, was, for the reasons best known to it, given up by the prosecution.

Indeed, LW.18 was the best person to speak about the incident, more-so when he was the person, who brought the deceased to the Hospital. The absence of PW.1's name in Ex.P.14 coupled with non-examination of Kolli Rambabu gives rise to any amount of doubt about the claim of PW.1 that he saw the accused running away after stabbing the deceased and that he took the deceased to the Hospital for treatment.

Further, the testimony of PW.1 that he was informed by his father that the accused have stabbed and beaten him also appears to be highly improbable, if we consider the nature of the injuries sustained by the deceased. As evident from Ex.P.16 – Postmortem Certificate and as spoken to by PW.14, the Doctor, as many as 9 injuries were found on the body of the deceased, which are “lacerated wounds on different parts of scalp, incised stab wound on the front of the chest left side at nipple 3 cm x 1 cm x 5 cm, incised stab wound at epigastric of anterior abdominal wall 3 cm x 1/1 cm x 6 cm into abdomen cavity, incised stab wound on right chest 3 cm x 2 cm x 5 cm, incised wound on left forearm just below elbow, Two Nos. 3 Cm x 2 cm x 3 cm and 3 cm x 1 cm x 1 cm, skull open fracture parital bone present with haematoma and a part of occipital region, left fifth rib fracture, heart region stab wound, Haemotherax present massive, rectos muscle present stab wound injured the liver 3 cm x 3 cm. Haemopertonium present”.

In his cross-examination, PW.14 admitted that if a person receives injuries on the heart and liver, there may be possibility of his loosing consciousness immediately. Therefore, we perceive the version of PW.1 that the deceased after running for quite a distance with all those serious injuries was conscious and fit enough to disclose the identity of his assailants to PW.1 as highly incredulous. The further fact that the deceased was declared dead on being brought to the Hospital also strengthens the doubt as to whether the deceased was

conscious and in a fit condition to speak at all much less to reveal the names of the assailants.

For all the aforementioned reasons, we are of the opinion that PW.1 was not an eye witness to the incident, but he was a planted witness as that of PW.2, his brother, whose evidence was disbelieved by the Court below.

Coming to the evidence of PW.6, in her chief-examination, PW.6 did not disclose her relationship with the deceased and has merely stated that she knows the deceased. However, in the cross-examination, she had to admit that the deceased is no other than the son of her elder sister, by name Sambrajyam. She deposed that on the day of occurrence, she was present at the house of Murakonda Jyothi, who, however, was not present at her house, which was locked and that at that time, she saw A.1 and A.2 stabbing the deceased with knives on his stomach and A.3 beating the deceased with an iron rod on his head, that due to fear she raised cries and ran into the premises of Murakonda Jyothi and that the deceased was running towards western side followed by the accused.

As rightly submitted by the learned counsel for the accused, the conduct of PW.6 appears to be highly unnatural. As admitted by her, she is no other than the maternal aunt of the deceased. Except stating that she ran into the premises of Murakonda Jyothi on seeing the occurrence, she did not state as to what she has subsequently done.

Being a close relative of the deceased and an eye witness, she was expected to immediately inform about the incident and also convey the fact of what she has witnessed to her family members and also to that of the deceased. She would also have rushed to the Hospital where the deceased was taken and informed PW.1 about what she has witnessed. The fact that PW.1 in Ex.P.1 has mentioned about the presence of himself and PWs.4 and 5 only and omitted to mention the name of PW.6 as an eye witness, raises a serious doubt about the veracity of her testimony. Even if, for any reason, PW.1 failed to refer in Ex.P.1 about the presence of PW.6 at the time of incident, he was expected to have referred her name as one of the eye witnesses, atleast in his evidence before the Court below. But, that was not to be.

The further improbability of PW.6 being at the house of Murakondal Jyothi, where the accused allegedly attacked the deceased, could be visualised from her admission that the said Murakonda Jyothi was not present at her house and that the door was locked. But, still she claims that she was present at the house of Murakonda Jyothi for getting some vegetables from her. She admitted that there were disputes between Murakonda Jyothi and her husband and that they were residing separately. She further admitted that the house of Murakonda Jyothi belongs to her father-in-law. Though she denied the suggestion that on the date of incident, Murakonda Jyothi was not residing in that house, her above-mentioned admissions are sufficient to raise a reasonable doubt as to whether Murakonda Jyothi was

residing in that house at the time of incident, because when she and her husband were residing separately, she was not expected to reside in the house belonging to her father-in-law i.e., father of her husband. In such an event, the burden lies on the prosecution to prove the fact that the husband of Murakonda Jyothi has left her in his father's house and has been living separately. PW.15, Investigation Officer, in his cross-examination sought to explain the reason for not examining Murakonda Jyothi, as, at that time, she was not present in her house. The above discussed lacunae in the evidence of PW.6 lead us to conclude that PW.6 is also a planted witness as that of PW.1.

If we disbelieve the evidence of PWs.1 and 6, the only other evidence that remains for consideration is the alleged recoveries.

The prosecution relied upon Ex.P.13 – Seizure Mediatornama and the evidence of PW.11, Incharge VRO of Navuluru Village, who was one of the witnesses to the said mediatornama to prove recoveries. A perusal of Ex.P.13 shows that on 25.01.2011 at 5.00 p.m., at a place which was a furlong away from Navuluru Village, the police accompanied by the accused and the said witness seized MOs.4 to 7 on the alleged confessional statement made by the accused in Mangalagiri Rural Police Station. The alleged confessional statement was, however, not marked. The prosecution failed to explain the reasons therefor. As per the evidence of PW.15, on information given by the accused during interrogation, they went to Yerrabalem road and there A.1

brought MO.4 – knife and MO.5 – T-Shirt from bushes, A.2 brought MO.6 – knife from the same bushes, A.3 brought MO.7 – rod from the bushes and that they were seized in the presence of PWs.11 and others under Ex.P.13.

In his cross-examination, PW.15 – Investigation Officer admitted that among MOs.4 and 6, one is new and the other is old, and that MOs.4, 6 and 7 are available in open market. He also admitted that Sharma Dhaba, near which MOs.4, 6 and 7 were allegedly recovered is a busy locality. Ex.P.18 – RFSL Report shows that the blood was detected on Item Nos.1, 3, 4, 5 and 6, which included MOs.4 to 7, and that the same are of human origin.

In **Pandurang Kalu Patil v. State of Maharashtra**¹, 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 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 Pulukuri 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

¹ AIR 2002 SC 733

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)

In our opinion, when the Investigation Officer failed to produce the alleged confessional statement of the accused containing the discovery of fact leading to the recovery of crime weapons, no legal sanctity could be attached to the recovery. Though the confession before the police is not admissible in evidence, under Section 27 of the Indian Evidence Act, the part of the confession which leads to the discovery of fact constitutes relevant evidence. When such confession of the accused, though pleaded, is not placed before the Court, we cannot rule out the possibility of police planting MOs.4 to 7, especially when they were not recovered from the private places belonging to the accused, but allegedly recovered from a place, which is very much accessible to the public. Therefore, it is not safe to believe the recovery based on Ex.P.13 – Seizure Mediatornama alone. While there is a serious doubt about the case of the prosecution regarding recovery for the reasons discussed supra, the law is well settled that mere recovery of weapons without corroborative evidence pointing to the guilt of the accused is not sufficient to hold the accused guilty of the offence.

In **Rambilas v. State of M.P.**² - the Supreme Court held that recovery of certain incriminating articles at the instance of the appellants/accused under Section 27 of the Evidence Act, assuming it to be true, the same alone cannot form the basis for conviction.

In **Wakkar v. State of U.P.**³, the Supreme Court held:

“26. It is true that recovery of certain incriminating articles at the instance of the accused under Section 27 of the Evidence Act by itself cannot form the basis of conviction. The recovery of incriminating articles and its evidentiary value has to be considered in the light of other relevant circumstances as well and the chain of events suggesting the involvement of the accused. The trial court as well as the appellate court did not rest the conviction of the appellants solely based on the recoveries. The fact remains that the recovery of articles used in the commission of offence has been taken into consideration together with other incriminating circumstances brought on record by the prosecution.”

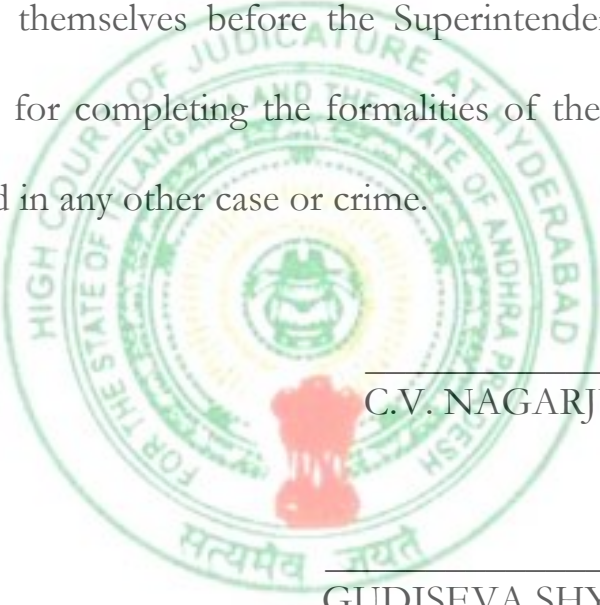
Even with respect to the nature of weapons, there is a discrepancy. While the prosecution has merely referred the MOs.⁴ and 6 as knives, in his cross-examination, the Investigation Officer has clearly admitted that in Ex.P.18 – RFSL Report, the weapons were described as ‘curved knives’. Added to this, he himself admitted that among MOs.4 and 6, one is new and the other one is old and that they are all available in open market. Under these circumstances, no credibility can be attached to the alleged recovery.

² 1997 SCC (Crl) 1222

³ (2011) 3 SCC 306

On an analysis of the facts and circumstances of the case in their entirety, we are of the opinion that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt and the Court below has erroneously convicted the accused.

In the result, the Criminal Appeals are allowed. Consequently, the judgment dated 13.03.2012 under appeals is set aside and the accused A.1 to A.3 are acquitted of the offences with which they were charged. The bail bonds of the accused shall stand cancelled and they shall surrender themselves before the Superintendent, Rajahmundry Central Prison, for completing the formalities of their release, if they are not required in any other case or crime.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

21.08.2018.

NOTE: L.R. Copy be marked.

(B/O)
Msr/DR

**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
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Criminal Appeal Nos.261 and 275 of 2012 and 1083 of 2013



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Msr