

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

CRIMINAL APPEAL No.717 of 2011

Date: 20.06.2018

Between :

Kattupalli Ratna Raju

... Appellant/ Accused

And

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

... Respondent/Complainant

COUNSEL FOR APPELLANT : Sri A. Rajendra Babu

COUNSEL FOR RESPONDENT : Public Prosecutor

THE COURT MADE THE FOLLOWING:

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

This Criminal Appeal, under Section 374(2) of Cr.P.C., is preferred against the judgment dated 09.06.2011 in S.C.No.595 of 2010 on the file of the XI Additional District and Sessions Judge (F.T.C.), Tenali, Guntur District, convicting the appellant/Accused for the offence punishable under Section 302 I.P.C. and sentencing him to undergo Imprisonment for Life and also to pay a fine of Rs.1,000/-, in default of payment of fine amount, to undergo Simple Imprisonment for three months, and also convicting him for the offence punishable under Section 506 I.P.C. and sentencing him to undergo Simple Imprisonment for one year.

The brief facts of the case of prosecution are as follows:

The Accused is a resident of Jangalapalem Village of Repalle Mandal and belongs Hindu (Mala) caste whereas the deceased – Guntur Mariya Das @ Dasu belonged to Hindu (Madiga) caste and he was an Auto driver by profession. The deceased fell in love with the daughter of the Accused and eloped with her from the village and married her. After the marriage, the couple lived separately for a few days in Chodavaram Village of Krishna District. On coming to know about the same, the elders of the village PW-5 and LW-9-Gajuleti Kotaiah, tried to settle the issue and negotiated with the deceased and PW.3 – the daughter of the Accused and wife of the deceased. She asserted that her husband was important to her and she does not want to go to her parents. Thereafter, the Accused visited the house of

PW.3 in Chodavaram and picked up a quarrel with the deceased for marrying his daughter (PW.3) against his will and threatened her that he would kill him. The Accused was waiting for an opportunity to do away with the life of the deceased. On 25.08.2009, LW.7, the neighbour of accused - Neela Yedukondalu, had arranged a function at his house on account of the death of his mother and invited his relatives and well wishers, including the deceased and his mother. On that day, at about 8.30 p.m., while the deceased was going to attend the ceremony and reached the four road junction, by the side of the house of LW.7, suddenly the Accused armed with butcher's knife attacked the deceased and hacked over his head, throat, neck and other parts of the body, due to which the deceased collapsed in a pool of blood and died on the spot. The mother of the deceased (PW.1) along with the Auto driver (PW.2), while coming to the house of LW.7 to attend the function, witnessed the incident from a distance and tried to reach the spot, raising hue and cry. The Accused had threatened them by showing the knife and on hearing the cries of PWs.1 and 2 and LW.7, he fled away from the spot along with the knife. On coming to know about the occurrence, PW.3 – wife of the deceased rushed to the spot and saw the dead body of her husband lying in a pool of blood with injuries. PW.1 – mother of the deceased lodged a complaint on the same day at 10.00 p.m. and the police registered Crime No.147/2009 of Repalle Police Station for the offence punishable under Section 302 IPC. The Investigating Officer,

after visiting the scene of offence seized the blood-stained earth and control-earth in the presence of mediators PW-7 and PW-8 on 26.08.2009, and got photographed the scene of offence by a private photographer – PW.7 and prepared the rough sketch of the scene of offence, held inquest over the dead body of the deceased in the presence of panch witnesses PW-7, PW-8 and LW-13 and after recording Section 161 Cr.P.C. statements of the witnesses – LWs.1 to 6, subjected the dead body of the deceased for autopsy. PW.12 – Medical Officer, conducted autopsy over the dead body of the deceased and issued Ex.P.11 – Postmortem Certificate opining that the cause of death was due to Cardio Respiratory Intracerebral Haemorage and Hypovolemic Shock. On 04.09.2009 at 3.15 p.m., the police arrested the Accused at Jangalapalem Village Bus shelter in the presence of LWs.14 and 15. In pursuance of the confessional panchanama of the Accused, the weapon used in the commission of offence i.e., butcher's knife, was seized from the bushes under the neem tree near Jangalapalem Bus shelter. The blood-stained knife together with the blood-stained earth and control-earth were sent to the Regional Forensic Science Laboratory, Guntur, for analysis and on receipt of Ex.P.10 - RFSL Report dated 10.09.2009, charge sheet has been filed against the Accused for the offences punishable under Sections 302 and 506 IPC.

The learned Magistrate furnished the copies of documents to the Accused as contemplated under Section 207 Cr.P.C. and

committed the case to the Sessions Court under Section 209 Cr.P.C. The learned Sessions Judge framed charges against the Accused under Sections 302 and 506 IPC, for which the Accused pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined PWs.1 to 12, marked Exs.P.1 to P.11 and produced material objects – MOs.1 to 8. On behalf of the defence, no evidence was adduced. On consideration of the evidence on record, the learned Sessions Judge convicted and sentenced the Accused as stated supra.

The point for determination is, whether the judgment in the Sessions Case suffers from perversity or illegality?

Heard the arguments of Sri A. Rajendra Babu, learned counsel for the appellant/Accused and the learned Public Prosecutor.

Learned counsel for the appellant/Accused contended that since the material witnesses i.e., PWs.1 and 2, were the mother and distant relative of the deceased, respectively, are interested witnesses, they gave evidence to implicate the Accused in the crime and, therefore, their evidence is not trust-worthy and cannot be taken into consideration for convicting the Accused. Learned counsel for the Appellant argued that the feast was arranged in the afternoon, but it is the case of the prosecution that PW.1 went to the house of Yedukondalu in the night at 8.00 p.m. and therefore the very presence of PW-1 near the scene of offence is doubtful. It is also contended that there is discrepancy in the evidence of the prosecution witnesses

with regard to the actual scene of offence. It is further contended that the alleged offence took place at 8.30 p.m. on 25.08.2009 and there was no electric pole or light at the scene of offence for the witnesses to identify the Accused and, therefore, the Accused is entitled for the benefit of doubt. It is further submitted that there is no corroboration with regard to the weapon used in the commission of offence and the injuries sustained by the deceased by PW.12 – Medical Officer either in his evidence or in Ex.P.11 – Postmortem Certificate, and as such, there is discrepancy with regard to the nature of weapon used in the commission of the offence.

It was also dark at that place. There was no light to identify the Accused committing the offence.

On the other hand, the learned Public Prosecutor submitted that PWs.1 and 2 are the natural witnesses and their presence at the scene of offence was proved as they narrated the incident of the Accused killing the deceased and therefore, their evidence is trustworthy and that nothing is elicited in their cross-examination to discredit their testimony. It is further submitted that there is no dispute with regard to the scene of offence, which is situated near the house of LW.7 and that the police have also seized the blood-stained earth and control-earth from the scene of offence. It is further argued that as per Ex.P.8 - Rough sketch of the scene of offence, there is an electric pole near the scene of offence and as rightly observed by the

trial Court, there is every possibility of the Accused being identified by the witnesses under the electrical lighting. It is further submitted that as PWs.1 and 2 are not strangers to the Accused and the deceased, there is every possibility of identifying him. It is further contended that the Accused has also verbally threatened while hacking the deceased that he would kill them if they go near him and therefore there is a possibility of the Accused being identified through his voice also by PWs.1 and 2. It is further submitted that the alleged incident occurred on 25.08.2009 at 8.30 p.m., the complaint was lodged by PW.1 in the Police Station at 10.30 p.m. on the same day, that there was no delay in lodging the complaint and that the inquest and Postmortem were conducted on the very next day i.e., on 26.08.2009 . The learned Public Prosecutor, therefore, submits that the prosecution has proved the guilt of the Accused beyond reasonable doubt, and the conviction and sentence recorded by the trial Court do not suffer from any illegality or perversity.

On a careful analysis of the evidence, it is revealed from the evidence of PW.1 that Ex.P.1 was lodged at 10.00 p.m., whereas the incident had occurred at 8.30 p.m. The complainant is an illiterate, and the distance between the scene of offence and the police station is 10 kms. Therefore there was no delay in lodging complainant. There is no possibility of false implication within that short time. Therefore the allegation of false implication of accused is not proved.

Though the feast was arranged by LW-7 in the afternoon, PW-1 could not attend the same in the afternoon and therefore she went in the evening to console him. Therefore her presence at the scene of offence cannot be doubted. The testimony of PW.1 further reveals that there was enmity between the Accused and the deceased. It is evident that the deceased was already a married person, and obtained divorce within 7 months of his marriage with one Mary . It is also pertinent to note that the deceased belongs to Madiga caste, and the Accused belongs to Mala caste. It is also evident that the deceased beat the Accused twice prior to the incident and a complaint was also lodged against him in that regard. These are the circumstances which naturally led the accused to develop bitter enmity with the deceased.

No doubt, it is argued by the learned counsel for appellant that the Auto hired by the deceased was not there at the scene of offence and, therefore, the presence of PW.2 at the scene of offence was to be doubted. As a matter of fact, the offence was committed on 25.08.2009 and the complaint was lodged immediately within 1½ hour after the incident. The Investigating Officer has visited the scene of offence only on the next day morning at 7.00 a.m. and, therefore, the Auto might not have been there at the scene of offence. Moreover in the light of the direct evidence of the witnesses this is not a serious discrepancy to doubt the presence of PW.2 at the scene of offence and his witnessing the incident. In fact, PW.2 stated in his cross-examination that the Accused bore grudge against the deceased due to

caste rivalry as the deceased eloped with the daughter of the accused and married her. Further, PW.2 identified (MO.1) knife with which the Accused hacked the deceased. He had also identified MO.4 - blood stained lungi of the deceased and MO.6 - blood stained shirt of the Accused. This piece of evidence is not discredited in the cross examination of any of the witnesses.

PW.5 is one of the mediators for the dispute, due to the elopement and marrying the daughter of the complainant by the accused. He testified about the mediation held in connection with the said dispute, which corroborates the motive alleged.

The witnesses PWs.7 and 8 are the mediators for preparation of observation of the scene of offence panchanama. PW.8 also acted as inquest panch and opined that the death of the deceased was homicidal in nature. He was also a panch witness for recovery of MO.1 – Veta kodavali from ‘English Tumma Bushes’ under a Neem tree and MO.6 – Sky blue shirt of the Accused at the instance of the Accused under the cover of panchanama in pursuance of the confessional panchnama conducted after the arrest of the accused on 04.09.2009. Hence, the recovery of material objects at the instance of accused is proved.

PW.3, being the daughter of Accused and wife of the deceased, did not support the case of the prosecution, as both of them are important to her. But, she stated in her chief-examination that she

married the deceased against the wishes of her parents. She also stated that the deceased used to ply Auto on rent. On an overall assessment of her evidence, PW-3, being in a delicate situation, she might not have supported the version of the prosecution, except stating that she married the deceased against the wishes of her parents. Therefore, her testimony partly supported the version of the prosecution with regard to the motive of the Accused for murdering the deceased.

PW.4 is a resident of Jangalapalem, where the incident occurred near the house of LW.7 – Yedukondalu. According to his testimony, the death ceremony was conducted in the afternoon and he attended the ceremony to console Yedukondalu and in the evening at 7.30 to 8.00 p.m. he heard shouting from the house of LW.7 – Yedukondalu, went there and found the dead body of the deceased.

It is pertinent to note that the prosecution has mainly relied on the testimony of PWs.1 and 2, who are eye-witnesses to the incident. PW.1 is no other than the mother of the deceased. Her testimony reveals that the alleged incident occurred in front of the house of LW.7 – Neela Yedukondalu. The obsequies of the mother of LW.7 were conducted on 25.08.2009 in his house. As per the testimony of PW.1, her son brought the auto of Rajesh to take the utensils and other articles after the ceremony. On that day, she was coming to the house of Neela Yedukondalu to console him and his relatives. PW.2 also joined her on the way while he was bringing cigarettes. While her

son was standing on the corner of the house of Yedukondalu on the road, the Accused hacked him with a knife on the left side of the head above the ear (temporal region) and on the back of neck, front of neck (throat), on his right hand (right forehead) and on the right side ribs. She also deposed that the Accused had threatened them that he would kill if they go near him and that due to fear, they escaped from there. PW-1 further deposed that the Accused bore grudge against her son as the latter married the former's daughter by eloping with her. She testified that the Accused belongs to Mala caste and they belong to Madiga caste and as such the Accused did not like their marriage and bore grudge against her son. It is clearly revealed from her testimony that due to grudge against deceased the accused killed him. Her testimony further reveals that she had identified MO.1 as the knife used by the Accused for commission of the offence. She had also identified the clothes of the deceased, marked as MO.2 – the blood-stained shirt, MO.3 – the underwear, MO.4 – the Lungi and MO.5 – the waist thread. It was suggested to Pw1 that due to the disputes with the Accused, she foisted a false case against him. In fact, there are no reasons forthcoming for PW.1 lodging a false complaint against the Accused. If really the Accused had not committed the offence, there was no reason for the defacto-complainant to lodge a complaint against him, who is no other than the father-in-law of the deceased. No doubt there was bitter relationship between the accused and the deceased. It is not the case of defense that there was any

enmity between the complainant and the Accused for implicating him in the grave offence of murder, on suspicion.

It is further revealed in the cross-examination of PW.1 that the deceased was plying an Auto for eking out his livelihood for the past two months prior to the incident. Her testimony reveals that the deceased came to the house of LW.7 - Neela Yedukondalu for collecting utensils and taking them in his auto. It is natural that if a function is in the afternoon usually it may go up to two or three hours and thereafter it may take one or two hours for emptying the vessels. There is also evidence of PW.2 to show that the deceased hired his auto for taking utensils from the house of LW.7 - Neela Yedukondalu and that in that connection he had gone with deceased, for collecting the vessels. PW.2 clearly stated that he saw the deceased being hacked by the Accused. Therefore, there are no reasons forthcoming to disbelieve the testimony of PWs.1 and 2.

It is the main contention of the learned counsel for the appellant that there was no electric pole at the scene of offence for PW-1 and PW-2 to identify the Accused. In this regard it is to be noted that the Accused is not a stranger to the witnesses, as he is no other than the father-in-law of the deceased and father of PW.3 and hence there is every possibility of PW-1 and PW-2 identifying him.

At this juncture, it is appropriate to refer to the evidence of PW.9 - Inspector of Police, who conducted the scene of offence

panchanama. On 26.08.2009 he inspected the scene of offence at 7.00 a.m. in the presence of PWs.7 and 8 – mediators, and found the deceased in a pool of blood. He seized the blood-stained earth and control-earth (MOs.7 and 8) under the cover of Ex.P.4 - Observation Report and got prepared Ex.P.8 - Rough sketch of the scene of offence. Nothing is elicited in the cross-examination of this witness with regard to the electric pole situated at the scene of offence and the exact place where it was shown in Ex.P.8 - Rough sketch of the scene of offence. Therefore, the trial Court has rightly appreciated the said fact and came to the conclusion relying on the testimony of PWs.1 and 2 about their witnessing the incident of the Accused hacking the deceased under the lighting of the electric pole.

Further, there is no discrepancy in the evidence adduced by PW.12 – Medical Officer with regard to the injuries suffered by the deceased. Though in Ex.P.11 - Postmortem Certificate, he did not mention about the probable weapon used to cause the injuries, and whether the injuries were chop injuries or not, and has not mentioned about the internal injuries corresponding to external injuries, however, it is to be noted that non-mentioning of the probable weapon used for causing injuries on the deceased, does not make the version of the Medical Officer unreliable. In fact, the Medical Officer has deposed that the injuries are – lacerated or chopped injury on the left chest, and lacerated injury on the right chest, and the lacerated or chopped injury extending into ribcage and lung parenchyma. In the chief-

examination also, the Medical Officer has clearly deposed that the injuries found on the dead body are possible with a weapon like MO.1, sharp and heavy e.g., sword/axe. The evidence on record would suggest that MO.1 – knife, was seized at the instance of the Accused in the presence of the mediators under the cover of panchanama. Further, there no evidence is brought on record to show that the offence was not committed by a weapon like MO.1. The nature of injuries would suggest that they were possible to be inflicted only with a weapon like MO.1, as was asserted by the Medical Officer.

For the foregoing reasons, we are of the considered view that the impugned Judgment, dated 09.06.2011, in S.C.No.595 of 2010 does not suffer from any irregularity or perversity, warranting interference by this Court either with regard to the findings recorded by the trial Court for convicting the appellant/Accused for the offences punishable under Sections 302 and 506 IPC or sentencing him accordingly.

In the result, the Criminal Appeal is dismissed. The conviction and sentence recorded against the appellant (sole accused) for the offences punishable under Sections 302 and 506 I.P.C. in judgment, dated 09-06-2011, in Sessions Case No.595 of 2010 on the file of the XI Additional District Judge (Fast Track Court), Guntur at Tenali, are hereby confirmed.

After the judgment was pronounced, the appellant has personally represented that he is suffering from serious health ailments and he has to perform his son's wedding, which is scheduled to be held shortly. He therefore requested for a month's time to surrender.

Having considered the representation of the appellant and in the facts and circumstances of the case, we permit the appellant to surrender himself before the Superintendent, Central Jail, Rajahmundry, on or before 20-07-2018.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

Date : 20.06.2018.
Msr

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

CRIMINAL APPEAL No.717 of 2011

(P.D. Judgment prepared by
Hon'ble Sri Justice Gudiseva Shyam Prasad)



.06.2018
Msr