

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

Crl.A.No.837 of 2011

Date:05.06.2018

Between.

Kurrapu Nageswara Rao,
S/o Chinnayya

.....Appellant

And.

The State of A.P, repled.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Ms. Hema Jaiswal

Counsel for the respondent: Public Prosecutor for the State of AP

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarajuna Reddy*)

The sole accused in Sessions Case No.68 of 2010 on the file of the learned VI Additional District and Sessions Judge, (Fast Track Court), East Godavari District at Rajahmundry, filed this Criminal Appeal feeling aggrieved by his conviction for the offence under Section-302 IPC and sentencing him to suffer life imprisonment apart from imposition of fine of Rs.1,000/- and in default, to suffer rigorous imprisonment for three months, *vide* judgment, dated 07.07.2010.

The case of the prosecution in brief is as follows:

The appellant, the deceased and P.Ws.1 to 8 are residents of Boorgupalem, H/o Daalipadu Village and are inter-related. The appellant is the paternal uncle of the deceased. While so, during the year 2008, the appellant took a loan of Rs.5,000/- from the deceased and did not repay the same in spite of repeated requests and demands; and that on the evening of 18.01.2009, at about 5 pm., when the appellant asked the deceased to repay the loan amount, the former felt insulted, revolted against the deceased, both of them quarrelled with each other and went away to their respective houses. That later, at about 8 pm., when the deceased was near the house of PW-4, the appellant went there with a bow and arrows, abused the

deceased for insulting him in public by asking him to repay the due amount, shot three arrows on the deceased with a view to kill him, i.e., one arrow hit on the chest, one hit on the left eye and one hit on the nose of the deceased; that when the deceased was lying in a pool of blood, P.Ws.2, 3 and others took the appellant to Government Hospital, Addateegala in 108 Ambulance; that P.W-9 removed one arrow from the chest of the deceased, referred the deceased to GGH, Kakinada for better treatment; and that on 24.01.2009, the deceased succumbed to the injuries. On receipt of complaint from PW-1, PW-14 registered the same as a case in Crime No.1 of 2009 under Section-307 IPC and took up the investigation. During the course of investigation, PW-14 examined P.Ws.1 to 8 on 19.01.2009 and 20.01.2009 and recorded their statements under Section-161 Cr.P.C., inspected the scene of offence in the presence of P.W.10 and LW-11-Kasa Bobbili, drafted Ex.P-7-Scene of the observation report in the presence of P.W.10 and LW-11, arrested the appellant on 23.01.2009 and sent him to judicial custody. That on receipt of death intimation, P.W-15 altered the Section of law from 307 IPC to 302 IPC; that on 25.01.2009, he got the dead body of the deceased photographed by P.W-11, held inquest over the same in the presence of P.Ws.1 and 12 and LW-13-Battula Satyanarayana and sent the dead

body of the deceased for post-mortem examination. P.W-13- Assistant Professor, who conducted autopsy over the dead body of the deceased, opined that the deceased died due to injury to the brain with sub-dural adhesion and piercing injury of skull vault bones along with injury to the right lung as a result of pointed, sharp and piercing object or weapon and issued Ex.P-10-Post-mortem examination report. After the completion of the investigation, the charge sheet was filed.

Based on the charge sheet and the material produced before it, the Court below has framed the following charge:

“That you on or about 20 hours on 18.01.2009 near the house of Lollodi Peramma of Boorgupalem, H/o Dalipadu Village, Y.Ramavaram Mandal intentionally or knowingly did commit murder of deceased viz., Kurrapu China Nageswara Rao, aged 18 years, R/o Boorugupalem, H/o Dalipadu Village, Y.Ramavaram Mandal by shot arrows with a bow on the deceased by inserting three arrows on his right chest, left eye and on nose and thereby, committed the offence punishable under Section-302 IPC within the cognizance of this Court.”

As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution has examined P.Ws.1 to 17, got Exs.P-1 to P-16 marked and produced M.Os.1 and 2. On behalf of defence, no oral evidence was let in, but Exs.D-1 and D-2 were marked.

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

We have heard Ms. Hema Jaiswal, learned counsel for the appellant, and the learned Public Prosecutor for the State of Andhra Pradesh.

At the hearing, Ms. Hema Jaiswal, the learned counsel for the appellant, submitted that the case of the prosecution suffers from many lacuna; that the prosecution failed to prove the motive of the appellant to kill the deceased; that there were no eye-witnesses to the alleged incident; and that in the absence of definite evidence of involvement of the appellant in the alleged incident, the Court below has wrongly held him guilty of the offence under Section-302 IPC. Learned counsel further submitted that the Police have failed to collect the fingerprints on the bow and arrows allegedly used by the appellant to kill the deceased and thereby, depriving him of a valuable defence. She has further argued that the material witnesses, *i.e.*, P.Ws.4 to 8 have turned hostile; that except P.W-3 no other witness has spoken about the involvement of the appellant and that as the solitary testimony of P.W-3 remained uncorroborated, the Court below has erroneously convicted the appellant. Alternatively, she submitted that the offence committed by the appellant can,

at best, be treated as one of culpable homicide not amounting to murder and he may be convicted and sentenced under Section-304 IPC.

Opposing the above submissions, learned Public Prosecutor for the State of Andhra Pradesh submitted that the village in which the offence has taken place is a tribal village; that the appellant, the deceased and the witnesses belong to Scheduled Tribe; that having regard to the intimate relationship among the witnesses and the appellant, majority witnesses have turned hostile, but the totality of circumstances brought out by the prosecution has pointed to the guilt of the appellant beyond all reasonable doubts; and that therefore, the Court below has rightly convicted the appellant.

We have carefully considered the respective submissions of the learned counsel for the parties.

This is a case where the appellant and the deceased are closely related, in that, the deceased is no other than the nephew of the appellant, *i.e.*, son of his elder brother. Except P.W-1, a Ward Member of Boorgupalem Village, all other private witnesses *i.e.*, P.Ws.2 to 7 are closely interrelated. P.W-2 is the father of the deceased and the brother of the appellant. P.W-3 is the sister-in-law of the appellant and the aunt of the deceased. P.W-4 is the sister of the appellant. P.W-5 is the daughter of

P.W-4. P.W-6 is also related to both the appellant and the deceased. P.W-7 is the husband of P.W-3 and the brother of the appellant. P.W-8, though not a relative to the appellant, is a resident of the same village to which the families of the appellant and the deceased belong. It is in this scenario that we are least surprised that P.Ws.4 to 8 turned hostile.

The law is well settled that merely because some material witnesses turned hostile, the case of the prosecution cannot be thrown out if it was able to let in some evidence which is credible and sufficient to find the accused guilty beyond all reasonable doubts. That the Court is concerned with the quality of the evidence rather than the quantity i.e., number of witnesses and that even the uncorroborated testimony of a solitary witness, if truthful, is sufficient to convict the accused. (See *Sunil Kumar v. State Govt. of NCT of Delhi*¹ and *Namdeo Vs. State of Maharashtra*²)

In this background, we shall consider the submissions of the learned counsel for the appellant.

In the charge sheet, it is alleged that the appellant took a loan of Rs.5,000/- from the deceased; that as he did not repay the same, the deceased started demanding the appellant to pay it; and that as the appellant felt insulted on the repeated

¹ (2003) 11 SCC 367

² (2007) 14 SCC 150

demands made in the presence of the villagers, he has done away with the life of the deceased. It is true that no witness has spoken about the motive part, as alleged in the charge sheet. In a case based on circumstantial evidence, motive plays a significant role, but as held by the Courts motive is not a sole factor on which the prosecution case hinges. Even in the absence of a clear motive, if there is credible evidence proving the involvement of the appellant, he will still be liable for conviction.

In **Suresh Chandra Bahri v. State of Bihar**³, the Supreme Court held that motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention, that in a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the court that the accused was guilty of the offence charged with, but it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless becomes untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of

³ 1999 SCC (1) Supp. 80

the crime. In **Ujagar Singh v. State of Punjab**⁴ the Supreme Court reiterated its view that motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

Of all the witnesses, P.W-3 is a material witness. She deposed that after finishing their work, the appellant and the deceased returned to their respective houses; that they quarrelled with each other in the evening at about 5 pm; and that after they dispersed, they again quarrelled for the second time at around 6 pm. She further deposed that during the second quarrel, she has intervened and separated them and brought the appellant to her house and instructed him to remain there and the deceased went to the house of P.W-4 (the sister of the appellant) for sleeping. P.W-3 further deposed that the appellant brought arrows to shoot the deceased; that the first arrow has hit the left eye, the second arrow has hit the nose and the third arrow has hit the chest of the deceased; that she informed about the incident to Saraswathi (one of the sisters of the appellant), who in turn informed P.W-2, the father of the deceased, and others; and that P.W-1 has called the Ambulance through phone and the injured was shifted to hospital at Addatheegala, where the doctors removed one arrow and

⁴ (2007) 13 SCC 90

referred the injured to Yeleswaram Government Hospital, from where he was shifted to Government Hospital, Kakinada.

In the cross-examination, P.W-3 stated that she did not know the place where the first quarrel has taken place while reiterating that the second quarrel between the appellant and the deceased has taken place at her house at about 8 pm. She also stated that the house of P.W-4 is situated at a distance of 10 feet from her house; that the deceased went to the house of P.W-4 and the appellant came to her house; that when she was preparing food and feeding her children, she heard some cries and came out of the house; and that, by that time, the arrows have already hit the deceased. She admitted that arrows are available with all the villagers and they know how to use bow and arrows. It is significant to note that no suggestions were put to P.W-3 regarding the quarrels that have taken place between the appellant and the deceased, her intervention during the second quarrel, the appellant staying at her house, the deceased going to the house of P.W-4 and the presence at the scene of offence and the participation of the appellant in the commission of offence. Thus, the evidence of P.W-3, on material aspects spoken to by her, regarding the involvement of the appellant remained unchallenged. It is also not suggested to P.W-3 that she was speaking falsehood on account of any rivalry or ill-

feelings between her and the family of the appellant. Therefore, even in the absence of proof of motive and non-corroboration of the evidence of P.W-3 by other hostile witnesses, we do not have any reason whatsoever to discard the evidence of P.W-3, which sounds not only natural but also credible. Indeed, P.W-3 being no other than the sister-in-law of the appellant has no axe to grind against him. At this stage, it is relevant to note that the prosecution has got Exs.P-2 to P-6-relevant portions of Section-161 Cr.P.C. statements of P.Ws.4 to 8, respectively, marked. In these statements, all the witnesses have clearly referred to the appellant killing the deceased with bow and arrows. We are, however, conscious of the fact that Section-161 Cr.P.C. statement cannot be treated as substantive evidence, but it can be used only for omissions and contradictions.

In the background we have narrated hereinbefore, though the material witnesses have turned hostile, that should not deter the Court from determining as to who the real culprit is based on the available evidence. The evidence of P.W-3 is also supported by the totality of circumstances, as argued by the learned Public Prosecutor. No suggestion was put to the prosecution witnesses that any outsider came to the village so as to suspect his role in the killing of the deceased. In such a small village, when a person is done to death, the identity of the real

culprit would get exposed in no time. Ordinarily, the family of the victim would not spare the real culprit and falsely implicate an innocent person unless there are strong reasons for such implication.

In **Dalip Singh v. State of Punjab**⁵ it has been laid down as under:

“A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

The above decision has since been followed in *Guli Chand v. State of Rajasthan*⁶ and *Kalegura Padma Rao v. State of Andhra Pradesh*⁷.

⁵ AIR 1953 SC 364

It was not even suggested to P.W-3 that there were rivalries in the village. Therefore, the possibility of false implication of the appellant is totally ruled out. As observed hereinbefore, P.W-3 being equally related to both the deceased and the appellant, she has no reason at all to come out with false evidence to secure the conviction of the appellant by hiding the real culprit. The fact that two quarrels have ensued between the appellant and the deceased in quick succession before the incident also adds credibility to the evidence of P.W-3 that it is the appellant alone who killed the deceased.

As regards the submission of the learned counsel for the appellant regarding not taking of fingerprints, it is to be noted that the arrows and the bow, marked as MOs.1 and 2, respectively, were recovered from the scene of offence and sent to Forensic Science Laboratory (FSL). Ex.P-16 is the FSL report, which detected human blood on the bow and arrows. In a case of this nature, there would be no necessity of taking fingerprints as, there were no other suspects and the appellant was immediately identified. Indeed, in Ex.P-1-report itself the appellant was named. Though the bow and arrows were not recovered from the possession of the appellant, the facts and circumstances clearly point to his involvement. Hence, even if

⁶ (1974) 3 SCC 698

⁷ (2007) 12 SCC 48

every household in the said Village has bow and arrows, that by itself would not lead to an inference that somebody else might have killed the deceased.

As for the alternative submission of the learned counsel for the appellant, we do not feel persuaded to accept the same. The appellant has shot the deceased with as many as three arrows, all on the vital parts, *i.e.*, on eye, nose and chest. PW-13-doctor, who conducted autopsy over the dead body of the deceased and issued Ex.P-10-Post-mortem certificate, opined that the death has occurred due to injury to brain with subdural adhesion and piercing injury of skull vault bone with injury to the right lung as a result of pointed sharp and piercing object. In order that the case falls under culpable homicide not amounting to murder, any one or more of the five exceptions under Section-300 IPC must be attracted. In our opinion, none of the said exceptions gets attracted to the present case. Merely because the deceased died a week after the attack, it cannot be said that the appellant had no intention of killing the deceased. Indeed, after two quarrels, the appellant has brought bow and arrows and attacked the deceased, which clearly reveals the pre-meditated intention of the appellant to kill the deceased. In these facts and circumstances of the case, the alternative submission of the learned counsel is rejected.

For the afore-mentioned reasons, we do not find any reason to interfere with the judgment of the Court below. The Criminal Appeal is, accordingly, dismissed.

As the appellant is on bail in pursuance of the order passed by this Court on 10.4.2017, he shall surrender himself before the Superintendent, Central Jail, Rajamahendravaram, within one week from today, failing which, the Police shall apprehend him.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

05th June, 2018

DR

