

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

CRIMINAL APPEAL No.832 of 2011

Date:20.06.2018

Between :

Erneni Laxmaiah @ Kishore @ Samba Shivudu
... 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 Nandigam Krishna Rao,
for Sri Narra Purushotham Reddy

COUNSEL FOR RESPONDENT : Public Prosecutor (T.S.)

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., arises out of the judgment dated 31.01.2011 in S.C.No.582 of 2010 on the file of the Principal Sessions Judge, Karimnagar, convicting the appellant/Accused for the offence punishable under Section 302 I.P.C. and sentencing him to undergo Imprisonment for Life and to pay a fine of Rs.2,000/- and, in default, to undergo Rigorous Imprisonment for six months; and also convicting him for the offences punishable under Sections 25(1)(a) and 27 of the Arms Act, 1959 and sentencing him to undergo Rigorous Imprisonment for three years for each of the said offences and also sentencing him to pay a fine of Rs.1,000/- for each of the offences and, in default, to undergo Rigorous Imprisonment for six months for each of the offences, with a further direction that all the sentences shall run concurrently.

The appellant – Erneni Laxmaiah @ Kishore @ Samba Shivudu has preferred this appeal challenging the impugned judgment on various grounds.

The case of the prosecution in brief is that the Accused, a Maoist Party underground cadre, is alleged to have killed one Meerja Munthaz Ali Baig (Gore Jani) [hereinafter referred to as “the deceased], aged about 40 years, by fire arms due to previous enmity. On 27.12.2007 at 10.00 a.m., PW.1 – father of the deceased lodged

Ex.P.1 – complaint with P.W.16 – Sub-Inspector of Police, Adavimutharam Police Station, stating that he has three sons, that his first son – P.W.4 is working as an Advocate and residing at Manthani, and that his second and third sons – the deceased and P.W.3 respectively, are residing in Mahabubabad village by doing agriculture. That on 26.12.2007 at about 10.30 p.m., while P.W.3 and P.W.5 - Ward Member of the Village, Mahaboobpalli were chitchatting at the house of P.W.1, the deceased proceeded towards the cotton fields from his house to attend the calls of nature and that while he was turning from the cattle shed towards south direction, after passing 60-70 feet from his house, P.W.1 heard a fire arm sound and the deceased made a hue calling ‘Allah’. That on hearing the same, immediately P.W.1 along with P.Ws.3 and 5 rushed to the place of occurrence and noticed some extremists with big weapons fleeing away from the place towards the cotton fields. That P.W.1 saw them in the street light and found that the deceased was in a pool of blood and struggling for his life and that while P.W.1 and others were shifting the deceased to his house, he died on the way. It was further stated in the complaint that the deceased was doing small contract works in the village, that he was acting as a village elder, that he used to visit the Government offices and Police Stations and that they are landlords in the village. It was also stated that some unknown extremists killed the deceased with fire arms and that due to fear of extremists, P.W.1 could not come to

the Police Station immediately and he requested the Police to take necessary action.

On receipt of the said complaint at 11.00 a.m. on the same day of the incident, PW.16 registered the case in Crime No.103/2007 for the offences punishable under Sections 148, 302 r/w. Section 149 IPC and Sections 25(1)(a) and Section 27 of the Indian Arms Act, and issued Ex.P.10 – FIR dated 27.12.2007. The further investigation was taken up by PW.17 – C.I. of Police, Mahaboobapalli Village. He rushed to the scene of offence on 27.12.2007 and found the dead body of the deceased inside the house. In the presence of panch witnesses - PWs.11 and 12, P.W.17 prepared the Crime Details Form dated 27.12.2007. He has collected the bloodstained earth and control earth – MOs.2 and 3 respectively, under the cover of the Crime Details Form, prepared Ex.P.3 - rough sketch of the scene of offence, which is a cotton field where the deceased went to attend the calls of nature from his house, and seized MO.8 - fire arm rounds from the scene of offence. P.W.17 later went to the house of the deceased from the scene of offence, conducted inquest over the dead body of the deceased and seized bloodstained sweater, full hands shirt, lungi and underwear under the cover of Ex.P.4 - inquest panchanama. After receipt of Ex.P.20 - FSL Report dated 19.02.2008, charge sheet has been filed against the Accused for the offences punishable under Sections 148, 302 r/w. Section 149 IPC and Sections 25(1)(a) and

27 of the Indian Arms Act. On committal, the learned Sessions Judge framed charges against the Accused under Section 302 IPC and Sections 25(1)(a) and 27 of the Indian Arms Act, for which the Accused pleaded not guilty and claimed to be tried.

The prosecution has examined PWs.1 to 19, got marked Exs.P.1 to P.22, and produced MOs.1 to 9. On behalf of defence, no evidence was adduced. On consideration of the evidence on record, the learned Sessions Judge convicted and sentenced the Accused as stated supra.

Heard the arguments of Sri Nandigam Krishna Rao, representing Sri Narra Purushotham Reddy, learned counsel for the appellant/Accused, as well as the learned Public Prosecutor appearing for the State of Telangana and perused the material on record.

Learned counsel for the appellant has relied on the decision in SAHADEVAN Vs. STATE OF TAMILNADU¹ and submitted that if extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent, it may be difficult for the Court to base a conviction on such a confession. In such circumstances, the Court would be fully justified in ruling such evidence out of consideration.

¹ (2012) 6 SCC 403

He argued that the panch witnesses, in whose presence the extra-judicial confession was made, do not appear to be reliable, in the light of the facts and circumstances of this case.

Learned counsel for the appellant also relied on a decision of this Court in NAKKA SREENIVASA RAO @ SREENU Vs. STATE OF ANDHRA PRADESH², wherein it was held that when there were serious material discrepancies in the version of the witnesses and the complaint given to Police, the earliest version has to be taken into consideration.

In the instant case, the motive for the commission of offence was that as the deceased was interfering with the affairs of the villagers in an unjustified manner, the Naxalites have killed him. In the complaint, it is stated by P.W.1 that some unknown extremists have killed the deceased and about 9 or 10 days later, P.W.1 came forward to give the name of the assailant stating that they were scared of him and, therefore, they did not reveal this fact to anybody in the village. This reason does not appear to be the correct. On the other hand, the motive for commission of the offence by the extremists was not proved by the prosecution by any cogent reasons. In the light of the above decisions, the version of the prosecution is not believable and hence the accused is entitled for the benefit of doubts in this case.

² 2018 (1) ALD (Crl.) 672

As per column No.8 of the Inquest Report, ‘the dead body of the deceased was lying supine on a cot in his own house bearing No.B-31 with its head towards East and legs towards West. The details of scene of offence are given in Crime Details Form.’ Column No.15 thereof reads as under:

“As per the statement of witnesses, the panchas are of the opinion that the deceased was an elder in the village and used to do small contract works and visit several Government offices, and as the family of the deceased being landlords, on the night of 26.12.2007 at about 8.30 p.m., while the deceased was going to attend the calls of nature, being shot by some armed extremists and he died due to injuries of fire arms.”

Among the inquest panch witnesses, PW.1 – father of the deceased, PW.2 – wife of the deceased, PW.3 – younger brother of the deceased, PW.4 – elder brother of the deceased, PWs.5 and 6 are residents of Mahaboobpalli village. The panchas opined that the cause of death of the deceased was due to the extremists shooting him to dead. As per the testimony of PW.11, another inquest panch witness, MO.7 is an empty cartridge seized from the scene of offence. Exs.P.3 and P.4 are the panchnamas under which the material objects were seized from the scene of offence.

It is to be noted that the material objects shown in the Appendix of Evidence in the impugned judgment appear to pertain to a different case and by mistake they were shown as material

objects in this case. The material objects seized in this case are as follows:

1. MO.1 – Sweater
2. MO.2 – Shirt
3. MO.3 – Lungi
4. MO.4 – Underwear
5. MO.5 – Plastic tin containing controlled earth
6. MO.6 – Plastic tin containing bloodstained earth
7. MO.7 – Empty Cartridge
8. MO.8 – Fired arm round
9. MO.9 – Seven live cartridges

The panch witnesses PWs.11 and 12 did not state anything about the material object - MO.8 – fired arm round alleged to have been seized in this case. MO.9 is seven live cartridges recovered from the Accused in pursuance of his confession to the police in the presence of panch witnesses PWs.13 and 14 by PW.17 – C.I. of Police.

The prosecution has also examined the panch witnesses PW.13 – Mukkera Ramnarayana, Sarpanch of the Village, Korlakunta; and PW.14 – Panthakani Rajamouli, a resident of Mandaram, H/o. Korlakunta village. According to the prosecution, the Accused made an extra-judicial confession before PW.13 and PW.14. In fact, these two witnesses did not support the case of the prosecution in their chief-examination and denied the suggestion about recovery. Exs.P.5 and P.7 are the signatures of these panch witnesses in the panchanama. These witnesses denied the suggestions made to them in their cross-examination with regard to the alleged confession made by the Accused about his participation

in several offences of murder and mischief, his grudge against the deceased and about killing him and about the accused making confession to PWs.8 and 9 about the murder of the deceased. PWs.8 and 9 are the residents of Mahaboobpalli village. As per their evidence, they enquired with the Accused, who stated to them that he killed the deceased as per the decision of his Party and went away towards the forest and that at that time he was holding a gun. These two witnesses have disclosed this fact to the police ten days after the incident when the police examined them and recorded their statements. The statements of these witnesses do not appear to be the extra-judicial confession made by the Accused. If really the Accused had informed them that he had killed the deceased, they would have informed the same to the Police immediately and they would not have waited till the Police examined them. Therefore, the evidence of these witnesses does not inspire any confidence. According to the prosecution, seven live cartridges were seized by the police at the instance of the Accused, but the same has not been proved, as the panch witnesses PWs.13 and 14 did not support the case of the prosecution. As per the testimony of PW.17 – C.I. of Police, he found an empty cartridge and a bullet at the scene of offence and he has seized the same. He has forwarded MOs.1 to 6 on 07.01.2008 vide Letter of Advice - Ex.P.11 and Letter of Request - Ex.P.12. He has separately referred MOs.7 and 8 to the Ballistic Expert under the originals of Ex.P.13 – Letter of

Advice and Ex.P.14 – Letter of Request. PW.18 is the Circle Inspector of Police, Korutla, who interrogated the Accused in the presence of panch witnesses, PWs.13 and 14. According to him, the Accused confessed that he has been working in Maoist Party, and committed two other crimes apart from the crime in this case, in the name of CPUSI Party. That the accused disclosed that he has fired at the deceased three rounds with 0.303 Rifle, and while the accused was returning from the village after committing the offence, two villagers Panga Pocha and Jadi Sammaiah have seen him, but on knowing about the crime the Maoist Party Cadre insisted the parents of the Accused to handover the cash and weapon immediately to the Party, and accordingly he has handed over the cash and weapon to the Party, but secretly retained with him, the seven rounds. Stating so, the accused handed over the said seven rounds of live cartridges, which were in his possession. What all the accused has said was recorded and the live cartridges were seized under cover of panchanama. Exs.P.15 and P.16 are the disclosure portions in the panchanama. The alleged confession of the Accused is inadmissible as it is hit by Sections 25 and 26 of Indian Evidence Act. It can be used only to the extent of discovery of fact of recovery of seven live cartridges. When he had surrendered his weapon and cash to the Party, it raises a reasonable doubt as to what was the use of keeping seven live cartridges without a gun.

According to the prosecution, the witnesses have seen the Accused leaving the scene of offence after firing the bullets against the deceased. However, there is no satisfactory evidence on record to show that the witnesses have seen the Accused at the scene of offence. Therefore, this case is based on circumstantial evidence. No doubt, there is evidence on record to show that this is a case of homicide and the death occurred was due to the bullet injuries. In fact, the scene of offence was at a distance of 50-60 feet from the house of the deceased.

According to the defence, the deceased was shot dead in the forest area and the relatives of the deceased have brought his dead body and kept in their house only to show that the death occurred at the house of the deceased and also to show the relatives of the deceased as witnesses to the incident.

There is some force in the argument of the learned counsel for the appellant in this regard, as the dead body was found in the house of the deceased and not at the place where the alleged incident has occurred. Therefore, there is a doubt with regard to the scene of offence also as to (1) whether the deceased was killed in the forest and his dead body was brought to his house? and (2) whether the deceased was killed in the fields near his house?

In Ex.P.1 - complaint and Ex.P.4 – Inquest panchanama, the panch witnesses have stated that some unknown extremists have killed the deceased. Therefore, the involvement of the Accused in this crime appears to be highly doubtful. The version of the prosecution, that due to fear of extremists the witnesses did not state the name of the Accused, cannot be believed, as atleast one of the witnesses would have informed the police about the Accused killing the deceased. The silence on the part of the witnesses for about 9/10 days raises any amount of doubt with regard to the version of the prosecution about involvement of the Accused in this case.

Further, the alleged incident occurred during the night at about 8.30 p.m. and it was dark at that time. The witnesses stated that there were lights and under the lights they could identify the accused. PW.1 stated that though he had asked the accused to stop firing at his son, the accused did not stop. When PW.1 was able to talk to the Accused by calling his name and asking him to stop firing at his son, what made him not to reveal that fact in his complaint Ex.P.1, is not known and the same would create any amount of doubt with regard to the version of the prosecution.

Further, there is inconsistency in the evidence of PW.5, who is a resident of the village to which the deceased belonged to. He stated that he cannot identify the person, who shot the deceased

though he knows the Accused, who is also a resident of the same village. Therefore, his evidence is not trustworthy. According to the evidence of PW.7, he heard two rounds of firing near the house of the deceased, that he saw the accused running opposite to him with a gun in his hand and that on seeing him, the Accused pointed his gun towards the witness and threatened him not to disclose the name of the Accused to anybody otherwise he would kill the witness. He disclosed the name of the Accused when the police officials came to record his statement. What are the reasons that made him to disclose the name of the Accused to the Police within a span of a week's time after the incident, are not explained. The weapon alleged to have been used by the Accused is not identified by any witnesses, nor it is produced before the Court for sending it to the Ballistic Expert for his opinion. Therefore, the testimony of these witnesses raises any amount of doubt with regard to the version of the prosecution.

In this case, it is not safe to rely on the sole testimony of the Investigating Officer with regard to seizure of the seven rounds of live cartridges from the possession of the Accused, when two panch witnesses - PWs.13 and 14 did not support the version of the prosecution. On the other hand, the disclosure with regard to the deceased firing with 0.303 Rifle three rounds against the deceased cannot be taken into consideration, as the alleged Rifle used in the

commission of the offence has not been seized from the Accused and sent for opinion of the Ballistic Expert to prove as to whether seven rounds of live cartridges and three empty cartridges are of same size and the three fired against the deceased were fired from the same 0.303 Rifle. MO.9 is seven live cartridges, which were not referred to FSL for comparison with MO.8. The Accused was not in possession of 0.303 Rifle with which he had fired three rounds against the deceased. Therefore, there is no satisfactory scientific evidence to connect the Accused with the crime that he fired the bullets from 0.303 Rifle, which is not seized by the police. A perusal of Ex.P.19 - opinion of the Expert with regard to the fired bullets, reads as follows:

- 1) "Item 1 the copper jacketed bullet must have been fired from a company made 0.303" caliber rifle having six lands, six grooves with right twist etc.
- 2) Item 2 the empty metallic cartridge case must have been fired from any firearm, which can chamber and fire 0.303" calibre rifle cartridges.
- 3) Items 1 and 2 come under the purview of Arms Act."

According to the prosecution, the Accused has fired three rounds by using 0.303 calibre Rifle. The reason forthcoming for not seizing the said Rifle was, that the Rifle and the cartridges were handed over to his Party by the Accused. The prosecution placed reliance on the confessional statement of the Accused, which is not supported by the panch witnesses, and argued that the Accused

fired the said Rifle to kill the deceased. Without the alleged Rifle being produced before the Court and forwarded to FSL, it is not possible to come to a conclusion that the Accused has nexus with the crime and that he fired the bullets by using the said Rifle. Therefore, there is no evidence on record to show that the Accused was in possession of 0.303 Calibre Rifle and fired three rounds against the deceased and those bullets were released from the said 0.303 Calibre Rifle, which was not seized by the police. It is also pertinent to note that in Ex.P.1 – complaint, PW.1 stated that he saw that some unknown extremists have fired against the deceased. Ex.P.19 - FSL Report shows that Item No.1, the copper jacked bullet, must have been fired from a company made 0.303 caliber Rifle; and Item No.2 the empty metallic cartridge case must have been fired from any fire arm, which can chamber and fire 0.303 calibre rifle cartridges. There is discrepancy in the nature of Item Nos.1 and 2 and the weapons with which they can be fired. It is stated in Ex.P.19 FSL report that Item No.1 can be fired from 0.303 Calibre Rifle and Item No.2 can be fired from any fire arm. Therefore, in the absence of recovery of the fire arm and in view of the fact that in Ex.P.1 – complaint, it is stated that the Naxalites fired at the deceased, it raises any amount of doubt as to whether one person is involved or more persons are involved in the commission of the offence. Therefore, the prosecution has miserably failed to bring home the guilt of the Accused beyond

reasonable doubt. The trial Court has erred in placing reliance on the alleged confessional statement of the Accused in the presence of the panch witnesses PWs.13 and 14 and the seizure of MO.9 and concluding that the Accused has committed the offence. Therefore, the findings of the trial Court in convicting the Accused for the aforesaid offence are not sustainable.

The evidence of the blood relatives and the independent witnesses, who have disclosed about the Accused committing the offence subsequent to the filing of the FIR during their Section 161 Cr.P.C. statements, clearly indicates that it is an improvement in the version of the prosecution. There are no reasons forthcoming from the prosecution for not lodging the complaint immediately after the incident and subsequently revealing the same, except stating that as the Accused is an extremist, the witnesses were scared and did not lodge a complaint against him. The said apprehension is not a reasonable one for believing the version of the prosecution.

In view of the foregoing reasons, we are of the considered view that the Accused is entitled to the benefit of doubt in this case and consequently he is found not guilty for the offences with which he was charged.

In the result, the Criminal Appeal is allowed. The convictions and sentences recorded against the appellant in the

impugned judgment are set aside. The appellant is acquitted of the offences with which he is charged. He shall, accordingly, be set at liberty forthwith, if he is not required in any order case(s) or crime(s). The fine amount, if any, paid by him shall be refunded to him.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

20.06.2018

Msr

