

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

CRIMINAL APPEAL No.449 of 2012

Date: 11.09.2018

Between :

Gadi Balaiah (A.1) and others.

... Appellants/A.1 to A.9

And

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

... Respondent/Complainant

COUNSEL FOR APPELLANT : Sri P. Prabhakar Reddy

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

THE COURT MADE THE FOLLOWING:

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

All the accused, who are 9 in number, in S.C.No.402 of 2011 have filed this Criminal Appeal against the judgment dated 27.04.2012, whereby the learned III Additional Sessions Judge (F.T.C.), Asifabad, Adilabad District, convicted them for the offences punishable under Sections 143, 148 and 302 r/w. Section 149 of IPC. They were sentenced to undergo Rigorous Imprisonment for one month for the offence under Section 143 IPC, six months for the offence under Section 148 IPC, and Imprisonment for Life for the offence under Section 302 r/w. Section 149 IPC. The Court below also imposed a fine of Rs.2,000/- on each of the accused and, in default of payment, they were sentenced to undergo Rigorous Imprisonment for three months. All the sentences were directed to run concurrently.

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

That on 28.03.2012 at 12.00 hours, the defacto-complainant came to the P.S., Asifabad and lodged a complaint stating that his brother, Narsingoju Eshwara Chary, was doing Jewellery business at Asifabad, that one Gunda Vishwanatham, r/o. Asifabad was having a land admeasuring Acs.10.54 guntas in Sy.No.174, situated at Edulawada Village, that the said land was in occupation and

cultivation by Gadi Pentaiah (A.8), Gadi Ramdas (A.7) and their brothers and family members for the last 30 years and they were demanding him to sell the above land to them only. But, Gunda Vishwanatham sold the above land to his brother Narasingoju Eshwar for a sum of Rs.1.5 lakhs and got it registered on 26.03.2010 on his brother's name, that on 28.03.2010 at 9.30 hours when his brother Eashwara Chary went to the above land along with his friend Pagide Anantha Rao, r/o. Kaghaznagar, on a motor cycle to oversee the above land and for ploughing it with a tractor, meanwhile, one Gadi Ramdas, Gadi Pentaiah and their two brothers and their wives, total (7) members, wielding axes and stones, attacked him, sprinkled chilly power into his eyes and killed him by beating with stones and axe. On receipt of the said complaint, the S.I. of Police, Asifabad, registered a case in the above crime and investigated into, that during the course of investigation, he recorded the statements of witnesses, that the Circle Inspector of Police, Asifabad, took up further investigation and examined the complainant, that he visited the scene of offence and conducted the scene of offence panchanama, held inquest over the dead body of the deceased and the dead body was subjected to post-mortem examination in which the Medical Officer has opined that the cause of death of the deceased was due to 'A severe head injury', Infra cerebral bleeding with cardio respiratory arrest, that subsequently the dead body, the amount of Rs.12,000/- of Rs.500/-

denominations, Golden finger ring, motor cycle bearing No.AP 01Q 7159 of Hero Honda Glamour were handed over to his parents under acknowledgement, that LW.28 forwarded the material objects to FSL, Hyderabad, for chemical analysis and report, that on 31.03.2010 at 16.00 hours the accused were arrested and on interrogation, they confessed to have committed the offence, that after investigation, the police filed charge sheet.

Based on the charge sheet and the material collected, the Court below has framed the following charge:

“Whether the prosecution has proved the guilt of the accused for the offences 143, 148, 302 r/w. 149 IPC beyond reasonable doubt or not?”

As the plea of the accused is one of denial, they were subjected to trial, during which the prosecution examined PWs.1 to 18 as its witnesses and got marked Exs.P.1 to P.41, besides producing material objects MOs.1 to 20. On behalf of defence, DW.1 was examined and got Exs.D.1 to D.6 marked on their behalf. On appreciation of oral and documentary evidence, the Court below convicted and sentenced the accused as stated supra.

At the hearing, Sri P. Prabhakar Reddy, learned counsel for the appellants/A.1 to A.9 submitted that there is unexplained delay in lodging Ex.P.1 – complaint and forwarding of Ex.P.36 - FIR to the Jurisdictional Magistrate, that PW.2, the only eye witness, being

a stranger to the accused, there was no possibility of his informing PW.1 about the names and identity of the accused and the fact that Exs.P.1 and P.36 contained the names of the accused shows that the accused have been falsely implicated after due deliberations and confabulations, that though PW.2 has attributed overt-acts against A.1 and A.2 with axes, Ex.P.34 – Post-mortem Examination Report do not show axe injuries and that, therefore, his evidence is not worthy of any credence, that once the evidence of PW.2 is discarded, except the alleged seizure of MOs.18 and 19 and Exs.P.41 – FSL Report, no other evidence is available for convicting the accused for the aforesaid offences.

As regards the seizure, learned counsel for the accused submitted that as PWs.11 and 12, the alleged panch witnesses for seizure of MOs.18 and 19, turned hostile, the prosecution failed to prove the said seizure also.

Opposing the above submissions, the learned Public Prosecutor appearing on behalf of the respondent - State (T.S.) submitted that though, there is unexplained delay between lodging of the report and the FIR reaching the Court, in view of Ex.P.41 – FSL Report and the seizure of MOs.18 and 19, axes and boulders, respectively, linking A.1 and A.2 to the murder, the delay is not fatal to the case of the prosecution.

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

The incident has allegedly taken place between 9.00 a.m. and 9.30 a.m. on 28.03.2012, Ex.P.1 – Report was given by PW.1 at 12.00 Noon and the police have forwarded Ex.P.36 – FIR on the same day at 8.30 p.m. to the Jurisdictional Magistrate Court, which is admittedly, situated in the same premises where the Police Station is also situated. It is, therefore, undeniable that there is a long and unexplained delay in the FIR reaching the Magistrate Court. However, the law is well settled that in every case, the delay caused in lodging of the report and the FIR reaching the Court cannot be made the sole basis for throwing out the case of the prosecution. As unexplained delay may give scope for false implication of the accused, the Court needs to carefully consider and scrutinize the evidence of prosecution witnesses to rule out the possibility of such false implication.

PW.2 is the only eye witness to the incident. The deceased as well as PW.2 are the residents of Penchikalpet Village, while the accused belong to Kommugudem Village. As per the version of PW.2, the accused were cultivating the land purchased by the deceased, who wanted to take possession of the said land and get the same ploughed by deploying a Tractor.

In his evidence, PW.2 has narrated how the incident has taken place. According to him, he accompanied the deceased to the land purchased by him at Edulawada on a motor cycle, that the deceased stopped the motor cycle at the land purchased by him, that 6 male persons and 3 female persons were present at the fields, that some of them were removing the cotton remainings and some others were cutting the bushes, that he has seen all the accused approaching them and when asked, the deceased informed him that they are all inter-related and in possession of the lands, that the deceased also informed him that yesterday a quarrel has ensued with the accused in the Jewellery shop and that the deceased has revealed the names of the accused. The witness further deposed that all the accused slowly reached and surrounded them, that one male person caught hold of the hands of the deceased and one lady caught another hand of the deceased, and one male person caught hold of the deceased by his waist, A.7 caught hold of the waist of the deceased, A.8 caught hold of the right hand of the deceased, A.6 caught hold of the hand of the deceased, A.9 and A.5 sprinkled chilly powder on the face and eyes of the deceased, that A.1 and A.2 were armed with axes, that A.1 hacked the deceased with axe on the left side of his forehead and A.2 hacked him from the back side on his head, A.3 and A.4 hit the deceased with boulders on head, chest and other parts of the body, that when the deceased fell

down on the ground, the witness prayed the accused by touching their feet not to kill the deceased, but they did not heed to his request and beat the deceased with axes, boulders and weapons resulting in his death on the spot.

In the cross-examination, PW.2 deposed that he has stated to the police that if they produce the accused before him, he will identify them, but the police have never shown the accused to him for identification purpose, either in the Police Station or in Jail. The witness, however, stated that he can identify the accused. The prosecution got Ex.D.2 – portion of Section 161 Cr.P.C. statement of PW.2 marked, wherein the names of all the accused were mentioned. Significantly, the witness admitted that he did not state to the police the names of the culprits as mentioned in Ex.D.2.

As rightly argued by the learned counsel for the accused, PW.2, being a stranger to the accused and having candidly admitted that he did not reveal the names of the accused even in Section 161 Cr.P.C. statement, it is highly improbable to believe that he would have informed PW.1 about the names of the assailants, who attacked the deceased. The fact that the FIR reached the Jurisdictional Magistrate almost 11.00 hours after occurrence of the incident gives ample scope for the police to falsely implicate the accused by including their names in Ex.P.1 – Report by ante-timing the same. When PW.2 could not identify the accused, the

prosecution failed to prove the participation of A.3 to A.9 in the commission of offence. Though, MO.19 – Two boulders were claimed to have been seized from the possession of A.3 and A.4, they were not sent for examination to the Forensic Science Laboratory. Therefore, the prosecution failed to prove participation of A.3 to A.9 in the commission of offence.

With regard to the participation of A.1 and A.2 in the commission of offence, no doubt, PW.2 may not have identified them as the assailants, PW.17 – Investigation Officer has seized MO.18 – Two axes from the possession of A.1 and A.2, under Ex.P.19 – Recovery panchanama. Though, PWs.11 and 12, panch witnesses, turned hostile, they however, admitted their signatures on the confessional and recovery panchanamas under Exs.P.26 to P.31. PW.17 – Investigation Officer has categorically spoken to the recovery of 2 axes at the instance of A.1 and A.2. Though, PWs.11 and 12 have not supported the case of the prosecution regarding recovery, their admission of signatures on Exs.P.26 to P.31 would render their testimony that they were not parties to the recovery untrustworthy. Evidently, they were won-over by the accused. Therefore, we have no doubt about the prosecution recovering MOs.18 and 19 from the possession of A.1 and A.2.

The most crucial piece of evidence linking A.1 and A.2 with the commission of offence is Ex.P.41 – FSL Report. A perusal of

the said document shows that as many as 13 items were sent to A.P. Forensic Science Laboratory for its examination and report. It is opined in the said report that human blood was detected on Item Nos.1, 4, 7, 8, 10 and 15. Item Nos.7 and 13 are the axes seized from the possession of A.1 and A.2, respectively. Item Nos.2, 3 and 4 of the FSL Report are the shirt, pant and cut sleeved banian, respectively, of the deceased. It is opined in the said report that the blood group on all these items is of 'A'. It is thus clearly evident that the two axes recovered from the possession of A.1 and A.2 contained the blood belonging to the deceased. No explanation was forthcoming from the defence as to how the blood of the same group found on the wearing apparel of the deceased was found on the axes recovered from the possession of A.1 and A.2. Thus, A.1 and A.2 failed to explain the fact in their exclusive knowledge as per Section 106 of the Indian Evidence Act.

As regards the submission of the learned counsel for the accused that no axe injuries were shown in Ex.P.34 – PME Report, we have carefully perused the evidence of PW.14 – Dr. Ch. Jyothi, who held autopsy on the dead body of the deceased. In her evidence, she opined that except Injury No.5, the remaining injuries might have been caused with the boulders and axes. Nowhere in her cross-examination, could the defence elicit from this witness that it was not possible to cause those injuries with axes. No

medical literature is placed by the counsel for the appellants to hold that the said injuries were not possible with axes.

The presence of PW.2 at the scene of offence is proved by the prosecution by producing MO.5 – Nokia Cell Phone, in which the deceased has recorded the conversation at the time of occurrence. The Court below has referred to, in detail, the contents of the said conversation, which amply prove the presence of PW.2 at the scene of offence and his requesting the accused not to throw chilly powder and attack the deceased.

This piece of evidence, coupled with the seizure of MOs.18 and 19, and Ex.P.41 – FSL Report, which conclusively prove that A.1 and A.2 have used the said weapons in killing the deceased, are sufficient to confirm the conviction recorded against them by the Court below.

In the result, the Criminal Appeal is partly allowed. Consequently, while confirming the conviction and sentence of the accused A.1 and A.2, the conviction and sentence recorded against accused A.3 to A.9, vide judgment dated 27.04.2012 under appeal are set aside and A.3 to A.9 are acquitted of all the offences with which they were charged. The fine amount, if any, paid by them shall be refunded to them. The bail bonds of the accused A.3 to A.9 shall stand cancelled. All the appellants/accused shall surrender

themselves before the respective Superintendents of Central Jail, Cherlapalli and Central Jail for Women, Hyderabad, as the case may be. A.3 to A.9 shall be released on completion of the legal formalities, if they are not required in any other case or crime.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

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Msr



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