

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD
CRIMINAL APPEAL No. 913 of 2011

Date : 20-6-2018

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

This appeal is preferred against the judgment in S.C.No.651/2010 on the file of the learned Principal Sessions Judge, Karimnagar whereby respondent Nos.2 to 4/accused were acquitted of the offences punishable under Section 365 r/w. Section 34 IPC and Section 302 r/w. Section 34 IPC.

The appellant is the defacto complainant, basing on whose complaint, the criminal law was set in motion.

The case of the prosecution briefly stated is as under :

A-1 loved the younger sister of Kasarapu Srikanth (hereinafter referred to as "the deceased") and with the mediation of A-2 their marriage was performed in the year 2006. A-2 married the sister of A-1 in the year 2003. A-2 and the deceased were cousins. That there was rivalry between the families of A-2 and that of the deceased with regard to the domination and grip over their village. That the deceased and his family members were not happy with the attitude of A-1

and developed inimical terms with him and A-2. On 2-9-2009 at about 10 p.m. while A-1 was returning to Malkapur village on his motor cycle the deceased tried to attack him with a sword but he managed to escape. That A-1 informed about the incident to A-2 over phone, that on the same day night at 11.30 p.m., A-2 went to the house of the deceased and admonished him whereupon the deceased got wild and attacked A-2 with a sword resulting in grievous cut injury to both his cheeks, due to which A-2 suffered loss of teeth. That the deceased was involved in four criminal cases and a rowdy sheet was registered against him in Karimnagar Police Station. That since one week prior to the murder of the deceased, the deceased along with his associates moved in Malkapur village with an intention to kill A-1 and A-2, that A-1 and A-2, upon observing the activities of the deceased decided to eliminate him anticipating danger to their lives at any time and were waiting for an opportunity, that in the evening on 5-3-2010, A-3 approached A-1 with regard to buying of one gunta of land at Malkapur village for construction of a house and on the same day A-1 and A-3 went to the house of A-2, on his call, for taking him to the Dental Hospital, that at about 6.30 p.m. A-1 to A-3 were proceeding in maruthi car of A-2 bearing registration No.AP10R6915, that while A-1 was driving and A-3 was sitting

in the front seat and A-2 was sitting in the back seat, that at that time the deceased accidentally came in their opposite direction on a motor cycle of his friend PW-6 at Laxmipur village in front of the Kirana shop of PW-7, that the accused took it as an opportunity and dashed the motor cycle of PW-6 with an intention to kill the deceased, that while he was trying to escape, immediately, the accused got down from the car and caught hold of the deceased, that A-1 stabbed in the stomach of the deceased with a button knife, that in the said scuffle A-3 received injury to his right thumb, that all the three accused shifted the deceased into their car and went towards Kamanpur village. That A-1 was driving the car, while A-2 and A-3 sat in the back seat of the car keeping the deceased between them, that on reaching Vaddepalli colony stage of Kamanpur village, the accused found a hillock nearby the road on the left side, that they carried the deceased from the car and laid him down on the hillock, that A-1 caught hold of the legs of the deceased, A-2 caught hold of the hands of the deceased and that A-3 cut the throat of the deceased as per the directions of A-1 with the same button knife. That later, while returning to Dharmaram, the native village of A-3, and after about ½ K.M. from the scene of offence, A-1 threw the button knife at culvert No.10/2, went to Dharmaram village, and parked the car in the open place

located beside the house of A-3. That A-3 took treatment at the clinic of LW-16 and all the accused slept at the house of A-3 during that night. That in the early morning on the next day, they boarded a bus at Dharmaram and went to Hyderabad where they stayed in the Hostel along with LW-17 and that on 18-3-2010, A-1 and A-2 returned to Karimnagar while A-3 left for Dharmaram.

Basing on the complaint given by PW-1, the brother of the deceased, stating that he came to know about a corpse lying in the bushes near Vaddepalli colony outskirts through the Sarpanch of Kamanpur, and identified the same as that of his deceased brother, PW-21 – the Asst. Sub-Inspector of Police, Karimnagar Police Station, registered the case in Cr.No.68/2010 under Sections 365 and 302 r/w. Section 34 IPC and issued express FIRs to all the concerned. That on receipt of the FIR, PW-23, the Circle Inspector of Police, Karimnagar, took up the investigation, he visited the scene of offence, held inquest over the dead body of the deceased in the presence of PW-16 and PW-17, got the dead body photographed through PW-13, observed the scene of offence minutely and collected the blood stained earth and control earth, recorded the statements of PW-1 to 5 and PW-13 and sent the dead body for post-mortem examination. PW-22, the doctor who conducted the post-

mortem examination, opined that the deceased died due to the cut throat injury of the neck with haemorrhagic shock and issued Ex.P-21-report.

That on 18-3-2010 on reliable information PW-23 arrested A-1 and A-2 at the Karimnagar Bus Stand at 3.00 P.M., secured the presence of PW-18 and LW-21 and interrogated A-1 and A-2 separately, that A-1 and A-2 have confessed the offence and PW-23 recorded their confessional statements before the panchas and that in pursuance of their confession A-1 and A-2 led the police and panchas to the outskirts of Vaddepalli colony and from the bushes at culvert No.10/2 on the B.T. road between Karimnagar and Siricilla, the button knife-MO-4 was recovered under seizure panchanama - Ex.P-18. That at the instance of A-1 and A-2, A-3 was arrested at Dharmaram on the same day at 8.10 P.M. That A-3 also confessed to have been committed the offence along with A-1 and A-2 before the panchas and showed the maruthi car parked beside his house which was used in the commission of the offence. After recording the statements of PW-14 and PW-20, PW-23 visited Gayathri Clinic where A-3 took treatment for the injury caused to his right thumb during the commission of the offence, examined the doctor - LW-16 and recorded his statement.

After completion of the investigation, PW-23 filed the charge sheet.

Basing on the evidence on record, the trial Court framed charges against A1 to A3 for the offences under Section 365, r/w 34 IPC and Section 302 r/w 34 IPC, read over and explained to them to the accused, for which, they pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined PWs.1 to 23 and marked Exs.P-1 to P-29 and produced MO-1 to MO-7. The accused have not examined any witness on their behalf nor marked any documents. After closure of the evidence, the accused were examined under Section 313 Cr.PC and they denied the incriminating material against them. The trial Court on consideration of the evidence acquitted the accused of the charges framed against them.

Heard the arguments of Smt. C. Vasundhara Reddy, learned counsel for the appellant, and the learned Public Prosecutor for the respondent State.

The accused were alleged to have committed the murder of the deceased due to the rivalry between families due to the domination of the deceased in the village and also because the deceased refused to give his sister in marriage to A1 who loved her. The marriage of A1 was performed with the sister of

deceased with the mediation of A2. However, the family members of the deceased were not happy with the attitude of A1 and A2, and they were inimical towards them.

To prove the motive, the prosecution has examined PW.1, the youngest brother of the deceased, PW.2, the father of the deceased and PW.3, the second brother of the deceased. The testimony of these witnesses reveals that the relationship between the family of the deceased and that of A-1 was strained. In this connection, PW.1, deposed that A-2 married the sister of A-1, that about 7 years prior to the incident, his sister Revathy married A1 and it was a love marriage, that after the marriage, their relationship was not cordial and that about 10 days prior to the incident, A1 and A2 came to the house of PW.1 and threatened his deceased brother that they would kill him. That PW.1 learnt that on 5-3-2010 when the deceased was going on motorcycle along with PW-6, A1, A2 and another dashed the motorcycle, that the deceased fell down, that A1 and A2 and one unknown person beat the deceased and carried him away in the car leaving PW-6 there and later killed him.

The motive alleged by the prosecution appears to be remote and it does not have much bearing on the incident. It is not prudent to believe that the strained relationship between

the two related families led the accused to commit the offences with which they were charged.

PW.4 is the witness who allegedly saw the dead body of the deceased and informed PW-5-the Sarpanch of the village over cell phone and later the Police and the relatives of the deceased reached the spot.

The prosecution examined PW.6, on whose motor cycle the deceased was allegedly traveling when the accused dashed the motor cycle and kidnapped the deceased. However, this witness deposed that he does not know the deceased and he denied the contents of his statement, Ex.P-2, recorded under Section 161 Cr.P.C. about alleged incident. He turned hostile and the prosecution could not elicit anything in his cross examination in support of its case about his going on motorcycle with the deceased and witnessing the accident and the alleged kidnapping of the deceased by the accused.

PW.7 is the owner of the shop where the accused allegedly dashed their maruthi car against the motor cycle on which the deceased and PW-6 were traveling. He deposed that he was not present in the shop at the time of the incident. PW-7 did not support the case of the prosecution and he was declared hostile. In fact, he has denied the contents of his statement, Ex.P-3, recorded under Section 161 Cr.P.C. PW.11 is the wife of

PW.7, and her testimony is of hearsay evidence. However, she has not supported the version of prosecution.

PW.8 is a resident of Malkapur village. He was examined by the prosecution to speak about the deceased falling off the bike and the accused kidnapping the deceased. His testimony was to the effect that he saw the deceased on the morning of the incident at the pump house near the gram panchayat and that later he has not seen the deceased on that day. He also turned hostile and denied the contents of his statement, Ex.P-4, recorded 161 Cr.P.C statement.

PW.9 is the owner of toddy shop. He was also examined by the prosecution to speak about the accident caused by the accused by dashing against the motorcycle on which the deceased and PW-6 were traveling and the accused kidnapping the deceased. But this witness too did not support the case of prosecution and denied his statement, Ex.P-5, recorded under Section 161 Cr.P.C.

PW.10 was another witness who allegedly witnessed the accused kidnapping the deceased. However, he did not support the case of the prosecution and he was treated as hostile by the prosecution. He denied the contents of the statement, Ex.P-6, recorded under Section 161 Cr.P.C.

PW.12 is a resident of the same village, and he is a circumstantial witness. He did not support the version of prosecution with regard to his coming to know about the alleged accident and the incident of kidnapping the deceased by the accused. This witness also denied his statement, Ex.P-8, recorded under Section 161 Cr.PC.

PW.13 is the photographer, who has taken photographs of the dead body of the deceased at the instance of the Investigating Officer – PW-23.

PW.14 is a resident of Dharmaram village. He was examined by the prosecution to speak about his seeing the maruthi car parked in the vacant site on the southern side of the site of A-3 and its seizure by the Police in connection with the present case. However, he did not support the case of prosecution and denied his statement Ex.P-10 recorded under Section 161 Cr.P.C..

PW.15 is a resident of Karimnagar who was allegedly running a hostel in Hyderabad. He was examined to speak about the accused staying at his hostel after committing the offences. He also did not support the case of prosecution and denied the contents of his statement, Ex.P-11, recorded under Section 161 Cr.P.C.

PW.16 and PW-17, who were examined by the prosecution to speak about the inquest conducted over the dead body of the deceased in their presence and the preparation of Ex.P-25-report, turned hostile and did not support the case of prosecution. They deposed that they do not know how the deceased died, that no inquest was conducted in their presence and that that their signatures were obtained at the civil hospital.

PW.18 acted as the panch for confession statements of A-1 and A-2, in pursuance of which MO-4 - knife, was allegedly seized from the scene of offence, under Ex.P-18. The admissible portion of the confession panchanama relating to A3 is marked as Ex.P19 and Ex.P-20 is the relevant portion of the seizure panchanama of the maruthi car. MO-5 is the maruti 800 car bearing No.AP 10 R 6915 seized in pursuance of the confession of A-3.

As far as recovery of material objects is concerned, the prosecution has to establish that the same have a bearing on the case. MO-4 is the button knife and MO-5 is the Maruti Suzuki car alleged to have been used by the accused in the commission of the offences. To prove the nexus, MO-4 was forwarded to the Forensic Science Laboratory under Ex.P-27 letter of advice

dated 14.03.2010. Ex.P28 is the FSL report, dated 07.04.2010. A perusal of Ex.P28 reveals that item No.4 is soil, item No.6 is the button knife, which is 20 cm in length, and it contains human blood, but the blood group of the blood stains, on the said items could not be determined. Item Nos.1 to 3 – Mos.1 to 3, are the T-Shirt, Jeans Pant and sleeveless Banian of the deceased and the blood stains on these items was determined to be of 'B group'. The MO-4 and MO-7 correspond to item Nos.6 and 4, respectively, of FSL report, and the blood stains on these items could not be determined. The finding that blood of human origin was detected on item Nos.1 to 4 and 6 is not sufficient to come to the conclusion that MO-4 was used in the commission of the offence as the blood group thereon was not determined, for comparison with the blood stains found on MO-1 to MO-3.

In this case, the material eyewitnesses and the circumstantial witnesses did not support the case of the prosecution. The entire case of prosecution is based on suspicion. The sea of suspicion has no shore. No amount of suspicion can take the place of proof.

On consideration of the entire evidence adduced by the prosecution, we are of the considered view that there is absolutely no material against the accused to connect them with

the crime. By the Judgment under appeal, the trial court has properly considered the evidence on record and acquitted the accused and the same does not require interference.

In the result, the appeal is dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

20th June, 2018

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