

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

Crl.A.No.62 of 2012

Date:10.9.2018

Between.

Bandari Sridhar
and three others.

.....Appellants

And.

The State, repled., by the
Public Prosecutor.

.....Respondent

Counsel for the appellants: Mrs. C.Vasundhara Reddy

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

The Court made the following:

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

The judgment, dated 17.11.2011, of the IV Additional Sessions Judge (Fast Track Court), Karimnagar, in Sessions Case No.356 of 2010, is the subject matter of this Criminal Appeal. By the said judgment, the appellants, who are appellant Nos.1 to 4 in the said Sessions Case, were found guilty for the offences punishable under Sections-148 and 302 read with Section-149 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.2,500/- each for the offence punishable under Section-302 read with Section-149 IPC and in default of payment of fine, to undergo rigorous imprisonment for two years each. They were also sentenced to undergo rigorous imprisonment for three years for the offence under Section-148 IPC, with the direction that all the said sentences shall run concurrently.

The case of the prosecution, as reflected from the charge sheet, is briefly stated hereunder:

On 20.10.2008 at about 1.30 pm., P.W-1 came to NTPC Police Station and lodged a complaint before P.W-23 stating that he is working as Casual labour in NTPC; that on 19.10.2008, at about 12 noon, while he was at his house, he came to know that his third son-Mekala Shravan (hereinafter referred as "the deceased") was killed at Medipalli centre; that immediately, he went to Medipalli centre along with his

youngest son-Mekala Praveen; that there he found the deceased lying dead in a pool of blood; and that the deceased's companions-P.Ws.6 and 7 informed him that at around 11.30 pm, appellant Nos.1 to 4 and others attacked the deceased with a sickle, a butcher's knife and sticks, killed him brutally and kept a flag of BJP party beside the dead body before leaving the place. That while so, about ten days ago, one Prashanth-the Sarpanch of Anthergoan told P.W-1 that the deceased (his son) had been interfering with him and warned P.W-1 to ask the deceased to change his ways, lest he would kill him. The said complaint was registered as a case in Crime No.153 of 2008 for the offences under Sections-147, 148 and 302 read with Section-149 IPC.

That during the course of investigation, P.W-24 verified the investigation done by P.W-23, found it on proper lines, secured the presence of P.W-20 and L.W-27-Kudhithela Suresh as the scene of offence panchas, conducted the scene of offence panchanama, observed the scene of offence minutely and drafted its sketch, got it photographed by P.W-10, seized two blood stained sticks, one blood stained big stone, two blood stained bricks and one BJP small flag from the scene of offence, held inquest over the dead body of the deceased in the presence of P.W-21 and L.W-29-Paidakula Thirupathi, examined and recorded the statements of P.Ws.2 to 9 and L.W-5-Mekala Praveen, and later, on his requisition, P.W-18-Deputy Civil

Surgeon, conducted post-mortem examination on the dead body of the deceased. That thereafter, P.W-24 secured the presence of L.W-12-Dasari Anand and P.W-11, examined and recorded their statements.

That on 31.10.2008, at 9 am., on information, P.W-24 and his party rushed to Chandraiah Tea Stall situated near Labour Court, Godavarikhani, and apprehended appellant Nos.1 to 6, who voluntarily admitted their guilt of committing the offence and that their confessional statements were recorded in the presence of P.Ws.17 and 19, in pursuance of which, MOs.1 and 2 were seized under the cover of seizure panchanama. That on 07.11.2008, P.W-24 filed a requisition before the Judicial First Class Magistrate, Peddapalli, to record the statements of P.Ws.5, 6, 7, 12 and 13 under Section-164 Cr.P.C. and accordingly, the former recorded their statements. That P.W-24 collected the Post-mortem examination report from P.W-18, who opined that the cause of death of the deceased was due to shock and haemorrhage due to head injury, and later, he forwarded 11 material objects, viz., blood stained sticks, two blood stained bricks, one blood stained T-shirt, etc., to the Regional Forensic Science Laboratory (RFSL) for chemical analysis and the RFSL expert issued Ex.P-20-report.

That the investigation clearly established that Appellant Nos.1 to 6 and the deceased belonged to different groups; that

there was enmity and grudge between them; that on the night of 19.10.2008 at about 9.30 pm., P.W-14 hosted a party to the deceased and his friends-P.Ws.15 and 16, L.Ws.21 to 24, in Sai Prakash Bar and Restaurant; that at about 10.30 pm., the party concluded and they came out of the Bar; that the said persons went towards Medipalli Cross road in their vehicles; that, at that time, P.W-14 came across P.W-22-a friend of L.W-18-Ravikanth, with whom he had financial transactions; that P.W-22 asked P.W-14 about the payment of L.W-18-Ravikanth and abused him; that P.W-14 tried to convince P.W-22, but the latter did not care, as a result of which, P.W-14 pushed P.W-22 and both of them started quarrelling with each other; that L.Ws.19 to 24 and others returned and attacked P.W-22; that meanwhile, Appellant No.2, a friend of PW-22, who went in support of PW-22, was also beaten; that later, PW-22 was shifted to a private hospital of L.W-25-Neelam Srinivas, in the auto of appellant No.6, where the remaining appellant, *i.e.*, appellant Nos.1 to 4 gathered and decided to attack and kill P.W-15 who took active role in attacking P.W-22; that appellant Nos.1 to 4 took the auto of appellant No.6 by informing their plan to him and went to the house of appellant No.1, collected butcher knife from his house, appellant No.2 collected one sickle from his house, appellant Nos.3 and 4 collected two sticks from the house of appellant No.3; that lastly,

they took appellant No.5 along with them by informing their plan and all the six went in search of P.W-15 and others and when they reached the Tea stall of P.W-8, they found the deceased and his friends-PWs.5 to 7 standing there; that immediately, appellant Nos.1 to 6 got down, took advantage of the situation and decided to kill the deceased to prove their existence; that appellant No.1 attacked the deceased with a butcher knife, appellant No.2 attacked with sickle and appellant Nos.3 and 4 attacked with sticks and killed him; and that appellant No.4 threw a big stone and bricks, which were plastered with cement on the dead body of the deceased, while appellant Nos.5 and 6 were guarding them on the road.

That after completion of the investigation and after obtaining all the relevant documents, the charge sheet was filed.

Based on the charge sheet and the material collected and placed before it by the Investigation Officer, the lower Court has framed the following charges:

“Firstly, that you A-1 to A-6, on 19.10.2008, at about 23.30 hours at Medipalli Crossroads, at one Miya Tea Stall, were members of an unlawful assembly and were at the time armed with deadly weapons, viz., butcher knife, sickle and sticks; which used as weapons of offence were likely to cause death, and thereby, committed an offence punishable under Section-148 IPC and within my cognizance.

Secondly, that you A-1 to A-6 on the date, time, place and during the course of transaction

mentioned in charge No.1 supra, were members of unlawful assembly with common object to kill Mekala Shravan, S/o Komuraiah, 23 years, Yadav, R/o Khajipalli Village (deceased) and that in prosecution of your common object of such assembly did commit murder by intentionally causing the death of said Mekala Shravan, S/o Komuraiah, 23 years, Yadav, Khajipalli Village, that you A-1 attacked him with a butcher knife, you A-2 attacked him with a sickle, you A-3 and A-4 attacked him with sticks and you A-4 threw a big stone and bricks on him while you A-5 and A-6 were guarding them on the road and that you, thereby committed an offence punishable under Section-302 read with Section-149 IPC and within my cognizance.”

As the plea of the appellant was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 24, got Exs.P-1 to P-20 marked and produced M.Os.1 to 3. On behalf of the appellant, no oral evidence was let in. However, they got Exs.D-1 and D-2 marked.

On appreciation of the oral and documentary evidence, the lower Court while convicting and sentencing the appellants (appellant Nos.1 to 4) in the manner as stated hereinbefore, however, acquitted appellant Nos.5 and 6 of all the charges.

At the hearing, Mrs. C.Vasundhara Reddy, learned counsel for the appellants/appellant Nos.1 to 4, submitted that the entire case of the prosecution is based on the evidence of P.Ws.6, 7, 12 and 13, the medical evidence and the alleged recoveries of

MOs.1 and 2, but the prosecution failed to prove its case beyond all reasonable doubt.

Opposing the above submissions, the learned Public Prosecutor for the State of Telangana, has submitted that P.Ws.6 and 7 are natural witnesses, who had no reason to falsely implicate the appellant, and as such, their evidence cannot be discarded. He has further submitted that the lower Court has correctly and properly appreciated the evidence on record and convicted the appellants while acquitting appellant Nos.5 and 6 and that therefore, the judgment under appeal is not liable for interference.

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

Since the case is projected by the prosecution based on the evidence of the eye-witnesses, it is unnecessary for us to discuss the motive aspect set up by it. As rightly submitted by the learned counsel for the appellants, the entire case of the prosecution hinges upon the testimonies of the alleged eye-witnesses, the medical evidence and the alleged recoveries of MOs.1 and 2. We shall, therefore, discuss these aspects in the same sequence.

THE TESTIMONY OF THE EYE-WITNESSES:

P.W-6: He deposed that he is a resident of Khajipalli Village; that he knew the deceased as well as the appellant; that on 19.10.2008, when he was in the house of his uncle at Godavarikhani, the deceased gave him a call on phone saying that there is some disturbance at Medipalli Centre and asked him to come there; that when he was proceeding towards NTPC, he saw P.Ws.14, 15, 16, one Nani and one Ramakrishna; that the deceased got down from the bike belonging to one of them and got on to his bike; that the deceased asked him to proceed to Medipalli Centre; that P.W-16 informed the witness that they will go to their houses; that meanwhile, the deceased got down and went to Medipalli Centre for smoking; that some friends have left the place, while P.Ws.11, 5, 6 and the deceased were present; that an auto came to Medipalli Centre from which, all the six appellant have got down; that appellant No.2 went to the deceased and enquired him about the whereabouts of P.W-15; that meanwhile, appellant No.1 beat the deceased with a butcher's knife on his head and appellant No.2 beat the deceased with a sickle on his neck; that appellant Nos.3 and 4 beat the deceased with stones on body; that appellant No.5 and 6 came to him; and that thereupon, he ran away. That he saw P.Ws.12 and 13 at some distance and he informed them that the appellants beat the deceased; and that, thereafter, himself and P.Ws.12 and 13 went to the scene of offence and saw the

deceased dead lying in a pool of blood. In his cross-examination, P.W-6 further stated that the distance from FCI cross roads to Medipalli chowrastha is $\frac{1}{2}$ km; that NTPC Police Station is located about 200 yards from Medipalli chowrastha; that the alleged incident took place at 11.30 pm; that after the incident, he informed his mother (PW-9) about the incident; that he has not stated the names of the assailants to her; and that he informed about the said incident to three persons, viz., Laxman, Mallesh and Srinu of their Village. While P.W-6 denied the suggestion that he has not stated to the police that appellant No.2 beat the deceased on the neck, the defence was able to extract the omission from P.W-24-the Investigation Officer to the effect that P.W-6 has not mentioned the specific overt act against appellant No.2 in his statement. PW-6 admitted that he has not stated to police that appellant Nos.3 and 4 beat the deceased with sticks. He has also admitted that he has not stated to the Police that Pavan and P.W-13 accompanied him to the dead body of the deceased. When the witness was confronted with Ex.D-1-relevant portion of his statement recorded under Section-164 (5) Cr.P.C., he denied the same. However, Ex.D-1 reads as under:

“After having smoking, except myself and Shravan, other friends left that place.”

P.W-6 also denied as having stated in Ex.D-2-the relevant portion of his statement recorded under Section-164 (5) Cr.P.C., which reads as under:

“When I was going, my another friend-Pavan (P.W-12) came across to me and I told him the entire incident that I witnessed.”

P.W-9 has candidly deposed that P.W-6-her son informed her that the deceased was killed by “some body” and that she does not know who killed the deceased.

A careful analysis of the evidence of P.W-6 exposes his unnatural conduct. On his own showing, the NTPC Police Station is located about 200 yards from the scene of offence. But, he has not ventured to go to the Police and inform about the incident. Though the witness allegedly informed his mother-P.W-9 about the alleged incident, admittedly, he has not disclosed the names of the assailants. He has also not informed the Police that appellant Nos.3 and 4 have beaten the deceased with sticks. While he attributed one blow each with MOs.1 and 2 to appellant Nos.1 and 2 respectively, and the attack by appellant Nos.3 and 4 with sticks, Ex.P-13-Post-mortem report shows as many as 14 injuries, which were either lacerated or deep lacerated wounds.

As noted hereinbefore, the overt acts attributed to appellant Nos.3 and 4 are clearly an afterthought as, P.W-6 has

not spoken about the same in his statement given before the Magistrate under Section-164(5) Cr.P.C. Moreover, he has resiled from Ex.D-1-the oral statement made by him before the Magistrate under Section-164(5) Cr.P.C., which makes him an untrustworthy witness.

P.W-7:

According to this witness, he followed the deceased and P.W-6 on his motor cycle; that when they stopped at a tea stall, he left for toilet; that meanwhile, 4 or 5 persons came in an auto; that appellant Nos.1 to 4 asked the deceased about the whereabouts of P.W-15; that when the deceased informed him that P.W-15 has also left, they announced that they will kill whomsoever it may be and accordingly, appellant No.1 beat the deceased with a knife on his head; appellant No.2 beat him with a sickle on neck; and that appellant Nos.3 and 4 beat the deceased with sticks on the body. In his cross-examination, P.W-7 stated that when the incident was taking place, he hid himself behind a tree. He admitted the sketch plan shown to him as true and correct, as per which, there is no tree near the scene of offence. He has also stated that he has not informed the police about the incident in the Police Station, which is situated about 200 yards away from the scene of offence, and where he allegedly hid himself. The presence of P.W-7 is rendered highly doubtful in the face of the statement made by P.W-6 in Ex.D-1,

wherein as noted hereinbefore, he has stated that before the incident has taken place, all have left except himself and the deceased. More over, the version of P.W-7 that he has hidden himself behind the tree also appears to be false as, on his own admission, the sketch, which reflected the true ground position, does not show the existence of a tree. We are, therefore, of the opinion that P.W-7 like P.W-6 was planted by the Police as an afterthought and that both have not witnessed the incident.

P.W-12:

He is a chance witness. According to him, on 19.10.2008, he along with P.W-13 was returning from Ramagundam to Godavarikhani; that when they reached Medipalli centre, they saw "some persons" beating the deceased with sticks and knives; that they stopped the motor cycle at a little distance; that P.W-6 came and informed them that the deceased was being beaten by some persons; that thereafter, all of them went to the said place and saw the deceased lying on the ground with bleeding injuries; and that the appellant threatened them and left in an auto. In his cross-examination, he has stated that the distance between Medipalli Cross roads and the Police Station is $\frac{1}{2}$ km; that they have to pass in front of the Police Station to reach Godavarikhani; and that they passed on that route on the day of incident, but, they have not informed about the incident in the Police Station. He further deposed that he knew P.W-6, but the

latter's friends are not his friends; that he knew the names of the appellant prior to the incident; and that himself and P.W-13 were called to the Police Station on the next day. He admitted that he has stated to the Police that P.Ws.6 and 7 met him on the road when they were running towards culvert which is situated about 30 meters from the scene of offence. It was suggested to him that he has neither seen anything nor visited the scene of offence.

A close scrutiny of the evidence of P.W-12 does not inspire confidence. While the appellant and the deceased were residents of Khajipalli, P.W-12 is a resident of Godavarikhani. In his chief-examination, he did not claim any acquaintance with the appellant and stated that he saw "some persons beating Shravan (the deceased) with sticks" and at a later stage, he has stated that the appellant are the same persons who beat the deceased. Had P.W-12 identified the assailants as the appellant, he would not have deposed that he saw "some persons" beating the deceased. More over, as referred above, in his cross-examination, P.W-12 stated that P.Ws-6 and 7 have met them when they were running towards culvert which is situated about 30 meters from the scene of offence. This, coupled with his statement in chief-examination that P.W-6 came to them and informed about the attack on the deceased unmistakably shows that even if they were present near the scene of offence,

they were about 30 meters away from it and it is at that place, that P.W-6 allegedly informed them about the attack on the deceased by "some persons". Thus, the equivocal stand of P.W-12 does not make the Court to believe that he witnessed the occurrence from a close distance and that he could identify the assailants as the appellant. Though, he and P.W-13 have passed by the Police Station to go to their native place-Godavarikhani, they have not even bothered to stop at the Police Station and inform the Police about the alleged incident.

P.W-13:

This witness made a parrot-like repetition of what P.W-12 had deposed. For the same reasons which convinced us to disbelieve the evidence of P.W-12, the testimony of this witness also cannot be believed.

From the above discussion, we are of the opinion that none of the witnesses among P.Ws.6, 7, 12 and 13 were either eye-witnesses or circumstantial witnesses to the alleged incident.

Medical Evidence:

Ex.P-13-Post-mortem report shows as many as 14 injuries on various parts of the deceased, such as head, back of the chest, left frontal region, middle of the nose, mouth and chin, etc.

P.W-18-Deputy Civil Surgeon, who conducted autopsy on the dead body of the deceased, has not referred to any of the aforesaid injuries except a head injury which was found as the

cause of death. When a knife, a sickle and stones were allegedly used in causing either lacerated or deep lacerated injuries, the prosecution has not elicited as to which injury was caused with which weapon. It has at least not shown MOs.1 and 2 (though the sticks were sent to R.F.S.L. report, they were not marked as Material Objects) to P.W-18 and elicited from him as to whether it was possible to cause the injuries shown in Ex.P-13 with those Material Objects. Thus, the medical evidence is very shaky and hazy, which cannot be made basis for the Court to come to a definite conclusion that the injuries found on the body of the deceased might have been caused with MOs.1 and 2.

Recoveries:

In pursuance of Exs.P-4 to P-9-the alleged confessional panchanamas of appellant Nos.1 to 6 respectively, MOs.1 and 2 were allegedly recovered under Exs.P-10 and P-11-recovery panchanamas. P.Ws.17 and 19 are the panch witnesses for the recovery of MOs.1 and 2. Apart from these two witnesses, P.W-24-Investigation Officer has spoken to the alleged recoveries. P.W-17 deposed that on 31.10.2008 at 10 am., the Police have called him to the tea stall near Labour Court; that he along with P.W-19 enquired from each of the appellant separately; that the appellant informed them that they have killed the deceased with a knife with wooden handle at Medipalli centre main road; that appellant Nos.1 to 5 left in an auto and kept the weapons in the

house of appellant No.2 in the backside of the bathroom; that the Police and the appellant brought the weapons and showed to them and that they were recovered under Exs.P-10 and 11. Contrary to what he has deposed in the chief-examination, P.W-17 stated in his cross-examination that he and P.W-19 were taken by the Police in a jeep; that appellant No.1 informed them that the house to which they were taken belongs to him; that the house was kept open; that appellant No.1 went to the backyard of his house, while the panch witnesses were standing in the front yard, and brought MOs.1 and 2.

The evidence of P.W-19 also suffers from the same inconsistency as that of P.W-17. In his chief-examination, P.W-19 stated that the weapons were kept in the house of appellant No.2 in the backside of bathroom. This witness gave a contradictory version in his cross-examination by stating that appellant No.1 alone has gone to the backyard of his house and brought the weapons. However, P.W-24 deposed that appellant Nos.1 and 2 lead the Police and the panchas to the house of appellant No.2, where he has recovered MOs.1 and 2 from their respective possessions under separate panchanamas. In Exs.P-10 and P-11, the version spoken to by P.W-24 is reflected. Thus, the testimonies of P.Ws.17 and 19-panch witnesses regarding the house from which M.Os.1 and 2 were seized were diametrically contrary to the contents of Exs.P-10 and P-11 and

the testimony of P.W-24. The above discussed inconsistencies render the theory of recovery of MOs.1 and 2 put forth by the prosecution wholly unbelievable.

Based on the discussion undertaken hereinbefore, we are of the opinion that all the three crucial and critical aspects on which the prosecution has relied upon, viz., the evidence of P.Ws.6, 7, 12 and 13-the alleged eye-witnesses, the medical evidence and the alleged recoveries of MOs.1 and 2, have not been proved by it beyond all reasonable doubt. Therefore, the appellants are entitled for benefit of doubt.

In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants are set aside. The fine amount paid by the appellants shall be refunded to them. The bail bonds of the appellants/appellant Nos.1 to 4 shall stand cancelled. The appellants shall surrender themselves before the Superintendent, Central Prison, Warangal. On such surrender, they shall be released if they are not required in any other case.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

10th September, 2018

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