

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD**

CRIMINAL APPEAL No.624 of 2011

JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellant/A-1 has challenged the judgment dated 23rd April 2011, passed by the Judge, Family Court, Anantapur, in Sessions Case No.672 of 2008, whereby, the appellant was found guilty for the offences punishable under Sections 302 and 148 of IPC and sentenced to suffer imprisonment for life and pay a fine of Rs.100/-, in default, to suffer simple imprisonment for one month for the offence under Section 302 of IPC. He was sentenced to suffer simple imprisonment for one year for the offence under Section 148 of IPC.

2. Case of the prosecution is that on 19th March 2008 at about 9.30 p.m., the deceased and his brother, Hanumanna (PW-1) went to the house of their friend Chakali Chandra on the motorcycle of the deceased. Khadar Basha, Tailor (PW-5) came there and the deceased paid tailoring charges to him. Thereafter, the deceased and PW-1 left for their village Kasapuram on the motorcycle. The deceased was the rider and PW-1 was the pillion rider. When they came in front of Vasavi theatre, A-1 to A-18, who were hiding near the theatre armed with hunting sickles and daggers, surrounded them and attacked. A-1 hacked the deceased with a hunting sickle on the right side of his neck. Then the deceased and PW-1 fell down from the motorcycle. A-2 and A-8 hacked the deceased with sickles on his back. Some of the accused caused severe injuries to the deceased. PW-1 ran away to save his life and informed the incident to

his junior paternal uncle, Narayanappa (PW-2). After some time, PW-1 returned to the scene of offence and found the deceased dead in a pool of blood. At about 10.30 p.m., PW-1 went to Guntakal II-Town Police Station and presented a written complaint/Ex.P-1 to Sanjeevulu, the then ASI (PW-14), who registered a case in Crime No.14 of 2008 for the offences under Sections 147, 148 and 302 r/w.149 of IPC and sent copies of FIR to all the concerned. Ex.P-15 is copy of FIR sent to the Court. On receiving information from PW-14, U.Narsingappa, the then Circle Inspector of Police, Guntakal Urban Circle (PW-15), rushed to the scene of offence at 10.45 p.m. along with Police Constables and found the dead body of the deceased in front of main gate of the theatre in the pool of blood. He posted the Constables to guard the scene and dead body. He searched for the accused in and around the scene, and in particular, on the Northern side of Guntakal town, but in vain. He again reached the scene of offence at 11.30 p.m., received copy of express FIR from PW-14 and took up investigation in the case. He and Circle Inspector of Police, Guntakal Rural surprised the houses of accused and found them absconding.

3. On 20th March 2008, PW-15 visited the scene of offence and secured the presence of panchas, G.P.Vishwanatha Reddy (PW-8), K.Mallikarjuna (PW-9) and K.Sathyanarayana Rao (PW-11), blood relatives of the deceased and villagers and held inquest on the dead body of the deceased. He examined the dead body and also examined and recorded the statements of PWs.1 to 7 and others. He seized blood-stained Nokia Cell phone (M.O.5), one pair of old black colour

chappal, one black colour left leg chappal, blood-stained earth (M.O.6), control earth (M.O.7), white shirt (M.O.1), white banian (M.O.2) and one blue colour pant. He got the scene of offence photographed. He prepared rough sketch of the scene of offence. After the inquest, he sent the dead body for Postmortem Examination. He moved in the area and examined few persons, but they did not state anything. He went to Rajendra Nagar area and inquired about Ramanjanamma, the concubine of deceased, but her house was found locked. He went to Kasapuram and secured the presence of K.Suresh (PW-10), Mekala Anjaneya, K.Hanumanthu and G.Jayaramudu, examined them and recorded their statements. On 05.04.2008, he received the postmortem examination certificate. On 24th March 2008, he sent the material objects along with letter of advice to the RFSL, Tirupathi through the committal Court. Himself and Circle Inspector of Police, Guntakal Rural made several attempts to arrest the accused, but in vain.

4. Further case of the prosecution is that on 08.04.2008, at 1 p.m., on information about the accused, PW-15 left the Circle office along with S.I. Jayaramudu and staff. On the way, they picked up the Circle Inspector, Guntakal Rural, the S.I., Kasapuram P.S. and staff. They picked up mediators K.Sathyanarayana Rao (PW-11) and G.Sivaiah (PW-12) and reached Bugga Sangameswara Swamy temple situated near Bugga Sangala village. They found the accused sitting on Eastern side compound wall of the temple. On seeing them, the accused tried to runaway, but they were detained with the assistance of the staff. Their confession statements were recorded in the presence of PWs.11 and 12,

which led to the seizure of 5 sickles (M.O.3) and two blood-stained daggers (M.O.4) as shown by A-1 at Meetu Naik temple beside Gooti-Guntakal road near Thimmapuram village on the same day at 5.30 p.m. under a cover of seizure panchanama/Ex.P-18. Ex.P-17 is the relevant portion of the arrest mahazar. On 09.04.2008, A-1 to A-18 were sent for remand. On the same day, he sent the case property along with letters of advise, Exs.P-19 and P-20 to the RFSL, Tirupathi, through the committal Court. After receipt of reports in Exs.P-21 and P-22 from RFSL, and after completion of investigation, he filed charge sheet against the accused for the offences punishable under Sections 147, 148 and 302 r/w.149 of IPC.

5. The learned J.M.F.C., Guntakal took the charge sheet on file as P.R.C.No.13 of 2008 and after following the required procedure, committed the case to the Court of Session, Anantapur, by order dated 04.08.2008. The said Court framed charges under Sections 147, 148 and 302 r/w.149 of IPC against the accused and under Section 302 of IPC against A-1, A-2, A-8, A-13 and A-16 to A-18. The accused pleaded not guilty and claimed to be tried. To prove the charges, prosecution examined PWs.1 to 15 and marked Exs.P-1 to P-22 and M.Os.1 to 7. The accused got marked 3 contradictions/Exs.D-1 to D-3 through PW-1, 2 contradictions/Exs.D-4 and D-5 through PW-7 and one contradiction/Ex.D-6 through PW-10. V.Yugandhar, S.I. Guntakal II-Town Police Station was summoned and examined as CW-1 and through him, G.D. entry dated 19th March 2008 recorded at 10.30 p.m., was marked as Ex.C-1. The accused were examined under Section

313 Cr.P.C. and they denied the incriminating material put to them. However, they did not adduce any oral evidence in their defence.

6. Accused No.14 died during the trial, therefore, the case against him was abated. After considering the evidence of the prosecution witnesses and rival contentions of the parties, the learned trial Court held that the prosecution failed to prove the guilt of A-2 to A-13 and A-15 to A-18, but proved the guilt of A-1, who is appellant before this Court.

7. Learned counsel appearing on behalf of appellant argued that the learned trial Court failed to appreciate the fact that PW-1 and deceased being brothers, proceeded in the lane towards town by the side of cinema theatre on motorcycle and the eyewitnesses deposed in their evidence that there were bloodstain marks on the motorcycle, which was fell to ground at the time of offence, but the same was not seized by the Police for the reasons best known to them. PW-1 being pillion rider of the motorcycle driven by his deceased brother, has not disclosed the registration number of the motorcycle and other particulars, which shows that the motorcycle is planted in the scene by the Police, to prove the presence of PW-1 at the time of occurrence. The conduct of PW-1 in lodging complaint before the Police Station which is situated at a distance of one kilometer, is highly improbable and explanation given for delay by PW-1 is only to manage the time, which doubts the genuineness of FIR. There is no mentioning of the names of all other accused except A-1 to A-12 in the FIR given by PW-1. PW-1 is a planted witness for the reason that in Ex.P-1 complaint, he stated that when they were on

motorcycle, A-1 to A-18 attacked. However, in the Court, he deposed that their motorcycle was stopped, thereafter, the accused attacked the deceased. Had PW-1 present at the scene of offence along with the deceased, he would have also been attacked by the accused persons. However, he has not received any injury in the said incident. In addition to above, the scribe of complaint has not been examined. Thus, if the FIR is not proved, the conviction cannot be imposed on the appellant. PWs.7 and 10 are close relatives of the deceased. They did not say the presence of each other in their depositions. PW-2 is the junior paternal uncle of the deceased, who instructed PW-1 to give a report. Therefore, PW-1 implicated 18 accused on the instructions of PW-2 only. There is no truth in the deposition of PW-1 that he had seen the attack upon the deceased by the accused persons. It is the admitted case of PW-1 that he spoke to PW-2 about the incident and took instructions on phone and thereafter, made complaint to the Police. After full trial, the Court acquitted all the accused except the appellant herein. The State has not filed any appeal to challenge the acquittal, therefore, based on the same evidence and same witnesses, when all other accused persons are acquitted, only the appellant/A-1 cannot be convicted for the offence punishable under Section 302 of IPC. PW-1 also does not speak about the presence of PWs.7 and 10 at the scene of offence. However, the Court has relied upon the evidence produced by the prosecution and convicted the appellant. Moreover, none of the witnesses in their statements to the Police, mentioned about the existence of street light at the place of occurrence, nor it is shown in the rough sketch of the scene

of offence. However, the witnesses deposed about the existence of street light at the scene of offence.

8. To strengthen his argument, learned counsel for appellant has relied upon the judgment of Supreme Court in **State of M.P. v. Ghudan**¹, wherein, it is observed that if really there was a tubelight, by which, PW-26 identified the respondent, then, the investigating agency would certainly have shown the existence of a tubelight and its placement in the sketch because, it was a very important fact mainly because, the identification of accused is a vital factor to be proved by the prosecution. The benefit of omission to point out the existence of such light in the sketch, should go to the accused.

9. Learned counsel for appellant submitted that in the present case also, in the rough sketch, the investigating officer has not mentioned about the existence of street light near the place of occurrence, whereas, the witnesses deposed before the Court that there was a tubelight in the street. In such situation, the benefit should be given to the appellant.

10. Counsel for appellant has also relied upon the judgment of Supreme Court in **State of U.P. v. Bhagwant & others**², wherein, it is observed that the accused would not have assaulted only the deceased on the facts and circumstances of the case when PW-1 was also at the spot, standing few paces away from the deceased. Learned counsel for appellant submits, in the present case also, PW-1 was pillion rider of the deceased and when 18 accused persons attacked the deceased, there was

¹ 2005 SCC (Cri) 801

² 2003 Cri.L.J.2337 (SC)

no chance of his escaping from being injured. Thus, PW-1 is a planted witness, however, the trial Court has relied upon said witness and convicted the appellant.

11. Learned counsel for appellant further relied upon another judgment of Supreme Court in **Syed Ibrahim v. State of Andhra Pradesh**³, wherein, the Hon'ble Supreme Court observed that no particulars of the person who allegedly scribed the report, not even his name, was stated by PW-1. His evidence is further to the effect that he alone had come to the Police Station, where the report was lodged. The Supreme Court held that if the scribe of complaint is not examined, the benefit of the same is to be given to the accused.

12. The learned counsel further relied upon the judgment of Supreme Court in **Prem Singh v. State of Punjab**⁴, wherein, the conviction of appellant which was founded solely on the evidence of two witnesses whose testimony in regard to the other accused was held by the trial Court and the High Court to be unreliable and disbelieved in regard to the participation of said 4 other accused in the incident, was set aside. The Supreme Court held that it is difficult to base conviction solely on the evidence of such witnesses.

13. Learned Public Prosecutor, on the other hand, argued that the trial Court has relied upon the depositions of PWs.1, 2, 7 and 10 out of total 15 witnesses examined. PWs.3, 4, 5 and 6 have not supported the case of the prosecution, therefore, they are declared hostile. The presence of

³ 2007 (1) ALT (Cri) 183 (SC)

⁴ (1976) 1 SCC 805

PWs.7 and 10 was doubted by the trial Court, therefore, based upon the said evidence, the trial Court acquitted the other accused. However, believed the evidence of PW-1/eye witness and the deposition of PW-2, who was conveyed the incident by PW-1. He further submitted that street light was not necessary to be mentioned in the FIR. In FIR, only the first information is required. So, each and every aspect of the incident cannot be mentioned in the FIR, as rest of the things are subject matter of investigation. Therefore, if the street light is not mentioned, that is not fatal to the prosecution case. Moreover, the incident had taken place between 9 and 9.30 p.m. in front of the cinema theatre. Obviously, there was a street light. PW-15 has admitted the fact that in the rough sketch of scene of offence he did not show the existence of street light, due to mistake. The motorcycle was not seized and no registration number was given for the reason that it was not the crime vehicle and it was a brand new vehicle, having no registration number. Therefore, neither the said vehicle was seized, nor its number was mentioned. The contention of the appellant that the motorcycle was planted, is contrary to the inquest report, wherein, the motorcycle was specifically mentioned that the said vehicle was not seized, being not the crime vehicle. As per Section 172 Cr.P.C. r/w. 477(2) of Police Manual, only gist of the FIR is to be mentioned in G.D., however, not the whole story. But, the presence of A-1 and A-2 was mentioned in G.D. PW-1 was a pillion rider, who deposed that the first blow was given by A-1 on the neck of the deceased. The Doctor who conducted postmortem examination also disclosed that injury No.1 had caused the death. The learned Public Prosecutor

submitted that the said injury was inflicted by A-1, therefore, A-1 was convicted and the rest of the accused were acquitted by the trial Court. Learned Public Prosecutor has relied upon the judgment of Supreme Court in **Israr v. State of U.P.**⁵ In Para 24 of the said judgment, the Hon'ble Supreme Court has observed as under :

“Under the provisions of Section 34 of IPC, the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them.”

14. The learned Public Prosecutor submitted that if some of the accused are acquitted, others cannot claim acquittal. The Court has to see the role of each and every one in commission of the offence.

15. We have heard learned counsel for the parties and perused the record.

16. No doubt, conviction can be based on the evidence of a single eyewitness, but the evidence must be cogent, clear and trustworthy. The evidence of PWs.1 and 2 shows that at around 9.45 p.m., PW-1 informed

⁵ (2005) 9 SCC 616

PW-2 on phone that the deceased was killed at Vasavi cinema theatre. As per the complaint, the number of assailants is 12. PW-2 stated that PW-1 informed him that A-1 and 14 others killed the deceased. "14 others" must be distorted version, and if that is discarded, 11 others must be the information given to PW-2. By 10.30 p.m., PW-2 reached the place of incident. PW-2 himself stated that since about 12 years, there is group rivalry between them and the accused. There is every possibility of PWs.1 and 2 adding the names of A-2 to A-12 and involving them in the offence due to group rivalry, after deliberations and consultations. The name of A-13 is not reflected in Ex.P-1. But in the chief-examination, PW-1 stated that while running away from the place of incident, he saw A-13 hacking the deceased with a sickle on the right side of the neck. In the cross-examination, he stated that he did not fall from the motorcycle when A-1 and A-13 hacked the deceased. Contradiction in Ex.D-2 was marked. As per Ex.P-1, after A-1 hacked the deceased on his neck, they fell down from the motorcycle. In the circumstances, the presence of A-13 and his involvement in the offence was doubted by the trial Court. PW-1 did not speak of even the presence of A-16 and A-18 at the time of incident. Their names are not reflected in Ex.P-1. Accordingly, by giving the benefit of doubt, the trial Court acquitted A-16 and A-18. As stated by the witnesses that A-1 to A-15 and A-17, armed with sickles and daggers, went opposite to the deceased and PW-1. A-7, A-14 and A-15 raised cries that they must be killed. Then, PW-1 got down from the motorcycle, went to a distance of about 10 feet. Later, A-1, A-2 and A-8 hacked the deceased one after another.

In the cross-examination, PW-1 stated that the recital of Ex.P-1 that except A-1 and A-2, the remaining persons surrounded him; that by the time A-1 hacked the deceased, he was at the distance of 10 feet; that he did not fall from the motorcycle and that he did not state to the Police as in Exs.D-1 and D-2, are not correct. In Ex.P-1, there is only mention of hunting sickles. PW-1 stated that he got mentioned in Ex.P-1 the names of persons who were armed with hunting sickles and daggers. The learned trial Court accordingly relied upon the said witness against the aforementioned accused. In the cross-examination, PW-13/the Doctor who conducted post-mortem examination, stated that if the injured was on motorcycle and received injury number one, then he would collapse immediately. Depending on the position of the injured, one can say about the impact of injury No.2. He categorically stated that normally, after receipt of injury No.1, the injured would not withstand to receive injury No.2. Then, it is difficult to believe the version of PW-1 that A-2, A-8 and A-13 hacked the deceased one after another after A-1 causing injury No.1. As per PW-1, he did not mention the names of A-13 to A-15 in Ex.P-1. The names of A-16 to A-18 were not written by him in Ex.P-1 as he did not see them at the place of offence. Admittedly, A-13 to A-18 were added during the course of investigation. The prosecution submitted that PW-1 was in perplexed condition and he was not in a position to mention the names of A-13 to A-18. The learned trial Court has not accepted the said submission on the ground that it was already held that Ex.P-1 was prepared after consultations and deliberations with PW-2.

17. It is the specific case of the prosecution that while A-1 hacking the deceased with a hunting sickle, the deceased and PW-1 fell down from the motorcycle and immediately, A-2 to A-8 hacked the deceased with sickles on his back. It is not mentioned in Ex.P-1 that A-8 hacked the deceased with a sickle on his back. It is also not mentioned in Ex.P-1 as to on which part of the body of deceased A-2 hacked. If really A-2 to A-18 were at the scene of offence and participated in the commission of offence as stated by PW-1, PW-1 would have narrated the same to PW-2 and the same would have been reflected in Ex.P-1.

18. As submitted by the counsel for appellant, if PW-1 was pillion rider and A-1 hacked the deceased with a hunting sickle while he was sitting on the motorcycle, PW-1 would also have received injury. Further, the offence allegedly took place in a narrow lane and 14 out of 18 accused were said to be after PW-1. If really PW-1 was along with the deceased at the time of offence, his escaping without receiving injury in the hands of accused, would normally be not possible.

19. It is pertinent to mention here that the trial Court, despite doubting the presence of PW-1 with the deceased at the time of incident, convicted A-1 based on the evidence of PW-1, who claimed to be eyewitness of the crime. It is admitted by PW-2 that there is old rivalry between them and accused persons, therefore, he instructed PW-1 to mention particular names of the accused and accordingly PW-1 reported the matter to the Police. If the presence of PW-1 is doubted by the trial Court and rest of the accused are acquitted, then, we wonder, as to what version of PW-1

was believed by the trial Court for convicting the appellant/A-1. If 11 or 12 persons had attacked together, there is no possibility that the associate of the deceased would not receive any injury despite the fact that PW-1 stood just 10 feet away from the place of incident and had seen the accused attacking the deceased. Thus, PW-1 seems to be a planted witness, who had not seen as to who killed the deceased. On this aspect, the investigating authority has also not properly investigated the case and not produced reliable evidence before the trial Court.

20. Keeping in view the doubtful presence of PW-1 who is stated to be an eyewitness, we hereby set aside the judgment dated 23rd April 2011, passed by the Judge, Family Court, Anantapur, in Sessions Case No.672 of 2008, whereby the appellant/A-1 was convicted. We accordingly discharge the appellant/A-1 from all the charges levelled against him. The bail bonds of appellant shall stand cancelled. The fine amount, if any, paid by the appellant, shall be refunded to him.

21. The appeal is accordingly allowed.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

T. AMARNATH GOUD, J

5th January, 2018

ajr