

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL APPEAL No.899 of 2011

Between:

Ummadaboina Nagaiah and others

..Appellants/ Accused Nos.1 to 5

and

The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

JUDGMENT PRONOUNCED ON: 04th July, 2018

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of local
Newspapers may be allowed : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
Judgment?

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

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

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Vs.

\$ The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

! Counsel for the appellants: Mr.T.Pradyumna Kumar

Counsel for the respondent: Public Prosecutor (A.P.)

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>Head Note:

? Cases referred:

1. AIR 1973 SC 501
2. 1993 CrLJ 3684
3. (1994) 5 SCC 188

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Counsel for the appellants: Mr.T.Pradyumna Kumar

Counsel for the respondent: Public Prosecutor (A.P.)

The Court made the following:

JUDGMENT:

The appellants, who are the accused in Sessions Case No.26 of 2008 on the file of learned V Additional Sessions Judge, Kurnool at Nandyal, filed this appeal assailing their conviction for the offences punishable under Sections 147, 148, 201 and 302 read with 149 I.P.C. They were sentenced to imprisonment for a term of two years and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo simple imprisonment for a period of two months for the offence punishable under Section 147 I.P.C.; for a term of three years and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo simple imprisonment for a period of two months for the offence punishable under Section 148 I.P.C.; for a term of three years and to pay a fine of Rs.500/- each and in default of payment of fine, to undergo simple imprisonment for a period of two months for the offence punishable under Section 201 I.P.C. and to life imprisonment and to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo simple imprisonment for a period of four months for the offence punishable under Sections 302 read with 149 I.P.C.

2. Briefly stated, the case of the prosecution, as reflected in the charge sheet, is as follows.

(a) The accused are the residents of Muthyalapadu Village of Chagalamarri Mandal. Accused Nos.2 to 5 are the sons of accused No.1. One Ummadaboina Obulesu (hereinafter referred to as 'the deceased') was the husband of P.W.1. L.Ws.11 and 12 – Ummadaboina Subba Rao @ Bujji and Ummadaboina Lakshmi Devi, were the son and the daughter, respectively, of the deceased and P.W.1. The deceased was the senior paternal uncle of P.Ws. 2, 3 and 8 and L.W.13 – Ummadaboina Venkata Subramanyam. P.W.4 and L.W.9 – Ummadaboina Suvarnamma, were the younger brother and the sister-in-law, respectively, of the deceased. The relationship between the family of accused No.1 and the deceased was strained due to the disputes regarding the hayrick yard and both the family members lodged criminal cases against one another in Chagalamarri P.S. Thus, there was bad blood between the two families and the accused intended to kill the deceased and waited for an opportunity to implement their plan.

(b) On 30.08.2007, in the morning, the deceased accompanied by P.Ws.1 to 3 went to their agricultural field - cherlo chenu, to attend to the work of removing the weed stack and all of them stayed at the land. At about 8.00 p.m., on hearing sound, they saw the accused and two others approaching them forming themselves into an unlawful assembly, armed with axes and daggers, in prosecution of their common object to kill the

deceased. On seeing the deceased, accused No.1 shouted as “champandiraa”. On that, the accused surrounded the deceased and beat and hacked him with axes. The deceased, having received injuries to his face and neck, fell down and died on the spot. P.Ws.1 to 3, who witnessed the occurrence, tried to intervene, but, the accused threatened them that they would also be killed. Not satisfied with the murder of the deceased and in order to cause disappearance of the evidence and screen themselves away from the legal punishment, the accused carried the dead body of the deceased and threw it into the water of the Telugu Ganga canal under the culvert nearby the field of Madduletaiah Setty, Muthyalapadu Village. L.W.8 – Akula Thimmaiah, saw the accused carrying the dead body of the deceased on the banks of the Telugu Ganga canal and identified the accused by focussing torch light on them. P.Ws. 1 to 3 identified the accused under the glow of an electric bulb burning near the bore pipe in the field of the deceased.

(c) On 31.08.2007, P.Ws.1 to 3 and their family members, with the help of P.Ws.5 to 7 pumped out water from the culvert and traced the dead body of the deceased at 11.00 a.m. and took it to their house. On the same day, at 1.30 p.m., basing on the report of P.W.1, the S.H.O., Chagalamarri P.S. registered it as crime No.59 of 2007 under Sections 147, 148, 201 and 302 read with 149 I.P.C. and issued Express F.I.Rs. to the Officers concerned and

investigated into. The Medical Officer, who conducted autopsy over the dead body of the deceased, opined that the cause of the death of the deceased was due to shock and haemorrhage because of the major injuries to the face and neck and that the time of death was about 30 to 36 hours prior to the post mortem examination. On 01.09.2007, at 7.30 a.m., the Investigating Officer (I.O.), in the presence of the panchayatdars, prepared observation panchanama of the scene of offence. On the same day, at about 9.00 a.m., the I.O. prepared observation panchanama of the place, where the dead body of the deceased was thrown into the canal to cause disappearance of the evidence, and also seized blood stained concrete pieces and also control earth. On 17.09.2007, at about 7.30 a.m., in the presence of the panchayatdars, the Circle Inspector of Police, Allagadda, the Sub-Inspector of Police, Chagalamarri, with the supporting staff, effected the arrest of the accused and four others at Brahmamgari Matam between Muthyalapadu and Chakravarthulapalli Villages and recorded their free and voluntary confessional statements regarding committing the murder of one U.Nageswara Rao relating to crime No.58 of 2007 and regarding the murder of the deceased by the accused relating to crime No.59 of 2007 of the present case and seized the crime weapon i.e., an axe and super bag from accused No.2, which were produced by him relating to the present case. The confessional statements of the

accused and the crime weapon were preserved under the cover of panchanama by the I.O. On the same day, the accused were produced before the Judicial Magistrate of First Class, Allagadda for remanding them to judicial custody. A separate charge sheet was filed against the accused and four others relating to crime No.58 of 2007 for causing murder of U.Nageswara Rao. Thus, the accused, being the members of the unlawful assembly, armed with deadly weapons i.e., axes and daggers and in prosecution of their common object, did commit the offence of rioting and also caused the death of the deceased and threw the dead body into the Telugu Ganga canal with an intention to screen away the evidence and thereby, they are liable to be punished under Sections 147, 148, 201 and 302 read with 149 I.P.C.

3. As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws. 1 to 17, got Exs.P-1 to P-16 marked and produced M.Os.1 to 7. On behalf of the accused, no oral evidence was let in. However, they got Exs.D-1 to D-8 marked.

4. On appreciation of the oral and documentary evidence, the Court below has disposed of the Sessions Case as noted hereinbefore.

5. At the hearing, Mr.T.Pradyumna Kumar, learned counsel for the appellants/accused, has submitted that the whole case of the prosecution is based on the evidence of P.Ws.1 to 3, who are no other than the wife and two nieces of the deceased respectively, and that their evidence is wholly unnatural to believe that they witnessed the occurrence. He has further submitted that the long delay of about 15 hours in registration of the F.I.R. remained unexplained, giving way for false implications. He has also argued that recovery of M.O.1 – axe and M.O.7 – D.A.P. bag from accused No.4 is a make believe affair and that in any event, the axe, being commonly available in the market, which did not contain any blood, does not connect the accused with the offences.

6. Opposing the above submissions, the learned Public Prosecutor (A.P.) has submitted that though P.Ws.1 to 3 are the close blood relatives of the deceased, their evidence cannot be discarded only because of that reason and that there is nothing unnatural in their conduct so as to disbelieve their evidence. He has further submitted that the accused and the deceased being the residents of the same village and in the absence of the defence coming out with the probability of any one else causing the murder of the deceased, the Court below has rightly held the accused guilty of committing the offences and that therefore, no interference is called for with the judgment of the Court below.

7. We have carefully considered the submissions of the learned counsel for the appellants and the learned Public Prosecutor (A.P.) appearing for the respondent-State with reference to the record.

8. It is the case of the prosecution that on account of some disputes regarding the hayrick yard, the accused caused the murder of the deceased at about 8.00 p.m. on 30.08.2007 in the former's agricultural field. Admittedly, P.W.1 - the widow of the deceased, gave report in Chagalamarri P.S. at 1.00 p.m. on 31.08.2007. As per the version of P.Ws.1 to 3, the offence took place in their presence and after killing the deceased, his dead body was thrown in the Telugu Ganga canal in front of their eyes. This being the admitted fact situation, it is not possible to believe that the Police would not have had information about the murder till P.W.1 went to the Police Station and gave Ex.P-1 - complaint at about 1.00 p.m. on the following day. Thus, *ex facie*, the long delay of about 15 hours in registering the F.I.R. could not be explained by the prosecution. The law is well settled that the long and unexplained delay in the registration of the F.I.R. considerably weakens the case of the prosecution as it gives rise to false implications and exaggerations. (See **Thulia Kali v. State of Tamil Nadu**¹, **State of A.P. v. Punati Ramulu**² and **Meharaj Singh v. State of U.P.**³)

¹ AIR 1973 SC 501

² 1993 CrLJ 3684

³ (1994) 5 SCC 188

9. Coming to the evidence of P.Ws.1 to 3, P.W.1 deposed that she along with her husband – the deceased and P.Ws.2 and 3 - her nieces, who are the daughters of the brother of the deceased, went to their agricultural land called “cherlo fields” for attending the agriculture work; that while the deceased was watering the crop, she and P.Ws.2 and 3 were waiting for him, so that, all of them can return home together; that at that time, the accused along with two strangers came there and hacked the deceased on his neck; that when they tried to interfere, the accused raised axes and knives at them and that they got threatened and did not interfere. P.W.1 further deposed that the deceased was beaten with axes and knives and the accused took the dead body of the deceased to a distance and dumped the same in the nearby canal; that she and P.Ws. 2 and 3 followed the accused, when they were taking the deceased and that when somebody focussed a light over the accused, they could see them while carrying the deceased. P.W.1 also deposed that there was an electric bulb near the borewell of their land, where they had a pump and she observed the accused in that light. It is the further version of P.W.1 that through out the night, she and P.Ws.2 and 3 stayed at the place where the dead body of the deceased was thrown into the water; that though they searched for the dead body of the deceased in the canal, they could not locate

the same; that P.W.4 and other villagers came there in the morning and they also searched for the dead body of the deceased; that they (P.W.4 and other villagers) brought an electrical pump and pumped out the water from the canal and recovered the dead body from the canal, which was near the culvert, and P.Ws.1 to 3 took the dead body of the deceased to their house and that at about 12 noon, one Anka Reddy drafted the Police complaint to the narration of P.W.1 about the incident and thereafter, the Police came home and she gave Ex.P-1 - complaint.

10. P.Ws.2 and 3 made a parrot like repetition of what was stated by P.W.1. P.W.16 – the Investigating Officer (I.O.) deposed that in the present case, P.Ws.1 to 3 are the only eyewitnesses; that in her complaint - Ex.P-1, P.W.1 did not state that she followed the accused along with P.Ws.2 and 3, while they were carrying the dead body after murdering the deceased, to the canal. He further admitted that P.W.1 did not state in Ex.P-1 - complaint and also in her statement under Section 161 Cr.P.C. that some body focussed a light over the accused; that she saw the accused carrying the dead body of the deceased and that the accused gave a life threat if they inform anyone about the murder and that throughout the night P.W.1 and P.Ws.2 and 3 remained near the canal, where the dead body of the deceased was thrown and searched for the dead body, but they could not locate the same. He also deposed that P.W.1 did

not state in Ex.P-1 - complaint and also in her statement under Section 161 Cr.P.C. that P.W.4 and other villagers came to the place of the occurrence on the next day morning and that they also searched for her husband – the deceased after pumping out the water from the canal.

11. On a careful scrutiny of the evidence of P.Ws.1 to 3, we find their conduct as wholly unnatural. P.Ws.1 to 3 are women and they were without any male assistance. If they have really witnessed the occurrence, it is highly improbable that they would not have informed their other family members and the villagers about the murder till the villagers arrived to the place of occurrence on the next day morning. The prosecution failed to place any evidence before the Court as to who informed the villagers about the murder. As noticed from the omissions extracted in the evidence of P.W.16 – the I.O., P.W.1 did not state about the material aspects of herself and P.Ws.2 and 3 following the accused to the canal and that they were at the canal all through the night searching for the dead body of the deceased. Her statement in her evidence that somebody focussed a light without specifying as to who focussed the light on the accused reveals her anxiety to make the Court believe that there was no problem regarding the identification of the accused. When there were only three witnesses apart from the seven assailants, it is not difficult for P.W.1 to know as to who

focussed the light. Significantly, both in Ex.P-1 – complaint and in her evidence, she spoke about the existence of light near the borewell. Ex.P-12 – the rough sketch pertaining to the scene of offence, did not show existence of any light. The tenor of the evidence of P.W.1, as discussed above, coupled with the omissions extracted from P.W.16, clearly suggests that she is a wholly untrustworthy witness and that being highly interested witness, she has come out with a false plea that she along with P.Ws.2 and 3 have witnessed the accused murdering the deceased. On a careful analysis of the evidence of P.Ws.1 to 3, we are in no doubt that the prosecution planted these witnesses as the eyewitnesses in the absence of any other evidence linking the accused to the offence.

12. If we eschew the evidence of P.Ws.1 to 3 from consideration, the only other evidence linking the accused to the offence is the alleged recovery of M.Os.1 and 7 under Ex.P-7 - the arrest and seizure panchanama. It is the case of the prosecution that on 17.09.2007 i.e., 18 days after the occurrence, the Police along with Panchayatdars found the accused near Brahmamgari Matam between Muthyalapadu and Chakravarthulapalli villages at about 7.30 p.m. while they were sitting on a pial and arrested them and that they also seized M.O.1 - axe and M.O.7 D.A.P. bag, in which the axe was placed, from the possession of accused No.4. The prosecution wants the Court to believe that accused No.4 was

carrying the crime weapon along with him for 18 days after committing the murder without throwing it away or hiding the same at some place. Considering the normal human conduct of any person, it is highly improbable that a person would carry the crime weapon along with him without fear of being caught. Such far fetched theories unfortunately are being accepted by the trial Courts, which militate against the natural human conduct. We strongly feel that it is high time for the Police to refrain from floating such fanciful theories and taking the Courts for a ride. They cannot be permitted to come out with incredulous versions with the sole aim of securing convictions at any cost without carrying out methodical and scientific investigation.

13. Be that as it may, the alleged crime weapon was not sent to forensic science laboratory to know whether it contained any blood stains and if so, whether the blood group thereon matches the blood group of the deceased. It is not in dispute that M.O.1 is an axe which is commonly available in the market. Therefore, it is not difficult for the Police to plant M.O.1 with a view to connect the accused to the alleged offences. On a holistic consideration of the evidence on record, we are of the opinion that the Court below was taken in by a highly artificial and unnatural version of the prosecution and it has convicted the accused based on suspicion without there being legal proof.

14. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in judgment, dated 01.06.2011, in Sessions Case No.26 of 2008 on the file of learned V Additional Sessions Judge, Kurnool at Nandyal, for the offences punishable under Sections 147, 148, 201 and 302 read with 149 I.P.C. are set aside. The appellants/accused are acquitted of all the offences with which they are charged. The fine amount, if any, paid by them shall be refunded to them. As the appellants/accused are on bail, their bail bonds shall stand cancelled and they are directed to surrender themselves before the Superintendent concerned immediately for completing the legal formalities of their release, if they are not required in any other case(s) or crime(s).

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

04th July, 2018

Note: L.R. copies to be marked.
(B/o)
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