

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

Crl.A.No.978 of 2011

Date: 10.07.2018

Between:

Nune Venkateswarlu S/o.Ganapathi,
35 years, Varagani Village,
Pedanandipadu mandal,
Guntur district

... Appellant

And

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

... Respondent

Counsel for the Appellant : Mrs. C.Vasundhara Reddy

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.5 of 2011 on the file of II Additional Sessions Judge, FAC III Additional Sessions Judge, Guntur, filed this appeal against judgment dated 16.08.2011, whereby he was convicted for the offence punishable under Section 302 I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- and in default of such payment, to undergo rigorous imprisonment for two months.

2. The case of the prosecution, in brief, is stated as hereunder:

Both the accused and the deceased are the residents of Varagani village, Pedanandipadu mandal, Guntur district. PW-1 is the father of the deceased. The lands of PW-1 and the accused are adjacent to each other. On 14.12.2009, when PW-1 was ploughing the land with oxen for raising Bengal gram dal on his lands, the oxen reportedly entered into the jute fields of the accused and as such, a quarrel arose between PW-1 and the accused, who was watering his fields at that time. That on account of the same, the accused bore grudge against PW-1 and was waiting for an opportunity to wreak vengeance against PW-1 and his son i.e. the deceased. That at around 4 p.m. on 15.12.2009, when the deceased went to his field to fix up sticks and white empty bags in order to avoid entering of the pigs into the land on account of the differences between his father and the accused, the accused had a wordy quarrel in the fields of PW-1 with

the deceased and made him fall down in the field at about 5 p.m., assaulted him by fisting with hand on his neck and also squeezed the testis of the deceased. That, PWs. 3 to 5, 10 and 11 are the eye witnesses to the said incident and the matter was informed to PW.1 by PWs.3 to 5 and PW-1 immediately rushed to the said place along with PW.8 and others and noticed the deceased lying dead in the field. That, PW.1 went to Pedanandipadu P.S. at 9.30 p.m. on 15.12.2009 and gave a report about the death of his son to PW.13 and stated that his son might have died on account of squeezing of testis by the accused. PW.13 registered the said report as Crime No.116 of 2009 u/s.174 Cr.P.C. and investigated the case by examining PW.1 on 15.12.2009. That, PW.13 held inquest over the dead body of the deceased from 10 a.m. to 12 noon on 16.12.2009 in the presence of PW.9 and others and sent the same for postmortem examination to the Government Area Hospital, Bapatla. He inspected the scene of offence in the presence of PW.9 and another at 8 a.m. and got an observation of the scene drafted and attested by them and also prepared a rough sketch of the scene. That, PW.13 received the post mortem certificate from PW.12 on 17.12.2009; that PW.12 without giving his final opinion regarding the death of the deceased, preserved the hyoid bone, right and left testicles, stomach and intestines and the lung of the deceased and sent the same to the Forensic Science, Medical College, Guntur, and the result of the analysis is awaited; that PW.13 gave a questionnaire to PW.12

regarding the possibility of the death of the deceased due to internal bleeding at the throat, haematoma injuries which were present over right and left testicles and to which, PW.12 answered that Haematoma injuries which were present over right and left testicles were caused by pressing of testicles and the same was sufficient to cause the death of the deceased; that PW.13 who received the above said opinion from PW.12, altered the section of law from 174 Cr.P.C. to Section 302 IPC, at 2200 hours on 20.12.2009 and sent express FIRs to all the concerned officers and informed PW.14 about the fact of alteration of the provision of laws, who took up the investigation on 21.12.2009, arrested the accused on 23.12.2009 and sent him to judicial remand.

3. Based on the charge sheet and the other material collected during the investigation, the lower Court has framed the following charge against the appellant:

“That you owned your land on the South of the land of Haridasula Subba Rao, who is the father of the deceased. He raised Bengal Gram Dal Seeds in his land. You raised jute crop in your land. On 14.12.2009, Haridasula Subba Rao, ploughed his land and bulls reportedly entered into your jute field and that Subbarao and yourself quarreled and that you were waiting for opportunity to take revenge. On 15.12.2009 at 4.00 P.M. deceased, who is the son of Subbarao went to the field and he was fixing sticks and white bags to prevent pigs to enter into the land and that you quarreled with the deceased and assaulted him and squeezed testicals of the deceased, who died on the spot and that you thereby committed an offence punishable under Section 302 of IPC and within my cognizance”.

4. As the plea of the accused is one of denial, he was subjected to trial, during which, the prosecution has examined PWs-1 to 14, got Exhibits P-1 to P-13 marked and produced MOs-1 to 3. On behalf of the defence, no evidence was adduced. However, it has got marked Ex.D1, a contradiction in the statement of PW-5. Based on the oral and documentary evidence, the trial Court has disposed of the case, in the manner as noted above.

5. We have heard Mrs.C.Vasundhara Reddy, learned counsel for the appellant and the learned Public Prosecutor for the State of A.P.

6. In Ex.P-1, PW-1, the father of the deceased stated that he suspected that the appellant (for the sake of convenience, the appellant is hereinafter referred to as 'the accused') has killed his son, as on the day prior to the occurrence, while he was ploughing Bengal Gram fields, PW-1's cattle strayed into the field of the accused and spoiled the crop. Though in the charge sheet it is alleged that a quarrel ensued between PW-1 and the accused on the day prior to the occurrence, neither in Ex.P1, PW-1 has referred to such quarrel, nor in his evidence before the Court, he made a whisper about such quarrel. Thus, the specific case set up by the prosecution that the alleged quarrel was the motive for the accused to kill the deceased, remained unsubstantiated. The prosecution miserably failed to prove the motive for the accused to kill the deceased.

7. Coming to the evidence relied upon by the prosecution, PWs.3 and 4 have allegedly seen the accused on the fields of the deceased and they have allegedly informed PW-1 about the same. The accused after allegedly killing the deceased, was stated to have gone to PW.6 and brought him to the fields of PW-1 on his moped by informing him that he saw the deceased falling down with fits. PWs.10 and 11 allegedly saw the accused mounting on the deceased and pressing the latter's testicles. Let us now analyse the evidence of these witnesses.

8. PW-1 is the father of the deceased. He has deposed that after planting the seeds of Bengal Gram in the morning of the day of occurrence, he returned from his fields to the village and that at about 4 p.m., the deceased left to the fields along with a crowbar, to put up sticks with white bags for planting them in the fields. That, at about 5.15 p.m., PWs.3 and 4 came to his house and informed him that the accused and his son were quarrelling with each other and also that his son fell down on the ground. If we compare this testimony of PW-1 with the contents of Ex.P1, one could find marked improvement in the version spoken to in the court. No doubt in Ex.P1, he referred to PWs.3 and 4 informing him about the quarrel taking place between the accused and the deceased, but he did not state that the deceased fell down on the ground. Further, the conduct of PW-1 is somewhat strange, in taking the doctor along with him,

when he was only informed about the quarrel between his son and the deceased.

9. Be that as it may, the testimony of PWs.3 and 4 is at variance with what PW-1 testified. PW-3, one of the co-villagers of PW-1 and the deceased, deposed that she has taken her cattle for grazing to the eastern side of her village; that at 4.30 p.m. on the day of occurrence, when she was returning to her village along with the cattle, she found the accused coming towards the deceased who was in his fields, with a stick in his hand and scolding him. That, when she was returning to the village by walk along with her cattle, the accused crossed her on his moped. This witness has not spoken anything about the accused and the deceased quarreling with each other or the deceased falling on ground. Coming to PW-4, she has deposed that while she was driving her cattle after grazing, she saw the accused coming on the ridge which is by the side of his land and that of PW-1, that the accused left for the village on his vehicle and that some two other male members were coming behind her but she did not know them and she has also referred to the presence of PW-3, going ahead with her cattle. This witness has not spoken anything about the quarrel between the accused and the deceased. In our opinion, the evidence of PWs.3 and 4 at best, could prove the presence of the accused at his fields, which are neighboring to that of PW-1 and the deceased.

10. In the absence of any motive established by the prosecution, it is not possible to conclude, based on the last seen theory that it is the accused alone, who could have caused the death of the deceased, more so, when there is material contradiction between the testimonies of PWs.3 and 4, as the latter has not even seen the accused either abusing or quarreling or in the least, physically assaulting the deceased. Thus, the quarrel between the accused and the deceased spoken to by PW-3, was not corroborated by the evidence of PW-4.

11. We shall now deal with the testimonies of PWs.10 and 11, who are supposed to be the eye witnesses to the occurrence. PW10 is a native of K.Rajupalem, which is at a distance of 50 to 60 kms. from Varagani, the native place of the accused, deceased and PW-1 and where the occurrence has taken place. Though in his chief examination, he has stated that he used to visit Varagani and surrounding villages to purchase cattle and that he knows the accused for 5 or 6 years, in his cross-examination he stated that he does not have acquaintance with the villagers of Varagani. He has further stated that he knows the names of the accused and the deceased 'lightly but not correctly' and that later he ascertained their names correctly. In his chief examination, he deposed that on the date of occurrence, he went to Peddanandipadu at about 9 or 10 a.m. for purchasing buffalo; that he has however purchased a she buffalo at

Pusuluru, which is at a distance of 10 to 15 kms. from Peddanandipadu for Rs.19,000/- and while taking the buffalo along with him towards Varagani side, he found 'one person on the ground with the accused on him at a distance of 100 yards from the road'. That he went near them and that he could recognize the person lying on the ground by face, as the deceased Srinivasa Rao; that the accused was catching the throat of the deceased with one hand and squeezing his testicles with the other hand and that when he reached the scene of offence, the accused threatened him that he will also receive the same treatment; that he then went to Varagani village and stayed in the said village during that night and left the same early in the morning at 4.30 a.m. He further deposed that while being at the village, he came to know about the death of the deceased and on 26.12.2009, the police have examined him.

12. As could be seen from the evidence of PW-10, there is a variation in his version between the chief examination and cross-examination, as to the place which he first visited. While in the chief examination, the witness stated that at about 9 or 10 a.m., he first went to Peddanandipadu and then he went to Pusuluru for buying cattle, where he has brought a she buffalo, in the cross-examination, he has stated that he first went to Varagani by starting at his village at 8 a.m., enquired about the cattle at Varagani and then reached

Pusuluru by bus at about 12 noon. This contradiction in his stands, raises a serious doubt about his presence at the scene of offence.

13. PW.11 has deposed that he moves around the villages and sells 'the commodities' since 10 or 12 years, that he knows the Accused and the deceased. That on 15.12.2009 he sold his commodities at Katrapadu village and along his way to Varagani on his bicycle at about 5.00 p.m., he found in the lands at a distance of 100 yards from the road a person on the ground and another person sitting on him, that he identified the Accused as the person sitting on the other person. That he rushed to them and questioned the Accused as to why he was doing so and the latter has threatened him to kill. That he saw the Accused pressing the throat of the deceased with one hand and squeezing his testicles with another hand. That he rushed to Varagani village and sold some of the goods till 7.30 p.m. in the village and reached the village centre where he came to know about the death of the deceased. That after 2 or 3 days, again he went to Varagani to sell his goods and came to know that the police have registered a case about the incident and that on 26.12.2009 he went to Peddanandipadu Police Station on his own and gave a statement.

14. Both PWs.10 and 11 have admitted that a jute crop of the height of about 'one moora' i.e., about 2 to 2 ½ feet exists between the field of the deceased where the occurrence took place and the road on which they were travelling. If we closely examine the

testimony of these witnesses, if exposed their abnormal behaviour, which no person of ordinary prudence would behave. Both have stated that after the incident, they went to Varagani village, but they did not inform anyone about the incident. If we believe their version that due to the threat given by the Accused, they did not disclose the incident to anyone, for the same reason they would have refrained from approaching the police and disclosing what they have seen more than 13 days after the incident. Both the witnesses are not the co-villagers of the Accused and the deceased. As noted hereinbefore, PW.10 is a native of K.Rajupalem, which is about 50 to 60 kms. away from Varagani village. It would be too much of a co-incidence that both have chosen to approach the police on the same day. Another important aspect, which throws a serious doubt on the veracity of the testimony of these witnesses is that, though each of them has claimed that he has seen the Accused being on the deceased and pressing the latter's neck and testicles, they have not spoken to the presence of each other. Both the witnesses belong to different villages unconnected with Varagani. It is evident from their testimonies, that they have no acquaintance with the deceased and the Accused. However, the prosecution failed to arrange for Test Identification Parade, which, on the facts of the case, was very much essential for identifying the Accused.

15. On consideration of the evidence of PWs.10 and 11, from an overall perspective, we are of the opinion that they were planted by the prosecution and their evidence which is wholly untrustworthy, cannot be relied upon.

16. The third and last set of witnesses are PWs.5 and 6. According to PW.5, he saw the deceased coming opposite to him in the village and that the latter has informed him that he is going to the field to fix the sticks to prevent animals from entering the field, that the deceased was seen having some sticks and crowbar and some plastic bags in his hands and that he went to his house. That when he went to the centre afterwards, there were about 10 persons there, including PW.6. That the Accused came there and informed PW.6 that in the fields the deceased fell down with fits and the witness overheard the same.

17. PW.6 deposed that at about 5.00 p.m., he was informed by the Accused that the deceased fell down in the field due to fits, that PW.5 was also present at that time and the Accused took him to the fields on his XL-50 Moped, where he found the deceased on the ground at his field.

18. We find the evidence of PWs.5 and 6 highly unnatural. In the first place, if a person has killed another, it would be highly unnatural for him to approach others and give a distorted version of the event. Instead, such a person would flee away fearing adverse consequences.

Even if he has ventured to inform others, there is no reason why he has not approached PW.1, father of the deceased. At any rate, the evidence of PWs.5 and 6 does not disclose that either there was any scuffle between the Accused and the deceased or that the Accused was responsible for killing of the deceased.

19. On an analysis as above, we are of the opinion that the Court below has wrongly relied upon the evidence of PWs.3, 4, 5, 6, 10 and 11, which, for the above discussed reasons, has no probative value. Therefore, the judgment of the Court below is set aside. The Accused is acquitted of the charge. The fine amount paid by him shall be refunded to him. As the Accused is on bail, his bail bonds shall stand cancelled and he shall surrender himself before the Superintendent, Central Jail, Rajahmundry, for completing the legal formalities of his release.

20. In the result, the Criminal Appeal is allowed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

10.07.2018.
msb/Msr

