

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

Criminal Appeal Nos.588, 589 & 618 of 2012

Crl.A.No.588/2012

Between:

J.M.Chandra Sekhar and 3 others

... Appellants/accused Nos.1, 3, 5 & 6

and

The State of A.P.,
Rep. by its Public Prosecutor,
High Court of A.P, Hyderabad

...Respondent

Date of Judgment Pronounced: 08-10-2018

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgments ? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment ? | Yes/No |

(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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! Counsel for the Appellant: Sri T.Niranjan Reddy
for Mr.N.Pavan Kumar

^ Counsel for the respondent: Public Prosecutor (AP)

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? Cases cited:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

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**Counsel for the appellants: Mr.T.Niranjan Reddy
for Mr.N.Pavan Kumar**

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

Common Judgment: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

As these three Criminal Appeals arise out of common Sessions Case *viz.*, S.C.No.110 of 2009 as well as Judgment, dated 19-06-2012, passed therein by the District and Sessions Judge, Chittoor, they are heard and being disposed of together.

Crl.A.No.588 of 2012 is filed by accused Nos.1, 3, 5 and 6, Crl.A.No.589 of 2012 is filed by accused No.4 and Crl.A.No.618 of 2012 is filed by accused No.2 in the aforesaid Sessions Case.

By the Judgment under Appeals, all these accused were found guilty of the offences punishable under Sections 147, 148 and 302 IPC and they were, accordingly, convicted and sentenced (i) to undergo Imprisonment for Life and to pay a fine of Rs.5,000/- each and in default of payment of fine, to suffer Simple Imprisonment for one month for the offence punishable under Section 302 IPC and (ii) to undergo Rigorous Imprisonment for a period of two years for the offence punishable under Section 148 IPC. No separate sentence was imposed on them for the offence punishable under Section 147 IPC. All the sentences were directed to run concurrently.

The case of the Prosecution, having been narrated in detail by the Court below, need not be repeated once again.

Based on the chargesheet filed and the incriminating material collected during the investigation by the Police, the Court below charged the appellants and accused Nos.7 and 8 as under:

“Firstly:- That you A-1 to A-8 on the 2nd day of September, 2008 at about 8-00 p.m. at Sugar Factory, Chittoor were members of an unlawful assembly, and, in prosecution of the common object of such assembly, to kill the deceased T.N.Sampath, committed the offence of rioting and thereby committed an offence punishable under Section 147 of the Indian Penal Code and within my cognizance.

Secondly:- That you A-1 to A-8 on the same date, time and place and during the course of same transaction as mentioned in charge No.1 above, were members of an unlawful assembly, and did, in prosecution of the common object of such assembly, to kill the deceased T.N.Sampath, committed the offence of rioting and at that time you were armed with a deadly weapons like knives and iron rods and thereby committed an offence punishable under Section 148 of the Indian Penal Code and within my cognizance.

Thirdly:- that you A-1 to A-8 on the same date, time and place and during the course of same transaction as mentioned in charge No.1 above, did commit murder by intentionally or knowingly causing the death of the deceased T.N.Sampath, by slashing and stabbing with knives and beating with iron rods and causing multiple bleeding injuries by cutting his throat and thereby you committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

Lastly:- That you A-1 to A-8 on the same date, time and place and during the course of same transaction as mentioned in charge No.1 above, were members of an unlawful assembly in prosecution of the common object to kill the deceased T.N.Sampath, which offence you knew to be likely to be committed in prosecution of the common object of the said

assembly and you are thereby under Section 149 of the Indian Penal Code, guilty of causing the said offence, an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.”

On appreciation of the oral and documentary evidence, the Court below has acquitted accused Nos.7 and 8 and convicted the appellants in the manner as noted supra.

At the hearing, Mr.T.Niranjan Reddy, learned Senior Counsel appearing for Mr.N.Pavan Kumar, learned Counsel for the appellants/accused Nos.1, 3, 4, 5 & 6, submitted that the Prosecution failed to explain the huge delay in registration of FIR and the same reaching the jurisdictional Magistrate, which evidently led to false implications; that the testimony of PW.1 is so unnatural that it is not possible to accept him as an eye witness; that the evidence of PW.4, who is a chance witness, does not inspire confidence and the Court below has erroneously believed his testimony as an eye witness; and that once the evidence of PWs.1 and 4 was discarded, there will be no other evidence except the alleged recoveries, based on which, the conviction of the appellants could be sustained.

As regards the recovery, the learned Senior Counsel submitted that Ex.P.16- FSL report did not detect blood on MOs.14 to 17 and that therefore, recovery of the same, even if proved, cannot be made

basis for convicting the appellants in the absence of any other incriminating evidence.

Opposing the above submissions, the learned Public Prosecutor for the State of Andhra Pradesh submitted that there was not much delay in lodging of Ex.P.1 or the FIR reaching the jurisdictional Magistrate. The learned Public Prosecutor alternatively submitted that even if there was some unexplained delay, the defence was unable to prove any prejudice on account of such delay. He further submitted that the evidence of PWs.1 and 4 sounds very natural and that in the absence of serious infirmities in their evidence, the Court below has rightly relied upon the same and convicted the appellants.

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

We shall first refer to the aspect of delay in giving Ex.P.1-report by PW.1 and the FIR reaching the jurisdictional Magistrate.

As per the evidence of PW.1- the alleged eye witness, who is not only the brother of the deceased but also claimed to have accompanied him, the occurrence had taken place at 8.00 p.m. on 02-09-2008. It has been noted down on Ex.P.1- report given to the Police that it was received at 11.30 p.m., by PW.11- Circle Inspector

of Police, Chittoor (R) East. The endorsement made by the jurisdictional Magistrate on Ex.P.13- First Information Report shows that it was received at 3.40 a.m., through PC.3097 of Taluk Police Station, Chittoor. When the occurrence has taken place at 8.00 p.m., the burden heavily lies on the Prosecution to explain the delay both in lodging of Ex.P.1 and the FIR reaching the jurisdictional Magistrate. In **Thulia Kali vs State of Tamil Nadu**¹, the Supreme Court held as under:

“First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of offence. Delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

¹ (1972) 3 Supreme Court Cases 393

In **Meharaj Singh (L/Nk.) vs. State of U.P.**², the Supreme

Court, while reiterating the above principle, held as under:

“With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate.”

In the case on hand, PW.1 deposed that on noticing that his brother was dead, he fainted for some time; that thereafter, he informed about the incident to his another brother- PW.2 through his mobile; that PW.2 accompanied by his wife- Jamuna came to the spot at about 9.00 p.m; that meanwhile, several persons including his villagers gathered; and that there was a traffic jam and heavy rain from 9.00 p.m., to 4.30 a.m. He further deposed that due to traffic jam, there was no vehicular movement; that at about 8.30 p.m., he along with his brother- PW.2 walked upto CCSE colony for conveyance to go to the Police Station; that they were unable to secure an auto till about 10.30 p.m; and that they went to the Taluk Police Station at about 11.00 pm. In the cross-examination made for

² (1994) 5 SCC 188

accused No.1, PW.1 candidly admitted that neither in Ex.P.1- report nor in his statement under Section 161 Cr.P.C., he had stated about the traffic jam, his walking upto the sugar factory and waiting for conveyance. PW.2 also repeated the same version as given out by PW.1 regarding the alleged traffic jam. In the Cross-examination made for accused No.2, PW.11 also admitted that PW.1 did not state before him that due to traffic jam and rain, he walked upto the sugar factory and waited for vehicles before coming to the Police Station. The fact that PW.1 did not refer to the alleged traffic jam in Ex.P.1 and came out with the said version for the first time in his testimony before the Court below clearly shows that the same was pressed into service to cover up the long delay in lodging Ex.P.1. Assuming that the traffic jam disabled PWs.1 and 2 to reach the Police Station on a two-wheeler as evident from Ex.P.13- FIR, the distance between the place of occurrence and the Police Station is 3 kms. Therefore, it would not have been difficult for PWs.1 and 2 to cover the distance of 3 kms by walk, even if, for any reason, they were unable to travel on a two-wheeler. Thus, the explanation put-forth by PWs.1 and 2, for the first time, before the Court below for the delay of 3½ hours is wholly unconvincing. PW.11 has denied the suggestion made on behalf of accused No.1 that the statement made by him in his chief-examination that Ex.P.1 was received at about 11.30 p.m., was false and that it was received at about 2.00 or 2.30 pm.

As noted above, one of the external checks laid down by the Supreme Court to know whether the FIR was lodged in time or not is the time when the FIR reaches the Magistrate Court. As per the testimony of PW.11- Circle Inspector of Police, the distance between the Taluk Police Station and the residence of the jurisdictional Magistrate is about 1 k.m. If Ex.P.1 was received at 11.30 p.m., even assuming that it took about 1 to 1½ hour for PW.11 to complete the formalities of preparing and issuing the express FIRs, there was no reason for the FIR not reaching the residence of the Magistrate by 1.00 or 1.30 p.m. These facts unerringly support the suggestion given by the defence that Ex.P.1 might have been received by the Police at about 2.00 or 2.30 p.m., and that after preparation of the FIR, the Police might have sent the same to the Magistrate. From the above discussed facts, we have no hesitation to hold that the Prosecution failed to explain the long delay in lodging Ex.P.1 and sending the FIR to the jurisdictional Magistrate. As held by the Supreme Court in the above noted judgments, the delay in lodging the FIR gives scope for concoctions and false implications. This is more true in a case where there are hostilities between two groups. Even on the Prosecution's own showing, there was severe enmity between the Prosecution and the accused groups for more than a decade. Therefore, the long and unexplained delay in lodging the FIR becomes highly fatal in the present case.

There is yet another serious lacuna in the case of the Prosecution. PW.11 deposed in his evidence that on 02.09.2008, at about 9.00 pm., when he was in his office, he received telephonic information that a male dead body with bleeding injuries was lying on Chittoor-Tirupathi main road. That on hearing the same, he along with his staff visited the crime scene and found the dead body lying with bleeding injuries there at. In his cross-examination, he has stated that he did not try to find out even the phone number from which, he has received the information about the occurrence. He had also admitted that he did not make any entry in the General Diary (GD) about the information received as there was no GD in his office. He, however, claimed that he instructed the Station House Officer, Taluk Police Station, which is situated in the same premises, to make GD entry and left his office.

Under Section 154 of the Code of Criminal Procedure, 1973, every information relating to the commission of a cognizable offence, if given orally to an Officer-in-Charge of a Police Station, shall be reduced to writing by him or under his direction. Clauses 8, 9 and 10 of the Standing Order No.409 of the AP Police Manual Part I read as under:

“8. Complaints made by telegrams or telephones need not be recorded immediately as F.I.R. unless authenticity is verified or a statement has been recorded or a written report

obtained from the sender. The factum of receipt of telegram or telephonic information has to be noted in the station general dairy (GD).

9. A vague rumour should be distinguished from an oral report and should not be reduced into writing but entered in the G.D. When the information is well founded after immediate enquiry by the SHO about its authenticity, the report should be obtained and the case registered.

10. The SHO can register a cognizable offence on his own information also and need not wait till some body gives report.”

The obvious purpose of making a GD entry is to record the earliest information on the nature of offence and the assailants, if any, named by the informant. As per Clause 10 as reproduced above, it was well within the powers of PW.11 to register a cognizable offence on receipt of the telephonic information. The failure of PW.11 to make such an entry resulted in the precious information being lost on the above aspects. Being in-charge Officer of the Taluk Police Station, within whose jurisdiction the murder took place, PW.11 was wholly irresponsible in not registering the FIR or atleast ensuring that the GD entry is made before he left for the scene of offence. Even according to PW.11, he left for the scene of offence immediately on receiving the telephonic information at about 9.00 p.m., and went to the Taluk Police Station at about 11.30 p.m. On his own showing, he was at the scene of offence for nearly 2½ hours. On coming to know that PW.1 went to the Taluk Police Station, he went there and

received Ex.P.1- report from PW.1. PW.11 again revisited the scene of offence at about 2.00 a.m., on 03.09.2011 along with his staff, secured the presence of PWs.5 and 6- mediators and conducted preliminary crime scene observation panchanama with the help of dragon burning lights. In the light of the finding rendered herein before that Ex.P.1- report might not have been received before 2.00 or 2.30 a.m., on 03-09-2008, it is quite possible that before Ex.P.1 was lodged by PW.1, PW.11 has commenced the investigation and even prepared the preliminary scene observation panchanama. Thus, on the basis of the above facts, Ex.P.1 cannot be treated as the FIR. However, the same could be treated as a statement made under Section 162, but it is hit by Sub-Section (1) thereof as it was signed by PW.1.

There is yet another incongruity relating to Ex.P1. While it is the case of PW.1 that PW.2 not only accompanied him from the scene of offence to the Police Station, but he has also scribed Ex.P1, in Ex.P1, there is no reference about the presence of PW 2 at all. PW 11, the Investigating Officer also has not testified that PW 2 scribed Ex.P1. He also did not speak about the presence of PW 2 at all when Ex.P1 was received by him. PW 1 admitted in his cross-examination that he did not state in his Section 161 Cr.P.C statement that PW 2 accompanied him to the police station for giving complaint. Thus, the prosecution failed to prove as to who is the author of Ex.P1.

Let us now consider the testimonies of PWs.1 and 4. According to PW.1, he accompanied the deceased as pillion rider. That after their Scooter crossed Kangin Railway Gate, at a distance of 20 feet from the railway gate, he heard Accused No.4 uttering the words 'hack', that immediately he informed his deceased brother that Accused No.4 was asking somebody to hack and that thereafter, he has noticed Accused Nos.1 to 6 and two others chasing their Scooter on four motorcycles, that after overtaking their Scooter near Ramanadham poultry farm, they waylaid, that with a view to avoid the accused, the deceased took his Scooter towards left side and hit a stone pillar on the road margin, that due to fear that the accused may hack them, they stood up and ran towards railway gate (backwards), and that when the deceased was running behind the witness, the traffic was flowing and the witness turned back and noticed the deceased lying on the road in the illumination of the motorcycles. That Accused Nos.1 to 6 and two others who were present armed with knives indiscriminately hacked his deceased brother, who was lying on the road. That after the accused left the spot, the witness went near his brother and noticed bleeding injuries on head, throat and all over the body and the entire body became bloodstained, that noticing that the deceased was not alive, he fainted for some time, that thereafter, he informed the same to his brother PW 2 through mobile phone about the incident, and that at about 9 p.m PW 2 and

his wife arrived at the scene. PW 1 also deposed that he did not receive any injury on his fall from the Scooter.

In his cross-examination made for Accused No.4, PW 1 admitted that he did not state in his Section 161 Cr.P.C statement that after the incident he fainted. He also admitted that he did not state before the police that Accused No.4 uttered the word 'hack'. He admitted that there were no street lights by the side of the scene of offence and that by 8 p.m it will be dark. The defence could elicit from the cross examination of PW 11 that PWs 1 and 4 did not state before him that they witnessed the commission of offence in the illumination of lights of the stationed vehicles on either side.

As noted hereinbefore, even PW 11 did not state about the presence of PW 2 at the police station when Ex.P1 was received from PW 1. Thus, the claim of PW 1 that he informed PW 2 and that all of them went to the police station does not appear to be true and the same appears to be appeared to be an after thought. If PW 1 being the natural brother was present at the scene of offence, he is expected to first try to rescue the deceased and if that is not possible, he would at least try to inform his near and dear and the police immediately.

As discussed supra, PW 1 did not reach police station which is situated just 3 kilometers away from the scene of offence till 11.30 p.m. Though he claimed that he has informed PW 2 and that he has

arrived at the scene of offence by 9 p.m, he admitted that in his statement given to the police, he did not state about PW 2 reaching the scene of offence and accompanying him to the police station.

When PW.11 himself claimed to have reached the scene of offence immediately after receiving information at about 9.00 p.m., his not meeting PW.1 at the scene of offence would give rise to any amount of doubt about the credibility of the testimony of PW 1 that he accompanied the deceased and was an eyewitness to the incident. We are therefore of the view that PW 1 was nowhere at the scene of offence and that he might have gone to the police station much after the occurrence on being informed by somebody about the same.

Coming to PW 4, he is a chance witness. According to his testimony, he was returning from Penumur to Chittoor on a motorcycle along with PW 3 and LW 4, that when they reached to a place near poultry farm after crossing Murukambattu junction at about 8 p.m, they noticed two lorries being stopped on either side of the road and Auto rickshaws and other two-wheelers were proceeding and they noticed Accused Nos.1 to 8 armed with Patta knives hacking a male person lying on the road and that after hacking, all the accused left on motorcycles from the crime scene and that he and others went near and they identified the person lying on the ground as the deceased and noticed bleeding injuries on the head and

other parts of the body of the deceased. That he noticed the presence of PW 1 at the scene of offence. Interestingly, PW 1 did not refer to the presence of PW 4 either in his Section 161 Cr.P.C statement before the police or in his evidence given before the court. Had PW 4 who claims to know the deceased and PW 1 witnessed and been at the scene of offence, PW.1 would not have failed to refer to his presence at the scene of offence.

As discussed supra, PW 11 stated that PW 4 also did not state in his Section 161 Cr.P.C statement that he saw the occurrence in the illumination of the lights of the stationed vehicles. Further more, he claimed that he tried to inform the factum of occurrence, but on coming to know that PW 2 has already left the scene of offence, he did not inform about the occurrence to anybody else till 9 a.m. on the next day at the time of inquest. This conduct of PW 4 is highly unnatural, as being a person who is well acquainted with the family of the deceased, he is not expected to remain quiet for more than 12 hours without informing the same to the police and others. On a careful scrutiny of the evidence of PW 4, we find that his version is laced with unnaturalities which render his testimony highly untrustworthy.

PW 3, who allegedly accompanied PW 4, turned hostile.

In the light of the foregoing discussion, we have no hesitation to hold that PWs 1 to 4 are planted witnesses and conviction cannot be based on their testimony.

As regards recovery, even if the case of the prosecution in this regard is accepted, Ex.P16-Forensic Science Laboratory Report shows that origin of bloodstains on Items-11, 12, 13 and 14 correlated to M.Os.14 to 17 could not be determined. Moreover, M.Os.14 to 17 were not put to PW 8 and it was not elicited from him whether the injuries were possible with the said Material Objects. In the absence of any other incriminating evidence corroborating with the recovery of M.Os.14 to 17, it is highly unsafe to convict the accused for the offence of murder only based on such recoveries.

For the aforementioned reasons, we are of the opinion that the prosecution failed to prove the guilt of the appellants beyond all reasonable doubt.

In the result, the three Criminal Appeals are allowed. The judgment under appeals is set aside. The fine amount, if any, paid by the appellants/Accused Nos.1 to 6 shall be refunded to them. They shall be set at liberty forthwith, if they are no longer required in any other case.

As the appellants/Accused Nos.2 to 6 are on bail, they are directed to surrender themselves before the Superintendent, Central Prison, Rajahmundry, for completing the formalities for their release, if they are not required in any other case or crime.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Date: 08.10.2018

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