

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.444 OF 2012

DATED 24TH OCTOBER, 2018

Between:

Neela Laxmanna and Others ... Appellants

AND

State of A.P., rep. by Public Prosecutor
High Court, Hyderabad. ... Respondent

Counsel for the appellants : Smt.A.Gayatri Reddy

Counsel for the respondent : Public Prosecutor (T.S)

THE COURT MADE THE FOLLOWING

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

This Criminal Appeal is filed by the appellants/accused Nos.2 to 6, against the judgment, dated 10.05.2012, in Sessions Case No.74 of 2008, on the file of III Additional District and Sessions Judge (F.T.C), Gadwal (for short, the trial Court). Charges were framed under Sections 148 and 302 read with Section 149 IPC., and the appellants were tried on the aforesaid charges. The trial Court convicted the appellants for the offence punishable under Section 148 IPC and sentenced them to undergo Rigorous Imprisonment for a period of two years. They were also convicted for the offence punishable under Section 302 read with Section 149 IPC., and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of three months.

2. Appellants/accused 2, 3 and accused No.1, who died during the course of trial, are brothers and appellants/accused 4 to 6 are their associates. P.W.1 is the brother of Neela Krishnaiah (hereinafter referred to as 'the deceased'), P.W.2 is the wife of deceased and P.W.3 is brother-in-law of the deceased. P.Ws.4, 10 and 11 are the circumstantial witnesses, while P.Ws.5 to 7 are the eye witnesses. P.Ws.8 and 14 are the panch witnesses for scene of offence and inquest, P.Ws.9 and 12 are the panch witnesses for confession and

recovery, P.W.13 is the mother of the deceased and P.W.15 is the Head Constable, who issued F.I.R. P.W.16 is the doctor, who conducted Postmortem Examination and P.W.17 is the Inspector, who conducted investigation and filed charge sheet.

3. It is the case of the prosecution that on 26.06.2006 at about 11.30 am., P.W.1 came to Elkur Police Station and lodged a written complaint-Ex.P1, stating that his brother Neela Krishnaiah and his coparceners i.e., A.1 to A.3 were in inimical terms in connection with one acre of land situated under Elkur village Tank. Both parties approached High Court and deceased got orders in his favour and that P.W.1 and deceased have been cultivating the said land. In that connection, A.1 to A.3 bore grudge against P.W.1 and the deceased and were waiting for a chance to kill them and occupy the land. On 26.06.2006 at about 10.00 am., while the deceased was sitting near the pial of Matham, all the accused armed with hunting sickles, rounded up the deceased and stabbed on his face, chest and stomach, as a result of which, the deceased died on the spot. He (PW.1), P.Ws.5 to 7 and L.Ws.9 and 10 Ladai Ramanna and Harijan Swamydass witnessed the incident.

4. P.W.15 registered a case basing on the said complaint under Sections 147, 148, 302 read with Section 149 IPC and issued Ex.P.19 F.I.R. P.W.17-Inspector of Police, took up investigation in this case,

conducted inquest under cover of Ex.P.5 panchanama over the dead body of the deceased in the presence of P.Ws.8 and 14 panchas and examined the witnesses and recorded their statements and he also conducted Ex.P.6 scene of offence panchanama. P.W.16, the doctor who conducted Postmortem examination over the dead body of the deceased, issued Ex.P.20 Postmortem Examination report and opined that the cause of death of the deceased is haemorrhagic shock of polytrauma of injuries. The accused were arrested on 13.07.2006 and their confessional statements were recorded under Exs.P.8 to P.10 and at the instance of A.1 to A.3 hunting sickle (M.O1) and two daggers (MOs.2 and 3) were recovered from the agricultural fields situated at the outskirts of Elkur village under a cover of panchanama Ex.P.11 and after completion of investigation, P.W.17 filed the charge sheet.

5. On appearance of the accused, the learned Judicial Magistrate of First Class, Gadwal, furnished copies of the documents as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.74 of 2008. Basing on the material available, charges under the aforesaid Sections came to be framed, read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

6. In support of its case, the prosecution examined P.Ws.1 to 17 and got marked Exs.P.1 to P.21 and M.Os.1 to 3. No witnesses were examined and no documents were marked on behalf of the defence. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against them in the evidence of prosecution witnesses, to which they denied. After appreciating the evidence brought on record, the trial Court found the appellants/accused guilty and accordingly convicted and sentenced them, as aforestated. Challenging the same, the present appeal came to be filed.

7. The learned counsel for the appellants would submit that basing on the testimony of P.W.1 to 3 and 13, who are highly interested witnesses and are inter-related, recording conviction by the trial Court is illegal. The trial Court failed to consider that PWs.5 to 7 who are eye witnesses to the incident turned hostile and did not support the prosecution case. The trial Court failed to observe that the prosecution has failed to prove the motive, which prompted the accused to murder the deceased. The presence of P.Ws.1 and 3 at the scene of offence is highly doubtful in view of their conduct and other circumstances. The evidence of P.W.1 is not corroborated by the other independent witnesses and it is not safe to rely on the uncorroborated testimony of P.W.1. There are no specific overt acts

attributed to the accused and the prosecution has failed to link the accused with commission of offence and the injuries sustained by the deceased and that the punishment awarded is exorbitant and therefore, the appellants are liable to be acquitted.

8. On the other hand, the learned Public Prosecutor would submit that there is no reason to disbelieve the evidence of prosecution witnesses, though there are slight discrepancies. The occurrence of incident is not disputed. The prosecution has proved the guilt of the accused for the offence punishable under Sections 148 and 302 read with Section 149 IPC., after evaluating the oral and documentary evidence and hence there are no grounds to interfere with the judgment of the trial Court.

9. As per the prosecution's case, P.Ws.5 to 7 are eyewitnesses to the incident, but they did not support the case of the prosecution and their evidence does not disclose that the accused committed murder of the deceased. Apart from the above, P.W.2 stated in her evidence that P.W.1 used to go to the field in the morning and used to return at 2.00 pm. If that is accepted, the probability of presence of P.W.1 at the alleged scene of offence at 10.00 am is doubtful and the version of P.W.1 that he witnessed the incident cannot be accepted. In Ex.P.1 and in the evidence of P.W.1, no specific overt acts of the accused are mentioned, but it was only mentioned that all the accused

attacked the deceased. Ex.P.1 reveals that the accused surrounded the deceased and attacked him. In the light of the evidence of P.W.16 and the M.Os.1 to 3, it cannot be said that as to which accused attacked upon the deceased and with what weapon, when there are six accused and three weapons. Hence, non-mention of specific overt acts against the accused is fatal to the case of the prosecution.

10. When a serious offence has taken place, filing of complaint by P.W.1 immediately coming out of shock and traveling a distance of 8 kilometers leads us to a reasonable doubt that the FIR was ante-timed. Ex.P.21 FSL report shows that blood was detected on item Nos.1 and 3 to 9; that blood on items Nos.3 to 9 is of human origin; that blood on item Nos.3 to 6 is of 'A' blood group; that blood group on item Nos.1 and 7 to 9 could not be determined and that blood is not detected on item No.2 which is received as control for item No.1. Though blood stains on item Nos.3 to 6 was detected as 'A' group, the blood group of the deceased has not been determined. The blood stains on M.Os.1 to 3 could not be determined. Therefore, it is not possible to connect the recovery of the material objects with the killing of the deceased. Apart from the same, the prosecution did not send M.Os.1 and 3 to the fingerprint

expert for comparing the fingerprints available on them with the fingerprints of the accused to prove the guilt of the accused.

11. As per the evidence of P.W.16, the doctor, mentioned the injuries in postmortem examination report Ex.P.20 as lacerations and deposed that the injuries are possible by single and same weapon; that the punctured wounds are possible if the tip of edge of sickle contacted the body and that the stab injuries and incised extending injuries are possible with dragger. If that is so, the blood stains on the material objects create a doubt in the manner in which the case has been registered. Further, there are around 20 cases between both the groups i.e., the complainant, the deceased and the accused. M.Os.1 to 3 were seized in the police station also gives any amount of doubt in the manner in which the recovery is made and investigation is conducted.

12. On the above analysis, this Court finds that the prosecution's case was fraught with inconsistencies and weaknesses, the fundamental defect being its failure to present the origin and genesis of the occurrence in its full and true form. Benefit of doubt would therefore have to be extended to the accused as the prosecution failed to establish beyond reasonable doubt that they are responsible for the death of the deceased. Hence, the convictions and sentences passed by the trial Court are liable to be set aside.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants in the judgment, dated 10.05.2012, in Sessions Case No.74 of 2008, on the file of the III Additional District and Sessions Judge (F.T.C), Gadwal, for the offences punishable under Sections 148 and 302 read with Section 149 I.P.C., are set aside. The appellants are acquitted of all the offences with which they are charged. As the appellants are on bail, they shall surrender before the Superintendent, Central Jail, Cherlapally, for completion of required legal formalities for their release, if they have not been convicted or required in any other case, in the light of their acquittal. The bail bonds furnished at the time of their securing conditional bail shall stand discharged. The fine amounts, if any, paid by them shall be refunded.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

Date: 24.10.2018
TJMR