

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Criminal Appeal No.1021 of 2011

Date: 18.07.2018

Between:

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

... Appellant

and

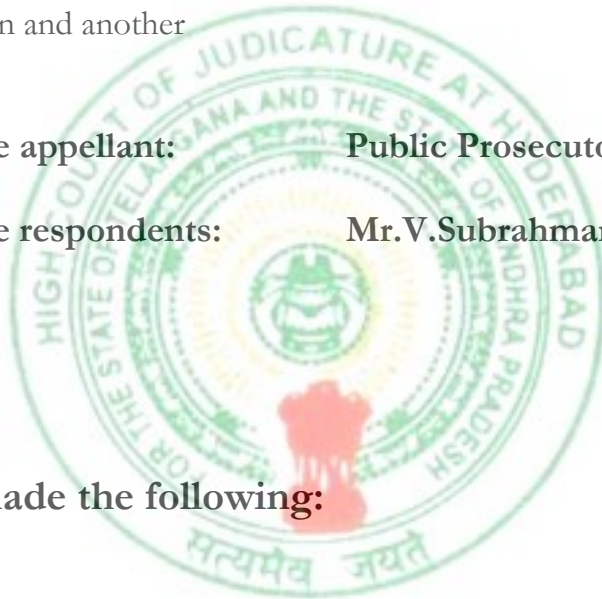
Nagavath Laxman and another

... Respondents

Counsel for the appellant: Public Prosecutor (TS)

Counsel for the respondents: Mr.V.Subrahmanyam

The Court made the following:



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

This Criminal Appeal is filed by the State against Judgment, dated 19-02-2010, in S.C.No.426 of 2009 on the file of the III Additional District & Sessions Judge (FTC), Asifabad, whereby respondent No.1 was acquitted of the charges for the offences punishable under Sections 302 and 201 IPC and respondent No.2 was acquitted of the charges for the offences punishable under Sections 302 and 201 r/w Section 109 IPC.

For convenience, respondent Nos.1 and 2 shall be referred to as they are arrayed in the Sessions Case.

The case of the prosecution, as set out in the chargesheet, is briefly stated hereunder:

Accused No.2 and PW.5 are the brothers of one Nagawath Raju (hereinafter referred to as 'the deceased'), who is a resident of Mamidigudem Village, Kasipet Mandal. Accused No.1 is the son of Accused No.2. PWs.1 to 4 and LW.5 are the two sons, wife and two daughters respectively of the deceased. While PW.1 was studying degree by staying at Karimnagar, PW.2, LW.7- Nagawath Laxmi, PW.3 and PW.4, being the elder son, daughter-in-law, wife and widow daughter respectively of the deceased, were staying along with the deceased. On 08.03.2009, accused No.2 and his two sons *i.e.*, accused No.1 and one Ramulu quarrelled with the

deceased and his family members and abused them in vulgar language regarding the false propaganda, alleged to have been made by PWs.3 and 4, about the illicit intimacy of one Laxmi, who is the daughter of accused No.2 and also the wife of PW.3's brother. On the same day, PW.3 was admitted in Ramakrishnapur Hospital due to ill health. On a phone call received from PW.2, PW.1 came to the village, met PW.4, LW.7-Nagawath Laxmi and PW.9 at home, went to the Hospital, consoled PW.3 and went away to Karimnagar.

The agricultural lands of the deceased and PW.5 are situated adjacent to each other. On the night of 11.03.2009, the deceased went to guard the field. On 12-03-2009 early hours, when PW.5 went to switch on the motor to supply water to the fields, he found that the cot under the shed was burnt and the other cot was also partially burnt. He also observed a burnt body. On his information, PW.2 rushed to the scene of offence, verified the clothes, chappals and shape of the dead body and found that it was none other than his father. On information from PW.2, PW.1 came to the village. On a complaint made by PW.1, PW.18- Sub-Inspector of Police, Kasipet, registered a case in Crime No.27 of 2009 under Section 302 IPC and sent express FIRs to all the concerned officers. On receipt of the same,

PW.19- Circle Inspector of Police, Mandamarri, visited the scene of offence and took the CD file from PW.18 for further investigation. Meanwhile, he called for the Dog Squad Team from Warangal for assistance in the investigation.

During the investigation, PW.19 observed the scene of offence, prepared Ex.P.6- Scene of Offence Panchanama in the presence of PW.10 and LW.13- Banoth Ukla, recorded the statements of PWs.1 to 4, LW.5- Islawath Vijaya Laxmi, PW.5, LW.7- Nagawath Laxmi under Section 161 Cr.P.C., got the dead body of the deceased photographed through PW.15, conducted inquest over the dead body of the deceased under the cover of Ex.P.5- Inquest Panchanama, seized MOs.1 to 9 and sent requisition to the Medical Officer, Bellampalli, for conducting spot autopsy. Accordingly, PW.13- Civil Assistant Surgeon, Government Hospital, Bellampalli, visited the scene of offence and conducted the autopsy.

During the further course of investigation, PW.19 examined and recorded the statements of PWs.6 and 7 under Section 161 Cr.P.C., wherein PW.7 stated that accused Nos.1 and 2 made extra-judicial confession of commission of the offence before him. On 21-03-2009, on information regarding the movement of the accused, PW.19 along with his staff apprehended the accused at

the outskirts of Kasipet on the way to Mandamarri Village, interrogated them separately, recorded Exs.P.8 and P.9- confessional statements in the presence of PWs.11 and 12. In pursuance of the confession, accused No.1 led the Police and Panchas to his house situated at Mamidigudem Village and produced the T shirt, which he wore at the time of commission of the Crime. PW.19 seized the same, brought the accused to the Police Station, caused their arrest at 16.00 hours and after completing the legal formalities, sent them to judicial custody.

During the further course of investigation, PW.19 examined PWs.8 and 9, recorded their statements under Section 161 Cr.P.C., preserved and sent the material objects to Forensic Science Laboratory (FSL), Hyderabad, and received the report from LW.21- Assistant Director, FSL, on 15.06.2009.

PW.19 obtained Ex.P.22- ownership certificate of the house identified by the dog and found that the said house belongs to accused Nos.1 and 2.

PW.13, who conducted autopsy over the deadbody of the deceased, issued Ex.P.11- Postmortem Examination report opining the cause of death of the deceased as 'Hemorrhage and shock as a result of head injury and associated burns extensive'.

Based on the contents of the charge sheet and the material produced before the Court, the Court below has framed the following charges:

“Firstly:

That on 11-03-2009 at about 10.00 p.m., at the maize field situated at the outskirts of Mamidigudem village, you the above named accused intentionally committed murder of Nagawath Raju by beating him with spade over the head and set fire and that you thereby committed an offence punishable under Section 302 of IPC and within my cognizance.

Secondly:

That on 11-03-2009 at about 10.00 p.m., at the maize field situated at the outskirts of Mamidigudem village you the above named accused committed murder of Nagawath Raju and set on fire with an intention to screen the evidence and to escape yourselves from legal punishment and that you thereby committed an offence punishable under Section 201 of IPC and within my cognizance.

and Thirdly:

That on or prior to 11-03-2009 you (A2) abetted the commission of above said offence with your son (A1) and committed murder of said Nagawath Raju and that you (A2) thereby committed an offence punishable under Section 109 of IPC and within my cognizance.”

As the plea of the accused was one of denial, they were subjected to trial during which the Prosecution examined PWs.1 to 18, got Exs.P.1 to P.27 marked and produced MOs.1 to 10. On behalf of the accused, no evidence was let in.

On appreciation of the oral and documentary evidence, the lower Court has disposed of the case in the manner as noted above.

At the hearing, the learned Public Prosecutor for the State of Telangana submitted that the only evidence available on record to connect the accused to the offence is that of PW.16- dog squad constable, who stated that the sniffer dog has led the Police team to the house of the accused. He has further submitted that though the blood stained T-shirt marked as MO.10 was seized from accused No.1, Ex.P.26- FSL report does not reveal any blood stains on it.

Mr.V.Srimannarayana, learned Counsel for the accused, submitted that in the absence of any corroborative evidence, the mere fact of the sniffer dog leading to the house of the accused does not constitute proof beyond reasonable doubt and that therefore, the Court below has rightly acquitted the accused.

We have carefully considered the respective submissions of the learned Counsel for both parties and perused the record.

In his evidence, PW.16 stated that on 19-03-2009, he has received instructions from the Superintendent of Police, Warangal, to proceed to Kazipet along with the Dog by name Jimmy; that by 1.30 p.m., they reached the scene of offence and reported to the

Sub-Inspector of Police, Mandamarri; that along with the Sub-Inspector of Police, they went to the scene of offence situated at maize crop where he observed the dead body; that at the scene of offence, scent was given to Jimmy; that from there, it proceeded to cattle shed; that from that place, it went into the village and entered the house of the accused, stopped there and gave a signal by barking; that the said signal indicates that the person, who committed murder, came to the place where Jimmy has given signals. In his cross-examination, this witness stated that they do not submit any report to the authorities; that his statement was also not recorded by the Circle Inspector of Police; and that they used to note down the work done by them. He further admitted that he did not file any report to the Court and added that it would be a part of their record. He further admitted that no Panchanama was held with regard to the Dog Squad Proceedings.

It is hazardous to hold a person guilty by relying upon the sole fact of the sniffer dog leading to his house. Further, as admitted by PW.17 neither a panchanama was held about engaging the sniffer dog nor the purported record of the events that have transpired in connection therewith has been produced by the Prosecution to prove the same. Therefore, it is not safe to convict the accused on the sole basis of the evidence of PW.16.

As regards the recovery of MO.10, though it is described as 'blood stained T shirt' by the Prosecution, Ex.P.26- FSL report shows that it did not contain any blood stains. Therefore, recovery of M.O.10- T shirt has no bearing on the alleged involvement of the accused in the commission of the offence. The Court below, in our opinion, has properly appreciated the evidence available on record and assigned sound reasons for acquitting the respondents. Hence, we do not find any ground to interfere with the judgment of the lower Court.

The Criminal Appeal is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 18th July, 2018
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