

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

**CRIMINAL APPEAL No.655 of 2011**

**06.03.2018**

Between:

Bondla Laxmaiah

..Appellant/Accused

and

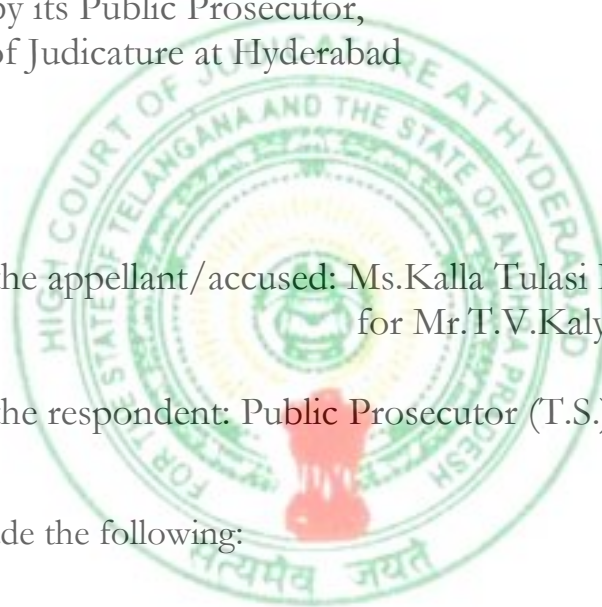
The State of Telangana,  
represented by its Public Prosecutor,  
High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellant/accused: Ms.Kalla Tulasi Durgamba  
for Mr.T.V.Kalyan Singh

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

The Court made the following:



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

The sole accused in Sessions Case No.31 of 2009 on the file of learned VI Additional District and Sessions Judge, (Fast Track Court), Nizamabad at Kamareddy, filed this appeal assailing his conviction for the offence punishable under Section 302 I.P.C. and sentencing him to undergo imprisonment for life and also to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for a period of four months.

2. The case of the prosecution as set out in the charge sheet runs as follows.

The appellant is the grandson of Smt.Arikela Lachavva (hereinafter referred to as "the deceased"). The deceased had two daughters *viz.*, Parvavva and Balamani (L.W.3). Her elder daughter was given in marriage to Bondla Chinna Kishan of Misanpally and the couple stayed at Misanpally. Her younger daughter was married and the couple lived with the deceased at Bhiknoor, the son-in-law being illatom son-in-law. However, the younger son-in-law left her younger daughter and she was also given to the elder son-in-law. The younger daughter was living along with the deceased at Bhiknoor. Her elder daughter has three sons including the appellant and the younger daughter has one son i.e., P.W.2. As rumours spread in Bhiknoor village that L.W.3 got illegal contacts with one Nelli Vittal of the same village, the elder son-in-

law - B.Chinna Kishan stopped visiting the house of L.W.3. One day, at the request of B.Chinna Kishan, the deceased went to the house of her elder daughter at Misanpally to see a match to the appellant and stayed at their house at night and during that night, somebody has stolen three tulas of gold gundlu of the deceased and she thought that her elder daughter's family committed the theft. Prior to the theft, the appellant was due an amount of Rs.3,000/- to the deceased. A panchayat was held in this regard and P.W.3 attended the Panchayat, during which, hot discussions took place between the family members of her elder daughter and the deceased, and the appellant threatened to kill the deceased as she defamed their family. About one month prior to the date of the incident, when L.W.3 went to some other Village to attend labour work in sugarcane field, P.W.2 and the deceased were in their house at Bhiknoor. According to his pre-plan, on 14.02.2008 at about 11.00 p.m., the appellant went to the house of the deceased at Bhiknoor, knocked the door of the house and when the deceased opened the door, the appellant took the opportunity, forcibly took her into the room, gagged her mouth with his hand and axed her to death. This incident was witnessed by P.W.2, but due to fear, he had hidden himself. The appellant, after killing the deceased, left the house of the deceased duly closing the door. On 15.02.2008, on the complaint given by P.W.1 – the brother-in-law of the deceased,

a case in crime No.21 of 2008 for the offence punishable under Section 302 I.P.C. was registered by P.W.10 – the Sub-Inspector of Police, Yellareddy, and he examined P.W.1 and handed over the case to P.W.11 – the Circle Inspector of Police, Yellareddy, for investigation.

During the course of investigation, P.W.11 visited the scene of offence at Bhiknoor – the house of the deceased, secured the presence of P.Ws.2 and 4 and L.W.3, examined them and recorded their detailed statements under Section 161 Cr.P.C., minutely observed the scene and the dead body of the deceased, got photographed the scene and the dead body of the deceased by P.W.8, secured the presence of P.W.5 and L.Ws.8 and 9 – Byagari Ramulu and Bhumagari Sangavva, held inquest over the dead body of the deceased, conducted the scene of offence panchanama before P.W.5 and L.W.9, prepared Ex.P-6 - rough sketch of the scene of offence, seized the blood stained apparel of the deceased, blood stained earth and control earth and referred the dead body to P.W.9 – the Civil Assistant Surgeon, Community Health Centre, Yellareddy, for conducting post mortem examination. P.W.9, who conducted the autopsy over the dead body of the deceased, opined that the cause of death was due to neurogenic shock due to transaction of spinal cord caused by chop wound with sharp heavy weapon – axe. On 17.02.2008, P.W.11 visited Misanpally village

and secured the presence of P.W.3, examined and recorded his statement under Section 161 Cr.P.C. While the investigation was in progress, the appellant was apprehended on 17.02.2008 at about 15.00 hours and was interrogated. During the interrogation, as the appellant confessed his guilt in the commission of the offence, P.W.11 secured the presence of P.Ws.6 and 7 and recorded the confessional statement of the appellant. On the appellant's confession and at his instance, P.W.11 seized one blood stained axe, which was used by him in the commission of the offence, under a cover of confessional/seizure panchanama and effected the arrest of the appellant. On 18.02.2008, the appellant was sent for judicial remand. On 20.02.2008, P.W.11 secured the presence of P.W.8, a private photographer, examined him and recorded his statement. On 27.02.2008, the incriminating material objects seized during the course of investigation were deposited in the Court and the same were forwarded through the Court to the Regional Forensic Science Laboratory (RFSL), Kamareddy for analysis and the report on 28.02.2008. Accordingly, the FSL expert sent the report stating that the articles were examined and human blood was detected. On 19.05.2008, L.W.12 – the Judicial Magistrate of First Class, Banswada, recorded the sworn statements of P.Ws.1 and 2 and L.W.3 under Section 164 Cr.P.C.

3. Based on the charge sheet, the Court below framed the following charge.

“That you on 14-2-2008 at about 11-00 P.M., you armed with an axe went to the house of Arikela Lachavva (deceased) and knocked the main door of the house of Arikela Lachavva and on opening the door you gauged her mouth and dragged her into the side of the room and put your leg on her back and axed to death by stabbing twice with the axe and caused her death and thereby committed an offence punishable U/sec 302 I.P.C. and within my cognizance.”

4. On the charge being read over and explained to him, the appellant denied the same. Therefore, he was made to stand trial, during which, the prosecution examined P.Ws.1 to 11, got Exs.P-1 to P-12 marked and produced M.Os.1 to 4. On behalf of the defence, no oral evidence was let in. However, it got Exs.D-1 and D-2 marked. On appreciation of the oral and documentary evidence, the Court below has convicted the appellant in the manner as indicated above.

5. The motive part alleged by the prosecution was two-fold; (i) existence of disputes between the deceased and the family of the appellant in connection with the alleged theft of gold ornaments belonging to the deceased and non-repayment of the alleged debt by the appellant to the deceased; and (ii) the alleged illicit intimacy between the step mother of the appellant – L.W.3 and a person *viz.*,

Nelli Vittal, S/o Kistaiah. Though the Court below has believed the first part of the theory of motive, it has disbelieved the second part. However, in a case based on the evidence of the eyewitnesses, motive plays insignificant role. Therefore, we do not propose to deal with this aspect.

6. The prosecution has mainly relied upon the evidence of P.W.2, who was examined as an eyewitness, and the confession of the appellant leading to recovery of M.O.1 – the axe. As regards the claim of the prosecution that P.W.2 witnessed the incident, P.W.1 in his evidence stated that the deceased was his sister-in-law; that he came to know about the death of the deceased through P.W.2 and after visiting the dead body, he gave Ex.P-1 report to the Police. He further stated that P.W.2 informed him that the appellant and three others might have killed the deceased. P.W.1 admitted in his cross-examination that in his statement under Section 161 Cr.P.C. he did not mention that P.W.2 informed him that the appellant and three others might have killed the deceased. He further admitted that in Ex.P-1 he stated that P.W.2 informed him that some unknown offenders have killed the deceased.

7. P.W.2, who was about fourteen years of age at the time of the occurrence, is the step brother of the appellant i.e., while the appellant is the son of the first wife, P.W.2 is the son of second wife

to their father. Both of them are the maternal grand children of the deceased. P.W.2 deposed that he was present along with the deceased at the time of occurrence and that the appellant killed his grandmother – the deceased with an axe. He further deposed that as the appellant threatened him, he maintained silence; that after half an hour, he went to the house of P.W.1 weeping and that the Police came and recorded his statement. In his cross-examination, he admitted that he did not inform about the causing of the death of the deceased by the appellant to anyone except to P.W.1 and the Police. A portion of his statement recorded under Section 161 Cr.P.C. was marked as Ex.D-2. The witness denied having given such statement. Exs.D-1 pertains to the statement of P.W.1 recorded under Section 161 Cr.P.C. In the said statement, P.W.1 reiterated the contents of Ex.P-1. P.W.1 stated that P.W.2 informed him that some unknown persons killed the deceased at about 11.00 p.m. when he was sleeping in the house. P.W.2 in his statement recorded under Section 161 Cr.P.C. stated that at about 11.00 p.m., they heard a sound of knocking of the door from outside and when his grandmother got up from sleep and opened the door after putting on lights, an unknown person gagged her mouth and forcibly dragged her inside the house, made her lie down on the ground facing downwards and axed her on the backside of the neck, on the hands and back for twice; that he

noticed the assailant as the appellant - his step brother and he felt like making noise, but due to fear that if he does so he may also be killed, he kept silent lying on the cot. It is of relevance to note that if P.W.2 was truthful in his version, he could have disclosed the name of the appellant as the assailant to P.W.1. The fact that P.W.1 both in Ex.P-1 report and his statement recorded under Section 161 Cr.P.C. stated that P.W.2 did not disclose the name of the appellant as the assailant raises a serious doubt about the credibility of the version of P.W.2. In this context, reference to Ex.P-4 – the inquest report is relevant. Inquest was held on 15.02.2008 i.e., the day following the night on which the deceased was done to death. Both P.Ws.1 and 2 were witnesses to the inquest. In Column 11 relating to the suspected persons, it is mentioned that the father of the appellant and the brothers of the appellant had disputes with the deceased with regard to gold and cash and a quarrel took place among them. The name of Nelli Vittal was also mentioned as having illegal intimacy with the younger daughter of the deceased L.W.3 i.e., the mother of P.W.2 and step mother of the appellant and due to those reasons, all the above named persons were suspected. It is evident that both the inquest report as well as Section 161 Cr.P.C. statement of P.W.2 were prepared on the same day i.e., 15.02.2008. The inquest report was obviously earlier in point of time. The fact that P.W.2 did not raise a whisper about his

witnessing the occurrence during inquest shows that his statement recorded under Section 161 Cr.P.C. implicating the appellant is a pure after thought. As noted hereinabove, if P.W.2 was really afraid of raising an alarm while watching the occurrence, nothing prevented him from disclosing the true facts to P.W.1 before the latter gave Ex.P-1 or at least to the Police during the inquest. The failure of P.W.2 to disclose the name of the appellant as the assailant convinces us to hold that he was not an eyewitness but he was planted by the Police after preparation of the inquest report.

8. Once the evidence of P.W.2 is discarded, the only other link between the appellant and the offence is the alleged recovery of M.O.1 – the axe. Ex.P-7 is the confession-cum-recovery panchanama of the appellant. It was prepared on 17.02.2008 i.e., three days after the alleged occurrence at the Police Station. P.Ws. 6 and 7 are the panch witnesses. It is mentioned in Ex.P-7 that when the said two witnesses were going to Yellareddy shandy from Bhiknoor village, P.W.11 – the Circle Inspector of Police was standing on the road with a person in his custody; that P.W.11 called the witnesses and after ascertaining their particulars, asked them to enquire from the appellant by taking him aside about the incident; that on enquiry, the appellant confessed his killing the deceased; that after such confession, the appellant informed that he is prepared to show the axe he used in the commission of the

offence; that both the witnesses along with the appellant went to the latter's house, which was a hut; that the appellant went inside the hut and brought three axes from a corner of the hut and showed the axe with which he killed his grandmother – the deceased; that they have also found the said axe with blood stains on the wooden portion and that P.W.11 seized the axe. In his evidence, P.W.6 stated that when he was going from Yellareddy to Bhiknoor, a Police Constable took him to the Police Station and he saw the appellant holding axe in the custody of Police. He also admitted that he does not know what was mentioned in Ex.P-7. Thus, the evidence of P.W.6 as regards the alleged recovery of M.O.1 – the axe does not support the contents of Ex.P-7, in that he clearly stated that by the time he went to the Police Station, the appellant was in possession of the axe. Therefore, the theory set up in Ex.P-7 that the appellant took the Police and the two witnesses to his house from where he produced M.O.1 – the axe and that the same was seized by the Police appears to be false. As regards the other panch witness i.e., P.W.7, he did not reiterate the contents of Ex.P-7, pertaining to the seizure of M.O.1 – the axe from the possession of the appellant. On the contrary, the witness only deposed that the appellant stated that he killed his grandmother – the deceased with the axe and evidently, referring to M.O.1, he stated that the said axe is now in

the Court. Thus, even P.W.7 did not state in his evidence that the axe was seized from the possession of the appellant. Though Ex.P-11 – the F.S.L. report, shows that the blood on item No.6 referable to M.O.1, was of human origin, the blood group of the blood stains on the said item and also on other items such as item Nos. 1, 3, 4 and 5 i.e. earth, torn red colour polyester blouse, light blue colour flower designed polyester saree and ash colour woollen blanket, could not be determined. Under Section 26 of the Indian Evidence Act, 1872 (for short “the Act”), the confessional statement, while in the custody of the Police, cannot be used against the appellant for proving his guilt. As the prosecution failed to prove the recovery from the appellant, it cannot take the aid of Section 27 of the Act, under which, the confession which led to discovery of the relevant fact alone, is admissible in evidence. As discussed hereinbefore, P.W.2 was not an eyewitness and in the absence of legal evidence as to the recovery of the weapon from the appellant, the prosecution failed to prove the involvement of the appellant in the commission of the offence. The Court below got swayed away by the evidence of P.W.2 and the recovery of M.O.1 – the axe, without proper analysis of the contradictions and lacunae, from which, both the above aspects suffer.

9. On the analyses as above, the judgment of the Court below is set aside. The appellant/accused is acquitted of the charge for

which he was prosecuted. As the appellant is on bail, he is directed to surrender himself before the Superintendent, District Jail, Nizamabad, for completing the formalities for his release, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

10. The Criminal Appeal is, accordingly, allowed.

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**C.V.NAGARJUNA REDDY, J**

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**GUDISEVA SHYAM PRASAD, J**

**06<sup>th</sup> March, 2018**

GHN/MSB

