

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

CRIMINAL APPEAL No.812 of 2011

13.03.2018

Between:

Seri Papa Reddy @ Papai Reddy

..Appellant

and

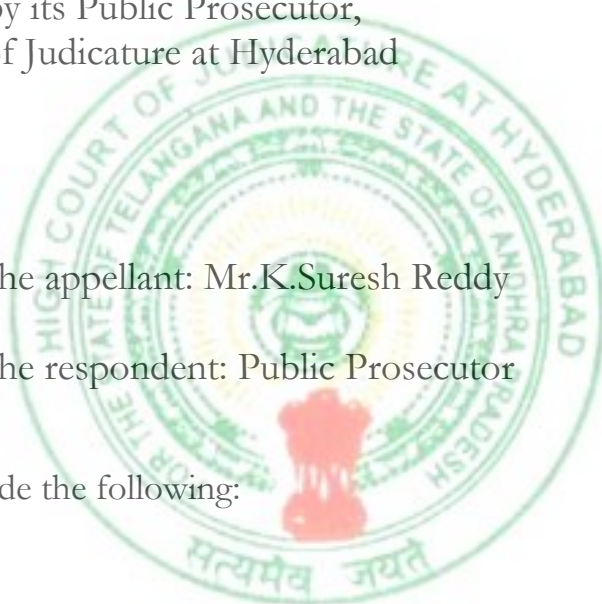
The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellant: Mr.K.Suresh Reddy

Counsel for the respondent: Public Prosecutor

The Court made the following:



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

The sole accused in Sessions Case No.309 of 2008 filed this appeal against his conviction for the offences punishable under Sections 302 and 379 I.P.C. and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.100/- for the offence punishable under Section 302 I.P.C. and rigorous imprisonment for six months for the offence punishable under Section 379 I.P.C., with the directions that both the sentences shall run concurrently and that the remand period undergone by the accused shall be set off under Section 428 Cr.P.C.

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

The appellant/accused is the native of Mandaram Village, Parigi Mandal, Ranga Reddy District and is a lorry driver. Chikkulla Sreenivas @ Sreenu (hereinafter referred to as 'the deceased') and the accused were close associates. They together committed offences for earning easy money. They used to purchase lorries on agreements, secure loads for transportation, sell the same and return the lorries to the owners. In the month of May, 2006, the accused and deceased purchased lorry bearing No.AP 16 U 7292 for Rs.2,62,000/- and gave Rs.30,000/- as advance besides executing agreement and took the lorry. They secured an iron load at

Sanatnagar, Hyderabad for transporting the same to Vizag. They sold the iron load through one Prabhakar of Kodada, Nalgonda District, for Rs.1,80,000/- to a muslim person at Bahadurpura. The accused, the deceased and the said Prabhakar shared the amount. Later, they returned the lorry to the real owner by saying that they cannot get it registered by paying the remaining amount as per the agreement. Again, the accused and the deceased purchased another lorry bearing No.AP 16 W 7339 under an agreement, paid Rs.50,000/- and took the lorry. On 28.07.2006, the accused and the deceased got a load of mango logs for transporting the same from Anakapalli to Bangalore. On the way, on 29.07.2006 as the lorry could not pass under the bridge, the accused and the deceased unloaded the same in a vacant place located at Three Cinema Halls Center, Rajamahendravaram and asked P.W.16 to watch the same. On 02.08.2006, they got a load of maizes and sold the same in Khammam for an amount of Rs.90,000/- and returned the lorry to its owner. On 05.08.2006, the accused purchased lorry bearing No.AP 9 U 6458 from P.W.4 for Rs.3,27,000/-, paid Rs.72,000/- from the amount realised by selling the maizes and also got executed an agreement with P.W.4 in the name of L.W.9 – Shaik Lathif Bi, who is his kept mistress. The accused signed on the agreement on behalf of L.W.9. After purchasing the lorry bearing No.AP 9 U

6458, the accused telephoned to the deceased. On that the deceased along with his son (P.W.6) came to the lorry and showed him. The accused and deceased went to Hyderabad on the said lorry on 06.08.2006 as they got a load of poultry feed at Hyderabad to be transported to Vizag through the lorry supply office of P.W.11. On 07.08.2006, the accused and the deceased went to the lorry supply office of P.W.7 and got unloaded the poultry feed through a local driver. On 08.08.2006, the accused and the deceased got an iron load through P.W.7 to transport the same from the company of P.W.8 to Tirupathi. The accused gave a copy of his driving license, vehicle records like C-Book, permit etc., to P.W.7 and also paid Rs.490/- towards commission. The accused also signed on receipt of Rs.5,000/- of transport charges and other documents in the company of P.W.8. On 08.08.2006 at 7 p.m., the accused and the deceased started at Vizag to go to Tirupathi with the iron load. On the same day at 7.21 p.m., they paid toll tax at Anganampudi to L.W.12 – M.Ananda Rao. On the same day, the deceased received a telephone call from his mother and son that they were taken away by Police in connection with a maize case to know his whereabouts. The deceased consoled them and said that he was coming with money and would settle the matter with maize load party. The deceased also made a phone call at 8 p.m. to his mother and

son informing them that he along with accused were coming from Vizag and that he will settle the matter with maize party by the next day evening. When, the accused and the deceased reached Diwancheruvu of Rajanagaram Mandal at 2.30 a.m., on 09.08.2006, the deceased directed the accused to take the lorry towards Hyderabad as they can sell the iron and settle the matter with the maize party by paying the amount. The accused refused to do so as his kept mistress name was in the agreement and she will face trouble. The deceased and the accused quarrelled with each other over selling the iron load. When, they reached near the place of the offence, the rear tyre of the lorry was deflated and the same was informed to them by another lorry driver, who crossed the lorry of the accused. The accused stopped the lorry by the side of road margin and removed the punctured tyre and replaced the same with Stepney. Again the deceased asked the accused to take the lorry to Hyderabad for selling the iron load. On that the accused refused to do so as his documents are in the office of P.Ws.7 and 8 and the lorry was purchased in the name of L.W.9 and L.W.9 and he has to face the risk. Again the deceased and accused quarrelled with each other and deceased beat the accused with an iron bit on his left shoulder. The accused with an intention to kill the deceased as he became hurdle to him, took an iron jockey rod and beat the

deceased on his head indiscriminately. The deceased died on the spot due to receiving the fatal injuries. The accused dragged the dead body of the deceased to the nearby reserve forest by taking the cell phone and gold ring of the deceased. The accused proceeded to Tirupathi alone. On the way, he threw the cell phone of the deceased in the Godavari river and got unloaded the iron with the help of the local driver – L.W.17 – Sai Sekhara Reddy at the office of P.W.10. The iron load was unloaded in the office of P.W.9. The accused again got a load of pipes through P.W.10's office to Hyderabad. The accused took the assistance of L.W.17 – the local driver, as he was not feeling well and no cleaner or helper was in the lorry. Then the accused and L.W.17 went to Hyderabad and unloaded the pipes and went to the office of P.W.11 and got loaded paddy to deliver the same at Mandapeta to the rice mill of P.W.12. On 09.08.2006, the dead body was noticed by P.W.2 and L.W.3 – Gollapalli David Raju. L.W.3, who was the village servant, informed the same to P.W.1, who was the Panchayat Secretary of Diwancheruvu village. P.W.1 gave a report to Police on 09.08.2006 at 1 p.m., about their noticing an unidentified dead body at the place of offence. P.W.19 – the incharge S.H.O., Bommuru P.S. registered a case in crime No.159 of 2006 under Sections 302 and 201 I.P.C. and investigated the same as an unidentified dead body. During the

course of investigation, P.W.19 examined P.Ws.1 and 2, L.W.3 and L.W.4 – Yerrampalepu Venkata Rao, and got photographed the place of offence including the dead body through P.W.14 and recorded his statement under Section 161 Cr.P.C. P.W.19 observed the scene of offence and seized the chappal of the deceased, blood stained stone and earth and control earth from the place of the offence under the cover of scene observation report in the presence of P.W.1 and L.W.22 – Koppula Yesu Ratnam. He also conducted inquest over the dead body of the deceased in the presence of P.W.1, L.W.21 – Tuttagunta Veera Venkata Satyanarryana Murthy and L.W.22 and sent the dead body for autopsy through L.W.24 – Ch.Prasad. P.W.19 prepared a rough sketch of the scene of offence. P.W.20, who is the Inspector of Police, Rajamahendravaram Rural, took up the further investigation. On the basis of the tailor's tag on the pant of the deceased, P.W.20 proceeded to the shop of P.W.3 and got identified the dead body of the deceased through P.Ws. 5 and 6 – the mother and son of the deceased. He also examined P.Ws.3 to 12, 14, 16 and 18 and L.Ws.9, 12 and 17, recorded their statements and sent the material objects to RFSL, Vijayawada. On 28.08.2006 at 7.30 a.m., P.W.20 arrested the accused in front of the shops of P.W.16 and L.W.21 at Vemagiri Centre in the presence of P.W.1 and L.W.21 – the mediators, when the accused and L.W.17

were present at the lorry bearing No.AP 9 U 6458. P.W.20 seized the gold ring of the deceased, iron jockey rod from the possession of the accused along with the vehicle records and toll gate receipts. P.W.20 sent the material objects to the RFSL, Vijayawada through the Court and the report is received by the Court. P.W.17 - III Additional Judicial First Class Magistrate, Rajamahendravaram conducted identification parade on the request of Police and P.W.7 identified the accused but P.W.16 failed to identify the accused. P.W.13, who conducted post mortem examination over the dead body of the deceased, issued Ex.P-12 report with the opinion that the deceased died due to shock caused by head injury and particularly, injury to vital organ - brain.

3. Based on the charge sheet filed by the Police and the material collected by it during the investigation, the Court below framed the following charges.

“1.Firstly, that you on 09.08.2006 at about 2.30 a.m., near Diwancheruvu of Rajanagaram Mandal did commit murder of deceased viz., Chikkulla Srinivas @ Srinu, S/o. Basavayya, A/40 years, C/Rajaka, Lorry Driver, Huzurnagar by beating deceased with iron jockey on his head and thereby committed the offence punishable u/sec.302 I.P.C. within the cognizance of this Court.

2.Secondly, that you on same date, time and place as mentioned in charge No.1 with dishonest intention take

away the Gold Ring and Cell Phone from the possession of deceased viz., Chikkulla Srinivas @ Srinu, S/o. Basavayya, A/40 years, C/Rajaka, Lorry Driver, Huzurnagar and thereby committed theft punishable u/sec.397 of I.P.C. within the cognizance of this Court.

3. That you on same date, time and place as mentioned in charge No.1 knowing the having reason belief that the murder of deceased committed has been dragged the dead body of the deceased nearby the reserve forest to disappear the evidence with the intention of screening you from legal punishment commits the offence punishable u/sec.201 I.P.C.”

4. As the plea of the accused is one of denial, he was tried for the aforementioned offences. During the trial, the prosecution examined P.Ws.1 to 23, got Exs.P-1 to P-31 marked and produced M.Os. 1 to 8. On behalf of the defence, no evidence was let in. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as stated hereinbefore.

5. At the hearing, Mr.K.Suresh Reddy, learned counsel for the appellant/accused, has submitted that while his client is not interested in seriously questioning the finding regarding his involvement in causing the death of the deceased, he is only intending to question his conviction for the offence punishable under Section 302 I.P.C. instead of under Section 304 I.P.C.

6. We have heard Mr.K.Suresh Reddy, learned counsel for the appellant/accused and also the learned Public Prosecutor on the above aspect only.

7. As could be seen from the case of the prosecution and also the evidence let in by it, the deceased first hit the accused with an iron rod on his left shoulder and thereupon, the accused took an iron jockey and beat the deceased on his head. Ex.P-12 – the post mortem certificate shows that the deceased received in all six injuries, which were either lacerations or contusions or abrasions. P.W.13 - the Doctor opined that the injuries sustained by the deceased are sufficient in the ordinary course of nature to cause death. No doubt, the multiple injuries caused to the deceased shows that the accused had the intention to kill the deceased. But, from the fact that though they were travelling together for a long time, the accused did not carry any weapon along with him, it is evident that he did not have the premeditated intention of killing the deceased. Furthermore, he did not attack the deceased at the first instance. It is only after the deceased beat him on his left shoulder, that the accused took out the jockey rod and repeatedly hit the deceased on his head and upper part of the body. These facts would, thus, clearly show that as the deceased provoked the accused by attacking

him, under the grave and sudden provocation, the accused committed the offence without premeditation in a sudden fight and in the heat of passion.

8. Accordingly, the appellant/sole accused is liable to be convicted for the offence punishable under Section 304 Part-I I.P.C., instead of under Section 302 I.P.C. As regards the sentence, we are of the opinion that the ends of justice would be served if he is sentenced to rigorous imprisonment for a period of ten years for the offence punishable under Section 304 Part I I.P.C., while sustaining the fine imposed by the Court below. Judgment, dated 20.02.2009, in Sessions Case No.309 of 2008 on the file of learned VI Additional Sessions Judge, (Fast Track Court), East Godavari District at Rajamahendravaram is, accordingly, modified.

9. In the result, the Criminal Appeal is allowed in part to the extent indicated above.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

13th March, 2018

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