

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Criminal Appeal No.814 of 2011

Date: 12.03.2018

Between:

Nethalla Yadaiah and 2 others

... Appellants

and

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

...Respondent

Counsel for the Appellants: Mrs.A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor (TG)

The Court made the following:



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

All the three accused in Sessions Case No.275 of 2009 on the file of the Principal Sessions Judge, Nalgonda, filed this Appeal against their conviction for the offence punishable under Section 302 r/w Section 34 IPC and sentencing them to undergo Rigorous Imprisonment for life and also to pay a fine of Rs.1,000/- each and, in default, to undergo Simple Imprisonment for one month.

The case of the Prosecution, as set out in the charge sheet, is as follows:

The deceased Nethalla Venkataiah (hereinafter referred as 'the deceased') had certain agricultural lands in Thungapadu Village. About three years prior to the date of the incident, he agreed to sell an extent of Ac.1.21 guntas in Survey No.381/A in the limits of Thungapadu Village to the appellants for a sum of Rs.45,000/- and handed over the possession of the same to them. As the appellants did not get the same registered in their names, the deceased requested them to get it done. In the meantime, there was a hike in the land rates and as such, the deceased wanted to register only one acre of land. Hence, disputes arose between him and the appellants. On both the

parties approaching the village elders, the latter advised the appellants to pay an extra amount of Rs.30,000/- and get the land registered in their names. As the appellants did not do so, the deceased sold away the said land to PW.7, who is the uncle of PW.3, through the mediators- LW.9- Nadimpally Ramachandram and PW.8 and also registered the same in his name on 19-08-2006. On 26-08-2006, while the deceased was measuring the said land with the help of PW.8 to hand over the same to PW.7, the appellants came to the spot, quarrelled with the deceased and PW.8 by claiming that the land belongs to them as they have purchased it about three years back and beat PWs.7 & 8. In this connection, a case in Crime No.64 of 2006 was registered under Section 324 r/w 34 IPC, which is pending trial *vide* CC.No.624 of 2006. Therefore, the appellants bore grudge against the deceased. On 01-07-2007, PW.7 came from his village and requested the deceased to show the land sold to him. He also requested PWs.3 to 6 and LW.9- Nadimpally Ramachandram to help him. All of them went to the land, completed their work and were returning to their village. The deceased was returning on the motorcycle of PW.3 as a pillion rider. When they reached near transformer on Laxmanapuram road, the appellants

attacked the deceased and axed him to death. PWs.3 to 6 witnessed the same. On the complaint given by PW.1- wife of the deceased, LW.17- Sub-Inspector of Police, Nampally Police Station, registered a case in Crime No.39 of 2007 under Section 302 r/w 34 IPC and dispatched the express FIRs to the Court and also to the concerned Officers.

On receipt of the express FIR, PW.12- Circle Inspector of Police, Nampally, proceeded to the scene of offence situated at the outskirts of Thungapadu h/o T.P.Gouraram Village, on Laxmanapuram road, secured the presence of PWs.1, 2 to 7 & 8 and LW.2- Smt.Nethalla Narasamma and LW.9- Nadimpally Ramachandran, examined and recorded their statements under Section 161 Cr.P.C., took the photographs of the scene of offence including the body of the deceased with the help of LW.11- Vattikuti Sudhakar, recorded the statement of LW.11, summoned the mediators LW.12- Dandiga Chandraiah and PW.9, examined them and held inquest over the dead body of the deceased in their presence and sent the dead body of the deceased to GCH, Devarakonda, for Postmortem Examination to know the exact cause of death. PW.11- Civil Assistant Surgeon conducted

autopsy over the dead body of the deceased and issued Ex.P.11- Postmortem examination report in which he opined that the cause of death was “Cardio Respiratory Failure due to Head Injury with shock”.

PW.12- Circle Inspector of Police, Nampally, arrested the appellants on 03-07-2007 at 13.00 hours, recorded their confessional statements, recovered one axe of appellant No.1 from the outskirts of Thungapadu Village. All the appellants led the Police, LW.14- Pulakaram Venkataiah and LW.15- Pochamreddi Anthi Reddy to the Bathai thota (Batavian garden) of Gundla Yadaiah, who is the brother in law of appellant No.2, situated in the outskirts of Pasunoor Village, where appellant Nos.2 and 3 kept the weapons of offence *i.e.*, two axes. PW.12 seized the same under the cover of recovery panchanama in the presence of LW.14- Pulakaram Venkataiah and LW.15- Pochampreddi Anthi Reddy. The appellants were produced before the Court on 04-07-2007 for judicial remand.

Based on the charge sheet, the lower Court has framed the following charge:

“That A-1 to A-3 of you, on the 1st day of July, 2007 at about 2.30 p.m., at Thungapadu h/o T.P.Gowraram village, in furtherance of common intention, did commit murder of

the deceased- Nethalla Venkataiah by axing him due to land disputes and thereby A-1 and A-3 of you committed an offence punishable under Sec.302 r/w.34 of Indian Penal Code and within my cognizance.”

The appellants pleaded not guilty and hence, they were subjected to trial.

The Prosecution has examined PWs.1 to 12, marked Exs.P.1 to P.13 and produced MOs.1 to 9. On behalf of the defence, no oral evidence was let in. It has got Exs.D.1 and D.2 marked. Based on the oral and documentary evidence, the trial Court has disposed of the case in the manner as stated herein before.

After arguing the case, Smt.A.Gayathri Reddy, learned Counsel for the appellants, submitted that she is not pressing the Appeal to the extent of the finding of the lower Court that the appellants have murdered the deceased. She, however, submitted that the facts and circumstances suggest that the appellants did not have the intention of killing the deceased though they were armed with axes. In support of her submission, she has invited our attention to Ex.P.11- Postmortem Examination Certificate and the oral testimony of

PW.11- Civil Assistant Surgeon, who conducted the autopsy over the dead body of the deceased.

PW.11 has mentioned the following injuries on the dead body of the deceased:

“External injuries:

1. Abrasion on right shoulder joint 1/1 CM.
2. Contusion on middle part of the temporal region 3x2 Cms.
3. Contusion on right side chest 2x2 Cms.
4. Contusion of occipital region 2x1 Cms.

Internal injuries:

1. Fracture right side 6, 7, 8 ribs.
2. Fracture temporal bone and brain matter come out of the cavity.
3. Fracture of occipital bone.”

A suggestion was put to PW.11 that the injuries were caused with a blunt object, which was denied by him. PW.11, however, admitted that there is a possibility of cut injury with MOs.1 to 3.

The learned Public Prosecutor has fairly conceded that if the sharp side of MOs.1 to 3 was used and the deceased was hacked as stated by the Prosecution witnesses, there would have been cut injuries as admitted by PW.11 and that no such cut injuries were found on the dead body of the deceased. He

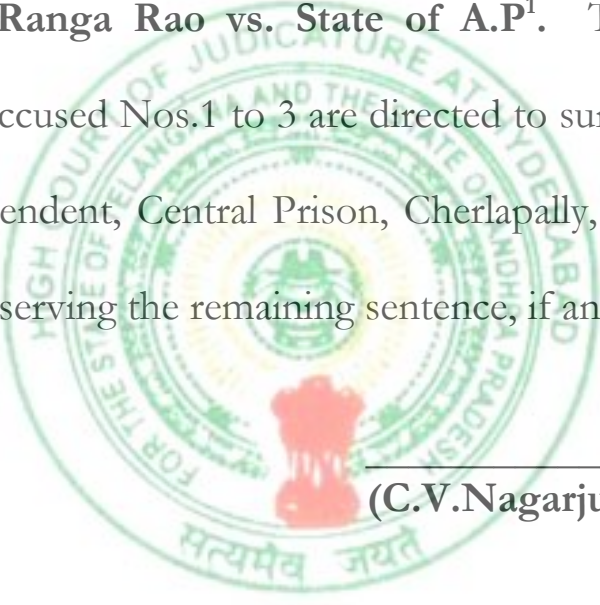
further admitted that injury Nos.1 to 4 must have been caused with the blunt side of MOs.1 to 3.

As the Prosecution was able to prove that the appellants have carried the axes and attacked the deceased with them, it is reasonable to presume that they must have attacked the deceased with the blunt side of the axes instead of the sharp side thereby causing blunt injuries. From this fact, it can be further presumed that though the appellants had the intention of causing injuries and the knowledge that in ordinary course, they are likely to cause death, they may not have had the intention of killing the deceased. Had it been so, they would have attacked the deceased with the sharp side of the axes. We are, therefore, of the opinion that the offence committed by the appellants would fall under Section 304 Part II of IPC.

In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellants/accused Nos.1 to 3 in Judgment, dated 05.01.2011, in S.C.No.275 of 2009 on the file of the Principal Sessions Judge at Nalgonda, for the offence punishable under Section 302 IPC is modified to that of the offence punishable under Section 304 Part II IPC. The appellants/accused Nos.1 to 3 are, accordingly, convicted and

sentenced to suffer Rigorous Imprisonment for seven years. The sentence regarding imposition of fine is confirmed. The period of sentence already undergone by the appellants is directed to be set off.

By Order, dated 04-01-2017, in Crl.A.M.P.No.2434 of 2016, the appellants, having completed five years of their sentence, were granted bail in terms of the Order of this Court in **Batchu Ranga Rao vs. State of A.P¹**. Therefore, the appellants/accused Nos.1 to 3 are directed to surrender before the Superintendent, Central Prison, Cherlapally, Ranga Reddy District, for serving the remaining sentence, if any.



(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 12th March, 2018
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¹ [2016 (3) ALT (Crl.) 505 (DB)(AP)]

