

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

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Criminal Appeal No.74 of 2012

Date: 10.09.2018

Between:

Panditi Yesobu and 2 others

... Appellants/accused Nos.1 to 3

and

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

...Respondent

Counsel for the appellants:

Smt.C.Vasundhara Reddy

Counsel for the respondent:

Public Prosecutor (AP)

The Court made the following:



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

The accused, three in number, filed this Criminal Appeal against Judgment, dated 09-01-2012, in SC.No.523 of 2010 on the file of the VI Additional District & Sessions Judge, (Fast Track Court), Markapur, Prakasam District, whereby they were convicted for the offence punishable under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.3,000/- each and in default of payment of fine, to suffer Simple Imprisonment for a period of six months.

The case of the Prosecution, as reflected from the charge sheet, is briefly set out hereunder:

The appellants/accused Nos.1 to 3 are the residents of Yedurallapadu Village of K.K.Mitla Mandal. One Pokala Dhanamjaya Rao (hereinafter referred to as 'the deceased'), who was a lorry driver, deserted his wife about four or five years prior to the incident. He was a tenant in the house of one Yadala Venkata Ratnam and PWs.2 and 3 were the co-tenants. One Panditi Rani, who is the wife of appellant No.1, was elected as Sarpanch of Yedurallapalli Village in the year 2006 with the support of the appellants. The appellants

belonged to one group and the deceased belonged to another group. There was a quarrel in the village in between the two groups in respect of which MC.No.2 of 2008 was registered on the file of the Sub-Divisional Magistrate, Kandukur and a case in Crime No.59 of 2008 for the offence under Section 509 IPC and the provisions of the SCs and STs (POA) Act, 1989, was also registered against the deceased for insulting the modesty of the wife of appellant No.1. The deceased sent petitions against the father of appellant No.3 and also against the wife of appellant No.1 and therefore, appellant Nos.1 to 3 conspired to kill the deceased. On the intervening night of 12.10.2009 at 1.00 hours, all the three appellants, armed with lethal weapons such as axe and sticks, went to the house of the deceased, during which time the latter was sleeping on a cot in the verandah of his house. Appellant Nos.1 and 3 beat the deceased on his face with sticks causing bleeding injuries; that appellant No.2 hacked him with axe on his head and that the deceased succumbed to the bleeding injuries. On hearing the noise, PWs.2 to 4, who were sleeping in the verandah of the said building, woke up and witnessed the same when appellant No.2 threatened them with dire consequences, if they reveal the same to

anybody. On 02-10-2009, PW.5- Village Revenue Officer, having come to know about the occurrence through PW.1- Village Servant, visited the spot, noticed the dead body of the deceased and presented Ex.P.5- Police report and PW.17- Sub-Inspector of Police, K.K.Mitla Police Station, registered the same as Crime No.111 of 2009 under Section 302 IPC and sent express FIRs to all the concerned Officers.

PW.18- Inspector of Police, Podili, took up the investigation, visited the scene of offence, seized the blood stained earth, control earth, blood stained clothes and other incriminating material therefrom in the presence of PWs.5 and 15- mediators under the cover of ExP.6- scene observation report, prepared Ex.P.40- rough sketch of the scene of offence, got the scene of offence photographed by PW.13, held inquest over the dead body of the deceased in the presence of the aforesaid mediators under the cover of Ex.P.7- inquest report and sent the dead body for post mortem examination through LW.17- constable. PW.16- Medical Officer, who conducted autopsy over the dead body of the deceased, issued Ex.P.38- Post-mortem Certificate opining that the deceased would appear to have died of shock and hemorrhage due to head injury.

On 11-10-2009 at about 8.00 a.m., the appellants approached PW.11 and confessed their guilt. PW.11 recorded their confessional statements and produced them before PW.18 along with report. PW.18 interrogated the appellants, arrested them at about 11.00 a.m., after informing the grounds of arrest, seized the axe used by appellant No.2 and the broken pieces of the stick used by appellant No.1 under the cover of Exs.P.11 and P.12- mediators reports in the presence of PWs.5 and 15 and produced the appellants before the jurisdictional Magistrate, for judicial remand. PW.18 forwarded the material objects to RFSL for examination and after receipt of the report, filed the charge sheet.

Based on the chargesheet, the Court below has framed the following charge:

“That you A1 to A3 on the intervening night of 1/2.10.2009 with a common intention and knowingly to kill the deceased Pokala Dhanamjaya Rao S/o Veligondaiah attacked him with lethal weapons such as axe, sticks and killed him and committed murder which is an offence punishable u/Sec.302 IPC and within my cognizance and I direct that you all be tried by this court on the said charge.”

As the appellants pleaded not guilty, they were subjected to trial, during which the Prosecution examined PWs.1 to 18, got Exs.P.1 to P.43 marked and produced MOs.1 to 17. 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 noted herein before.

We have heard Smt.C.Vasundhara Reddy, learned Counsel for the appellants, and Sri P.Venkateswaralu, learned Public Prosecutor for the State of Andhra Pradesh.

This is a case where all the Prosecution Witnesses except PWs.1, 13 and 16 to 18 have turned hostile. Among the hostile witnesses, PWs.2 to 4 were the alleged eye witnesses to the occurrence. It is noteworthy that both in Ex.P.5- Report, Ex.P.39- FIR and Ex.P.7- Inquest Report, the offenders were described as unknown. PWs.2 to 4 have been introduced in the case after the inquest was held on the dead body of the deceased. However, PWs.2 to 4 have turned hostile and as a result, the main basis of the

Prosecution case has suffered a severe set back. When the evidence of the alleged eye witnesses is discarded, the only evidence available with the Court was (i) Ex.P.4- extra-judicial confession allegedly recorded by PW.11 and (ii) recovery of MOs.5, 16 and 17.

As regards the alleged extra-judicial confession, it is to be noted that PW.11, whose signature on Ex.P.41 was marked as Ex.P.18, turned hostile. The Court below, however, relied upon Ex.P.41 only on the ground that the witness has admitted his signature on the said document. We shall, therefore, closely examine the testimony of PW.11.

In his chief-examination, PW.11 stated that he is an agriculturist and resident of Konakanamitla Village; that he knows appellant Nos.1 and 3 and also the deceased though he had no acquaintance with him; that about one year back, the deceased was murdered; that he is not a literate, but he has learned to sign in Telugu; and that though he cannot read and write in Telugu, he can identify his signature. He further stated that about one year back, one day he was called by the Inspector of Police, Podili, to his office; that by the time, he went to his office, all the three appellants were

present there; that the Inspector had asked him whether he knows them for which he has answered in the affirmative; that the Inspector asked him to sign on the written paper as if he knows the appellants; that then he insisted to read the contents of the document; that he was told by the Inspector that there is nothing in the document except the witness's familiarity with the appellants; and that he simply obliged and signed. PW.11 identified his signature on Ex.P.41 counter-signed by the Circle Inspector. It is further stated that he does not know the contents of the report.

As PW.11 was declared hostile, he was cross-examined. He has denied the suggestion that on 11-10-2009, the appellants confessed their guilt and surrendered before him, apprehending danger for their direct surrender to the Police; that he took them to the office of the Inspector of Police and surrendered them along with his report; and that he has been deposing falsely to help the appellants. He has also denied the suggestion that the report was not prepared by the Inspector and that his signature was not obtained thereon as deposed by him. He admitted that he is not in

the habit of attesting any document or signing any paper in the Court without knowing its contents.

We have perused Ex.P.11, which is in Telugu. We find an ocean of difference in the manner of writing between the contents of the said document and the signature. While the appearance of the writing in the document shows that it was written by a person, who has proficiency in Telugu, the signature thereon clearly shows that it is subscribed by someone, who is either illiterate or semi-literate. Significantly, the statement made by PW.11 that he does not know reading and writing has not been subjected to any cross-examination. Indeed, a perusal of Ex.P.11 fully supports the statement of PW.11 that he is not capable of writing the contents as they appear therein. In our opinion, the lower Court has misled itself into believing that PW.11 has prepared Ex.P.41- Report. On the contrary, the above discussed evidence shows that Ex.P.11 was put into the mouth of PW.11 by PW.18. Therefore, we have no hesitation to hold that Ex.P.11 is brought into existence by making PW.11, who is an illiterate, sign on Ex.P.41 as if he has prepared the same and surrendered the appellants.

The only other evidence, on which reliance has been placed by the Prosecution and accepted by the Court below, is the alleged recovery of MOs.5, 16 and 17. The Prosecution has pleaded that the recoveries were made based on Exs.P.11 and 12- Seizure Mahazars, but PWs.5 and 15- Panchayatdars thereto have turned hostile and they have not supported the case of the Prosecution.

PW.5- Village Revenue Officer, in his chief-examination, stated that on 11-10-2009, the Inspector of Police summoned him to his office and asked him to prepare the arrest mahazar of the appellants and seizure mahazars as if recoveries were made at the instance of the appellants at different places and that though he hesitated to prepare the reports, he was forced to write the same in the office of the Inspector as he is the Village Revenue Officer at the relevant time. He further stated that the appellants were not present in the Circle Office either at the time of preparation of mediators' reports incorporating the confession that lead to recovery or at the time of seizure of the Material Objects under Exs.P.11 and 12- seizure mahazars. He further stated that the appellants were neither interrogated in his presence

nor they have made any confessions. In the cross-examination, PW.5 stuck to his stand and stated that he was not shown the axe and sticks seized under Exs.P.11 and P.12.

PW.15- another Village Revenue Officer also towed the line of PW.15. Nothing much could be elicited from his cross-examination, which could be used as incriminating point against the appellants as regards the recovery. As the theory of recovery put forth by the Prosecution was not supported by the independent witnesses, who attested the seizure mahazars, it is not safe to rely upon the sole testimony of PW.18- Investigating Officer.

In the light of the above discussion, we are of the opinion that the Court below has committed an error in convicting the appellants based on the extra-judicial confession and the alleged recoveries.

Therefore, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused Nos.1 to 3 for the offence punishable under Section 302 IPC in the Judgment, dated 09.01.2012, in

Sessions Case No.523 of 2010, on the file of the VI Additional District & Sessions Judge (FTC), Markapur, are set aside. The fine amount, if any, paid by them shall be refunded to them. The bail bonds of the appellants/accused Nos.1 to 3 shall stand cancelled. They are directed to surrender themselves before the Superintendent, Central Jail, Nellore, for completion of the legal formalities for their release from the said Jail.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 10th September, 2018
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