

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SMT.JUSTICE KONGARA VIJAYA LAKSHMI**

CRIMINAL APPEAL No.1385 OF 2011

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Originally accused Nos 1 to 8 in S.C.No.104 of 2011 on the file of VII Additional District (FTC), Visakhapatnam were tried for an offence punishable under Section 302 read with Section 34 I.P.C. for causing the death of one Korra Kasupathi (D1) and Korra Guruvu (D2). Vide judgment, dated 31-10-2011, the learned Sessions Judge, convicted accused Nos 1, 2 and 8 for the offence punishable under Section 302 I.P.C. and sentenced them to suffer imprisonment for life and to pay fine of Rs.500/- each, in default, to suffer simple imprisonment for one month and acquitted the other accused. Challenging the same, the present appeal came to be filed.

2. The gravamen of charge against the accused is that on 10-12-2009 at about 8 PM, son of A-1 by name Korra Raja Rao died and all the accused suspected the death due to sorcery being performed by two deceased. It is said that all the accused went to the house of deceased, brought them to the house of A-1 and done them to death.

3. The facts of the case, as culled out from the evidence adduced by the prosecution, are as under:

PW.1 is the wife of Korra Kasupathi (D-1) and daughter-in-law of Korra Guruvu (D-2), PW.3 is daughter of deceased Kasupathi, while PW.4 is the brother-in-law of D-1, PW.5 is the brother-in-law of D-2. D-1 and D-2 are residents of Chittamamidi Village. On the date of incident at about 2 pm, the son of A-1 died and all the accused were under the impression that the death was due to sorcery practiced on the son of A-1 by D-1. On the date of incident, after having dinner, PW.1, her husband and children and D-2 were sitting in the house. At that time, A-1 to A-3 came to their house and asked D-1 to come along with them. A-1 to A-8 forcibly took away D-1 from the house. It is stated that PWs 1 and 3 followed them and at the house of A-1, all the accused hacked both deceased to death. A-1 is said to have hacked D-1 with an axe on the forehead, while the other accused caught hold of D-2. At that time, A-2 brought an axe from the house and hacked D-2. Seeing the incident, PWs 1 and 3 ran away from the scene and went to the house of PW.5 at Govada Village. On the next day, they started from their house at 8 am, to lodge a report. According to PW.14, Head constable in G.K.Veedhi, PW.1 came to police station at 6 pm on 11-12-2009 and presented a report,(Ex.P1) basing on which a case in Cr.No.77 of 2009 came to be registered under Section 302 read with Section 34 IPC. Ex.P.12 is the F.I.R. sent to the Court along with report. He immediately informed the registration of FIR to PW.12, who took-up investigation

from PW.14. On receiving a copy of the F.I.R., PW.12 CI of police visited Chittamamidi village and informed about registration of F.I.R to the higher officials. He said to have received F.I.R. at 8 pm in the night time. As the place of offence in the Maoists affected area, he could not proceed with investigation on that day. On the next day, he left to Chittamamidi village along with special party and at the scene of offence prepared a scene of offence panchanama in the presence of PWs 2 and 9. Ex.P.2 is the scene observation report. He also got scene of offence photographed, which is placed on record as Ex.P.13. Apart from preparing rough sketch, which is marked as Ex.P.14, he seized blood stained earth and controlled earth from the scene, which are placed on record as MOs 8 and 9 apart from examining Pws 1 to 5. He then, conducted inquest over dead body of deceased Kasupathi (D-1) from 9 am to 11 am in the presence of Pws 1 to 3. Ex.P.15 is the inquest report of D-1. Thereafter, he conducted inquest over the dead body of deceased Korra Guruvu (D-2) from 11 am to 13.00 pm in the presence of same witnesses. Ex.P.16 is the inquest report of D-2. Later the two dead bodies were sent for Post-mortem examination. PW.13 who was working as Medical Officer, Government Hospital, Chintapalli conducted autopsy over the dead body of the two deceased and issued Ex.P.17 and Ex.P.18 the P.M. certificates respectively. According to him, the cause of death of deceased was due to hemorrhage and destruction of vital

structures of cerebral hemispheres due to injuries. Further investigation was taken-up by PW.15 the Inspector of Police. According to him on 20-12-2009 A-2 and A-8 surrendered before him in the police station, who were arrested in the presence of PW.9 under Ex.P.19. Pursuant to confession made by both accused, they seized axe and knife from the bushes situated by the side of path way in the outskirts of Chittimamidi Village. Ex.P.20 is the panchanama report drafted at the time of seizure of MOs 1 and 2. Thereafter, they returned to police station and sent the accused for remand. On information, he arrested A-1, A-3 and A-7 at Chittimamidi Village and recorded their confessional statements in the presence of PW.10 and PW.11. Ex.P.11 is the panchanama report drafted at the time of arrest of A-1, A-3 to A-7. Further investigation was taken up by PW.16, who is successor of PW.15. After completing the investigation, he filed the charge sheet on 20-10-2010 which was taken on file as PRC.No.40 of 2010 on the file of Judicial Magistrate of First Class, Chintapalli.

4. On appearance of the accused, copies of the documents were furnished to them, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.104 of 2011.

5. On consideration of material placed on record, the charge as stated above came to be framed, read over and explained to the accused, to which, they pleaded not guilty and claimed to be tried.

6. In support of its case, the prosecution examined (16) witnesses and got marked Ex.P.1 to Ex.P.21. Out of (16) witnesses examined by the prosecution, Pws 6, 7, 8, 9, 10 and PW.11 did not support the case of the prosecution and were treated hostile by the prosecution.

7. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses, to which they denied, but, however, did not place any evidence in support of their defence.

8. Relying upon the evidence of PWs.1, 3 and 5, the learned Sessions Judge, vide his judgment under challenge, convicted the appellants herein for the charge under Section 302 I.P.C. and sentenced them to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

9. Learned counsel for the appellants mainly submits that there are any number of circumstances to indicate that Pws 1, 3 and 5 have not seen the incident and that they are set up by the prosecution to connect the accused with the

crime. According to him, the evidence of witnesses is inconsistent with each other, as to when they went to scene of offence. He would further submit that though Pws 1, 3 and 5 claimed to have started from their house at 8 am or 10 am, as the case may be, to give the report, same was said to have been lodged at 6pm on 11-12-2009 before PW.14 with an abnormal delay, to which there is no explanation. Having regard to the inconsistent versions of the eye-witnesses pleads that, a doubt arises as to whether these witnesses have seen the incident.

10. On the other hand, the learned Public Prosecutor would contend that there are no reasons to disbelieve the evidence of Pws 1, 3 and 5. According to him, the delay in giving the report may not matter much as the place of offence is a tribal area. Definitely it would have taken some time to get the report drafted and reach the police station, since their evidence indicates that most of their time was lost in moving from one village to other village on foot. He further submits that discrepancy if any in the evidence of Pws 1, 3 and 5 are minor in nature, which do not go to the root of the matter.

11. To appreciate the rival contentions, it would be useful to refer to the evidence of witnesses, more particularly Pws 1, 3 and PW.5.

12. According to the case of prosecution, after the death of son of A-1, the accused suspected D-1 and D-2 responsible

for his death, as they were practicing sorcery in the village. In view of the same, A-1 to A-8 are said to have gone to the house of D-1 and D-2 and forcibly brought them to the house of A-1, where they were alleged to have been done to death. Pws1, 3 and 5 claim to have gone there along with accused and watched the incident.

13. It is to be seen whether these three witnesses were there at the scene and also as to whether the incident in question took place at the house of A-1. PW.1 in her evidence deposed that on the date of incident i.e. on 10-12-2009 while herself along with two deceased and PW.3 were sitting in the house, the accused came to their house and forcibly asked D-1 to come along with them. D-2 is also said to have gone to the house of A-1, to see the dead body of the son of A-1. Insofar as Pws1 to 3 and 5 coming to the house of A-1 is concerned, the cross-examination of PW.1 shows that she went to the house of A-1 at 7.00 pm, after the accused took her husband (D-1), along with them. It was admitted that the date of incident was a 'Amavasya' night, and that their village is situated in the forest area. She further admits that distance between her house and house of A-1 is about 1 km. She further admits in the cross-examination that by the time she saw D-1 and D-2, both of them were dead. She further admits that PW.5, who is her junior paternal uncle, is a resident of Govada and distance between their village and Govada is 5 kms. She further admits that PW.3 used to live

in the house of PW.5 and both of them came to their village on hearing the disputes. She denied the suggestion that Naxalites or enemies were responsible for the death of D-2 and a suggestion that a false case has been filed against the accused at the instance of enemies of accused of their village was also denied by her. She further admits that herself and PW.3 went to the police station, where police drafted Ex.P.1 report. All other suggestions given to witness with regard to accused coming to their house and non-existence of street lights were denied. Insofar as attack on deceased is concerned, PW.1 in his evidence deposed that A-1 hacked D-1 with axe on the fore head and neck, while A-2 to A-8 caught hold of D-2. He further deposed that A-2 brought axe from inside the house and hacked D-2.

14. It is to be noted here that the evidence of PW.1 does not anywhere indicate specific role being attributed to A-8 except stating that he along with A-2 to A-7 caught hold of D-2. The evidence of this witness shows that D-1 took her dinner at 7 pm and thereafter all of them were sitting in the house. At that time, A-1 to A-8 came there and forcibly took away D-1 from their house and D-2 accompanied them to the house of A-1, to see the dead body of the son of A-1. It is to be noted that A-1 to A-8 never asked D-2 to accompany them. Further her evidence is to the effect that distance between her house and house of A-1 is 1 km and distance between her

village and Govada where PW.5 resides, is 5 kms. Her admission in the evidence goes to show that PW.3 used to live in the house of PW.5 and PW.3 and 5 came to their village on the date of offence only on coming to know about the incident.

15. Coming to the evidence of PW.3, who is the daughter of PW.1 and D-1, she deposed that on the date of incident, the son of A-1 died due to fever. Suspecting the involvement of two deceased in causing his death by practicing sorcery all the accused came to their house. While they were sitting in the house, after having dinner, all the accused forcibly took D-1 and D-2. According to PW.3, she along with PW.1 and PW.5 went along with accused. It is further deposed that there was quarrel in the house of A-1, pursuant to which, A-1 hacked D-1 with axe on the forehead. Thereafter, A-2 took the axe from the hands of A-1 and hacked D-2 on the forehead and neck. A-8 pocked D-1 and D-2 with knife. The other accused caught hold of D-1 and D-2. Though herself, PW.1 and PW.5 requested the accused not to beat the deceased, the accused threatened them to kill and as such they ran away from the place due to fear. On the next day morning they reported the matter to Sarpanch and thereafter went to the village. However, in the cross-examination she states that about 8 pm, the accused took away both deceased and herself, her mother and PW.5 followed the accused and

the two deceased. According to her, the house of A-1 is at a distance of 40 meters to their house. The wife of A-1, wife of A-2 and brothers of deceased Raja Rao were present in the house of A-1, when accused took her father and grand father to the house of A-1. She further states that on the date of incident, she went to the house of PW.5 to bring him to the house of PW.1, due to disputes between accused and deceased. According to her, she went to the house of PW.5 at 8.30 pm, which is situated at Govada village by walk and after both of them returned to house of PW.1 from Govada Village went to the house of A-1. According to her Govada Village is at a distance of 1 km to Chittimamidi Village. She further admits there are some other enemies to both the deceased in the village and she does not know whether the two deceased used to give information to the police about movements of Naxalites.

16. A perusal of the evidence of PW.3 shows that it gives a different version from what PW.1 has deposed to. PW.1 in her evidence states that accused asked D-1 to accompany them to the house of A-1, while D-2 followed the accused to see the son of A-1. Whereas, the evidence of PW.3 is to the effect that accused forcibly took both deceased to the house of A-1. Similarly, the evidence of PW.1 is to the effect that they followed the accused after 7 pm, but the evidence of PW.3 is to the effect that herself, PWs 1 and 5 together went along with accused. There is no reference to PW.5 in the evidence

of PW.1. Apart from that, PW.1 in her evidence states that house of A-1 is at a distance of 1 km, PW.3 deposes that the distance from the house of A-1 to the house of PW.1 is 40 meters. Further PW.3, admits that on the date of incident at about 8.30 pm, after hearing the disputes she went to the house of PW.5, brought him to her house and thereafter all of them went to the house of A-1. She is said to have walked from her house to the house of PW.5, which is situated in a different village on an 'Amavasya' day covering a distance of 5 Km as per PW.1 and 1 km as per PW.3. Apart from that, PW.1 deposed that there are no enemies to two deceased. While PW.3 admits that there are number of enemies to both deceased in the village and that she does not know whether two deceased were police informers. In substance, if the evidence of Pws1 and 3 are read together, it would show that at about 7 pm all the accused came to the house of PW.1 and took both deceased along with them and thereafter PW.3 is said to have gone to the house of PW.5, which is at Govada village, which is at a distance of 5 kms according to PW.1 and 1 km according to PW.2, and then returned to the house of PW.1 at Chittimamidi Village. Thereafter, PWs.1, 3 and PW.5 are said to have gone to the house of A-1, where they saw the deceased being attacked, which is not the version of PW.1. Her evidence to the effect that PW.3 was staying with PW.5 in Govada Village and that both of them came there on hearing disputes. She does not say about time as to when PW.3 and

PW.5 came to the village. If the version of PW.3 is to be accepted, it is to the effect that she went to Govada village at 8.30 pm, came back along with PW.5 and then went to the house of accused, by which time the incident must have been taken place having regard to the distance they covered on foot. In other words, their version goes to show, that the accused waited till the arrival of Pws1, 3 and 5 to attack the two deceased.

17. Coming to the overtacts spoken to by PWs.1 and 2 there are number of inconsistencies in their evidence. While PW.1 in her evidence deposed about A-1 hacking on the forehead of D-1. A-2 to A-8 catching hold of D-2 and A-2 hacking D-2 with axe, there is no reference to A-8 except saying that he caught hold of D-2 along with A-2 to A-7. But PW.3 gave a different version. She stated that prior to the incident there was a quarrel at the house of A-1, pursuant to which, A-1 hacked D-1 with axe. Thereafter, A-2 is said to have taken the axe from the hands of A-1 and hacked D-2. Thereafter, A-1 hacked D-1 and D-2 with knife, causing injuries. The version that A-2 took the axe from the hands of A-1 and A-8 hacking D-2 was not spoken to by PW.1.

18. Coming to the evidence of PW.5, who is the junior paternal uncle of PW.3, his evidence is to the effect that on the date of incident PW.3 came to his house at 6 pm and informed that A-1, A-2 and A-8 took away her father. She

further states that A-1, A-2 and A-8 may kill her father and asked him to come to her village. Thereafter PW.5 along with PW.3 went to the house of PW.1 and enquired about the issue. Later PW.1, PW.5, and PW.3 went to the house of A-1 and noticed A-1 and A-8 questioning D-1 about the death of son of A-1 and then attacking him. His evidence runs contra to the evidence of Pws.1 and 2. While the evidence of PW.1 show that accused came to their house at 7 pm, the version of PW.3 is to the effect that she went to the house of PW.5 at about 8 pm which is after the accused taking the deceased with them; which is again contrary to the version of PW.5, who deposed that PW.3 came to his house which in a different village, at 7 pm/7.30 pm. Further his evidence is to the effect that PW.3 came to his house and informed him about accused taking away her father. If that is so, then the evidence of PW.3 and PW.1, as observed earlier is something different.

19. It would be useful to extract the relevant omissions and contradictions in the evidence of PWs 1, 3 and 5, which are as under:

PW.1 in her chief examination stated as under:

“ A-1 to A-8 forcibly took away my husband from our house. Son of A1 died out of fever on Thursday. A1 to A8 hacked my husband and my father-in-law at the house of A1. The son of A-1 is by name Raja Rao (Deceased). My father in law Korra Guruvu went to the house of A1 to see the dead body of deceased Raja Rao. A-1 hacked my husband with an axe on the fore

head and neck. A2 to A8 caught hold of my father in law. A2 hacked my father in law with an axe. A2 brought the axe from his house and hacked my father in law. A1 brought the axe from his house. Accused were under impression that my husband was practicing sorcery and caused the death of son of A1. The accused threatened to hack me. I ran away due to fear.”

In the cross-examination PW.1 stated as under:

“ On the date of incident, it was Amavasya night. There is a light at the place of offence. Our village is situated in the forest area. On the date of offence, my husband took dinner at 7.00 pm. I went to the house of A1 at 7.00 p.m after they took away my husband.”

“ There is some distance between my house and house of A-1. There is one km. distance between our house and house of A-1. My husband and my father in law were dead by the time when I saw them.”

“There is a channel in between our village and village of Govada. The distance between our village and Govada is 5 kms. Korra Savithri used to live in the house of Vanthala Debo. Savithri and Debo came to our village on hearing the disputes. Savithri and Debo came from Govada village on hearing the disputes.”

“ It is not true to suggest my husband and my father in law died due to enemies or Naxalites. It is not true to suggest I filed false case against the accused at the instance of enemies of accused of our village.”

Pw.3 in her chief examination deposed as under:

“ On Thursday my father and grand father and other family members were sitting in the house after

taking dinner. All the accused came to our house and took my father and grand father by force. I, PW.1 and Vanthala Debo is the Jr.Paternal uncle of PW.1. My father and grand father were taken to the house of A1. There was a quarrel at the house of A1. A1 hacked my grand father on the fore head and neck with an axe. A8 pocked my father and grand father with a knife MO2 (Chooru kathi). The other accused caught hold of my father and grand father. Then A8 pocked my father and grand father with the knife.”

In her cross-examination PW.3 deposed as under:

“ At about 8.00 p.m. in the night time, accused took away my father and grand father. I, my mother and Vanthala Debo followed accused and my father and grand father.”

“It is not true to suggest I, PW1 and Debo did not follow my father and grand father on the alleged taking them by the accused. Vanthala Debo came to the house of PW1 on the date of offence at 8.30 p.m. after hearing about the disputes. On the date of offence night time, I went to the house of Vanthala Debo to brought him to the house of PW1 as there were disputes. I went to the house of Debo at 8.30 p.m. I took one hour time to go to Govada Village. I went to Govada village by walk. Govada Village is at a distance of 1 km to Chittimamidi village. I took one hour time to return to Chittimamdi village from Govada village. After I brought Vanthal Debo to the hosue then we went to the house of A1. I, PW.1 and Vanthala Debo went to the house of A-1.”

“There are some other enemies to my father and grand father in the village. I do not know whether my father and grand father used to go to police station to give information about naxalites.”

PW.5 in his chief examination deposed as under:

“PW.3 came to my house at 6.00 pm and informed me that A-1, A2 and A8 took away her father. She further informed me that A1, A2 & A8 may kill her father and asked me to come to her village. I went to the house of PW1 and asked her about the fact. I, PW1, PW3 went to the house of A1. A1 & A8 questioned deceased Kasupathi that he is responsible for the death for son of A1. Korra Kasupathi informed to A1 that he believed the God and behaving like a good citizen.”

In his cross-examination, PW.5 deposed as under:

“PW.3 went to the house of PW.1 at 6.00 pm. in the evening. PW.3 came to me on Thursday at 7.30 p.m. We came to the house of PW1 at 8.30 pm. By the time we reached to the house of PW.1, she was present in the house. I cannot say at what time we reached to the house of A1. By the time we reached to the house of A1, A2 to A8 and deceased were present. There were some other people also present at the house of A1.”

20. From the above admissions and contradictions in the evidence of Pws 1, 3 and 5, a doubt arose as to whether really these witnesses went to the house of A1 and witnessed the incident. If really they were present at the time of incident, accused would not have left them. Further if really the accused intend to murder the two deceased as projected by the prosecution, there was no need for them to take both deceased to their house and then kill them. They had many number of opportunities to kill them, on the way to their way to the house, without being seen by any third party. There

was no need for them to wait till the arrival of Pws 1, 3 and 5 for attaching the two deceased.

21. Coming to the delay in lodging report, all the witnesses in one voice deposed that after the incident, they went to the village of PW.5 and stayed in his house that night. Thereafter, on the next day morning they informed about the offence to Govada village Munsiff and on his advice, PW.1, PW.3 and PW.5 went to the police station at 5.30 pm where PW.1 reported the matter to the police. The munsiff by name Korra Jinnu to whom, the above witnesses are said to have informed about the incident was not examined.

Further, the evidence of PW.5 further shows that by 10 pm they reached their house after witnessing the incident. The case of the prosecution and the evidence of Pws 1 to 3 shows as if the actual attack was at 10 pm. The evidence of PW1 and PW.3 shows that after the incident they came back to Chittimamidi Village and then went to the house of PW.5. It is to be seen that all the witnesses were walking from one village to other village. By no stretch of imagination, they could have reached the village by 10 pm itself and then proceeded to the village of PW.5. While the evidence of PW.3 goes to show that on the next day morning they reported the matter to Sarpanch, but he was not examined. Her evidence is to the effect that they proceeded to the police station on the next day and lodged the report. Though PWs1, 3 and 5 says that they started from village at 10 am, in the cross-

examination they admit that they left the village at 8 am and reached the police station at 6 pm. It has come on record that during day time, jeeps would be plying between Govada Village and G.K.Veedhi and no effort was made by them to hire a jeep. Hence we feel that no reasonable explanation is forthcoming, as to why there was abnormal delay in lodging the report. Therefore, arguments advanced by learned counsel for the appellants that the admissions of PW.3 that there were enemies to D-1 and D-2 in the village and the above case came to be foisted against accused cannot be brushed aside.

22. For the aforesaid reasons, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused Nos 1 2 and 8 in the judgment dated 31-10-2011, in Sessions Case No.104 of 2011, on the file of the VIII Additional District and Sessions Judge, (FTC) Visakhapatnam for the offence punishable under Sections 302 of I.P.C., is set aside and they are acquitted for the said offence. Consequently, the appellants/accused Nos 1, 2 and 8 shall be set at liberty forthwith, if not required in any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE K.VIJAYA LAKSHMI