

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND
THE STATE OF ANDHRA PRADESH**

Crl.A.No.640 of 2011

Between:

Tata Arjuna Rao, S/o.Venkateswara Rao,
Aged 28 years, Krishnapuram,
Kuchipudi road,
R/o.Choragudi village,
Pamidimukkala mandal,
Krishna district

... Appellant

And

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

... Respondent

JUDGMENT PRONOUNCED ON 05.03.2018

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

(C.V.NAGARJUNA REDDY,J)

(M.GANGA RAO, J)

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO
±
C.R.P.No.640 of 2017

% 05.03.2018

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 R/o.Choragudi village,
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Appellant

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\$The State of Andhra Pradesh,
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 High Court of A.P., Hyderabad

...

Respondent

!Counsel for the Appellant : Mr.Masthan Naidu Cherukuru
 For Mr.Harinadh Nidamanuri

Counsel for the Respondent: Public Prosecutor (A.P.)

<Gist :

>Head Note:

?Cases referred:

1. (2015) 6 Supreme Court Cases 282
 (2016) 3 SCC 325

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

CrI.A.No.640 of 2011

Date: 05.03.2018

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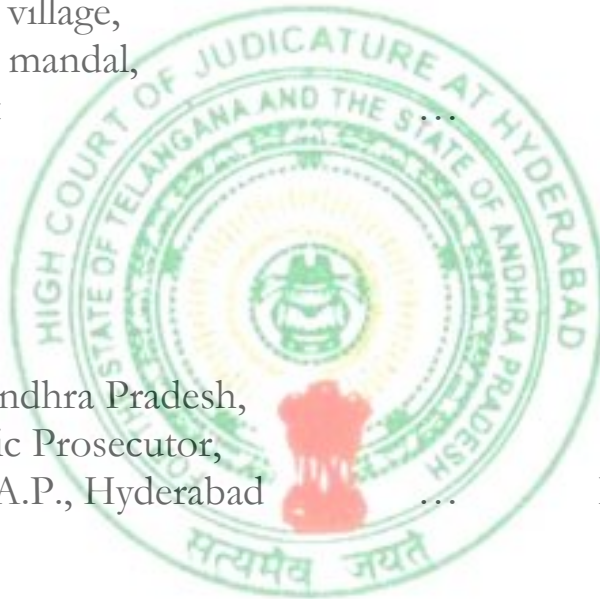
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Respondent



Counsel for the Appellant : Mr.Masthan Naidu Cherukuru
 for Mr.Harinadh Nidamanuri

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

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

Accused No.1 in Sessions Case No.57 of 2009 on the file of the XI Additional District and Sessions Judge, (FTC), Krishna, Gudiwada, filed this appeal against his conviction for the offence under Section 302 IPC and sentencing to undergo imprisonment for life and also to pay a fine of Rs.10,000/-.

2. The case of the prosecution briefly stated, is as under:

Accused Nos. 1 and 2 are close friends and associates. A-1 is a resident of Choragudi village and is having a cool drink shop in Krishnapuram centre and A-2 is the son-in-law of the deceased. LW-1, the Ex-Sarpanch of Pamulalanka village, Thotlavalluru mandal, is the complainant. A-1 and the deceased used to do business of brokerage of she-buffaloes and on some financial issues, disputes arose between them and A-1 who bore grudge against the deceased, was waiting for an opportunity to do away with the life of the deceased. That A-2 is the elder son-in-law of the deceased and as he used to ill-treat his daughter and grand daughters, the deceased chastised A-2 and held panchayats in the presence of caste elders i.e. LWs-20 to 22, but A-2 did not change his attitude and declared before LW-18 that he would do away with the life of his father-in-law before pongal festival. As A-1 and A-2 were having grudge over the deceased, they conspired to kill him and hatched a plan. That on 12.12.2007, when the deceased came to the shop of A-1 on his moped, A-1 told him that some buffaloes have to be purchased and

the deceased parked his moped in A-1's shop and followed him on the TVS motorcycle of A-1 bearing No.AP16 AA 6330; that at about 12 noon, A-1 and the deceased went to LW-6 – Moturu Venkateswara Rao, of Pillivani lanka and as he told there were no cattle for sale, they informed him that they were going to Potti Dibalanka to enquire about the cattle for sale and even while leaving, A-1 picked up quarrel with the deceased. However, both of them went to LW.7 – Muppavarapu Veera Reddy and LW.8 – Avutu Sivareddy, but even they stated that there were no cattle for sale. That while returning from Potti Dibalanka, they reached near cart track situated in the middle streamlet (Madhya paya) of the Krishna river at Thummala Pitchika village at about 1700 hours; that A-1 stopped the motor cycle and both of them got down and A-1 picked up quarrel and picked the ponakathi which he brought with him in the motor cycle box and hacked the deceased indiscriminately and chased him; that while the deceased was running away to save his life, A-1 hacked him to death instantaneously. That when the deceased fell down, two coolies – LWs 2 and 3 who were attending to sugarcane cutting work noticed the same and came to the deceased, but due to fear, they could not go to him and remained as spectators. That A-1 went away from there on his motor cycle with the weapon; that LWs 2 and 3, on the next day informed the same to Mandava Apparao and also to one Bommareddy Krishnareddy, LWs 4 and 5; that LW-4 went to the ex-Sarpach of Pamula Lanka (LW-1), who in

turn, visited the place where the dead body was found lying and that on enquiry, he identified the deceased and gave a report to the Sub-Inspector, Thotlavalluru P.S. (LW-32) at 10.30 a.m. on 13.12.2007. LW-32 immediately registered the same as a case in Crime No.70 of 2007 u/s.302 I.P.C. at first instance at 10.30 hours and LW-33 took up the investigation.

That LW-33 received a copy of the express FIR, secured the presence of mediators LWs. 24 and 29, visited both the scene of offence where the dead body was lying and also the scene where the offence started and observed the first scene under cover of mediators' report drafted by mediators from 11.45 hours to 12.30 hours on 13.12.2007 and seized blood stained sugar cane leaves, blood stained relligaddi, four chappals, blood stained sand, control sand and the towel under cover of the same mediators' report and also got the scenes of offence photographed by a private photographer, LW-26, besides preparing rough sketches of the same. That LW-33 held inquest over the dead body of the deceased under the cover of inquest report drafted by the inquest panchayatdars LW-24, 27 and 28 from 14.30 hours to 16.30 hours on the same day, in the presence of blood relatives and other witnesses and recorded their statements. LW-33 sent the dead body to post-mortem examination, to know the definite cause of death of the deceased. That on 14.12.2007, LW-33 resumed the further investigation and examined the elder daughter and grand daughters of the deceased as

LWs-16 to 18 who stated that A-2 used to harass them and the deceased chastised him and made efforts through village elders, because of which he grew wild and declared that he would kill him before pongal festival and that A-2 after murdering the deceased, informed them that he hatched up a plan and murdered the deceased in pursuance of their conspiracy. That based on the evidence of LWs-15 to 19, LW-33 added the elder son-in-law of the deceased as A-2 and, accordingly, charge sheet was filed under Sections 312 and 120(B) I.P.C.

That on 19.12.2007 at about 10 a.m., while LW-33 was in the office, he received information on telephone from the Sub- Inspector of Police, Thotlavalluru that the V.A.O. (LW-24), produced A-1 along with the crime vehicle/motor cycle, saying that A-1 came to him and surrendered before him and he accordingly, drafted the extra-judicial confession; that LW-33 proceeded to Thotlavalluru P.S. at 11 a.m. and arrested the accused at 11 a.m. and recorded the confessional statement of A-1 under the cover of mediators' report drafted by the mediators from 11 a.m. to 12.30 p.m. That LW-33 seized the motor cycle bearing No.AP 16 AA 6330, under the cover of same mediators' report and affixed the labels containing the signatures of mediators. That, the accused confessed that he would show the crime weapons and clothes worn by him at the time of commission of the offence and that he also confessed that due to the dispute over money of Rs.10,000/-, he conspired with A-2, for

murdering the deceased. That in pursuance of the confession given by A-1, LW-33 along with mediators LWs 24 and 29 and LW-32, SI of Police, Thotlavalluru, proceeded to the Karakatta (river bund) of the Krishna river and A-1 brought out the crime weapon and the clothes worn by him at the time of commission of the offence, which contained blood stains; that the same were seized under cover of mediators' report drafted from 13.00 hours to 14.30 hours and that A-1 was remanded to judicial custody. That on 03.01.2008, A-2 surrendered before the Court and he was remanded to judicial custody. That blood stained material objects were forwarded to RFSL, Vijayawada, through ACP, East Zone and CE report was received. That LW-30, the Medical Officer who conducted autopsy over the dead body, issued post-mortem report, opining that the deceased died due to multiple injuries.

3. Based on the charge sheet filed by the police, the court below has framed the following charges:

“Firstly: That you on the 12th day of December, 2007, at about 17.00 hours at Thummala Pitchika village – did – commit murder by intentionally causing the death of deceased (Kagita Sivaiah) and that you A1 picked up quarrel and picked the Ponakathi, in his motor cycle box and hacked the deceased and that you A1 committed an offence punishable U/s.302 of the Indian Penal Code, and within my cognizance.

Secondly: That you on 11.12.2007 evening and 12.12.2007 morning at 9.00 a.m. at the shop of A2 agreed to do an illegal act in pursuance of the said agreement to wit – A1 committed murder causing the death of Kagita Sivaiah and thereby committed an offence punishable

u/s.120(B) of the Indian Penal Code, and within my cognizance”.

4. As the plea of the accused was one of denial, he was subjected to trial, during the course of which, the prosecution examined PWs-1 to 19 and got exhibits P-1 to P-17 marked. On behalf of defence, it has got exhibits D-1 to D-4 marked. On consideration of oral and documentary evidence, the Court below has acquitted A-2 and convicted and sentenced A-1 in the manner as noted herein before.

5. At the hearing, Mr.Masthan Naidu representing Mr.Harinadh Nadamanuru, learned counsel for the appellant, submitted that the whole fabric of the prosecution got destroyed, when the court below has disbelieved the conspiracy theory and acquitted A-2 of the charge. That the statement of PW-9, the daughter of A-2 was recorded by the police on 12.12.2007 itself, but the same was suppressed and the F.I.R. was registered on the report given by PW-1 on 13.12.2007, and that, therefore, the F.I.R. is hit by provisions of Section 162 Cr.P.C. He has further submitted that PWs-2 and 3, the alleged eye witnesses, were strangers to the appellant and that in the absence of proper and complete descriptive particulars of the assailant, the failure of the police to hold identification parade, vitiates the prosecution case. The learned counsel also submitted that the alleged extra-judicial confession referred to by PW-18, has no evidentiary value because, he has deposed that the appellant has made

his confession in the police station and that in the absence of any recovery following the alleged confession, the same cannot be made basis for convicting the appellant.

6. Mr.Posani Venkateswarlu, learned Public Prosecutor for the State of A.P., opposed the above submissions and sought to sustain the judgment of the lower Court.

7. We have considered the respective submissions of the learned counsel for both parties, with reference to the evidence on record.

8. As could be seen from the case of the prosecution, though the appellant had some petty quarrels with the deceased, he was instigated by A-2, who is none other than the son-in-law of the deceased. The court below while acquitting A-2, categorically found that there is no legal evidence on record to show that A-1 and A-2 came to an agreement to kill the deceased.

9. PW-8, wife of A-2 did not support the version of the prosecution and maintained that there were no disputes between herself and A-2. PW-8 further stated that PW-9, her daughter was brought up by the deceased and his wife, PW-6. The court below has eventually held as under:

“Coming to the criminal conspiracy, there is no legal evidence on record to show that A.1 and A.2 came to an agreement to kill the deceased. PW-8, the wife of A-2 did not support the version of the prosecution in any way. She stated that there were no disputes at all between herself and A.2. She further stated that her daughter PW.9 was brought up by P.W.6 and the deceased. PW.9, the daughter of

A.2 stated that on 12.12.2007, evening at about 6.30 p.m., A.2 asked her over phone as to what her grand father was doing, and informed that her grand father and Arjunarao quarreled and he murdered her grand father through Arjunarao and asked her not to reveal anybody. It is to be noted that whatever stated by PW.9 is not the case of the prosecution. It is not the case of the prosecution that A.2 telephoned to PW.9 and informed the fact that he got the deceased murdered through A.1. Whatever P.W.9 stated is an improvement and not the case of the prosecution. There are no good terms between P.W.9 and her father, because she married a person loving him against the will and wishes of her parents. It was stated by PW.9 herself. P.W.10 stated that deceased used to inform him that there was some quarrel between A.2 and P.W.8 and once when he approached A.2 about the marriage of his daughter with brother's son of deceased, A.2 grew wild. That will not lead to any inference that A.2 got such amount of grouse to kill his father-in-law. PW.11 stated that A.2 and his wife used to quarrel. That also has no consequence.

Considering the entire material on record, I hold point No.1 that the prosecution has failed to establish that the accused persons 1 and 2 conspired to kill the deceased Sivaiah”.

10. As rightly argued by the learned counsel for the appellant, when once the conspiracy theory failed, the case of the prosecution gets weakened considerably, especially when no witness was examined to prove the exclusive motive for the appellant to go to the extent of killing the deceased. However, motive being harbored in mind by a human being, and if the prosecution proves the offence on the strength of the evidence of the eye witness, the failure of prosecution to establish motive, pales into insignificance.

11. As regards the second submission of the learned counsel for the appellant, PW-9, the daughter of A-2 and grand-daughter of the deceased, admitted in her cross-examination that on the night of 12.12.2007 itself, the police examined her. This admission of the witness who supported the case of the prosecution, remained

uncontraverted. This necessarily means that the police already had information about the murder, much before PW-1 has given Ex.P-1-report. Therefore, as rightly pointed out by Mr.Masthan Naidu, Ex.P-1 cannot be treated as the first information and at the most, it could be treated as a statement under Section 161 Cr.P.C. Under Section 162 Cr.P.C., such a statement shall not be signed by the person making it and the same shall not be used for any purpose, except enabling the prosecution to use the same with the permission of the Court, against such witness in the manner provided in Section 145 of Indian Evidence Act, 1872 (for short 'the Act'). Hence, in our opinion, the prosecution was set into motion, based on a document which was hit by Section 162 of Cr.P.C.

12. The effect of suppression of the earliest version, was considered by the Supreme Court in **Abdul Razak and Others Vs. State of Karnataka rep. by Station House Officer, Hutti Police Station**¹. In that case, the Sub-Inspector of Police, PW-19, has initially recorded the statement of PW-1, disclosing the death of the deceased in that case. However, the said report was destroyed by PW-19 after another statement in writing, was given by PW-1.

Considering those facts, the Supreme Court held as under:

“It is difficult to appreciate how PW-19 could have destroyed the original complaint given to him by Hanumantha, PW-1. This implies that the earliest version about the incident was destroyed by PW-19 and a new story stated in the fardbeyan was tailored to suit the prosecution version. This has the effect of completely

¹ (2015) 6 Supreme Court Cases 282

demolishing the prosecution case and rendering its version wholly unacceptable.

The only inference which can, in the circumstances, be drawn is that Basavaraj was done to death and his dead body left at the spot from where it was picked up by the police after they arrived around 10.00 p.m. The complaint presented to the Sub-Inspector perhaps did not say what the police intended to present as its case. The same was, therefore, destroyed and a new version brought in, according to which Basavaraj was shown to be alive when the police reached the spot. The fact of the matter, however, appears to be that Basavaraj was dead when his brother, mother and father discovered the body, for otherwise there was no question of the parents of the deceased and his brother leaving him alone in the condition, which they are alleged to have done. The conclusion drawn by the trial court that the prosecution had not proved the charges against the appellants beyond reasonable doubt, was, in our opinion, correct, no matter the judgment and order is not as happily worded as it ought to be, especially coming from a senior judicial officer of the level of Additional Sessions Judge. Inasmuch as the High Court has overlooked all these aspects, we are constrained to set aside the order passed by it and acquit the appellants of the charges framed against them.”

13. In the light of the ratio laid down in **Abdul Razak** (1 supra) and the facts discussed above, the credibility of the whole case of prosecution was seriously affected and unless it was able to produce unimpeachable evidence, pointing to the guilt of the accused, it cannot secure their conviction.

14. As regards the evidence let in by the prosecution, PWs-2 and 3 are wife and husband and they were allegedly engaged by PW-4, a hostile witness, in his field. Both these witnesses have stated that they have witnessed the incident. Certain omissions, which on superficial reading, may appear to affect their testimony, were extracted by the defence. A perusal of Ex.D-2, Section 161 statement of PW-2, got marked by the defence, would however, dispel the suspicion if any,

on the credibility of the testimony of the said witnesses. From a reading of Ex.D-1, it is clear that the required details of two persons coming on a motor cycle, their quarrelling with each other, one of them being in the process of attending nature calls and the other person who was diminutive in personality, hacking the other person with a knife, the injured running and the short person again chasing him and hacking him, were given. Even PW-4, though turned hostile, in the cross-examination by the prosecution, admitted that on the date of occurrence, PWs-2 and 3 alone attended the coolie work in his field. From this evidence, the presence of PWs-2 and 3 at the place of occurrence is established by the prosecution. The question however, is whether the prosecution succeeded in establishing the identity of the appellant.

15. Under Section-9 of the Act, identity of anything or person whose identity is relevant *inter alia* is a fact necessary to explain or introduce a fact in issue or relevant fact. Rule-34 of the Criminal Rules of Practice lays down the procedure for identification parades.

16. It is not in dispute that the appellant was a stranger to P.Ws.2 and 3. The only descriptive particular given by P.Ws.2 and 3 in their Section-161 Cr.P.C. statements is that the assailant was diminutive in stature. They gave evidence in the Court two years after the alleged incident. It is not possible for a human being to identify a stranger after lapse of a considerable time. In our opinion, two years is too

long a time for a person to identify a stranger with certainty. The prosecution has not made any effort to conduct identification parade for P.Ws.2 and 3 to identify the appellant.

17. In *Noorahammad and Others Vs. State of Karnataka*², wherein identification parade of the accused who are strangers to the witnesses was not conducted by the Police and the dock identification by the witnesses was made two years after the incident, the Supreme Court observed as under:

“In view of the fact that the FIR was registered against unknown persons and even description of the accused was not mentioned, a test identification parade (TIP) ought to have been conducted so as to inspire confidence about the identity of the assailants. However, the prosecution has not rendered any explanation as to why the said TIP was not conducted. In such circumstances, dock identification by the witnesses, after two years from the incident was rightly not relied upon by the trial Court.”

18. In the afore-mentioned facts of the present case and in the absence of the prosecution conducting an identification parade, it is wholly unsafe to convict the appellant based on the testimony of P.Ws.2 and 3.

19. The only other evidence that may serve as a link to connect the appellant to the alleged offence is the alleged extra-judicial confessional statement made by the appellant to P.W-18. In his evidence, P.W-18 deposed that on 13.12.2007, at 11 am., he

² (2016) 3 SCC 325

accompanied the Police to Krishna river leading to Lankapalli Village and at the scene of offence, they found blood stained sand, sugarcane leaves and slippers and the same were seized under Ex.P-8-Observation report. He also referred to their finding one towel, slippers and sugarcane leaves at some distance and the Police seizing the same under Ex.P-9. He further deposed that on the same day at 2 pm., inquest was conducted on the dead body of the deceased and Ex.P-10-Inquest report was prepared; that one week or ten days later, i.e., on 19.12.2007 at 11.30 am., he was summoned by the Police to the Police Station, where the Police produced one person before him, asked him to enquire the said person and prepare the mediator report incorporating the information disclosed by the said person; and that the said person has confessed the offence and a Mediator Report was stated to have been prepared. The Court below, however, declined to mark the said report (As the same was hit by Section-27 of the Act). P.W-18 further deposed that the Police have shown him one motor bike, knife and some clothes and informed him that they belong to the person who was shown to him and on the narration of the Police, he prepared the report.

20. Under Section-26 of the Act, confession by the accused while in custody of the Police is not to be proved against him. Section-27 of the Act, however, contains an exception to the extent that when any fact is deposed to as discovered in consequence of information

received from a person accused of any offence, in the custody of the Police, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

21. From the evidence of P.W-18, it is clear that nothing was recovered by the Police in his presence. On the contrary, one motor bike, knife and some clothes allegedly belonging to the appellant were already in possession of the Police and they were shown to P.W-18. Thus, the alleged confessional statement made by the appellant in Police custody, which has not led to discovery of any fact, is hit by Section-27 of the Indian Evidence Act and the Court below has rightly declined to mark the alleged Mediator Report. The prosecution, therefore, failed to prove recovery of any incriminating material from the appellant so as to connect him to the alleged offence.

22. In the light of the above discussion, we have no hesitation to hold that the case of the prosecution is vitiated by various legal defects and deficiencies, as discussed above, and it has miserably failed to prove the guilt of the appellant beyond all reasonable doubt.

23. Accordingly, the Criminal Appeal is allowed and judgment, dated 04.5.2011, in Sessions Case No.57 of 2009 on the file of the learned XI Additional District and Sessions Judge, Krishna, Gudivada, is set aside. The appellant is acquitted of the charge under

Section-302 IPC and his bail bonds shall stand cancelled. The appellant is directed to forthwith surrender before the Superintendent, Rajahmundry Central Jail, for completion of the required formalities for his release, if he is not otherwise required in any other case.

(C.V.Nagarjuna Reddy, J)

(M.Ganga Rao, J)

Date: 05th March, 2018

Note:

L.R. copies

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msb/DR



