

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice Gudiseva Shyam Prasad**

CRIMINAL APPEAL Nos.494 and 497 of 2012

18.09.2018

Crl.A.No.494 of 2012:

Between:

Pattapu Gopala Krishna (accused No.1)

..Appellant

and

The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad

..Respondent

Counsel for the appellant/accused No.1: Mr.T.Niranjan Reddy,
senior counsel
for Mr.K.Suresh Reddy

Counsel for the respondent: Public Prosecutor (T.S.)

Crl.A.No.497 of 2012:

Between:

Peram Pavan Kumar (accused No.2)

..Appellant

And

The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad

..Respondent

Counsel for the appellant/accused No.2: Mr.T.Niranjan Reddy,
senior counsel
for Mr.D.Kodandarami Reddy

Counsel for the respondent: Public Prosecutor (T.S.)

THE COURT MADE THE FOLLOWING:

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

These two appeals are filed by accused Nos.1 and 2, respectively, in Sessions Case No.69 of 2011 on the file learned II Additional Sessions Judge, Guntur. Both of them have been charged by the Court below as under.

“Firstly:-

That you A.1 decided to do away with the deceased-Battula Srinivasa Rao and sought the help of A.2 who readily accepted for the same since the deceased Battula Srinivasa Rao suspended you A-1 from service in view of office matters, and that you A-1 accompanied with A.2 on 10th day of July, 2010 near Basara road while the deceased-Battula Srinivasa Rao (Chief Executive Officer, Office of the Guntur Co-operative Urban Bank Limited, Guntur) was proceeding to his house by walk, both of you came from opposite side on the bike driven by A.1 of you bearing No.AP7 AP 3797 and stopped the bike and in the meanwhile, A.2 in furtherance of common intention to do away with the Battula Srinivasa Rao caught hold of the deceased while A.1 of you beat on the head of the deceased - Battula Srinivasa Rao with cricket bat and murdered him with pre-plan in view of the longstanding disputes in office matters and that you A-1 thereby committed an offence punishable under Section 302 I.P.C. and within my cognizance.

Second and Lastly:-

That you A.1 and A.2 on 10th day of July, 2010 near Basara road while the deceased-Battula Srinivasa Rao (Chief Executive Officer, Office of the Guntur Co-

operative Urban Bank Limited, Guntur) was proceeding to his house by walk, both of you came from opposite side on the bike of A.1 of you bearing No.AP 7 AP 3797 and stopped the bike and in the meanwhile, A.2 of you in furtherance of common intention caught hold of the deceased-Battula Srinivasa Rao and A.1 beat on the head of the deceased-Battula Srinivasa Rao with cricket bat and murdered him with pre-plan in view of the longstanding disputes in office matters and that you A-1 and A-2 thereby committed an offence thereby committed an offence punishable under Section 302 r/w 34 IPC and within my cognizance.”

For convenience, the appellants are referred to as they are arraigned in the Sessions Case.

As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 16, got Exs.P-1 to P-30 marked and produced M.Os.1 to 4. On behalf of the defence, D.W.1 was examined and Exs.D-1 to D-3 were marked. Exs.X-1 to X-4 were also marked. On appreciation of the oral and documentary evidence, the Court below has convicted accused No.1 for the offence punishable under Section 302 I.P.C. and accused No.2 for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. Consequently, they were sentenced, *inter alia*, to undergo imprisonment for life apart from imposing a fine of Rs.5,000/- each.

We have heard Mr.T.Niranjan Reddy, learned senior counsel representing Mr.K.Suresh Kumar, learned counsel for the appellant (accused No.1) in Crl.A.No.494 of 2012 and also representing Mr.D.Kodandarami Reddy, learned counsel for the appellant (accused No.2) in Crl.A.No.497 of 2012.

The case of the prosecution is rested mainly on the testimony of the alleged eyewitnesses – P.Ws.2 to 4 apart from motive and recovery of M.O.1 – cricket bat.

We shall first deal with the allegation of motive. The case of the prosecution is that the deceased was the Chief Executive Officer of Guntur Cooperative Urban Bank. P.W.2 – his brother is also an employee of the said Bank along with accused No.1. On 19.05.2010, a memo was issued to accused No.1 for his alleged misconduct. After considering the explanation submitted by accused No.1 on 25.05.2010, the deceased suspended him on 31.05.2010. Later, a charge memo was issued against accused No.1 on 17.06.2010 and an Enquiry Officer was appointed on 08.07.2010, which information was received by accused No.1 on 09.07.2010. The alleged incident occurred on 10.07.2010 at about 8.30 p.m. The above facts pleaded by the prosecution remained uncontroverted. The

prosecution has not examined any witness to speak about accused No.1 nursing grudge against the deceased. In our opinion, from the mere fact that the deceased suspended and charge sheeted accused No.1, no presumption could be drawn that he must have developed motive to kill the deceased. Undoubtedly, motive is a mental process, which cannot be proved with certainty, but at the same time to attribute such a motive, the prosecution must bring out attendant circumstances, such as accused No.1 openly defying or questioning the deceased for his acts of suspension and issuing charge sheet. The prosecution has not examined any employee of the Guntur Cooperative Urban Bank to speak about the conduct of accused No.1 reflecting his grudge against the deceased. We are, therefore, of the opinion that the case of the prosecution regarding the motive is based on mere surmise and not on any concrete material to enable the Court to arrive at a definite conclusion that accused No.1 had entertained the motive for doing away with the life of the deceased.

In a case based on the evidence of the eyewitnesses, motive pales into insignificance. The case of the prosecution rested on the eyewitnesses has been believed by the Court below. We shall, therefore, closely scrutinise the evidence of P.Ws.2 to 4.

P.W.2 is the natural brother of the deceased. He deposed that on 10.07.2010, he was coming by walk from Basara School side towards his house at Vidya Nagar near the house of one Basha and that on the road, he saw accused No.2 catching hold of the deceased and accused No.1 beating him with a cricket bat on his head about four or five times and he also beat him on the eye brows. He further deposed that the deceased fell down on the ground and accused No.1 again beat the deceased with the cricket bat on the head. He referred to the presence of P.Ws.3 and 4 and L.W.5 – C.T.V.Bhaskara Reddy, at the scene of offence and their trying to catch hold of the accused. He further deposed that then accused No.2 started the motor cycle owned by accused No.1, who boarded the same and they left the place; that P.W.3 telephoned to 108 ambulance and P.W.4 telephoned to P.W.10 – the wife of the deceased and thereafter, P.W.10, one Naga Mounika Srilakshmi and P.W.1 came to that place; that all of them shifted the injured (deceased) in to an auto in order to take him to the hospital and that meanwhile, on their way, at Koretipadu, the ambulance came in the opposite, and they shifted the deceased to the ambulance and went to Amaravathi Hospital, where the injured died on the next day. He also deposed that P.W.1 gave report to the Police.

The defence was able to extract certain important omissions in the evidence of P.W.2 from P.W.14 – the investigating officer. It was elicited from P.W.14 that P.W.2 did not state before him that accused No.1 beat the deceased four or five times on the head and also gave a blow on his eye brows; that P.W.2 did not state that the deceased fell down on the ground and accused No.1 again beat him; that P.W.2 did not state before him specifically on which part of the deceased accused No.1 beat; that P.W.2 did not specifically state to him that P.Ws.3, 4 and L.W.5 tried to catch hold of the accused; that P.W.2 also did not state before him that accused No.1 damaged a computer and was irregular in his duties and that a memo was issued to him by the Director. Thus, the overtacts alleged by P.W.2 before the Court reflected a highly exaggerated version. As regards the conduct of P.W.2, he admitted that he had cell phone and that he did not inform anybody about the incident through his mobile. P.W.2, being none other than the own brother of the deceased, had he been present at the scene of offence, he would have informed P.W.10, his own sister-in-law and the wife of the deceased, about the alleged incident. On the contrary, he stated that P.W.4 telephoned to P.W.10. In his chief-examination, P.W.2 deposed that he along with P.Ws.1 and 10 and one Naga Mounika Srilakshmi shifted the injured (deceased) into

an auto. In his cross-examination, when P.W.2 was questioned whether his clothes were stained with blood, he replied in the negative as he did not carry the injured (deceased) either to the auto or to the ambulance. Thus, there is a patent contradiction between the chief-examination and the cross-examination of P.W.2.

The most crucial aspect to be discussed here is about the strange conduct of P.W.2 in not disclosing the names of the assailants either to P.W.1 or P.W.10. If we go by the version of P.W.2, he along with P.Ws.1 and 10 shifted the injured (deceased) to the Amaravathi Hospital at about 8.35 or 8.40 p.m. immediately after the incident. A perusal of Ex.P-1 report shows that it was given by P.W.1 at 10.00 p.m. If P.W.2 was an eyewitness, he would not have refrained from disclosing the name of, at least accused No.1, his co-employee, if not accused No.2, who appears to be a stranger to P.W.1, when all of them together travelled from the scene of offence to Amaravathi Hospital. But P.W.2 did not do so, which is also evident from Ex.P-1 report given by P.W.1, who stated therein that “some two persons” attacked his son-in-law (deceased). Evidently, to cover up this lacuna, P.W.2 deposed in his cross-examination that he became unconscious and that after regaining his consciousness within half an hour or one hour,

he saw the Police people in the hospital. Even if we believe his version as true, by 9.40 p.m., he must have regained his consciousness, whereas Ex.A-1 report was given at 10.00 p.m. At least, after regaining consciousness, P.W.2 would have divulged the name of accused No.1 to P.W.1. The aforementioned unnatural conduct of P.W.2 gives raise to a serious doubt about his presence at the scene of offence and his being the eyewitness.

As regards the evidence of PW.3, while it is his case that he cannot identify A.2, he has not claimed that he knows A.1 either. On the contrary, his evidence starts with the statement “I know A.1 and A.2 by now.” This clearly shows that he had no prior acquaintance with both the accused. At later portion of his evidence, he candidly admitted that prior to the incident, he did not know the accused or the injured or any other persons gathered at that place except one Mohan. He has also stated in his chief-examination that he found one person beating another person on the road. In his cross-examination, he stated that his clothes were not blood stained. He did not give the identification details of the assailants to the police. When the witness was not acquainted with the accused, it is the duty and obligation of the police to arrange for Test Identification Parade. But, no such parade was held. For the first time, the witness allegedly identified

the accused in the Court. In our opinion, such identification cannot stand the legal scrutiny, as even a stranger can identify a person standing in place of accused in the Court.

Coming to the evidence of PW.4, in his cross-examination, he admitted that by the time of incident, he did not know both the accused. He, however, claimed that he stated to the police the identity particulars of the person, who beat the deceased. As in the case of PW.3, PW.4 being a stranger, the Test Identification Parade was not conducted so as to identify the accused.

Most importantly, PW.1, not only in Ex.P.1 – Report, but also in his evidence given before the Court, did not refer to any of the names among PWs.2 to 4, as the persons being present at the scene of offence or that they are accompanying the injured along with himself and PW.10. The various shortcomings referred to above in the evidence of PWs.2 to 4 would lead us to an inescapable conclusion that PWs.2 to 4 were not eye witnesses to the incident, but they were merely planted by the police.

Once the evidence of the alleged eye witnesses is discarded, the nature of the prosecution case changes into one based on circumstantial evidence. The law is well settled, in a case based on circumstantial evidence, the prosecution has to establish all the

links in the chain of circumstances. The only circumstance, based on which A.1 is sought to be connected with the offence is the alleged recovery of MO.1 – Cricket bat. Ex.P.29 – FSL Report only shows that the blood detected on MO.1 was of human origin. But, no finding was recorded, whether the blood on it matches with that of the blood group of the deceased.

It is fairly a well settled legal proposition that in a case based on circumstantial evidence, recovery of crime weapon constitutes only one of the links in the chain of circumstances and the accused cannot be convicted merely based on the solitary instance of recovery. The following are the decisions, which support the said legal proposition.

VIJAY THAKUR v. STATE OF HIMACHAL PRADESH¹, STATE OF HARYANA v. RAM SINGH², MANI v. STATE OF TAMIL NADU³, GOVINDARAJU ALIAS GOVINDA v. STATE BY SRIRAMAPURAM P.S. & ANR.⁴, STATE OF U.P. v. ARUN KUMAR GUPTA⁵ and KHILAWAN KUMAR v. STATE OF C.G.⁶.

¹ 2014 (4) Cr.L.R. (SC) 1066

² 2002 (1) SCR 208

³ 2008 (1) SCR 228

⁴ (2012) 4 SCC 722

⁵ (2003) 2 SCC 202

⁶ MANU/CG/0060/2009

In SHARAD BIRDHICHAND SARDA v. STATE OF MAHARASHTRA⁷, the Supreme Court has laid down the following parameters for holding the accused guilty in a case based on circumstantial evidence:

“(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(ii) The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

In SUJIT BISWAS v. STATE OF ASSAM⁸, the Supreme Court in para-6 of its judgment held as follows:

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that ‘may be’ proved, and something that ‘will be proved’. In a criminal trial, suspicion no matter how

⁷ (1984) 4 SCC 116

⁸ 2013 Cr.L.J. 3140 (SC)

strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State through [CBI v. Mahender Singh Dahiya](#), AIR 2011 SC 1017; and [Ramesh Harijan v. State of U.P.](#), AIR 2012 SC 1979)."

In the facts and circumstances of the case as discussed above, we are of the opinion that the prosecution failed to bring home the guilt of the accused beyond all reasonable doubt and wrongly convicted them.

In the result, the Criminal Appeals are allowed. Consequently, the judgment dated 05.06.2012 in S.C.No.69 of 2011 is set aside and both the accused are acquitted of the offences with which they were charged. The fine amount, if any, paid by them shall be refunded to them. The bail bonds of the accused shall stand cancelled and they shall surrender themselves before the Superintendent, Rajahmundry Central Prison, for completing the formalities of their release, if they are not required in any other case or crime.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

18.09.2018.

NOTE: L.R. Copies be marked.
(B/O)
Msr/GHN

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

Criminal Appeal Nos.494 and 497 of 2012



**18.09.2018
Msr**