

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

CRIMINAL APPEAL No.1019 of 2011

21.08.2018

Between:

Boda Linga @ Lingaiah and another
..Appellants/Accused Nos.1 and 4
and

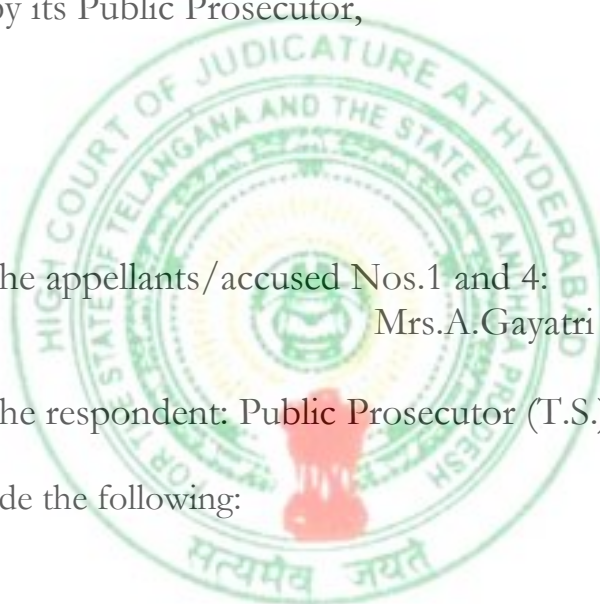
The State of Telangana,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellants/accused Nos.1 and 4:
Mrs.A.Gayatri Reddy

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

The Court made the following:



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

Accused Nos.1 and 4 in Sessions Case No.306 of 2007 on the file of learned IV Additional Sessions Judge (Fast Track Court), Warangal, filed this appeal against judgment, dated 08.04.2011, passed in the said case. By the said judgment, both the appellants were found guilty of the offences punishable under Sections 302 and 307 read with Section 34 I.P.C. They were, accordingly, convicted for the aforesaid offences and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.200/- each and in default of payment of fine, to undergo simple imprisonment for one month for the offence punishable under Section 302 read with Section 34 I.P.C. and also to undergo rigorous imprisonment for ten years each and to pay a fine of Rs.200/- each and in default of payment of fine, to undergo simple imprisonment for one month for the offence punishable under Section 307 read with Section 34 I.P.C. Both the sentences were directed to run concurrently.

2. The case of the prosecution, as set out in the charge sheet filed by the Police, is briefly stated hereunder.

This is a case of double murder of Pannala Venkat Reddy (hereinafter referred to as 'deceased No.1') and Pannala Swaroopa (hereinafter referred to as 'deceased No.2'), committing rape on deceased No.2, attempting to commit murder of P.W.4 and theft of gold and silver ornaments, which occurred on 06.05.2005 at about 20.00 hours at Dumpelligudem Village of Govindaraopet Mandal. On the next day i.e., 07.05.2005 at 10.30 hours, P.W.1 - the son of deceased No.1 and P.W.4, and the husband of deceased No.2, reported to the Police that on the previous day, accused Nos. 1 to 4 took deceased Nos.1 and 2 and P.W.4 to the outskirts of Balaji Nagar, H/o Dumpelligudem Village, beat deceased No.1 and P.W.4 with a stick, knife and axe and killed deceased No.1; that accused No.2 committed rape on deceased No.2 and killed her; that the accused stole away the gold and silver ornaments worth Rs.50,000/- from the persons of deceased No.2 and P.W.4 and that P.W.4 and L.Ws.3 and 4 – Murari Sammaiah and Thirumal Reddy Mallaiah, who are the neighbours of P.W.1, identified accused Nos.1 to 4.

Accused No.1 is the husband of accused No.4; that accused No.3 is the friend of accused No.2 and known to accused Nos.1 and 4; that accused Nos.1 to 3 are the residents

of Ramnagar, H/o Dumpelligudem Village and that accused No.2 is the resident of Balaji Nagar, H/o Dumpelligudem Village. Accused No.1 worked under deceased No.1 to watch the groundnut fields and that as accused No.1 was irregular in watching the fields, the cattle eaten away the crop and some crop was stolen away, due to which, deceased No.1 sustained loss. Deceased No.1 had a quarrel with accused No.1 in this regard about three months prior to the incident and both of them fell on the ground and accused No.1 sustained simple injuries, due to which, accused No.1 threatened deceased No.1 with dire consequences that he will kill him at any time and demanded for compensation, but deceased No.1 and his family members refused to compensate accused No.1.

While the matter stood thus, about two months prior to the incident, one tractor hit P.W.1 while he was returning from the fields upon which, P.W.1 had a quarrel with the tractor driver. Accused No.3, who was travelling on the tractor, pushed P.W.1, due to which, P.W.1 beat accused No.3; and that since then, accused No.3 bore grudge against P.W.1 and was waiting for an opportunity to take revenge against P.W.1. As deceased No.1 did not pay any compensation, accused No.1 approached accused No.3 and sought his help. Accused No.3,

who was waiting for an opportunity to take revenge against P.W.1, agreed to help accused No.1. Accordingly, on 06.05.2005, accused No.3 went to the house of accused No.1 along with his friend - accused No.2 and all the accused hatched a plan to take revenge against the family of deceased No.1 and to collect the compensation from deceased No.1. According to their plan, accused Nos.1 and 4 went to the house of P.W.1 at about 19.00 hours on the same day i.e., 06.05.2005, found the presence of P.Ws.1, 4 and deceased Nos.1 and 2 and informed the same to accused Nos.2 and 3, who took shelter at their house. Accused Nos.2 and 3 went to the house of P.W.1 at about 20.00 hours and took deceased No.1 and P.W.4 on the pretext that one Mohananna was calling them to settle the dispute between accused No.1 and deceased No.1 by conducting panchayat at Mango Orchard. Deceased No.2, who was the daughter-in-law of deceased No.1, also followed them as deceased No.1 and P.W.4 were old aged persons with poor visibility and unable to return to the house in the night. Accused Nos.2 and 3 took them to the house of accused Nos. 1 and 4. P.Ws.1 and 2 and L.Ws.3 and 4 witnessed while accused Nos.2 and 3 were taking deceased Nos.1 and 2 and P.W.4 away. While accused Nos.1 to 4 were discussing at the

house of accused No.1 and when P.W.13 noticed the same and questioned them about the presence of deceased Nos.1 and 2 and P.W.4 on that night, accused No.3 threatened P.W.13. Accused Nos.1 to 4 took deceased Nos.1 and 2 and P.W.4 and proceeded towards the outskirts and that out of suspicion, P.W.13 followed them secretly. Accused Nos.1 to 4 took deceased Nos.1 and 2 and P.W.4 to Challa Vorre and demanded deceased No.1 to pay Rs.3,000/- or half acre of land to accused No.1 towards medical expenses. Deceased No.1 denied the said proposal, due to which, accused Nos.1 to 3 beat deceased No.1 with a stick, knife and an axe. When P.W.4 tried to rescue deceased No.1, accused No.4 pushed her aside and beat her. Later, accused Nos.2 and 3 beat deceased No.1 and P.W.4 with the axe and knife and as a result, deceased No.1 died instantaneously and P.W.4 fell down with severe injuries. Accused No.2 instructed accused Nos.1 and 4 to go to their house, committed rape on deceased No.2 and killed her. Accused Nos.2 and 3 stole away the gold and silver ornaments from the persons of deceased No.2 and P.W.4 and left the scene believing that P.W.4 might have died.

On receipt of the complaint from P.W.1 on 07.05.2005 at 10.30 hours, P.W.10- Assistant Sub-Inspector of Police

registered a case in crime No.25 of 2005 under Sections 302, 307, 379 read with Section 34 I.P.C. and issued express F.I.Rs. to all the concerned. As P.W.12 was on other duty, P.W.14 took up the investigation, examined and recorded the statement of P.W.1, requisitioned the clues team and Dog squad, visited the scene of offence, got photographed the scene and the deceased through P.W.6, drafted rough sketch of the scene of offence and examined and recorded the statements of P.Ws.2, 3, 6 and L.Ws.3 and 4. Meanwhile, P.W.5 and L.W.9 – A.Saraiah, visited the scene of offence, got the Dog named Toni, smelled at the scene, which led them to the houses of accused Nos.1 and 3. P.W.14 conducted inquest over the dead body of deceased No.1 in the presence of P.W.7 and L.W.12 – Pindi Sambaiah, and seized blood stained clothes from the dead body of deceased No.1 and referred the dead body for postmortem examination. P.W.14 also conducted inquest over the dead body of deceased No.2 in the presence of P.W.8 and L.W.13 – Ajmira Sarojana, and seized blood stained clothes from the dead body of deceased No.2 and referred the dead body for postmortem examination. P.W.14 also seized blood stained earth and control earth and examined and recorded the statements of P.W.5 and L.W.9.

Subsequently, P.W.12 took up the investigation, examined and recorded the statements of P.Ws.6 and 13. On 30.05.2005, P.W.12 arrested accused No.1 at Jangalapalli Cross Roads, recorded his confessional statement in the presence of L.W.15 – Donakonda Prabhakar Reddy and P.W.9, and at the instance of accused No.1, the stick, which was used in commission of the offence, was seized from his possession under the cover of panchanama in the presence of P.W.9 and L.W.15 and also arrested accused No.4 and sent the said accused for remand. P.W.11, who held autopsy over the dead bodies of deceased Nos.1 and 2, opined that the cause of the death was due to haemorrhage and shock as a result of the injuries to the vital organs like brain and preserved vaginal swabs from the person of deceased No.2. The preserved material objects, vaginal swab and blood stained stick, were forwarded to the Regional Forensic Science Laboratory (RFSL), Warangal, through the Court and on receipt of RFSL report, P.W.11 opined that there is evidence of sexual intercourse. P.W.11, who treated P.W.4, opined that injury No.1 is grievous and other injuries are simple in nature. L.W.18 – D.Narasimha Chary, III Additional Judicial Magistrate of First Class, recorded the dying declaration of

P.W.4. On requisition, LW.19 recorded the statement of P.W.4 under Section 164 Cr.P.C. on 15.10.2005.

During the investigation, it was established that accused Nos.1 and 4 committed the offences punishable under Sections 302 and 307 read with Section 34 I.P.C., while accused Nos. 2 and 3 committed the offences punishable under Sections 302, 307, 376(G), 379 read with Section 34 I.P.C. As accused Nos. 2 and 3 were absconding at the time of filing of the charge sheet, the case was split up against them and the charge sheet was filed against accused Nos.1 and 4 only.

3. Based on the charge sheet and the material collected during the investigation, the Court below framed the following charges against the appellants/accused Nos.1 and 4.

“CHARGE I: That you Boda Linga @ Lingaiah and Boda Rajamma (A.1 and A.4) on or about 6-5-2005 at about 8.00 p.m., did commit murder by intentionally injuring with stick, knife, and axe causing the death along with two others of one Pannala Venkat Reddy and that you thereby committed an offence punishable U/s.302 IPC r/w Sec.34 IPC and within my cognizance.

CHARGE II: That you Boda Linga @ Lingaiah and Boda Rajamma (A.1 and A.4) on or about 8.00

p.m., did an act i.e., injuring with stick, axe and knife with such knowledge and under such circumstances of causing injuries and that if by that act you had caused the death of one Pannala Vajramma you would have been guilty of murder and that you caused the hurt to the said Pannala Vajramma by the said Act and that you thereby committed an offence punishable U/s.307 IPC r/w. Sec.34 IPC and within my cognizance.”

4. As the plea of the appellants/accused Nos.1 and 4 was one of denial, they were made to stand trial, during which, the prosecution examined P.Ws.1 to 14, got Exs.P-1 to P-20 marked and produced M.O.1 – stick. On behalf of the appellants, no evidence was adduced. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted above.

5. At the hearing, Mrs.A.Gayatri Reddy, learned counsel for the appellants/accused Nos.1 and 4, has submitted that the prosecution has failed to adduce the evidence, which conclusively proves the guilt of the appellants beyond all reasonable doubts; that even as per the charge sheet, the appellants only wanted a dispute between them and deceased No.1 settled; that the alleged murder of deceased No.1 and rape and murder of deceased No.2 was, evidently,

caused by accused Nos.2 and 3 and that therefore, the Court below was not justified in convicting the appellants for causing the murder of deceased Nos.1 and 2 and attempting to murder P.W.4 – the wife of deceased No.1.

6. Opposing the above submissions, the learned Public Prosecutor (T.S.) appearing for the respondent-State has submitted that the appellant No.1 was the root cause for the murder of deceased No.1 and rape and murder of deceased No.2; that both the appellants shared the common intention of murdering deceased No.1 and attempting to murder P.W.4 and that therefore, they were rightly charged for the offences punishable under Sections 302 and 307 read with Section 34 I.P.C. He has further submitted that P.W.4, being an injured eyewitness, her evidence is trustworthy and that therefore, the Court below has rightly found both the appellants guilty of the offences of murder of deceased No.1 and attempting to murder P.W.4.

7. We have carefully considered the respective submissions of the learned counsel for the parties and perused the record.

8. P.W.1 – the son of deceased No.1 and P.W.4 and husband of deceased No.2, and P.W.4 – the wife of deceased

No.1, mother of P.W.1 and mother-in-law of deceased No.2, categorically spoke about the quarrels that ensued three months prior to the date of occurrence between deceased No.1 and appellant No.1, but no suggestion was put to these witnesses to the effect that such quarrels did not take place. It has also come out in the evidence of P.W.4 that during the earlier fight between deceased No.1 and appellant No.1, the latter sustained injuries, for which, the former paid some money for medical treatment. P.W.4 also deposed that the disputes did not continue later as appellant No.1 left deceased No.1 and also severed his job with him (deceased No.1). The learned counsel for the appellants has laid emphasis on this part of the evidence of P.W.4 and submitted that after the disputes were settled, there was no reason for appellant No.1 to have developed motive to do away with the life of deceased No.1 and attempt to kill P.W.4. We are unable to accept this submission. The motive is a mental process locked in the mind of a person, who nurses it. Merely because deceased No.1 had paid some money to appellant No.1 for the medical treatment for the injuries sustained by him during the scuffle between him and deceased No.1 and also that appellant No.1 left his employment with deceased No.1, it is not possible to presume

that appellant No.1 must have forgotten the insult and forgiven deceased No.1 for his act of beating and causing injuries to him. In a case based on the evidence of the eyewitnesses, motive will not play a significant role. The fact that P.Ws.1 and 4 categorically narrated the pre-occurrence events, i.e., appellant Nos.1 and 2/accused Nos.1 and 4 laying a watch on the movements of deceased No.1, their involving accused Nos.2 and 3 and deceased No.1 being brought to the house of accused No.1 at the first instance before he was taken to a tree near a place called Challa Vorre along with accused Nos.2 and 3, clearly establishes the active participation of appellant No.1 and the whole transaction leading to the murder of deceased Nos.1 and 2.

9. At this juncture, we need to mention that the Court below has treated the murder of deceased Nos.1 and 2 as two different transactions, evidently, for the reason that in the charge sheet, it was alleged that on the death of deceased No.1, accused No.2 instructed the other accused to go to their house and thereafter, he committed rape of deceased No.2 and killed her. Therefore, the appellants were not charged for the offences committed on deceased No.2. As noted above, as the case was spilt up against accused Nos.2 and 3, charges in

relation to the said offences *qua* deceased No.2 have not been framed against the appellants/accused Nos.1 and 4 in the present case by the Court below.

10. Before proceeding further, it is to be seen that the case of the prosecution is strongly fortified by the evidence of P.W.4, who is admittedly an injured eyewitness. She vividly narrated the whole occurrence leading to the murder of her husband – deceased No.1 and the injuries caused to her. In her chief-examination, she deposed that accused No.3 and one short and black complexioned person (accused No.2) came to their house on the evening of the occurrence, by which time P.W.1, her son was outside of the house; that some altercation took place between them and P.W.1; that on hearing the same, she and deceased Nos.1 and 2 came out of their house; that accused Nos.2 and 3 informed them that one Mohananna wanted to settle the dispute between appellant No.1 and deceased No.1; that deceased No.1 went along with accused Nos.2 and 3; that as it was night, herself (P.W.4) and deceased No.2 accompanied him; and that the two said accused took them first to the house of accused No.1 and there they demanded to pay a sum of Rs.4,000/- or give half acre of land

to accused No.1, which was declined by them. P.W.4 further deposed as under.

“Then all the four of them forced us to come to the Naxalites and taken us to a tree near Challavarre out of those four, two of them went and came by saying that the Naxalites were not there. Then the short person beat my husband with a stick then I intervened to rescue my husband and so also my daughter-in-law, the both accused (A1 and A4) also pushed us aside and the other accused beating (sic beat) us. They beat us with axes and knives. We all the three were beaten by the accused. Then I fell down on the ground. The said short person, raped my daughter-in-law. I sustained injuries on the right side of my head and face. They taken away pustela taadu, anklets ear studds and a chain from my daughter-in-law and they taken away the 3 tulas of pustela taadu, ear studds from me. They also tested whether all the three of us died or not and then they thought that we were died and they went away.

I lost my conscious and regained in the hospital. I was examined by the Police at the MGM Hospital week days later. I also stated the same before the Court while recording my statement under 164 Cr.P.C. about 5 months later to the incident.”

In the cross-examination, it was suggested to P.W.4 that till the appellants left the scene of offence, she did not sustain injuries. The witness added that after she fell on the ground with the

injuries, she closed her eyes and heard the entire conversation. She further deposed that accused Nos.2 and 3 hacked her while the appellants caught hold of her. Though she deposed that her dying declaration was recorded by the jurisdictional Magistrate, for the reasons best known to the prosecution, it has not got the same marked.

11. Be that as it may, nothing relevant could be elicited from the evidence of P.W.4 to discredit her testimony. On the contrary, no specific suggestions were put to her to the effect that the events narrated by her at her residence prior to the murder did not take place or that the appellants/accused Nos. 1 and 4 were not at the scene of offence. On the contrary, by suggesting to P.W.4 that till the appellants left the place (of occurrence), she did not sustain injuries, which implies that it is the specific case of the appellants that it is only accused Nos. 2 and 3, who are responsible for causing injuries to deceased No.1. The law is well settled that the injured witness is a stamped witness as the injuries certify the presence of a witness at the scene of offence. Hence, we have no hesitation to treat P.W.4 as the credible witness and rely upon her testimony.

12. The next aspect to be considered is the respective roles played by the appellants. The undisputed fact of the case as could be brought out by the prosecution would reveal that appellant No.1 is the root cause for all the events leading to the murder of both the deceased. It is at his instance that accused Nos.2 and 3 were involved. Though no specific overtacts were attributed by P.W.4 to the appellants with regard to the attack on deceased No.1, as regards appellant No.1, his active connivance with accused Nos.2 and 3 and his presence at the scene of offence were undeniable. Even assuming that it was accused Nos.2 and 3, who alone physically attacked deceased No.1, it can safely be concluded that since the attack had taken place at the behest of appellant No.1, he shared the common intention with accused Nos.2 and 3 to attack deceased No.1. Therefore, the Court below has rightly charged all the accused for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. However, as regards appellant No.2/accused No.4, except stating that she along with appellant No.1 laid a watch on the movements of deceased No.1 before accused Nos.2 and 3 entered the scene of offence and took deceased No.1 to the house of appellant No.1, no specific role was attributed to her by P.W.4 in connection with the murder of

deceased No.1. All that P.W.4 alleged against appellant No.2 was that the latter along with appellant No.1 pushed her and both the deceased aside while the other accused i.e., accused Nos.2 and 3 beat them. The following statement of P.W.4 in her chief-examination would lead us to understand that it is her specific case that it is accused Nos.2 and 3, who beat her and the two deceased with axes and knives.

“Then the short person beat my husband with a stick then I intervened to rescue my husband and so also my daughter-in-law, the both accused (A1 and A4) also pushed us aside and the other accused beating (sic beat) us. They beat us with axes and knives.

(emphasis added)”

It is, thus, clear from the evidence of P.W.4 that the physical attack on deceased No.1 was made by accused Nos.2 and 3. Even if we accept the version of P.W.4 that appellant No.2 along with appellant No.1 pushed all the above three persons aside, it is not possible to believe that she (appellant No.2) shared the common intention for doing away the life of deceased No.1. It is significant to note here that though the alleged dying declaration of P.W.4 was not marked, nevertheless the Court below has made a reference to the same by rendering the following finding.

“...In view of the above reasons, the evidence of P.W.4 before the Court cannot be discarded. Though P.W.4 did not state the name of A4 in dying declaration, she categorically stated in her evidence that A-1 was the person engaged by them to watch the fields.”

However, the Court below convicted appellant No.2/accused No.4 also by applying Section 34 I.P.C. In our opinion, the Court below has erred in attributing the common intention to appellant No.2 merely because she accompanied her husband – appellant No.1 and pushed the deceased and P.W.4 as the prosecution has not alleged that appellant No.2 had any specific animosity against the deceased. Therefore, we hold that appellant No.2 is not guilty of charge No.1.

13. Coming to charge No.2, P.W.4 categorically deposed that while the appellants were holding her, accused Nos.2 and 3 caused injuries to her. Ex.P-19 – wound certificate, shows that P.W.4 sustained an injury on the left hand, which was described as grievous, and a lacerated wound on left side parietal region, which was described as simple. Since no omission on the participation of the appellants to the extent of their holding P.W.4 could be elicited either from the said witness or from P.W.12 – the investigation officer, we have no reason to

disbelieve the version of P.W.4 that the appellants caught hold of her while accused Nos.2 and 3 attacked her. Therefore, the Court below has rightly convicted both the appellants for charge No.2. As regards the sentence for charge No.2, we hold that interests of justice would be served if the sentence imposed on them by the Court below is converted into the one as already undergone by them.

12. In the result, the Criminal Appeal is partly allowed in the following terms.

(i) The conviction and sentence recorded against appellant No.1 (accused No.1) under charge No.1 for the offence punishable under Section 302 read with Section 34 I.P.C. are confirmed. Appellant No.2 (accused No.4) is, however, acquitted of the said charge.

(ii) The conviction of the appellants under charge No.2 for the offence punishable under Section 307 read with Section 34 I.P.C. is confirmed. However, the sentence is reduced to the period they have already undergone.

(iii) The fine amount imposed on appellant No.1 for charge Nos.1 and 2 and on appellant No.2 for charge No.2 is

confirmed. The fine amount, if any, paid by appellant No.2 for charge No.1 shall be refunded to her.

(iv) The bail bonds of both the appellants shall stand cancelled. Both the appellants shall immediately surrender before the Jail Superintendent, Central Prison, Warangal. On such surrender, appellant No.2 shall be released if she is not required in any other case(s) or crime(s).

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

21st August, 2018
GHN

