

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

CrI.A.No.1396 of 2011

Date:01.8.2018

Between.

Mylapalli Kumar,
S/o Pentayya and three others.

.....Appellants

And.

The State of A.P, reptd.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellants: Mrs. C.Vasundhara Reddy

Counsel for the respondent: Public Prosecutor for the State of AP

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

All the accused who are four in number in Sessions Case No.36 of 2010 on the file of the II Additional District and Sessions Judge (Fast Track Court), Srikakulam, filed this Criminal Appeal feeling aggrieved by judgment, dated 29.11.2011, whereby they were convicted for the offence punishable under Section-302 read with Section-34 IPC and sentenced to suffer life imprisonment and also to pay a fine of Rs.1,000/- and in default, to suffer simple imprisonment for one month each.

For convenience, the appellants are hereinafter referred to as the accused.

The case of the prosecution, as reflected from the charge sheet, is briefly stated hereunder:

P.W-1 was the wife, P.Ws.2 and 3 were the sons and L.W-9-Komari Venamma was the daughter of the deceased. P.W-1 gave Ex.P-1-statement to the Sub-Inspector of Police, Etcherla, stating that she along with her husband and sons is living by quarrying stones at the hill beside by their house and also doing fish business; that the villagers have an eyesore against them on account of their earnings; and that on 07.5.2009, at about 8 pm., her son-P.W-3 came to the house and informed that a quarrel took place at the bore-well in Fishermen Colony, in which the villagers-Mylapalli Pentaiah,

Pentaiah's son-Bhulokam, Mylapalli Vasudeva Rao, Mylapalli Kumar, Dummu Santosh, Mylapalli Asirappadu's son-Rambabu, Yerragolla Mangamma's brother-Raghu @ Abaddam, Mylapalli Seshagiri, Mylapalli Kedhari, Mylpalli Tatarao @ Ankulu and Ganagalla Giri have beaten him and PW-2. She further stated that while she was asking P.W-3 about the things, the villagers mentioned above along with Mylapalli Ankamma, W/o Pentaiah and Mylapalli Gannemma, W/o Kedari came to their house by abusing, beat them by hurling bricks, inflicted injuries and went away; that at about 10 pm., again they raided their house with deadly weapons, viz., sticks and knives; that on noticing them, her husband and sons ran away out of fear, but the villagers chased them towards western side of hill, apprehended her husband (deceased), beat him with knives and sticks and killed him; that as she prayed mercy, they let her off; that as she was not having any other resort, she approached the President of their Village and informed him about the incident; that thereafter, she brought the dead body of the deceased with the help of her sons and kept it in the vacant place in front of their house; and that the villagers with an intention to drive them away from the place, killed her husband and inflicted injuries to her and her sons. That on the basis of the said statement of P.W-1, P.W-11 registered a case in Crime No.97 of 2009 on 08.5.2009 at 8 am and submitted the copies of FIR to all the

officers concerned. That during the course of investigation, P.W-13 has minutely inspected the crime scene and the place where the dead body of the deceased was found in the presence of mediators-P.W-11 and LW-13-Kariggi Lakshmana, got drafted two separate observation reports duly seizing the incriminating materials, i.e., M.Os.1 to 7, blood stained earth, control earth, etc., got the scene of offence photographed by P.W-8, prepared the rough sketches of the scene of offence, held inquest over the dead body of the deceased in the presence of his blood relatives-P.W.1 and L.W-9-Komari Venamma and panchayatdars-P.W-11, LWs.14 and 15-Mylapalli Asirappadu and Dummu Krishna, respectively and thereafter, sent the dead body of the deceased to P.W-10 for conducting post-mortem examination, who opined that the death was due to head injury; and that as per his directions, PW-1 was sent to RIMS Hospital, Srikakulam, for examination.

That on 13.5.2009, P.W-7 produced the accused before P.W-13 and presented a report stating that they confessed that they killed the deceased on 07.5.2009 at 10 pm at Karrodu Metta by inflicting injuries with iron bars and sticks; that P.W-13 recorded the detailed confessions of the accused about their committing the offence, in pursuance of which, MOs.2 to 5 were seized; that on 14.5.2009, all the accused were produced before the Judicial First Class Magistrate, Srikakulam, and were

remanded to judicial custody; that P.W-11, who examined P.W-1, issued wound certificate opining that the injuries found on her body are simple in nature; that P.W-13 prepared letter of advice and transmitted the incriminating materials to the Regional Forensic Science Laboratory, Visakhapatnam; and that after analysing the MOs, L.W-22-Assistant Director, Regional Forensic Science Laboratory, Visakhapatnam, issued Ex.P-52-Report, wherein it is stated that human blood is detected on blood stained earth, blood stained stone, blood stained clothes of the deceased and bamboo stick, but the group of blood could not be determined. After completion of the investigation and after obtaining all the material papers, the charge sheet was filed.

Based on the charge sheet and the material collected and placed before it by the Investigation Officer, the lower Court has framed the following charges:

“Firstly, that all of you on 07.5.2009 at about 8 pm., at the house of Mylapalli Korlamma, W/o Ramamurthy in Fishermen colony, Ponnada Village, Etcherla Mandalam, in prosecution of your common intention voluntarily caused simple hurt to Mylapalli Korlamma with stones and thereby, committed an offence punishable under Section-324 read with 34 IPC and within my cognizance.

Secondly, that all of you on 07.5.2009 at about 10 pm., at the hill situated towards the west of house of Mylapalli Korlamma, W/o Ramamurthy in Fishermen colony, Ponnada Village, Etcherla Mandalam, in pursuance of your common intention killed M.Ramamurthy with sticks and knives, and

thereby, committed an offence punishable under Section-302 read with 34 IPC and within my cognizance.”

As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 13, got Exs.P-1 to P-52 marked and produced M.Os.1 and 7. On behalf of the accused, no oral evidence was let in. However, they got Exs.D-1 to D-7 marked.

On appreciation of the oral and documentary evidence, the lower Court has disposed of the case in the manner as noted above.

At the hearing, Mrs. C.Vasundhara Reddy, learned counsel for the accused, made the following submissions:-

- (i) Though the incident allegedly took place at 10.30 pm on 07.5.2009 and P.W-6-Sarpanch, Ponnada Village, has informed the same to the Etcherla Police at 2 am on 08.5.2009, the Police have not registered the Crime till 6 am on 08.5.2009 and that, therefore, there was unexplained delay in registration of the F.I.R;
- (ii) There is a serious discrepancy as to whether Ex.P-1-report was given by P.W-1 at the Police Station or the same was recorded at the scene of offence;

- (iii) In Ex.P-1-report, P.W-1 has stated that 13 persons chased and killed the deceased. But, in her evidence, she named only the accused and in her Section-161 Cr.P.C. statement, marked as Ex.D-1, she mentioned participation of 30 persons;
- (iv) The lower Court having disbelieved the evidence of P.Ws.2 and 3, who are examined as eye-witnesses, ought not to have relied upon the uncorroborated and interested testimony of P.W-1, which suffers from serious contradictions, for convicting the accused; and
- (v) The lower Court having held that the case of the prosecution as regards the injuries on P.W-1 is not proved, ought not to have relied upon her evidence for convicting the accused.

Opposing the above submissions, learned Public Prosecutor for the State of Andhra Pradesh submitted that though the investigation was defective, there is a ring of truth in the case of the prosecution and that the discrepancies pointed by the learned counsel for the accused are too trivial to be given any weight. He further submitted that though the testimony of P.W-1, who is undoubtedly an interested witness, is not

corroborated by P.Ws.2 and 3, the same could still be relied upon as, it does not suffer from serious lacunae.

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

As for registration of the First Information Report, the incident allegedly took place at 10.30 pm on 07.5.2009. P.W-6 Sarpanch of Ponnada Village deposed that at about mid-night after the occurrence, P.W-1 came to his house and told him that her husband was killed, but she did not reveal as to who killed him; and that he telephoned to Etcherla Police Station and informed about the murder. It is thus evident that the Police had information of the alleged murder almost by mid-night following the incident. P.W-1 deposed that at about 5.30 am., she left her village in an auto and went to Etcherla Police Station, where her statement was recorded by the Sub-Inspector of Police. Though Ex.P-1 shows that the statement of P.W-1 was recorded at 6 am on 08.5.2009, Ex.P-41-F.I.R mentioned that the information was received at the Police Station on 08.5.2009 at 8 am. P.W-11-Sub-Inspector of Police while stating that he has received a phone call at 2.30 am on 07/8.05.2009 from P.W-6-Sarpanch about the alleged incident, further deposed that at about 4.30 am., he visited Ponnada Village; that none of the villagers came forward to give statement about the death of the deceased; that he went to the house of the deceased and

found P.W-1 and the dead body of the deceased there; and that he recorded the statement of P.W-1, marked as Ex.P-1. From this evidence, it is clear that though the information of murder was received by P.W-11 at about 2.30 am, he did not take any steps to register the crime till 8 am on the following day.

Further, as discussed above, we find serious inconsistency between the evidence of P.Ws.1 and 11 as to the manner in and the place at which Ex.P-1-report was given. P.W-1 further admitted that P.W-11 did not read over the contents of Ex.P-1-report to her before obtaining her Left Thumb Impression. Thus, the very genesis of the prosecution case suffers from serious defects, which give raise to serious suspicion about the whole case of the prosecution.

In Ex.P-1, P.W-1 stated that when she and her husband (deceased) went to P.W-3-their younger son's house, the latter informed them that an altercation took place at the bore-well where himself and P.W-2-another son were beaten by 13 persons named therein including the accused; that while they were enquiring with P.W-3 about the said incident, all the 13 named persons, their women folk and some others came to their house abusing them; that all of them beat her family members with stones causing injuries to them; and that thereafter, they went away. In Ex.P-1-report, she further stated that later again "all of them" came to their house at about 10 pm; that on seeing

them armed with sticks and knives, her two sons (P.Ws.2 and 3) and her husband (the deceased) fled away due to fear; that “all of them” followed them; that her husband and two sons went to the hill situated on the western side of their house; that the assailants beat her husband with sticks and knives and killed him as he was caught by them and as P.W-1 pleaded mercy, they left her. From the contents of Ex.P-1, it is clear that the alleged injuries received by P.W-1 were not during the course of the accused attacking the deceased. If at all, P.W-1 had received any injuries, it could have been only in the course of an earlier attack, following which, all the assailants have dispersed.

Contrary to the above version reflected in Ex.P-1, in her evidence given as P.W-1, she deposed that an earlier event took place at 8 pm on 07.5.2009 involving 13 named persons, during which accused No.1 allegedly followed her by catching hold her tuft and twisted her hand; that the other assailants attacked the deceased and went away; that as her approaching the President of the Village has not yielded any result, she and her family members went back to their house; that on the same night after 10.30 pm., the accused and about six others came to their house armed with stones and brick pieces, damaged the cots and fencing to the plants and went away; that one hour thereafter, again all the accused came to their house armed with sticks and chased them; that P.Ws.2 and 3 ran away due to fear

after sustaining some injuries at the hands of the accused; that herself and the deceased ran towards the garden situated on the western side of their house; that the accused chased and beat the deceased with sticks; that accused No.4 hurled a stone which hit on the head of the deceased and after sustaining that injury, the deceased fell down; that accused No.1 who was also armed with an iron rod beat the deceased on the left side of the face; and that accused Nos.2 and 3 beat the deceased with sticks all over his body, due to which, the deceased died. P.W-1 further deposed that accused No.4 beat her with stone on her left wrist and also with stick on the calf muscle of left leg; that she requested them not to beat her with folded hands; and that thereupon, the accused left the scene of offence.

A close analysis of the above discussed evidence would reveal that P.W-1's receiving injuries from accused No.4 when all the accused attacked her husband (the deceased) and caused his death is a clear improvement over Ex.P-1, wherein there is no whisper about the accused attacking her at the time of their attacking the deceased. While referring to the injuries on P.W-1, the lower Court has rendered the following findings:

“Regarding the injuries sustained by P.W-1, Medical Officer-P.W-12 found a swelling on the right ankle and dark brown coloured clots at two places on the right ankle. P.W-1 deposed that A-4 beat her with stone on the left wrist and with stick on the left calf muscle, but there are no injuries to the left wrist or

left calf muscle. Besides that she did not mention about the overt acts attributed to A-4 in her statement before Police. P.W-2 did not say as to how his mother sustained injuries. Though P.W-3 deposed that A-4 beat P.W-1 with stick on the wrist of P.W-1, he could not say whether it is right or left and there is no injury on either of wrists of P.W-1. As such, there is no clear evidence on record as to how P.W-1 sustained injuries. As such, the prosecution has failed to establish the guilt of all the accused for the first charge framed against them.”

Though the above findings were rendered while dealing with the charge for the offence under Section-324 IPC, the lower Court has failed to attach proper significance to the said findings while appreciating the evidence of P.W-1, as noted hereinbefore. If at all P.W-1 had received injuries at the time of the accused attacking the deceased, she would not have failed to refer to the same in Ex.P-1. It therefore necessarily means that P.W-1 did not receive injuries when the accused were attacking the deceased. Hence, P.W-1 cannot be treated as an injured witness. Once it is held that P.W-1 is not an injured witness, her very presence itself becomes doubtful in view of the improved version with which she came before the Court.

The defence was able to extract Ex.D-1-contradiction from the evidence of P.W-1, wherein she has stated that about 30 persons attacked their house at 10 pm on 07.5.2009. In Ex.P-1-report she named 13 persons, while in Ex.D-1 she

referred the assailants as about 30 in number. In Ex.P-1-report she did not attribute specific overt acts to the accused. We also find serious contradictions between the version of P.W-1 on the one side and that of P.Ws.2 and 3 on the other side. While P.W-1 has stated that in the incident preceding the attack on the deceased, 13 persons have attacked her and the deceased and caused injuries to them, P.W-2 in Ex.D-2 stated that when 30 persons have tried to attack their house, himself, his father (deceased) and P.Ws.1 and 3 started abusing those assailants and were prepared to face them by attacking them by holding stones in the hands and that being scared, those 30 persons left without reaching their house.

Thus, there is a discrepancy between the version spoken to by P.Ws.2 and 3, marked as Exs.D-2 to D-7, and the evidence given by them before the Court. More over, the lower Court has disbelieved the evidence of P.Ws.2 and 3 by assigning the following reasons:

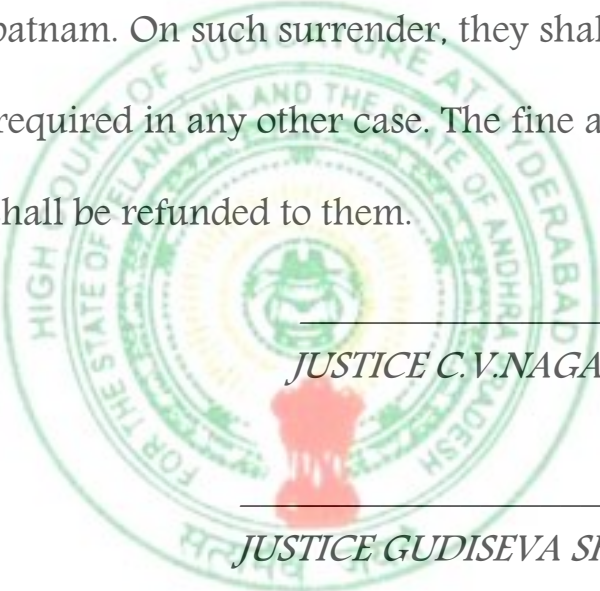
“In this case, FIR was registered against 13 persons, but charge sheet was filed against only the present accused. Contradictions are elicited in the evidence of P.Ws.1 to 3 which is to the effect that including the present accused about 30 persons attacked their house and that they tried to retaliate with stones, then all of them went away. The evidence of P.Ws.1 to 3 shows that before the incident in which the deceased sustained injuries, number of people attacked their house and caused damage to cots, plants, etc and subsequently, the present accused

came back and attacked the deceased and P.Ws.1 to 3. Though the overt acts attributed by P.Ws.1 to 3 about the attack on the deceased were found to be development, their evidence that A-1 to A-4 only attacked the deceased is consistent. The claim of P.Ws.2 and 3 that they saw the attack on deceased by standing behind boulder is not believable, as the incident happened during night time and if accused could see P.Ws.2 and 3 they would not have left P.Ws.2 and 3. Besides that though P.Ws.1 to 3 claimed that after the death of the deceased, they shifted him from the place of attack to their house. Admittedly P.Ws.2 and 3 were not there in the house in that night. According to them, after bringing the dead body to their house, due to fear, they left the house and they wanted to go to Etcherla Police Station through fields by walk, but could not go there before dawn and subsequently, on coming to know that police went to their village, they came back by walk by 2 pm.”

Once the testimony of P.Ws.2 and 3 is discarded, there remains the sole testimony of P.W-1 who being the widow of the deceased is a highly partisan witness.

The law is well settled that the testimony of an interested witness shall be subjected to close scrutiny. As noted above, the evidence of P.W-1 suffers from several discrepancies and inconsistencies, thereby rendering her testimony as wholly untrustworthy. Based on the uncorroborated and laconic testimony of P.W-1, it is wholly unsafe to convict the accused. The lower Court, in our opinion, has committed a serious error in convicting the accused based on the sole testimony of P.W-1.

For the above-mentioned reasons, the Criminal Appeal is allowed and the conviction and sentence imposed on the accused for the offence punishable under Section-302 read with 34 IPC by the learned II Additional District and Sessions Judge (Fast Track Court), Srikakulam, vide judgment, dated 29.11.2011, in Sessions Case No.36 of 2010 are set aside. The bail bonds of the accused shall stand cancelled. The accused shall surrender themselves before the Superintendent, Central Jail, Visakhapatnam. On such surrender, they shall be released if they are not required in any other case. The fine amount paid by the accused shall be refunded to them.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

01st August, 2018

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