

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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

Crl.A.No.719 of 2012

Date: 19.11.2018

Between:

Mitta Naga Malla Reddy  
@ Malligadu,  
S/o.Malla Reddy,  
aged about 36 years,  
Occ: Lorry Driver,  
R/o.Cherlopalle,  
Pendlimarry mandal,  
Kadapa district.

Appellant

And

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

Respondent

Counsel for the Appellant : Mr. D.Kodanda Rami Reddy

Counsel for the Respondent: Public Prosecutor (AP)

**The Court made the following:**

**Judgment:** (Per the Hon'ble Sri Justice Nagarjuna Reddy)

This appeal by the sole accused in Sessions Case No.208 of 2010 on the file of the I Additional Sessions Judge, Kadapa, is filed against his conviction for the offence punishable under Section 302 I.P.C. and sentencing him to imprisonment for life and also to pay a fine of Rs.5000/- and in default, to suffer simple imprisonment for a period of three months.

2. The gist of the prosecution case is that, the appellant had illegal intimacy with deceased No.2 (D2), the wife of deceased No.1 (D1). The appellant and D2 eloped and returned to the village after some time. Even after the appellant was warned by the family members of D2, he continued his illicit relationship. After D1 and D2 re-united and started living together, D2 refused to continue the illegal relationship. As D1 was coming in the way of the appellant in continuing the illicit relationship with D2, he decided to kill D1.

3. On 28.09.2009 at about 4.30 p.m., when both the deceased were cutting straw in their fields, the appellant has first hacked D1 with likki sickle and when D2 intervened, the appellant also hacked her with the same sickle on her forehead, throat upto neck, left wrist and right hand, causing bleeding injuries. As a result of the injuries received by them, both the deceased met with instantaneous death.

4. Following the investigation, the police have filed charge sheet, based on which, the lower court has framed the following charge:

“That you on 28.09.2009 at about 4.30 p.m., at Baralagutta, of Pendlimarri Mandal, you committed murder by intentionally and knowingly causing the death of the deceased Sambugari Chinna Konda Reddy and Sambugari Lakshmi Devi to with you went there to kill S.Chinna Konda Reddy deceased No.1 by arming with Likki sickle and attacked him and hacked with sickle on his right eye brow, left shoulder and back of neck, due to which he fell down on the ground and that when Sambugari Lakshmi Devi deceased No.2 intervened to secure S.Chinna Konda Reddy deceased No.1 you grew wild and hacked her with the same sickle on her forehead, throat up to neck, left wrist and right hand and caused bleeding injuries resulting in instantaneous deaths of them and thereby you have committed an offence punishable under section 302 of I.P.C. and within my cognizance”.

5. As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined PWs.1 to 13, got Ex.P1 to P14 marked and produced M.Os.1 to 24. On behalf of defence, no oral evidence was let in. However, Ex.D1 to D4 were marked. On appreciation of oral and documentary evidence, the trial court has disposed of the case in the manner as noted hereinbefore.

6. At the hearing, Mr.D.Kodandarami Reddy, learned counsel for the appellant submitted that the prosecution was not able to prove motive, as it could not prove that D2 refused to continue illicit intimacy with the appellant; that there was undue delay in FIR reaching the court; that PWs.1, 2 and 5 were not eye witnesses, but they were planted by the prosecution and the prosecution failed to

prove the recovery with proper evidence and that in any event, as the Forensic Science Laboratory failed to trace the origin of the blood, recovery of MO.1 did not help the prosecution in connecting the appellant with the murders.

7. Opposing the above submissions, the learned counsel representing the learned Public Prosecutor submitted that the evidence produced by the prosecution is sufficient to prove the guilt of the accused beyond all reasonable doubts.

8. We have carefully considered the respective submissions of the learned counsel for the respective parties with reference to the evidence on record. We shall first consider the case of the prosecution regarding motive. We find a serious contradiction between the case set up by the prosecution in the charge sheet and the evidence of PW-1, the brother of D1. While in the charge sheet, it was alleged that despite the advice given to D2 to give up her intimacy with the appellant, she continued the same; that D1 threatened the appellant to kill him and that since then, the appellant himself bore grudge against D1. However, PW1, in his evidence stated that in spite of the compromise effected by the elders as per which, illegal intimacy between the appellant and D2 should be discontinued, the appellant demanded D2 to continue the illegal intimacy and that when she refused, the appellant has committed the offence. It was elicited from PW-11, the investigation officer that

PW-1 did not state before him that D2 did not agree for continuing illegal intimacy with the appellant. Thus, as noted above, the case set up by the prosecution in the charge sheet, is in direct conflict with the evidence of PW-1 regarding motive for the appellant to do away with the lives of the deceased. While PW-2 did not specifically depose on the motive, he however admitted in his cross-examination that even after re-union of D1 and D2 following a compromise, the latter was continuing intimacy with the appellant. Thus, the motive part of the case of the prosecution not only suffers from serious self contradictions, but also is too hazy.

9. As regards the lodging of police report and registration of FIR, PW-3, the Village Revenue Officer lodged Ex.P1 – police report, allegedly at 7 p.m. on 28.09.2009. He has stated in his report that about 5.30 p.m., PW-1 approached him and informed him about the murder of the two deceased, allegedly committed by the appellant. PW-12 has stated that even before he received the said report, he received a phone call at about 5.30 p.m. about the double murder; that he reached Pendlimarri from Kadapa at 6.30 p.m. and at about 7 p.m., when he was present in the police station, PW-3 has approached him and presented Ex.P1, based on which, Ex.P11 – FIR was registered. He further stated that on registering the FIR, he sent express FIRs. to all the concerned officers including the Court, through P.C.No.1669 at about 8 p.m. and that the police constable

returned on the next day morning. A perusal of the FIR shows that the police constable-PC 1669 of Pendlimarri police station was handed over the FIR at 7 am on 29.09.2009. A suggestion was put to PW12 that the police report was fabricated after midnight on 28.09.2009 and that the FIR copy was received by the Court at 7 a.m. The said suggestion was however denied by the witness. The learned counsel for the appellant strongly submitted that the distance between Pendlimarri police station and the Court at Kadapa is about 22 kms, that, if express FIR was sent through the police constable by PW-12 at 8 p.m. on 28.09.2009, there was no reason for the FIR to reach the jurisdictional court at 7 a.m. on the next day morning. Though the distance between the police station and the jurisdictional court is not brought out in the evidence on record, the learned counsel representing the learned Public Prosecutor did not specifically dispute the submission of the learned counsel for the appellant regarding the distance. Burden lies on the prosecution to prove that there was no undue delay in the FIR reaching the court. One of the external checks to ensure that the FIR is not ante-timed, is the time when it reaches the court. Even in the absence of evidence regarding specific distance between Pendlimarri police station and the Kadapa jurisdictional Magistrate, the Court can take notice of the fact that the police stations in plain areas such as Kadapa district, are ordinarily situated within a distance of about 50 to 60 kms. Even if the maximum distance between the police station and the

court/residence of the jurisdictional Magistrate is taken as about 60 kms., there was absolutely no reason for the FIR to reach at 7 a.m. on the following day, if an express FIR was sent through a police constable by PW-12 at 8 p.m. on 28.09.2009. Therefore, we have no hesitation to hold that the FIR might not have been registered at 8 p.m. and that as suggested to PW-12, the police report was evidently fabricated during the intervening night of 28.09.2009/29.09.2009 and despatched early in the morning of 29.09.2009, so as to reach the jurisdictional Magistrate at 7 a.m.

10. Coming to the ocular evidence of PWs. 1, 2 and 5, who were examined as eye witnesses, PWs.1 and 2 are the brothers of D1. Being the blood relations of D1, their evidence need strict scrutiny. PW-1 claimed that he is not only an eye witness, but also that he has accompanied PW-3 to the police station after he first reported to him about the incident. In his cross-examination, PW-1 admitted that he waited outside the police station when PW-3 went inside and brought a white paper and reduced the report into writing on the former's narration. He further admitted that PW-3 who allegedly read out the contents of the report, did not obtain his signature thereon and that the police did not record his statement immediately at the police station after PW-3 gave Ex.P1 report. PW-3 at one stage of cross-examination stated that he did not reduce the statement of PW-1 into writing. However, at a later stage, he has stated that he has reduced

the version of PW-1 given to him at the village and also at the scene of offence, into writing and prepared Ex.P1. He further admitted that he did not inform PW-12, the S.I. of Police and that PW-1 accompanied him to the police station. PW-12 stated in his cross-examination that he came to know that PW-1 was an eye witness to the occurrence, but he has not come to him and that he did not ask PW-3 as to why PW-1 did not come along with him. This admission of PW-12 exposes the falsity in the claim of PW-1 that he has accompanied PW-3 to the police station when PW-3 gave Ex.P1 report. Apart from the candid admission of PW-12, as noted above, the conduct of PW-1 is somewhat abnormal, as, being the brother of D1, he was expected to be the first informant and there was no necessity for PW-3 to give the report, if PW-1 had accompanied him. We are, therefore, of the opinion that PW-1 has not accompanied PW-3 to the police station for giving the report. This conduct of PW-1 would throw any amount of doubt on his claim that he was an eye witness to the occurrence. Further more, if we closely examine the behaviour of PW-1 and PW-2, the alleged eye witness, it looks highly unnatural. He stated that he and his brother PW-2 watched the appellant attacking both the deceased from a distance of about 50 feet, but he neither cried out immediately when he saw the appellant hacking D1, nor the deceased who knew about their presence, shouted for his help. He further stated that he and PW-2 carried sickle and spade with them to the place of the occurrence and that,

neither he nor PW-2 shouted at the appellant or hurled stones to prevent him from attacking the deceased. He further stated that Pendlimarri police station is situated at a very short distance from the place of occurrence and that one can reach the same by walk from the scene of offence and that without going to the village, one can go to Pendlimarri police station straight from the scene of offence, but in spite of the same, PW-1 allegedly went to the village at about 6 p.m. when the incident has allegedly taken place at 4.30 p.m., to inform PW-3 who was not even an ordinary resident of Cherlapally village. From the evidence of PW-3, it is clear that he came to Cherlapally village at 5 p.m. while PW-2 claimed that he has gone to his garden at 4 p.m. Thus, there was no possibility for PW-1 to know about the presence of PW-3 in the village. This being the admitted position, we do not find any reason for PW-1 to go to the village, instead of going to the police station, which is nearer to the scene of offence, than the village. Added to this, the conduct of PW-1 as admitted that he has neither shouted nor tried to interfere when the appellant was hacking the deceased, renders his claim of being an eye witness, highly doubtful.

11. Similar is the case with PW-2, who being the brother of D1, did not carry the spade along with him and try to interfere to save the lives of the deceased. He did not even claim to have accompanied PW-1 and 3 to the police station to give the complaint. Ex.D2 is the

portion of Section 161 Cr.P.C. statement of PW-1 marked as contradiction. It is stated therein that on 28.09.2009 afternoon, PW-1 was working in his flower garden. Though he denied having given such a statement, PW-12 admitted that PW-1 has stated this in Ex.D2. Contrary to what he has stated in Ex.D2 and in his evidence, PW-1 has deposed that he was cutting grass on the ridge which is by the side of the field of the deceased, when the occurrence took place. Thus, there is serious contradiction between the version given out by PW-1 in his Section 161 Cr.P.C. statement and in his deposition given before the court. The above aspects render the claims of PWs-1 and 2 that they are eye witnesses, highly doubtful and hazy.

12. As regards PW-5, who claims to be another eye witness, in his chief examination, he stated that while he was cutting grass in his garden, he heard the shouting from the side of the fields of D1 and when he went towards the said place running, he found PWs. 1, 2 and LW5 and also the dead bodies of both the deceased there and the appellant running away with 'Likki'. In his cross-examination, PW-5 stated that he found the appellant running with 'Likki Dhoti'. To the question posed by the court, the witness stated that he cannot give the colour of the dress of the appellant. The contradiction in the weapon allegedly seen in the hands of the appellant and his inability to tell about the colour of the dress of the appellant worn at the time of the incident, renders the testimony of this witness untrustworthy.

13. When we discard the evidence of PWs. 1, 2 and 5, the only other evidence to connect the appellant to the offence, is the alleged recovery of MO1 and the wearing apparel of the appellant. As could be seen from Ex.P14, the FSL report, a cream colour terry cotton full sleeved shirt with pink colour small checks design and dark brown stains, a blue colour cotton lungi with white colour checks design with dark brown stains belonging to the appellant and MO.1 sickle with wooden handle blade measuring 4 cms. were sent for forensic examination with PC 1180. It was mentioned in Ex.P14 that the human blood detected on the wearing apparel belonged to the appellant and its blood group was identified as 'A' blood group and that the origin of the blood detected on MO.1 sickle, could not be determined. When the origin of the blood on MO.1 could not be determined, it is not possible to hold that the appellant might have used MO.1 to kill both the deceased.

14. Insofar as evidence of PW9- V.R.O., who is the witness to the confession made by the accused and the recovery of MOs.1, 23 and 24 is concerned, he deposed that he along with VRO, Prasad Babu (LW.16) and Constable of Pendlimarri Police Station, went to the choultry of Gangamma temple of Nandimandalam village outskirts and found the accused, that on seeing the police, the accused tried to run away, but the police apprehended him and recorded his confession statement. The accused led them to Veyyinothalakona

and there, from a boulder in the choultry, MOs.1, 23 and 24 were recovered. In the cross-examination, PW9 deposed that VRO, Prasadbabu (LW.16) identified the accused at a distance of 40 feet and the Constable ran and apprehended the accused; that the time of apprehension of the accused was not mentioned and that there was no independent witness to the panchanama and the recovery of MOs.1, 23 and 24. The evidence of PW13 is also on the same lines and there are discrepancies with regard to time and distance between Nandimandalam and the choultry. Though there are blood stains on MO.1 – sickle and MOs.23 and 24 – clothes of the accused, as per Ex.P13 and P14 – RFSL reports, the blood group could not be determined. The recovery of the material objects and recording of the confession in the presence of LW.9 cannot be relied upon, as the same appear to be doubtful, for the simple reason that after committing the offence, no person preserves the clothes and weapon unwashed for over a period of two weeks, that too, in a choultry of temple. PW.10 - the doctor who issued Ex.P7 and P8 – post-mortem reports, in his cross-examination, deposed that the sharp edge of MO.1 is curved shape and MO.1 is a heavy cutting weapon; that usually the tip of a curved weapon like MO.1 produces stab injuries from the pointed end, but he did not find any stab injury caused with the tip of MO.1 on the bodies of D1 and D2 and the injuries noted in Ex.P7 and P8 could not have been caused and could not have been probable with a curved weapon like MO.1. Since the

medical evidence and deposition of PW.10 do not support the case of the prosecution that the injuries were inflicted by MO.1, it creates a doubt whether the injuries are caused with MO.1 or not.

15. For the aforementioned reasons, we are of the opinion that the prosecution failed to prove the guilt of the appellant beyond all reasonable doubts.

16. Therefore, the judgment under appeal dated 20.06.2012 in Sessions Case No.208 of 2010 of the I Additional Sessions Judge, Kadapa, is set aside and the conviction and the sentence imposed on the appellant are consequently set aside. The appellant is acquitted of the offence for which he was charged. The fine amount, if any, paid by him shall be refunded to him. The bail bonds of the appellant shall stand cancelled. The appellant shall surrender himself before the Superintendent, Central Prison, Nellore, for completing the legal formalities for his release, if he is not otherwise required in any other case or crime.

17. The criminal appeal is, accordingly, allowed.

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**(C.V.Nagarjuna Reddy, J)**

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**(T.Amarnath Goud, J)**

Date: 19<sup>th</sup> November, 2018

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