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

**AND**

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL APPEAL No.1454 of 2011**

**06.08.2018**

Between:

Nunna Sudarsana Rao

..Appellant/sole accused

and

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

..Respondent

Counsel for the appellant/sole accused: Mr.C.Sharan Reddy
for Mrs.C.Vasundhara Reddy

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

The Court made the following:

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

The sole accused in Sessions Case No.96 of 2009 on the file of learned I Additional District and Sessions Judge, West Godavari at Eluru, filed this appeal against judgment, dated 14.11.2011, whereby he was convicted for the offence punishable under Section 302 I.P.C. and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer simple imprisonment for two months.

2. The case of the prosecution as set out in the charge sheet is, briefly, stated as follows.

(a) The accused and one Merugu Moshe (hereinafter referred to as 'the deceased') were the residents of Bhogapuram Village, Hamlet of Gundugolanu Village, Bhimadole Mandal, at the time of occurrence. They both belong to Schedule Caste (Mala) community and that they were neighbours. That there was a dispute between them with regard to the boundaries of their houses as there is a common passage to their houses. That on 14.05.2005, at about 8.30 p.m., the deceased, his wife – P.W.6 and his brother – Samuel, jointly attacked the accused, cut his nose with a vegetable chopper (*Katti Peeta),* and also beat

the witnesses, who came across them, at his house, due to the disputes in respect of the house boundaries and also as the wife of the accused scolded the family members of the deceased as they spread dung cakes across the common passage. That on the complaint of the accused, a case in Crime No.69 of 2005 for the offence punishable under Section 324 read with Section 34 I.P.C. was registered at Bhimadole Police Station and that after observing necessary formalities, a charge sheet was filed in the said case, which was numbered as C.C.No.626 of 2005 on the file of learned II Additional Judicial Magistrate of First Class, Eluru. That however, dissatisfied with the case registered against the deceased and his family members as the deceased used to laugh at the accused, the latter bore grudge against the deceased, decided to kill him and was waiting for an opportunity to wreak vengeance against him.

(b) That while so, on 21.07.2006 at about 4.00 p.m., when the deceased was present at the fields of one Konda Subba Raju at Korukollu Village situated two kilometers away from Bhogapuram Village, the accused attacked him with a sickle by chasing him and hacked him, indiscriminately, resulting in his instantaneous death and that the deceased fell

down in 10" deep water in the field, where there were paddy saplings of about ten days. That on the complaint lodged by P.W.1, who is the junior paternal uncle of the deceased, P.W.12 – the then Sub-Inspector of Police, Bhimadole Police Station, registered a case in Crime No.79 of 2006 for the offence punishable under Section 302 I.P.C., issued express F.I.Rs. and handed over a copy thereof to P.W.13 – the then Inspector of Police, Bhimadole, for investigation.

(c) That during the course of investigation, P.W.13 got photographed the scene of offence with the help of P.W.8 – the photographer, examined the scene of offence in the presence of the mediators – P.W.9 and L.W.13 – Saradhi Varikonda Siva Prasad from 7.00 a.m. to 8.30 a.m. and collected blood stained grass, control grass, water from the scene of offence near the dead body of the deceased and also water from a little distance from the scene of offence. That later, on 22.07.2006, he held inquest over the dead body of the deceased from 9.30 a.m. to 12.30 p.m. in the presence of the inquest panchayatdars – P.Ws.7 and 9 and L.W.14 – Boda Paramanandam, and sent the dead body of the deceased to the

Government Head Quarters Hospital, Eluru, for postmortem examination.

(d) That P.W.10 - Dr. P.Sailaja, Civil Assistant Surgeon, Government Head Quarters Hospital, Eluru, who conducted postmortem examination on the dead body of the deceased and issued postmortem certificate, opined that the deceased appeared to have died due to multiple deep injuries (stab injuries) resulting in excessive bleeding and shock. That on 23.07.2006 at 1.00 p.m., the accused was arrested by P.W.13 in the presence of the mediators – P.W.11 and L.W.16 – Maddala Krishna; that at the instance of the accused, the sickle used in commission of the offence was recovered from the bushes situated near Pathuru Bridge, where the accused concealed the same; that the aforesaid mediators prepared another *mahazarnama* regarding confession made by the accused and that thereafter, the accused was sent to judicial custody. That P.Ws.2 to 5 and L.W.8 - Gangireddi Bangaraiah are the direct eyewitnesses to the occurrence; that P.W.6 and L.W.6 – Merugu Suseela are the wife and mother, respectively, of the deceased and that L.W.9 - Koti Bhusanam is the Village Servant, who retrieved the dead body of the deceased from the

scene of offence. That on completion of the investigation, P.W.14 – the Circle Inspector, Bhimadole, filed the charge sheet against the accused for the offence punishable under Section 302 I.P.C.

3. Based on the charge sheet and the material collected during the investigation, the Court below framed the following charge against the accused.

> "That you on 21.07.2006, at about 4.00 P.M., at the land of one Konda Subba Raju at Korukollu Village committed murder by intentionally caused the death of Merugu Moshe by attacking him with a sickle, chased in the lands and hacked him indiscriminately with an intention to kill him and that you thereby committed an offence punishable under Section 302 I.P.C. and within my cognizance."

4. As the plea of the accused was one of denial, he was made to stand trial, during which, the prosecution examined P.Ws.1 to 14, got Exs.P-1 to P-13 marked and produced M.O.1. On behalf of the defence, no evidence was let in. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as indicated hereinbefore.

5. Mr.C.Sharan Reddy, learned counsel representing Mrs.C.Vasundhara Reddy, learned counsel for the appellant/accused, has urged that there is long and unexplained delay in registration of F.I.R and also that the evidence of P.W.1 is inconsistent with the material on record regarding the time at which the report was given and when the Police visited the scene of offence. He has further submitted that among P.Ws.2 to 5 – the alleged eyewitnesses, P.Ws.2 and 4 turned hostile and the evidence of P.Ws.3 and 5 is not worth believing. He has, therefore, submitted that the accused is entitled to the benefit of doubt.

6. The learned Public Prosecutor (A.P.) appearing for the respondent/State, while opposing the above submissions, has submitted that as the witnesses gave evidence in the Court about five years after the occurrence, they were not expected to remember the timings meticulously and that therefore, even if any discrepancies exist with regard to receiving of report by Police and registration of F.I.R., the same cannot be taken seriously so as to disbelieve the case of the prosecution. He has further submitted that as regards the evidence of P.Ws.3 and 5,

the version spoken to by them sounds natural and therefore, there is no reason to disbelieve their testimony.

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

8. As regards the first submission of the learned counsel for the appellant, Ex.P-1 report is shown to have been received by P.W.12 - the then Sub-Inspector of Police of Bhimadole Police Station, on 21.07.2006, at 9.30 p.m. Based on Ex.P-1 report, Ex.P-11 – F.I.R. was registered. P.W.1 – the paternal uncle of the deceased, deposed that at about 5.00 p.m., P.W.4 came and informed him that the accused hacked the deceased with knife and then, the witness along with four persons took an auto and went to the field of Subba Raju, where the deceased was lying, with an intention to shift him to the hospital if he is alive; that by the time, they went to that place, the deceased already died and that in the same auto, he went to the Police Station and gave report. In the cross-examination, the witness admitted that by the time, he reached the place where the dead body was lying, it was 6.00 p.m.; that the distance between the scene of offence and Bhimadole Police Station is more than 10

kilometers and that it might have taken half an hour for him to reach the Police Station from the place where the dead body was lying. Even if the statement of P.W.1 is taken on its face value, he might have reached the Police Station at around 6.30 p.m. or at least by 7.00 p.m. Interestingly, the witness further deposed in the cross-examination that after recording the statement of P.W.4, the Police obtained the signature of the latter and that thereafter, the witness (P.W.1) came to the scene of offence at 8.00 p.m. and the Police came there at about 8.30 p.m. Quite contrary to what P.W.1 deposed, in Ex.P-1 report as well as Ex.P-11 – F.I.R., P.W.12 endorsed that on 21.07.2006, he received Ex.P-1 report and registered F.I.R. at 9.30 p.m. When P.W.1 made a categorical assertion that by 8.30 p.m., P.W.12 reached the scene of offence after receiving the statement of P.W.1 and recording the statement of P.W.4, it is reasonable to presume that it is only after P.W.12 visited the scene of offence and returned to the Police Station, he registered F.I.R. at 9.30 p.m. We are, therefore, of the opinion that FI.R. was registered after commencement of investigation and accordingly, the F.I.R. is hit by the provisions of Section 162 (1) Cr.P.C. Moreover, these circumstances would clearly show that though P.W.1 contacted the Police

before 7.00 p.m., the F.I.R. was registered only at about 9.30 p.m., giving scope for confabulations and false implications. In our opinion, this unexplained delay seriously affected the case of the prosecution.

9. As regards the second submission of the learned counsel for the appellant relating to the oral evidence, though P.Ws.2 to 5 were cited as eyewitnesses, in Ex.P-1 report given by P.W.1, the latter did not refer to the names of any person, including P.W.4 as eyewitness. All that P.W.1 stated was that P.W.4 informed him that the accused hacked the deceased at 4.00 p.m. near the land belonging to Subba Raju. As noted hereinbefore, P.Ws.2 and 4 also turned hostile. The only remaining alleged eyewitnesses are P.Ws.3 and 5. P.W.3 deposed that he was the resident of Danagudem Village, which is at a distance of 50 kilo meters from Bhogapuram Village - the native place of the deceased and the accused. He did not reveal that he was closely related to the deceased. However, the defence was able to elicit from P.W.13 – the Investigating Officer that P.W.3 is none other than the brother-in-law of the deceased and that as per his investigation, he has been residing in Danagudem Village. In his cross-examination, P.W.3 admitted that his ration card

and election identity card showed that he was the resident of Bhogapuram Village and that he resided there for about 4 years. He further stated that at the time of incident, his family was residing at Bhogapuram Village and that his three children, at the time of his deposing evidence, were staying in Danagudem Village. He also stated that his elder sister is the wife of the deceased and he was staying in the house of the deceased. In our opinion, P.W.3 was highly interested witness. Being the permanent resident of Danagudem Village, there was no possibility of his staying at Bhogapuram Village at the time of the incident. Moreover, as noted above, P.W.13 candidly admitted that his investigation revealed that P.W.3 was residing at Danagudem Village. Further, as observed earlier, in Ex.P-1 report, his name was not mentioned. Had P.W.3 been the eyewitness, being closely related to the deceased, P.W.1 would not have failed to refer to his name in Ex.P-1 report. In the light of the above circumstances, we have no hesitation to conclude that P.W.3 was not an eyewitness, but a planted witness.

10. As regards P.W.5, he is the resident of Palakonderu Village and he was working as watchman for the fish tanks of

Tirubabu, which are situated near Bhogapuram outskirts. He claimed that he knows the accused, who is a resident of Bhogapuram Village and that he also knows the deceased, who used to come to the tanks at Bhogapuram Village for cutting the green grass on the tank bunds. He further deposed that at about 4.30 p.m. on the date of the incident, he heard the cries and at a distance of 10 yards he saw the accused hacking the deceased with his grass cutting sickle. In the cross-examination, he admitted that at the time of the incident, he did not know the name of the accused and so he did not refer his name when he was examined by the Police. He further admitted that he came to know about the name of the accused only on the date of his giving evidence and that the Police did not conduct any test identification parade to him to identify the accused.

11. In our opinion, it is highly incomprehensible as to how a person, who did not even identify a person by name, could testify that he was the one who killed the deceased without the Police conducting test identification parade. This witness has also not claimed that he had any acquaintance with the accused though he claimed such acquaintance with the deceased. Moreover, his presence was also not referred to in Ex.P-1

report. In the face of these facts, the presence of P.W.5 at the scene of offence and his identifying the accused as the assailant are highly doubtful and based on such evidence, the Court below ought not to have convicted the accused.

12. With regard to the alleged recovery of M.O.1 – the sickle, which was allegedly used by the accused in the commission of offence, the same was recovered from the bushes situated near Pathuru Bridge. P.W.11 is the panch witness for recovery of M.O.1 – sickle, which is commonly available in market. Ex.P-13 – R.F.S.L. report could not detect the origin of the blood allegedly found on the sickle. In the absence of any corroborative evidence, conviction cannot be based on mere recovery of a weapon, more so when it is commonly available in market and which was also recovered from a place, which is accessible to public. In the light of the above discussion, we are of the opinion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant (sole accused) in judgment, dated 14.11.2011, in Sessions Case No.96 of 2009 on the file of learned I Additional District and

Sessions Judge, West Godavari at Eluru, for the offence punishable under Section 302 I.P.C. are set aside and the appellant is acquitted of the charge framed against him. The appellant shall, accordingly, be set at liberty forthwith, if he is not required in any other case(s) or crime(s) and the fine amount, if any, paid by him shall be refunded to him.

**C.V.NAGARJUNA REDDY, J**

**GUDISEVA SHYAM PRASAD, J**

**06th August, 2018**

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