

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

CRIMINAL APPEAL No.562 of 2011

24.01.2018

Between:

Mohammad Sadiq

..Appellant/Accused No.2

and

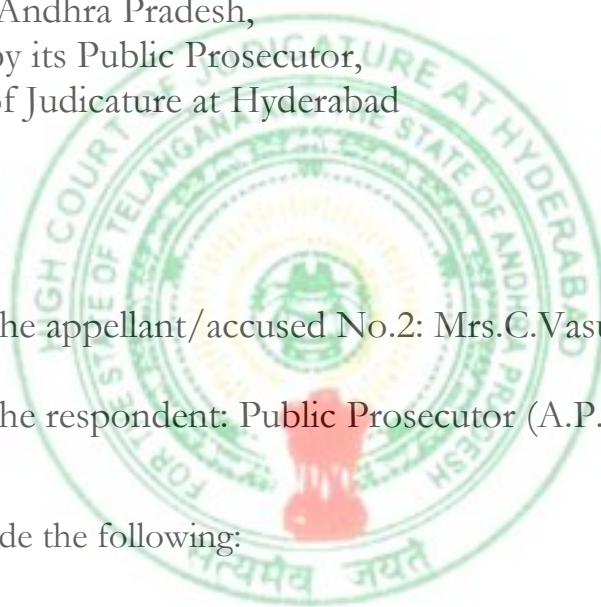
The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellant/accused No.2: 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)

This appeal is filed by accused No.2 in Sessions Case No.232 of 2008 on the file of the Special Sessions Judge for Trial of Cases under SCs/STs (POA) Act-cum-VIII Additional District Judge, Nizamabad, whereby he was found guilty of the offence punishable under Section 302 read with Section 34 I.P.C. and sentenced to suffer imprisonment for life and also to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for a period of three months. The sentences were directed to run concurrently.

2. The case of the prosecution, in brief, is that on 22.03.2007 at 9.30 a.m., a report was lodged before the Police by P.W.11 - the brother of the deceased, wherein he stated that on the same day at 8.00 a.m., one of his friends *viz.*, Amzad came to his house and informed that his younger brother *viz.*, Waseem (hereinafter referred to as 'the deceased') was murdered by some unknown persons at fruit market, Nizamabad. Immediately, he rushed to the fruit market situated on Bodhan road and found the dead body of the deceased in a pool of blood in front of Shaik Chand Family Dhaba hotel. That there were severe injuries on the head and back of the dead body caused by a sharp edged weapon. P.W.11 further stated that a few days back, with regard to purchase of one lorry by the deceased, one Rehman and his brother - Jahangir acted as mediators for the said transaction. That on 21.03.2007 morning, Jahangir came to the P.W.11's house and demanded due amount i.e. commission on the sale of the lorry. In that regard, there was an

altercation between Rehman (Jahangir's brother) and the deceased. Thereafter, at about 4.00 p.m. on the same day i.e., 21.03.2007, Jahangir again came and informed that another Leyland lorry was available for sale and asked whether the deceased was interested to purchase the same, upon which, P.W.11 suggested to the former to contact the deceased directly and sent him away. During that night at around 10.00 p.m., the deceased, left the house in order to discuss with Jahangir about the purchase of second lorry. P.W.11 suspected that Rehman along with his brother - Jahangir and his associates might have killed the deceased over the transaction of lorry. Hence, he requested the Police to take necessary action in that regard.

3. The report was received by L.W.26 – S.Lakshmi Narayana at the scene of offence. He sent the same to P.W.13 for registration thereof. Based on the said report, P.W.13 registered F.I.R.No.75 of 2007 for the offence punishable under Section 302 read with Section 34 I.P.C. and issued Express F.I.Rs. to all the concerned. On receiving the Express F.I.Rs., P.W.14 rushed to I Town Police Station, Nizamabad and verified the investigation done by P.W.13. Thereupon, P.W.14 conducted further investigation, during the course of which, he along with his staff visited the scene of offence situated in front of Shaik Chand Dhaba hotel at fruit market, Bodhan Road, Nizamabad. P.W.14 secured the presence of two mediators *viz.*, P.W.10 and L.W.17 – Abdul Imran Farooqui, conducted the scene of offence observation panchanama with the help of Clues team comprising L.Ws.22 and 23 –

B.Ravindra Babu - Police Constable and Jalander – Sub-Inspector respectively. L.W.22 photographed the scene of offence with digital camera. P.W.14 drew the rough sketch of the scene of offence in the presence of the mediators. He also collected the blood stained earth and controlled earth from the scene of offence and seized one Maruthi Omni Van bearing registration No.AP 16-P 6723, in which, the accused came to the crime scene and left the van at that place after committing the offence. He also seized one blood stained knife from the scene of offence, which was left behind by the side of the deceased. He seized iron rod from the scene of offence in the presence of the mediators. He conducted the inquest panchanama over the deceased at the scene of offence in the presence of the mediators i.e. P.W.6 and L.W.19 – Mohd. Abdul Javeed and he also examined P.Ws.1, 2, 4 and 11 and L.Ws.4 to 8 viz., Mirza Buran Ahmed Baig, Mirza Munawar Baig, Maddol Thukkaram, Vilas Narendra Pande and Abdul Raheem. The dead body of the deceased was sent to the District Headquarters Hospital, Nizamabad, for post mortem examination. P.W.12 conducted autopsy over the dead body and handed over the same to the brother of the deceased, after conducting post mortem examination.

4. During the investigation, P.W.14 received credible information at 16:10 hours on 26.03.2017 about the presence of accused No.1 near Baswa Gardens. Upon said information, P.W.14 along with L.W.26 - S.Lakshmi Narayana – Sub-Inspector of Police and staff, rushed to the said place and apprehended accused No.1 at 16:30 hours. On enquiry,

accused No.1 voluntarily confessed his guilt of killing the deceased in the early hours on 22.03.2007 near fruit market, Nizamabad along with his associates i.e., accused Nos.2 to 4. P.W.14 secured the presence of two mediators *viz.*, P.W.7 and L.W.21 – Vadla Dattesh, who witnessed the confessional panchanama. Accused No.1 led the Police and the mediators to his house at Mirchi compound, where P.W.14 conducted search in the presence of the mediators and seized blood stained clothes of accused No.1 and also the property documents, air tickets, etc., under the cover of seizure report. Thereafter, accused No.1 led the Police and the mediators to the house of the appellant/accused No.2 at Shanthinagar, where P.W.14 arrested the said accused at 21.40 hours. On interrogation, the appellant/accused No.2 voluntarily confessed his guilt of killing the deceased along with his associates. P.W.14 conducted confessional-cum-seizure panchanama of the said accused, searched his house and seized his blood stained clothes under the cover of seizure report.

5. On receipt of the information that accused No.3 i.e. brother of accused No.1, is available at AZUBA Hotel at Malapally, P.W.14 along with the mediators and staff, after arresting accused Nos.1 and 2, proceeded to Malapally and arrested accused No.3 at 23.35 hours at the aforesaid hotel. On interrogation, accused No.3 voluntarily confessed his guilt. All the three accused were brought to the Police Station on 27.03.2007 at 01.00 hours and were handed over to the Watch Police Constable (P.C.) for safe custody. The efforts made to apprehend

accused No.4 turned futile. Accused No.1 was sent to the District Headquarters Hospital as he sustained injuries on his hand and foot and got him treated on 27.03.2007. Thereafter, accused Nos.1 to 3 were produced before the jurisdictional Magistrate and they were remanded to judicial custody. On 31.03.2007, accused No.4 surrendered before the jurisdictional Magistrate and he was remanded to judicial custody.

6. The charge sheet has referred to the background leading to the offence as under:

“From the evidence collected during the course of investigation, it is well established that the complainant agreed to purchase a Lorry LP 1210 from one Mr.Goud for Rs.1,10,000/- in the first week of this month. The offer has been brought by A3. The deceased Mohd. Waseemuddin along with his brother, L.Ws.10, 11 seen the Lorry, examined it at the mechanic shed of A3 and satisfied. However, the complainant could not pay the money within the stipulated time. Upon which, Mr.Goud asked the complainant whether he is interested to purchase the Lorry or not. The complainant told Mr.Goud that the money has not been arranged and he asked for a day to meet the requirement. Upon which, A3 interfered and an altercation took place between A3 and the deceased. The deceased grew angry, abused A3 in filthy language and beat him and sent him away. The incident took place near AZUBA Hotel at Malapally. A3 informed the same to his brother A1 and he intended to teach a lesson to the deceased. However, the next day the complainant along with L.Ws.10, 11 came to A3 shed at Mirchi Compound, paid Rs.1,00,000/- to Mr.Goud. On 21.03.2007, A3 came to Faheemuddin shop at Malapally where L.Ws.10, 11 and deceased were present. A3 demanded his commission of Rs.2000/- from the complainant towards the purchase of Lorry. Upon which, again an altercation took place, in which, the

deceased abused A3 in un-parliamentary language and beat him, instead of giving his commission. Keeping in view of the above incident A3 bore grudge on the deceased and informed the same to his brother A1 and requested him to teach a lesson to Md.Waseemuddin (Deceased).”

7. Before the Court below, out of the four accused, the case was split up as regards accused No.1 as he was found absconding and since accused No.4 died, the case against him abated. In support of its case, the prosecution examined P.Ws.1 to 14 and got Exs.P-1 to P-19 marked. On behalf of the defence, Exs.D-1 to D-8 were marked. M.Os.1 to 17 were also marked. The Court below, by the judgment under appeal, convicted and sentenced the appellant/accused No.2 alone in the manner as stated hereinbefore and acquitted accused No.3.

8. We have heard Mrs.C.Vasundhara Reddy, learned counsel for the appellant/accused No.2, and the learned Public Prosecutor (A.P.) for the respondent-State.

9. **Delay in registration of F.I.R.:**

The learned counsel for the appellant/accused No.2 has strongly urged that the evidence on record would clinchingly show that there is delay in registration of F.I.R.

Though P.W.11 – one of the brothers of the deceased urged the counsel had information at around 4.00 a.m., he chose not to give Police report till 9.30 a.m. and that the prosecution failed to explain this inordinate delay. That P.W.4 - one of the alleged eyewitnesses, in his

evidence deposed that after the incident, he went to his house on his bicycle at 4.00 or 4.15 a.m. on the date of the incident; that it took 20 minutes for him to reach his residence and that by the time he reached his house, the residents of the locality had known about the occurrence.

It is clear from the testimony of P.W.4 that at 4.15 a.m. everyone in the locality, including all the brothers of the deceased, knew about the alleged incident. That P.W.1, who is also examined as an eyewitness, deposed that at 6.00 a.m. on the date of the incident, he informed P.W.11 about the incident. If we go by the evidence of P.W.4, P.W.11 had knowledge of the incident before 4.30 a.m. itself and even if we take into consideration the evidence of P.W.1, P.W.11 came to know about the incident at 6.00 a.m. Admittedly, P.W.11 is the resident of Nizamabad town. Therefore, there was no reason for him to not go to the Police Station within a reasonable time of his knowing about the incident for reporting about the same. But, he went to Police Station after 9.00 a.m. Thus, as rightly submitted by the learned counsel for the appellant/accused No.2, there is unexplained delay in the report being given by P.W.11 to the Police and consequently, in the registration of F.I.R. It is well settled position that unexplained delay in registration of F.I.R. is fatal to the case of the prosecution as it gives rise to false implications and embellishments in the case of the prosecution.

In **Thulia Kali v. State of Tamil Nadu**¹, H.R. Khanna, J, has highlighted the importance of the FIR in a criminal case. It was held that FIR is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and that the importance of the report can hardly be overestimated from the standpoint of the accused, that the object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence and that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further held that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation and that it is therefore essential that the delay in the lodging of the FIR should be satisfactorily explained.

In **State of A.P. v. Punati Ramulu**², the Supreme Court held:

"Once we find that the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussions, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely

¹ AIR 1973 SC 501

² 1993 CrLJ 3684

upon such a tainted report, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. when the bona fides of the investigation has been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case."

In **Meharaj Singh v. State of U.P.**³, the Supreme Court held that with a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks; one of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate; if this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate and that the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, weapons, if any, used, as also the names of the eyewitnesses, if any.

10. **Absence of Motive:**

No specific motive has been alleged by the prosecution against the appellant/accused No.2. He was only described as a driver and the

³ (1994) 5 SCC 188

prosecution has not even alleged that he was the close associate of accused Nos.1 and 3 and has any axe to grind against the deceased.

11. **Whether the prosecution established the presence of P.Ws.1, 2 and 4 at the scene of offence:**

In Ex.P-8 – Police report given by P.W.11, he, *inter alia*, stated that at 8.00 a.m. on 22.03.2007, one Amzad came to his house and informed that some persons killed his brother – the deceased, near the fruit market; that immediately, he went to the scene of offence and the deceased, lying in a pool of blood with injuries on his head, which might have been caused by a sharp edged weapon(s); that a few days earlier, his brother – the deceased, purchased a lorry with the mediation of accused Nos.1 and 3; that on the morning of 21.03.2007, accused No.3 approached P.W.11 demanding payment of due amount by the deceased; that he sent back accused No.3 by convincing him that the said amount will be paid later; that at about 10.00 p.m., the deceased went out of the house for holding talks with accused No.3 for purchasing second lorry and that during that night, accused Nos.1 and 3 and his followers might have done away with the life of the deceased, in connection with the lorry transaction.

From the contents of Ex.P-8, it is quite evident that P.W.11 did not speak about the alleged eyewitnesses i.e., P.Ws.1, 2 and 4. On the contrary, P.W.1 in his evidence categorically stated as under:

“After running away from the place of incident, I did not inform the Police or the said Faheemuddin. At Baban Sahed Pahad, A-1 came half an hour after the arrival of A-2 to that place. At 6.00 a.m., of the day of incident I informed the said Faheemuddin about the incident.”

12. If P.W.1 were the eyewitness, being a close friend of the deceased, he would have rushed to the house of P.W.11, which even according to P.W.1 was ten houses away from his house and informed him before he went to his house. The failure of P.W.1 to inform P.W.11 about the incident till 6.00 a.m. defies the natural human conduct. Even assuming that P.W.1 informed P.W.11 about the incident at 6.00 a.m., he would not have failed to inform P.W.11 that the incident had occurred in the presence of himself and P.Ws.2 and 4. As noted hereinbefore, P.W.11 did not refer to the presence of any of these eyewitnesses in Ex.P-8. On the contrary, he stated that one Amzad, who was not examined as a witness, informed him at 8.00 a.m. about the killing of the deceased. In our opinion, failure of P.W.11 to refer to the presence of P.Ws.1, 2 and 4 at the time of commission of the alleged offence in Ex.P-8 and the conduct of P.W.1 in not informing P.W.11 on his return to his house till 6.00 a.m. would throw any amount of doubt on the case of the prosecution that the offence occurred in the presence of the said witness *viz.*, P.W.1. The conduct of P.W.2 in his not trying to inform either the Police or any of the brothers of the deceased after allegedly running away from the scene of offence is highly unnatural.

13. As regards P.W.3, he claimed to have worked as Supplier in Shaik Chand Dhaba, the place, where the offence allegedly took place. He deposed that the Dhaba was closed by 11.00 or 11.30 a.m. on 21.03.2007; that after closure of the Dhaba, its owner left for his house, while himself, one Vilas and one Rahim were sleeping in front of the Dhaba. That at 1.30 a.m., accused Nos.1 and 2 and P.Ws.1 and 2 along with the deceased came to the Dhaba and called them by names; that Rahim woke up and opened the Dhaba; that they asked for supply of whisky; that as whisky was not available, at their request, Rahim supplied three quarter bottles of cheap liquor to them; that Rahim woke him (P.W.3) up for supply of glasses; that when all the aforementioned five persons were drinking the cheap liquor, talking to each other, himself and Rahim slept and that at 5.00 a.m., when he woke up, he saw the dead body of the deceased lying in front of the Dhaba in a pool of blood. In his cross-examination, P.W.3 stated that he slept at a distance of about twenty yards from the place where accused Nos.1 and 2, the deceased and P.Ws.1 and 2 sat and consumed liquor. If P.W.3 served the liquor and slept in the Dhaba and the alleged offence took place at the Dhaba, it was highly improbable that he would not have woken up, for an offence of the nature alleged by the prosecution would not have been committed in silence and there would have been shouts and commotion when accused Nos.1 and 2 were attacking the deceased in the presence of at least, three eyewitnesses i.e., P.Ws.1, 2 and 4. Therefore, the presence of P.W.3 at the scene of offence is highly doubtful.

14. As regards P.W.4, a perusal of Ex.P-1 - inquest panchanama shows that his name was not referred to as an eyewitness. On the contrary, the name of L.W.4 – Mirza Buran Ahmed Baig is shown as the person, who had last seen the deceased at about 3.30 a.m. in column IV of Ex.P-1. For the reasons, best known to the prosecution, the said person was not examined. P.W.4 deposed that he went at about 3.00 a.m. on 22.03.2007 to the fruit market situated opposite to Shaik Chand Dhaba for purchasing oranges. He is, thus, a chance witness. Even he did not venture to inform anyone, including the Police about the alleged incident. There is also variation in the versions of P.Ws.1, 2 and 4 – the alleged eyewitnesses as regards the overtacts. While P.W.1 alleged that the appellant/accused No.2 attacked the deceased on his cheek after snatching the knife from accused No.1, P.Ws.2 and 4 alleged that the appellant/accused No.2 attacked the deceased on his back. Thus, there is no consistency in the versions of P.Ws.1, 2 and 4 on the nature of the attack and the injury caused by the appellant - accused No.2. On a careful consideration of the above circumstances, we are of the opinion that the testimony of P.Ws.1, 2 and 4 does not inspire confidence of the Court to believe that the offence took place in their presence.

15. **Collection of Finger Prints and the FSL report:**

It is alleged in the charge-sheet and it has also come out in the evidence of P.W.14 that he collected the finger prints from the scene of

offence i.e., on the crime vehicle and sent the same for the opinion of the finger prints expert for comparison with that of the accused and that he also collected the report of the finger prints expert. However, the alleged report has not been filed by the prosecution, which in our opinion, is a serious lacuna in the investigation. The failure of the Investigating Officer to file the FSL report would give rise to an adverse inference that the report is in favour of the accused and that their finger prints do not match with those found on the crime vehicle. Moreover, while it is the case of the prosecution that the attack took place in front of the Dhaba, it has not explained as to how blood stains were found inside the Maruthi car.

16. **Ex.P-4 - disclosure panchanama and Ex.P-5 - recovery-cum-seizure panchanama relating to the appellant/accused No.2:**

It is the case of the prosecution that accused No.1 led the Police and the mediators to the house of the appellant/accused No.2, where he was arrested by P.W.14 and that during the interrogation, the appellant/accused No.2 voluntarily confessed his guilt of killing the deceased. Ex.P-4 is the alleged confessional panchanama and Ex.P-5 is the alleged recovery panchanama, with regard to the appellant/accused No.2. It is stated therein that the said accused confessed his guilt and on such confession, he went inside the house and took out the blood stained shirt and pant belonging to him from sajja and P.W.14 recovered the same in the presence of the mediators, including P.W.7. Ex.P-19 is the FSL report regarding these clothes, a perusal of which

would reveal that human blood is detected on item Nos.1 to 8. However, the blood group was of 'O' positive on item Nos.1 and 2 i.e., torn blue colour terry cotton full sleeve shirt and torn white colour mill made cut sleeved banian. Blood group on item Nos.3 to 8 could not be determined. The Investigating Officer has not taken any steps to compare the blood group found on item Nos.1 and 2 with that of the deceased.

17. In our opinion, in the absence of ascertainment of the blood group of the deceased, the prosecution failed to establish the nexus between the clothes seized from the possession of the appellant/accused No.2 and the deceased. Mere seizure of the blood stained clothes from the possession of the appellant/accused No.2 would not establish the link between him and the alleged offence and no inference could be drawn against the appellant by the mere fact of seizure without the establishment of the fact that the blood found on the clothes of the appellant/accused No.2 was of the deceased.

18. **Conclusion and the Result:**

From the discussion undertaken above, this Court has no hesitation to hold that P.Ws.1, 2 and 4 are the planted witnesses. There was no possibility of P.W.3 having seen accused Nos.1 and 2, the deceased and the alleged eyewitnesses together before the occurrence took place at the Dhaba. Long and unexplained delay in the registration of F.I.R. has given scope for false implications and the

prosecution has miserably failed to establish the motive on the part of the appellant/accused No.2 to kill the deceased and consequently, it has failed to establish his guilt beyond all reasonable doubt.

19. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused No.2 in judgment, dated 28.03.2011, in Sessions Case No.232 of 2008 on the file of the Special Judge for Trial of Cases under SCs/STs (POA) Act-cum-VIII Additional District Judge, Nizamabad, for the offence under Section 302 read with Section 34 I.P.C. are set aside and the appellant/accused No.2 is acquitted of the charge framed against him. The fine amount, if any, paid by him shall be returned to him.

20. We have been informed that the appellant/accused No.2 is presently on bail *vide* this Court's order, dated 19.12.2016. Therefore, he shall forthwith surrender before the Jail Superintendent concerned for completing the formalities of his release from the jail, if he is not required in any other case(s) or crime(s).

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

24th January, 2018
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