

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice M.Ganga Rao

Criminal Appeal Nos.578 and 632 of 2011

Crl.A.No.578 of 2011:

Between:

Bandiri Mohan

..... Appellant/accused No.3

and

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

.....Respondent

Crl.A.No.632 of 2011:

Between:

Ragipuri Ram Babu and others

..... Appellants/Accused Nos.1, 2, 4, 5, 6 and 7

and

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

.....Respondent

Counsel for the appellants/accused Nos.1 to 7: Mr.D.Kodanda Rami Reddy

Counsel for the respondent:

Public Prosecutor (AP)

The Court made the following:

Common Judgment: (per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused Nos.1 to 7 in Sessions Case No.444 of 2009 on the file of the learned Additional Sessions Judge, Hindupur (for short 'the Court below'), filed these two Criminal Appeals against their conviction and sentencing by Judgment, dated 10-05-2011, passed therein. Accused No.3 filed Criminal Appeal No.578 of 2011 against his conviction and sentencing to undergo Imprisonment for Life for the offence punishable under Section 302 I.P.C. Accused No.1 filed Criminal Appeal No.632 of 2011 for similar conviction and sentencing. Accused Nos.2 and 4 to 7, who were convicted and sentenced to undergo Imprisonment for Life for the offence punishable under Section 302 read with Section 149 I.P.C., also joined accused No.1 in filing Criminal Appeal No.632 of 2011. Accused Nos.1 to 7 were further convicted and sentenced to undergo Rigorous Imprisonment for two years each for the offence punishable under Section 148 I.P.C., and this sentence was directed to be merged in the Life Imprisonment imposed on them. The Court below has, however, acquitted accused Nos.8 to 10 of all the charges framed against them.

For convenience, the appellants shall be hereinafter referred to as the accused.

2. The case of the Prosecution, in brief, is as follows.

(a) All the accused, Kayala Prasad (hereinafter referred to as 'deceased No.1') and Ragipuri Prameela (hereinafter referred to as 'deceased No.2') are the residents of Kowlepalli quarters, Kadiri Mandal, Anantapur District. P.W.1 was the maternal uncle, P.W.3 was the mother and P.W.4 was the grandmother of deceased No.1. Appellant No.1 was the husband, P.W.2 was the mother and P.W.5 was the brother of deceased No.2.

(b) The marriage of deceased No.2 was performed with accused No.1 eight years prior to the incident. They were blessed with a daughter *viz.*, Bhagyasree. Deceased No.1, who was the neighbour of accused No.1, used to visit the house of accused No.1 frequently, and developed illicit intimacy with deceased No.2 – the wife of accused No.1 since three years prior to the incident. The said fact came to the notice of accused No.1 and he chastised his wife – deceased No.2 and deceased No.1 and warned them to sever their relationship, but they continued the same. Then the same was brought to the notice of their village elders, who also advised deceased Nos.1 and 2 to put an end to their illegal relationship, but the latter did not heed their advice. Later, the said illegal relationship was brought to the notice of Kadiri Taluk Police, who, in turn, warned both deceased Nos.1 and 2. About one year prior to 25.10.2006, deceased No.1 eloped with deceased

No.2, moved somewhere for three months and later returned to their village. Since then, deceased No.2 did not join her husband – accused No.1 and was living with deceased No.1 in a separate house in the same village. Accused No.1 got disgusted and his family members felt insulted with the said acts of deceased No.2. All of them quarrelled with deceased Nos.1 and 2 and assaulted them. During the month of March, 2006, deceased No.2 lodged a Police complaint against accused No.1 and his relatives and since then, the Police were searching for them. Added to that, deceased No.2 filed a petition before the Family Court seeking divorce from her husband – accused No.1. Accused No.1 and his family members, who could not digest the activities of deceased Nos.1 and 2, wanted to do away with their lives.

(c) On 24.10.2006, at about 8.30 a.m., on the way between Kowlepalli Village and Kowlepalli Quarters of Kadiri Mandal, all the accused, armed with deadly weapons like hunting sickles and sticks, formed themselves into an unlawful assembly, went towards the brick yard of deceased No.1, and by abusing both deceased Nos.1 and 2 in vulgar language for having illicit intimacy and living as couple in front of accused No.1, hacked them. Accused Nos.1 and 3, armed with hunting sickles, hacked on the heads of deceased Nos.1 and 2, due to which, both of them fell on the ground and

accused No.5 attacked them with hunting sickle, whereas the remaining accused armed with iron rods and sticks attacked them indiscriminately all over their bodies, as a result of which, they received severe bleeding injuries and died on the spot. Thereafter, all the accused went away from the scene of offence with the crime weapons.

(d) On 25.10.2006, at 8.00 a.m., on the complaint of P.W.1, a case in Crime No.65 of 2006 under Sections 147, 148, 302 read with 149 I.P.C. was registered by P.W.12 – Sub-Inspector of Police, Kadiri Rural Police Station and subsequently, it was investigated by P.W.13 – the then Inspector of Police, Kadiri Urban Circle.

(e) During the course of investigation, on 25.10.2006, inquest was held on the dead bodies of deceased Nos.1 and 2 between 11.00 hours to 15.00 hours and 15.15 hours to 18.00 hours respectively in the presence of P.Ws.1 to 6, L.Ws.4 and 8 – Kayala Yesanna @ Yesaiah and Syed Musthafa and the inquest panchayatdars- P.W.7 and L.W.12 – Bhukya Tulasi Bai. Thereafter, both the dead bodies were sent for Postmortem Examination. During the course of further investigation, on 13.11.2006, at 9.45 p.m., in the tamarind tope of Yeguvinti Chandra Reddy near Kowlepalli Railway gate, accused Nos.1 to 7 were arrested by P.W.13 in the presence of the mediators - P.Ws.8 and 9 and were

interrogated separately, during which, they confessed to have committed the offence. Hence, a mahazer was drafted for their arrest. In pursuance of the confessional statements of accused Nos.1 to 7, on 13.11.2006 at 2.30 p.m., at their instance, the crime weapons, which were abandoned by them, after commission of the offences, at the thorny bushes situated at Padamati gutta, nearby the burial ground on the western side of the tank at Kowlepalli quarters, Kadiri town, were seized under the cover of separate mahazer duly attested by the mediators. Later, on 24.04.2007 at 10.00 a.m., at Jeevimanu Circle, Kadiri Town, accused Nos.8 to 10 were arrested by P.W.14 and after observing all the formalities, they were sent for remand.

(f) P.W.10 – the Civil Assistant Surgeon, Area Hospital, Kadiri, who conducted autopsy over the dead body of deceased No.1 opined that the said deceased would appear to have died of shock and haemorrhage due to multiple injuries. P.W.11 – the Medical Officer, Government Area Hospital, Kadiri, who conducted autopsy on the dead body of deceased No.2, opined that the said deceased would appear to have died of injury to the brain due to head injury. On completion of the investigation, the Inspector of Police, Kadiri Urban Circle, filed a charge sheet.

3. Based on the charge sheet and the material collected by the Investigation Agency during the investigation, the Court below framed the following charges:

“Charge No.1: That A1 to A10 of you on 24-10-2006 at about 8.30 a.m. in between near Kowlepalli and Kowlepalli quarters of Kadiri Mandal were a member of unlawful assembly and did in prosecution of common object of murdering Kayala Prasad and Ragipuri Prameela and at that time A1 to A10 of you were armed with deadly weapons like hunting sickles, sticks or weapons of offence likely to cause death and that A1 to A10 of you thereby committed an offence punishable u/Sec.148 of the Indian Penal Code and within the cognizance of offence.

Charge No.2: That A1 and A3 of you along with other accused on 24-10-2006 at about 8.30 a.m. in between near Kowlepalli and Kowlepalli quarters of Kadiri Mandal having bore grudge for having illegal intimacy by the first deceased Kayala Prasad with second deceased Ragipuri Prameela, did commit murder of by intentionally and knowingly causing death of first deceased Kayala Prasad with second deceased Ragipuri Prameela went towards bricks yard of the deceased, A1 and A3 of you hacked on the heads of the deceased 1 and 2 and both the deceased died on the spot and that A1 and A3 of you thereby committed an offence punishable under Sec.302 read of the Indian Penal Code and within my cognizance.

Charge No.3: That A2, A4 to A10 of you along with A1 and A3 on 24-10-2006 at about 8.30 a.m. in between near Kowlepalli and Kowlepalli quarters of Kadiri Mandal having bore grudge for having illegal intimacy by the first deceased Kayala Prasad with second deceased Ragipuri Prameela, did commit murder of by intentionally and knowingly causing death of first deceased Kayala Prasad with second deceased Ragipuri

Prameela went towards bricks yard of the deceased, A1 and A3 of you hacked on the heads of the deceased 1 and 2 and A2, A4 to A10 of you beat the deceased 1 and 2 with iron rods and sticks indiscriminately all over their bodies and the deceased 1 and 2 died on the spot and that A2, A4 to A10 of you thereby committed an offence punishable under Sec.302 read with 149 of the India Penal Code and within my cognizance.”

4. As the plea of the accused was one of denial, they were subjected to trial, during which, the Prosecution examined P.Ws.1 to 20, got Exs.P-1 to P-25 marked and produced M.Os.1 to 15. On behalf of the accused, the defence examined D.Ws.1 and 2 and got Exs.D-1 to D5 marked. The Court got Exs.X-1 to X-4 marked.

5. On appreciation of both oral and documentary evidence, the Court below has disposed of the case in the manner as noted hereinbefore.

6. Mr.D.Kodanda Rami Reddy, learned Counsel for the accused, submitted that the judgment of the lower Court suffers from many errors; that it has convicted the accused by taking the evidence of PWs.1 and 2 on their face value without analysing their unnatural conduct; and that there was a huge delay in registration of FIR and also the FIR reaching the jurisdictional Magistrate, thereby, giving scope for false implications and exaggerations. He has pointed out various inconsistencies such as contradiction

between the statements of PW.2 given to the Police, which was marked as Ex.D.4, and the one spoken to before the Court regarding her following PW.1 to the Police Station for giving Ex.P.1- Complaint. The learned Counsel also pointed out that when the incident has allegedly taken place at 10.00 p.m., outside the village near a brick kiln, it was impossible for PWs.1 and 2 to identify the assailants with reference to the specific overt acts and that all these factors would show that PWs.1 and 2 are planted witnesses. He further submitted that if the evidence of PWs.1 and 2 is not believed, the only other piece of evidence that could connect the accused to the offences is the alleged recovery of the crime weapons and that PWs.8 and 9, who were the attestors to the recovery panchanama, having turned hostile, the Prosecution has failed to prove recovery and thereby, the Court is left with no evidence to hold the accused guilty of the offences with which they were charged beyond all reasonable doubts.

7. Mr.P.Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh, opposed the above submissions and argued that the heinous murders committed by the accused deserved appropriate punishment and that the Court below, having properly appreciated the evidence on record, has rightly held them guilty of committing the offences. He has further submitted that though

PWs.1 and 2 are near relatives of deceased Nos.1 and 2 respectively, there was no reason for them to falsely implicate the accused by letting off the real assailants and that in the absence of the defence suggesting any motive for these two witnesses to frame the accused, their evidence cannot be discarded. As regards the delay in registering the FIR and its reaching the jurisdictional Court, while conceding that there was delay, which was not explained, he, however, submitted that the defence failed to prove any prejudice on account of such delay.

8. We have carefully considered the submissions of the learned Counsel for the parties with reference to the record.

9. We shall first deal with the aspect of delay. The offences have allegedly taken place at 10.00 p.m., on 24-10-2006 near the brick kiln belonging to deceased No.1. Both PWs.1 and 2, who claimed to have witnessed the incident from close quarters, stated that on being threatened by the accused that they will cause harm to them, if they reveal the incident to anyone, and as the accused have gone to the village after accomplishing their task, they were afraid of going to the village and that therefore, they spent all the night hiding themselves behind the bushes. In our opinion, the conduct of these two witnesses is so unnatural that it is not possible to visualise that PW.1- maternal uncle of deceased No.1

and PW.2- mother of deceased No.2 would hide themselves due to fear of harm being caused to them through out the night behind the bushes. If at all they had any such fear, they would have quietly gone to the village and not revealed the said fact to anyone. It is also not possible to accept their further stand that they noticed that the accused had gone to the village because the scene of offence is admittedly away from the village and the offence allegedly took place during dead of the night. It is, therefore, not possible for PWs.1 and 2 to know the exact destination of the accused in the dark. Further, if, on account of fear, they did not go to the village and inform anyone, it defies any reason or logic for them to go to the Police Station at 8.00 a.m., even without disclosing this fact to anyone in the village.

10. The learned Counsel for the accused has pointed out a serious discrepancy as regards the persons, who went to the Police Station and gave Ex.P.1- Police report. A perusal of Ex.P.1 shows that it contains the purported signature of PW.1 and the thumb impression of PW.2. In his cross-examination, PW.1 has stated that Ex.P.1 was scribed by one Venkata Ramana, document writer, Kadiri, on his narration. The witness has not given the details as to whether Ex.P.1 was written at the Police Station or he went to the said document writer, got it drafted and presented it before the

Police Station. While PW.1 stated that he went to the Police Station at 9.00 a.m., and gave the report, PW.12- Sub-Inspector of Police, who registered Ex.P.1, stated that at 8.00 a.m., PWs.1 and 2 came to the Police Station and presented Ex.P.1. There is, thus, apparent discrepancy with regard to the time at which PWs.1 and 2, allegedly, reached the Police Station and gave Ex.P.1 report. More serious discrepancy lies in the stand taken by PW.2 before the Police and in her evidence given in the Court. When she was confronted with Ex.D.4- her Section 161 Cr.P.C., statement, she denied having given the same. In Ex.D.4, the witness allegedly stated that herself and PW.1 were hiding near the brick kiln throughout that night and that on the following morning, PW.1 went to Kadiri informing PW.2 that he will go to the Police Station and give a report. While PW.12 denied the suggestion given to him that PW.2 did not accompany PW.1, PW.13 candidly admitted in his cross-examination that PW.2 has deposed as in Ex.D.4. Through this admission by PW.13, the Prosecution was able to prove the contradiction in Ex.D.4. It appears that PW.2 has not accompanied PW.1 to the Police Station for giving Ex.P.1 report. This conduct of PW.2, thus, casts a serious cloud on the case of the Prosecution that PW.2 was the eye witness to the incident.

11. One other incongruity in the case of the Prosecution is that PW.1, in his evidence, stated that while passing in front of the house of appellant No.1, he overheard the conversation among all the accused hatching a conspiracy to kill both the deceased, that he immediately rushed to the house of PW.2 and informed the same to her. If PWs.1 and 2 really knew about the said conspiracy, it would be highly incredulous that they would not have informed the same to their relatives, if any, if not to the other villagers and instead proceeded to the scene of offence without being accompanied by any other person. When we examine the conduct of these witnesses with reference to the purported time of receiving Ex.P.1 by PW.12 and the same reaching the jurisdictional Magistrate, a serious doubt would arise whether PWs.1 and 2 were really present at the scene of offence. Even assuming that out of fear PWs.1 and 2 have not gone to the Police Station till the next day morning, when the FIR was purportedly registered at 9.00 a.m., on 25.10.2006, the same has reached the jurisdictional Magistrate, whose Court was, admittedly, situated within the same premises as that of the Police Station, at 6.00 p.m. PW.12, who registered the FIR, has admitted in his evidence that no explanation for delay in registration of FIR has been mentioned therein. Similarly, the Prosecution has not put forth any reason for the delay in the FIR reaching the jurisdictional Magistrate. All these aspects

cumulatively considered would lead us to the only conclusion *viz.*, that PWs.1 and 2 were not eye witnesses to the incident but they were planted witnesses and that after confabulations and consultations, the Police might have registered the FIR shortly before the same was sent to the jurisdictional Magistrate at 6.00 p.m., The law is well settled that the unexplained delay in registration of FIR is fatal to the case of the Prosecution as it gives scope for false implications and embellishments. (see **Thulia Kali v. State of Tamil Nadu**¹, **State of A.P. v. Punati Ramulu**² and **Meharaj Singh v. State of U.P.**³)

12. For the reasons discussed herein before, we have no doubt that PWs.1 and 2 are not truthful witnesses and their evidence cannot be relied upon for convicting the accused. Once their evidence is discarded, as rightly submitted by the learned Counsel for the accused, the only other evidence that could connect the accused to the offences is the alleged recovery. Ex.P.18 is the alleged confessional statement of the accused leading to recovery of the crime weapons. Under Ex.P.19, MOs.1 to 5 (in all 5 sickles) were allegedly recovered from the possession of accused Nos.1 to 6 and under Ex.P.20, MO.6- iron rod was allegedly recovered from the possession of accused No.7. PWs.8 and 9 are stated to be the

¹ AIR 1973 SC 501

² 1993 CrL.LJ 3684

³ (1994) 5 SCC 188

panch witnesses for the recoveries. However, both of them in one voice stated that they have neither seen the accused nor any weapons were recovered in their presence. They, however, admitted that they signed Exs.P.19 and P.20 in the Police Station. Nothing material could be elicited from their cross-examination by the Public Prosecutor to prove the recovery. Even as per the aforementioned documents, the sickles and the iron rod did not contain any blood. The Prosecution did not dispute that these weapons are readily available in the market. Thus, the Prosecution failed to prove recovery of the alleged crime weapons.

13. In the light of the above discussion, we have no hesitation to hold that the Prosecution has failed to prove the guilt of the accused beyond all reasonable doubts and that the Court below has got swayed away by the case of the Prosecution without properly appreciating the evidence on record.

14. The learned Counsel for the accused submitted that accused No.7 has died recently. Hence, Criminal Appeal No.632 of 2011 *qua* appellant No.6/accused No.7 stands abated.

15. Criminal Appeal Nos.578 and 632 of 2011 *qua* accused No.3 and accused Nos.1, 2 and 4 to 6 respectively are allowed. The conviction and sentences recorded against accused Nos.1 to 6 in Judgment, dated 10.05.2011, in Sessions Case No.444 of 2009, on

the file of the Additional Sessions Judge, Hindupur, are set aside. Consequently, the appellants/accused Nos.1 to 6 are acquitted of all the charges framed against them.

16. As the appellants/accused Nos.1 to 6 are on bail, they are directed to surrender themselves before the Superintendent, Central Jail, Kadapa, for completing the legal formalities for their release, if they are not required in any other case or crime.

(C.V.Nagarjuna Reddy, J)

(M.Ganga Rao, J)

Dt: 9th July, 2018
ghn/lur

