

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

CRIMINAL APPEAL No.1029 of 2011

24.07.2018

Between:

The State of Telangana,
represented by its Public Prosecutor,
Hyderabad

..Appellant

and

Boya Pedda Nagesh @ Auto Nagesh and others

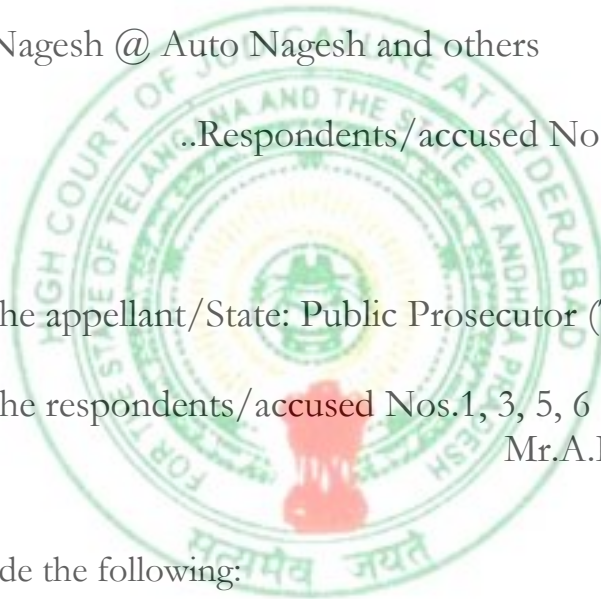
..Respondents/accused Nos.1, 3, 5, 6 and 7

Counsel for the appellant/State: Public Prosecutor (T.S.)

Counsel for the respondents/accused Nos.1, 3, 5, 6 and 7:

Mr.A.Ravi Babu

The Court made the following:



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

This appeal is filed by the State against judgment, dated 23.12.2009, in Sessions Case No.126 of 2006 on the file of learned III Additional District and Sessions Judge, (Fast Track Court), Gadwal, whereby the respondents/accused Nos.1, 3, 5, 6 and 7 were acquitted of all the offences with which they were charged.

2. The case of the prosecution as set out in the charge sheet filed by the Police, in brief, is stated hereunder.

(i) That one T.Suri Babu (hereinafter referred to as 'the deceased') was the son of P.W.1; that they and the accused hail from Bijjaram village; that on 20.09.2003, at 6.00 a.m., P.W.1 lodged Ex.P-1 - complaint at the Police Station (P.S.), Maldakal, stating that on the intervening night of 19/20.09.2003 at about 1.15 a.m., P.W.1 sent his younger son – the deceased and their farm servant – P.W.3 on a motor cycle to their agriculture field for supplying water to their crop; that after 30 minutes, P.W.3 returned home and informed P.W.1 that accused No.2 kept stones across the pathway and sat nearby, and said that he was attending the nature's call; that P.W.3 removed the stones and went to their field and started the bore well to supply water to the crop; that while returning home on the motorcycle, when

they reached the field of one G.Kista Reddy, accused Nos. 1 to 4 and other accused, holding knives and sticks, waylaid them and attacked the deceased and that due to fear of the accused, P.W.3 escaped. That immediately, P.W.1 along with P.Ws.2 and 4, L.W.4 – R.Thimma Reddy and L.W.13 – T.Pratap, rushed to the spot and found his son – the deceased dead with severe injuries. That P.W.1 further stated that last year in the month of November, the R.T.C. authorities stopped buses alleging that the private vehicles are being plied to the village; that his son – the deceased and others, insisted on stopping the autos, due to which accused Nos.1 and 2 quarrelled with the deceased and that keeping the grudge and enmity, they attacked and killed the deceased. Hence, P.W.1 requested for legal action.

(ii) On receipt of the complaint, P.W.13 – the Sub-Inspector of Police, Maldakal P.S., registered a case in crime No.45 of 2003 under Sections 147, 148, 302 read with Section 149 I.P.C., sent express F.I.Rs. to all the concerned and took up the investigation. During the course of investigation, P.W.13 visited the scene of offence, conducted the scene of offence panchanama in the presence of the mediators – P.W.8 and L.W.13, seized the blood stained earth, control earth and

blood strained boulder and photographed the scene with the assistance of P.W.5 – the photographer. That P.W.13 conducted inquest panchanama over the dead body of the deceased in the presence of the aforementioned mediators, examined P.Ws.1 to 4 and L.W.4 and L.W.6 - Smt.T.Rajeshwaramma, recorded their statements and referred the dead body of the deceased for post mortem examination to the Government Hospital, Gadwal.

(iii) That P.W.14 – the Circle Inspector of Police, Gadwal, took up further investigation, verified the scene of offence, secured the presence of P.Ws.1 to 4 and L.Ws. 4 and 6, examined and verified the statements recorded and the investigation done by P.W.13 and found them to be on proper and correct lines. That P.W.14 caused further enquiries, examined P.Ws.6 and 7 and L.Ws.10 and 11 – K.Venkatanna and Telugu Pedda Ranganna and recorded their statements. That P.W.12 – the Civil Assistant Surgeon, Government Hospital, Gadwal, conducted post mortem examination over dead body of the deceased and opined that the cause of death of the deceased was due to haemorrhage shock caused by the multiple injuries.

(iv) That on 08.10.2003, at 8.45 a.m., P.W.14 arrested accused Nos.1, 2, 3, 5 and 6, who on interrogation admitted the commission of the offence, recorded their confessional statements in the presence of the mediators – P.Ws.9 and 10, recovered the weapons used in the commission of the offence i.e., hunting sickle, from accused No.1, one cart peg from accused No.2 from the bushes in the limits of Bijjaram and three knives, one dagger knife, one hunting sickle and six small wire bundles from accused No.3 and produced the aforesaid accused before the Court; that on 12.10.2003 at 2.45 p.m., P.W.14 arrested accused No.4, recorded his confessional statement in the presence of the mediators – L.Ws.16 and 17 – U.Kistanna and N.Srinivas Reddy, recovered one cart peg containing blood stains used by the said accused in the commission of the offence concealed in bushes, and produced him in the Court. That on 07.04.2004, P.W.14 arrested accused No.7, recorded his confessional statement in the presence of the mediators – L.Ws.18 and 19 – Nadagoundlu Samarashimha Reddy and Ragiman Sathya Reddy and produced him in the Court.

(v) The investigation and the evidence of the witnesses disclosed that in the month of November, 2002, the R.T.C.

Authorities stopped plying the buses to Bijjaram village from Gadwal on the pretext that the private vehicles i.e., autos were transporting the passengers, due to which, the Corporation incurred huge loss, that the students of the said village, who were availing free bus passes and concession bus passes, represented to the R.T.C. authorities for plying the R.T.C. buses and they were informed to stop the autos plying during the timings of R.T.C. buses; that the majority of the villagers and the students stopped the autos during the timings of R.T.C. buses to facilitate the school and college going students; that the deceased played active and important role and succeeded in running the R.T.C. buses; that later, on one day, the sister of the deceased boarded the auto of accused No.1, who did not allow her to travel in the auto and in that regard, there was an altercation between the deceased and accused No.1; that the father of the deceased - P.W.1 gave evidence in a criminal case against the father of accused No.1, who threatened him with dire consequences; that accused Nos.1 and 7, with the assistance of accused Nos.2 to 6, hatched a plan to kill P.W.1 or his son – the deceased, and according to their plan, in the night on 19.09.2003, accused Nos.1 to 7 formed into an unlawful assembly, way laid the deceased while he was returning home along with P.W.3 - the farm servant on the motor cycle after

starting the bore well, attacked and killed the deceased on the spot. That there was ample evidence to prove the guilt of the accused for the offence of murder liable for punishment under Sections 147, 148, 302 read with Section 149 I.P.C.

3. As the plea of the respondents/accused was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 14, got Exs.P-1 to P-14 marked and produced M.Os.1 to 21. On behalf of the accused, 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 noted hereinbefore.

4. At the hearing, the learned Public Prosecutor (T.S.) representing the appellant/State has submitted that the case was split up as Sessions Case Nos.99 of 2008 and 24 of 2006 *qua* accused Nos.2 and 4, respectively, and that by separate judgments both the said accused were acquitted by the Court below. He has further submitted that the remaining accused, who are the respondents herein, were also acquitted by the Court below by the judgment under appeal. He has also fairly conceded that the witnesses examined by the prosecution in all the Sessions Cases are common and that the appellant/State has not preferred appeals against the judgments in Sessions

Case Nos.99 of 2008 and 24 of 2006, whereunder accused Nos.2 and 4, respectively, were acquitted.

5. When all the accused were arraigned in connection with the same incident and the appellant/State has not preferred appeals against acquittal of two of the accused i.e., accused Nos.2 and 4, it does not stand to reason for the appellant/State to file the present appeal only to the extent of the remaining accused.

6. Be that as it may, the only piece of evidence on which the learned Public Prosecutor (T.S.) has placed heavy reliance is the testimony of P.W.3. We have carefully considered the ocular evidence of P.W.3. He deposed that he was the farm servant of the deceased; that he accompanied the deceased to the agricultural field; that he witnessed the attack on the deceased and that he identified the accused in the focus of a torch light. This witness was also admitted in a hospital on the ground that he received injuries. However, a perusal of Ex.P-12 – the wound certificate issued in respect of P.W.3 shows that a Civil Assistant Surgeon signed it at the bottom, mentioning the date as 08.03.2004. P.W.12 – the Doctor, who issued the said wound certificate, admitted in his cross-examination that in Ex.P-12, out patient number and the age of the injury were not

mentioned. Most importantly, he admitted that he issued Ex.P-12 on 08.03.2004 i.e., almost six months after the occurrence. It is further noteworthy that nowhere in his evidence P.W.3 either referred to the injuries caused to him or his taking treatment for such injuries. The torch light on whose focus P.W.3 allegedly identified the accused was also not seized by the Police. These serious inconsistencies and shortcomings in the evidence of P.W.3 render the testimony of this witness wholly unreliable. Except P.W.3, no other witness claimed to have witnessed the occurrence. The Court below has, therefore, rightly given benefit of doubt to the respondents/accused and acquitted them.

7. In the light of the above discussion, we do not find any merit in this appeal and the same is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

24th July, 2018

GHN