

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CRIMINAL APPEAL No.289 OF 2013

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Assailing the order of acquittal of the accused in S.C.No.73 of 2005 on the file of II Additional District and Sessions Judge (Fast Track Court), Srikakulam, the present appeal came to be filed by the State.

2. In this case, thirteen accused were charged for the offences punishable under Sections 148, 324 and 302 read with 149 I.P.C. Vide the impugned judgment, the learned Sessions Judge acquitted the respondents - accused of all the charges.

3. The facts of the case, as culled out from the evidence adduced by the prosecution, are as under:

(i) The deceased 'Pedda Appalanaidu' is the father of PWs.1 and 2, while PW.3 is the neighbouring land owner. They are all residents of Thungapeta Village. All the accused are also residents of Thungapeta Village and Thungapeta Colony.

(ii) In the year 1996, Government granted D-form Patta in respect of land admeasuring Ac.5-00 to one Metta Laxmana Murthy of Subrahmanyapuram Village, Jalumuru

Mandal. In view of the acquaintance between the said Laxmana Murthy and the deceased, the said Laxmana Murthy handed over the said land to the deceased for cultivation as a tenant. The deceased used to cultivate the said land. Later, the said D-form Patta holder executed a power of attorney in favour of the deceased and thereafter, the land was registered in the name of the deceased, as he paid the consideration. Though the registration was in respect of Ac.3-09 cents, but on ground, it was only Ac.2-09 cents. Ever since then, the deceased was cultivating the said land.

(iii) In the year 1999, the D-Patta holder Laxmana Murthy died. In the year 2002, there were panchayat elections in the Village, during which accused No.1 contested for the post of Sarpanch. Against him, one Kuna Venkatarao, one of the relatives of the deceased, also contested. In that elections, Kuna Venkatarao was defeated and accused No.1 was elected as a Sarpanch. Since then, accused No.1 bore grudge against the family of the deceased, as they supported Kuna Venkatarao. It is stated that owing to the said grudge, accused No.1 called accused Nos.12 and 13, the wife and son of D-Patta holder, promising to arrange title deed and pattadar pass book in their favour, in respect of the land, which was in possession of the deceased and his family. Accordingly, in the year 2004, accused No.1 obtained title deed and pattadar pass book in favour of accused No.12, the

wife of D-Patta holder. Basing on the same, accused No.12 filed a Suit in the Court of Junior Civil Judge, Rajam, against the deceased and his family. Initially, temporary injunction was granted, but subsequently, it was vacated on 07.08.2004. Because of these issues, disputes arose between the family of the deceased and accused Nos.12 and 13.

(iv) It is stated that on 08.08.2004, in the early hours at about 05:30 AM, as usual PW.1 and his father went to their land for agricultural purpose. While PW.1 was ploughing the land, the deceased was plucking paddy leaves. At that time, accused No.1 along with other accused armed with deadly weapons entered into their land. It is said that accused No.12 sprinkled chilly powder on the deceased, while accused Nos.1 and 2 beat the deceased on his head with knives. While accused Nos.3 to 5 beat the deceased on his hand with borigas. Accused Nos.6 to 11 together beat the deceased with sticks indiscriminately all over his body. At that time, PW.3, who is a neighbouring land owner and present in his land, claims to have witnessed the incident. After the accused left the place, PW.1 went towards his father and found him dead. Immediately, PW.1 reached his house and informed about the incident to his family members. Thereafter, he proceeded to Ponduru Police Station and narrated the entire incident to the Assistant Sub-Inspector of Police, Ponduru Police Station, which was reduced into writing.

(v) Basing on the said report, PW.9, the Assistant Sub-Inspector of Police, Ponduru Police Station, registered a case in Crime No.69 of 2004 for the offences punishable under Sections 147, 148 and 302 read with 149 I.P.C. He examined PW.1 and issued Ex.P31- F.I.R. About half-an-hour after registering the case, PW.10, the Circle Inspector of Police, J.R. Puram, who was informed about the incident, reached the police station and took up investigation. He proceeded to the scene of offence and in the presence of PW.4, observed the scene of offence under Ex.P2 – Mediators Report. During observation, he seized M.O.1 – hand stick. He got the scene photographed through PW.7. Later, he conducted inquest over the dead body of the deceased in the presence of PW.4, L.W.9 and L.Ws.10 to 12. During inquest, he examined PWs.1 to 3. Ex.P3 is the inquest report. He also prepared rough sketch of the scene under Ex.P32. Thereafter, the dead body of the deceased was sent to postmortem examination. PW.5, the Civil Assistant Surgeon, District Head Quarters Hospital, Srikakulam, conducted autopsy over the dead body of the deceased and issued Ex.P6, the postmortem certificate. According to him, the cause of death was due to injury to the vital organ i.e., brain. Thereafter, PW.10 continued with the investigation and on 12.08.2004, arrested accused Nos.2 to 13 at Thungapeta Village, in the presence of PW.4 and LW.13 and got drafted a confession report. Pursuant to the said

confession, he seized four Borigas and six Bamboo sticks in the presence of same mediators. The relevant portions of the confessional statements of accused Nos.2 to 13 leading to recovery are marked as Exs.P33 and P34. On 07.09.2004, he arrested accused No.1 in the presence of PW.8. On interrogation he is said to have confessed about the offence leading to recovery of a knife.

(vi) After completion of investigation, PW.10 filed a charge sheet before the Court of Judicial Magistrate of First Class, Rajam, which was taken on file as P.R.C.No.5 of 2005. On appearance of the accused, copies of the documents were furnished to them, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.73 of 2005.

4. On consideration of material placed on record, charges under Sections 148, 302 and 324 read with 149 I.P.C. came to be framed against the accused, which were read over and explained to them, to which, they pleaded not guilty and claimed to be tried.

5. To substantiate their case, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P36 and M.Os.1 to 12.

6. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to

the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. But no oral evidence was let in, except marking Exs.D1 to D8.

7. Since the evidence of PWs.1 and 3 did not inspire confidence, more particularly with regard to their conduct, and as the medical evidence did not support the prosecution case, the trial Court, vide its judgment under challenge, acquitted the accused of all the charges levelled against them. Challenging the same, the present appeal came to be filed by the State.

8. Learned Public Prosecutor would contend that the reasons given by the trial Court for not considering the evidence of PWs.1 and 3, cannot be accepted. According to him, both PW.1 and the deceased went to the scene of offence and as such, the possibility of PW.1 witnessing the incident cannot be doubted. He also submits that the evidence of PW.1 gets ample corroboration from the evidence of PW.3, a neighbouring land owner, who witnessed the incident. Coupled with the same, the learned Public Prosecutor would contend that the findings of the trial Court with regard to the ocular evidence being not corroborated with the medical evidence is incorrect.

9. On the other hand, learned counsel for the respondents would submit that the evidence of PWs.1 and 3

does not inspire confidence, in view of the material discrepancies and their unnatural conduct at the time of and after the incident. Hence, the findings recorded by the trial Court require no interference.

10. It is to be noted here that the entire case rests on the evidence of PWs.1 and 3, who were examined as eye-witnesses to the incident. Before dealing with the evidence of prosecution witnesses, it would be useful to refer to the contents of Ex.P1 - report, which set the law into motion.

11. A perusal of the First Information Report, marked as Ex.P31, shows that the incident in question took place on 08.08.2004 at 06:00 AM and the said report was received by the Magistrate on the same day. Therefore, there was no delay in lodging the report and the same deserves no probe. But, however, as seen from the evidence of PW.9, who registered the case, he admits that there is no mention about the names of accused Nos.2 to 13 in Ex.P1-report. That being the admission, it is strange as to how the names of accused Nos.2 to 13 came to be reflected in Ex.P31, the original F.I.R. An explanation is now forthcoming stating that after receiving Ex.P1 - report, PW.9 questioned PW.1 about the names of other accused, as it was mentioned in Ex.P1 that accused No.1 and 12 other persons attacked the deceased, to which PW.1 revealed the names of other accused and as such, their names were incorporated in the F.I.R. However, in the cross-

examination, PW.9 clearly admitted that Part-I CD does not reflect the fact that he questioned PW.1 on receipt of Ex.P1 report, got clarified about the names of other 12 accused and incorporated the names. Therefore, this circumstance creates any amount of doubt with regard to the explanation given by PW.9 for incorporating the names of accused Nos.2 to 13 in the F.I.R., though, their names were not mentioned in Ex.P1 – report. Further, PW.1, in his evidence, has not whispered about PW.9 questioning him about the names of other 12 accused and got clarified the same. Even in Ex.P3 – inquest report, there is no specific mention about the names of all the accused. If really, PWs.1 and 3 have seen the incident and participated in the inquest, they would not have failed to mention the names of accused Nos.2 to 13 at the earliest point of time. Non-mentioning of the names of accused Nos.2 to 13, even in the inquest report, throws any amount of doubt in the prosecution case, when there exists disputes between both the parties. Further, Ex.P1 does not refer to or contain any thing with regard to the specific role of each of the accused.

12. Coming to the evidence of PW.1, who is the son of the deceased, he deposed that in the year 1966, Government granted D-form Patta to one M. Laxmana Murthy of Subrahmanyapuram Village in respect of land admeasuring Ac.5-00. In view of the acquaintance between the said

Laxmana Murthy and his deceased father, the said Laxmana Murthy handed over the said D-Patta land to the deceased for cultivation as a tenant and ever since then, the deceased has been cultivating the said land and out of the proceeds, he used to pay Ambaram to the said Laxmana Murthy. Later, the said Laxmana Murthy executed a Power of Attorney in favour of the deceased. Thereafter, the said land was registered in favour of the deceased under Village registration, as the deceased paid consideration. Though the Village registration was made in respect of Ac.3-09 cents, but on ground, the land was only Ac.2-09 cents. While so, in the year 1999, the said Laxmana Murthy died. In the year 2002, there were panchayat elections in their Village, during which accused No.1 contested for the post of Sarpanch against one Kuna Venkatarao, one of the relatives of PW.1. In that elections, accused No.1 was elected as Sarpanch. Since PW.1 and his family members supported Kuna Venkatarao, accused No.1 bore grudge against them. To wreak vengeance, accused No.1 called accused Nos.12 and 13, who are the wife and son of the said Laxmana Murthy, and promised them that he would arrange title deed and pattadar pass book in their favour with respect to the said land. Accordingly, accused No.1, being the Sarpanch, arranged title deed and pattadar pass book in favour of accused No.12. Basing on the same, accused No.12 filed a Suit in the Court of Junior Civil Judge, Rajam, and obtained temporary injunction, but

later, the said injunction was vacated. Thereafter, on 07.08.2004, accused Nos.4, 12 and 13 came to their land and tried to enter into the same forcibly, but PW.1 averted them. On the next day i.e., on 08.08.2004, when PW.1 and his deceased father went to the disputed land for agricultural operations, accused No.1 along with other accused entered into their land with deadly weapons like sticks, knives and borigas. Accused No.12 sprinkled chilly powder on the deceased, while accused Nos.1 and 2 beat the deceased on his head with separate knives. Accused Nos.3 to 5 beat the deceased on his hand with borigas and accused Nos.6 to 11 beat the deceased with sticks, indiscriminately all over his body. At that time, PW.3, who is the neighbouring land owner, was also present in his land and witnessed the incident. After all the accused left the place, he reached his father and found him dead in a pool of blood. Thereafter, he reached his home and informed about the said incident to his family members. He, then proceeded to Ponduru Police Station and narrated the entire incident to the Assistant Sub-Inspector of Police, Ponduru Police Station. The said statement was reduced into writing, which was marked as Ex.P1 – report.

13. PW.2, who is the another son of the deceased, supported the evidence of PW.1 in all respects. His evidence is on the same lines, as that of PW.1, particularly as to how the

disputed land was in possession and enjoyment of his deceased father and the civil disputes between the deceased and accused Nos.12 and 13. In his examination, he deposed that he came to know about the specific overt acts of the accused against the deceased through PW.1, who witnessed the incident.

14. Coming to the evidence of PW.3, who is a neighbouring land owner and an eye-witness to the incident, his evidence is also on the same lines as that of PW.1 with regard to the civil disputes between the deceased and accused Nos.12 and 13 and accused No.1 developing grudge against the deceased, since the deceased supported Kuna Venkatarao in the elections, which were conducted in the year 2002. He also deposed that on 08.08.2004 at about 06:00 AM, while he was cultivating his land, he observed the deceased and PW.1 coming to their land and the deceased plucking leaves on one side and PW.1 ploughing the land on other side. Some time thereafter, he observed the presence of all the accused near the deceased and accused Nos.12 and 13 sprinkling chilly powder on the face of the deceased, accused Nos.1 and 2 beating the deceased on the back of his head with knives, accused Nos.3 to 5 beating the deceased on the back of his head with borigas and accused Nos.6 to 11 beating the deceased with sticks indiscriminately all over his body. He further deposed that on witnessing the same, he was in a

shock and after all the accused left the scene of offence, himself and PW.1 reached the deceased and found him dead. Thereafter, both of them left to their respective houses and again reached the scene of offence when he was called by the police.

15. From the above, it is clear that the evidence of PWs.1 and 3 is consistent and corroborating with each other without any discrepancies. But, to believe their evidence, the same has to be scrutinized with other circumstances of the case. Therefore, it is useful to refer to the evidence of PW.5, who conducted autopsy over the dead body of the deceased.

16. According to PW.5, the Doctor who conducted postmortem examination over the dead body of the deceased, he found linear abrasion marks on the right calf muscle, back of the thorax, abdomen, right shoulder and right upper arm, multiple in number with various lengths. Lacerated injuries, 5 in number, of size 3" x 1" x bone deep present on the back of head near to right ear. Left eye swollen and black in colour. On internal examination, he found organs in chest, heart, abdomen, liver, intestine, head and neck normal, but blood clots were present under the scalp layers. Scalp layers were separated from the skull at the site of injury and brain matter tinged with blood and blood clots. However, in the cross-examination he admits that in Ex.P6, the postmortem certificate, did not mention the objects with which the said

injuries were caused and also as to whether the said injuries were caused by known or unknown persons. He further averred that sharp edged objects will cause only incised wounds. Abrasions will be caused due to contact with a rough surface. Lacerated injuries will be caused by blunt objects and there are no incised wounds in Ex.P6. Further, he clearly admitted that all the five lacerated injuries are in the same dimensions and they might have caused with a single weapon but not with different weapons. He also admits that he did not find any chilly powder in the eyes of the deceased or any part of his body.

17. From the above, it is to be noted that, though, PW.1, in his evidence, refers to accused No.12 sprinkling chilly powder on the deceased, but PW.5, in his cross-examination, admitted that he did not find any chilly powder in the eyes of the deceased or any part of his body. Further, PWs.1 and 3 in their evidence stated that accused Nos.1 and 2 beat the deceased on his head with separate knives and accused Nos.3 to 5 beat the deceased on his hand with borigas. But, the said facts are not corroborated with the medical evidence, because PW.5 has clearly stated that with sharp edged weapons, incised wounds will be caused and no such incised wounds were found on the dead body of the deceased, particularly on the head and that he has found only five lacerated injuries on the back of head of the deceased with same dimensions, by

which it can be said that the deceased might have received the said five injuries with only one weapon. Apart from that, PW.1 stated that accused No.12 sprinkled chilly powder on the deceased, but he is silent about the presence of accused No.13 as well his participation in the alleged incident. Whereas, PW.3 stated that accused No.13 also sprinkled chilly powder on the face of the deceased. Thus, it appears that the evidence of PW.3 is nothing but an improvement over his earlier statement more particularly with regard to the participation of accused No.13. However, their evidence is not supported by the medical evidence, as PW.5 found no chilly powder in the eyes of the deceased or on any part of the body of the deceased and that he has only found left eye swollen and black in colour.

18. Further, the evidence of PWs.1 and 3 shows that accused Nos.6 to 11 beat the deceased with sticks indiscriminately all over the body, whereas the evidence of PW.5 shows a linear abrasion mark on the right calf muscle, back of the thorax, abdomen and right shoulder and right upper arm. If really, accused Nos.6 to 11 beat the deceased on his back with sticks, indiscriminately, definitely there would be at least some lacerated injuries but not linear abrasion marks, though multiple in nature. The evidence of PW.5 to the effect that the abrasions will be caused due to contact with rough surface gains importance. On scrutiny of

the evidence of PWs.1 and 3, particularly the specific overt acts attributed to the accused, it can be said that ocular evidence is not corroborating with the medical evidence, which create any amount of doubt about the trustworthiness of their evidence.

19. In view of the above, we feel that the finding of the trial Court that medical evidence is inconsistent with the prosecution evidence cannot be found fault with.

20. Coming to the evidence of PWs.1 and 3 witnessing the incident, both the witnesses in their cross-examination admit that they did not try to rescue the deceased due to fear and not raised cries nor tried to call any of the villagers. This conduct of PWs.1 and 3, definitely, appears to be unnatural. No prudent person would behave in such a manner when their own kith and kin is being attacked. If really PWs.1 and 3 were present at the scene of offence, they could have either attempted to interfere when the deceased was beaten or run to the Village and inform the villagers. But the conduct of PWs.1 and 3 appears to be quite different. After witnessing the incident, PWs.1 and 3 left the scene and went to their respective houses. PW.3 came back to the scene of offence only when he was called by the police. He did not reveal to any one about the incident. Further, PW.1 has clearly stated that he has not revealed about the specific overt acts of the accused to any of the villagers on his way and revealed the

same only to the police. This conduct of PWs.1 and 3, more particularly that of PW.3 throws any amount of doubt about their presence at the scene of offence and witnessing the incident.

21. Coming as to whether the prosecution was able to establish the motive, it is to be noted that there is no direct dispute between accused No.1 and the deceased family. The evidence of PWs.1 to 3 would show that accused No.1 bore grudge against the deceased and his family, since the deceased and his family supported one Kuna Venkatarao, who contested against accused No.1 in the elections and was defeated. In order to wreak vengeance, accused No.1 called accused Nos.12 and 13, arranged a pattadar pass book and title deed in favour of accused No.12 and thereafter the incident took place. If really that was the case, there was no need for accused No.1 to kill the deceased, since no benefit would be gained by accused No.1, if the deceased is killed. Thus, the motive for the accused to kill the deceased, as projected by the prosecution, cannot be accepted.

22. Further, as per the evidence of PW.1, the temporary injunction granted in I.A.No.171 of 2004 in O.S.No.85 of 2004 filed by accused No.12 against the deceased and his family was vacated and the stay order was not in force at the relevant time. But the trial Judge observed the same as false, in view of the certified copy of the orders filed by accused

No.12 during her 313 Cr.P.C. examination. But the said order indicates that the Junior Civil Judge, Rajam, granted interim injunction on 16.07.2004 for only 30 days. Thus, evidently the interim injunction was in force at the relevant time, which probablises that accused No.12 was in possession and enjoyment of the disputed land at that time.

23. In view of the above, we feel that the findings recorded by the trial Court in acquitting the accused require no interference.

24. Accordingly, the present appeal filed by the State is dismissed confirming the judgment, dated 29.01.2008, rendered in S.C.No.73 of 2005 on the file of II Additional District and Sessions Judge (Fast Track Court), Srikakulam.

Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

March 13, 2018.
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