

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

CRIMINAL APPEAL No.1404 of 2011

08.08.2018

Between:

Chintala Cheruvu Manaiiah and others

..Appellants/Accused Nos.1 to 5 and 8
and

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

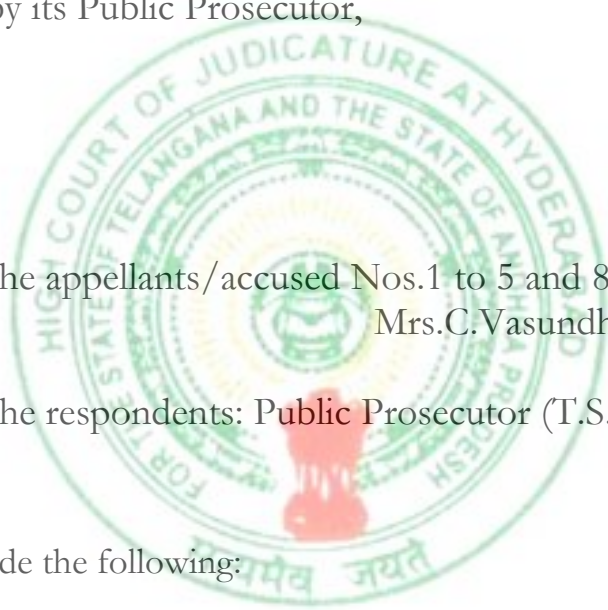
..Respondent

Counsel for the appellants/accused Nos.1 to 5 and 8:

Mrs.C.Vasundhara Reddy

Counsel for the respondents: Public Prosecutor (T.S.)

The Court made the following:



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

Accused Nos.1 to 5 and 8 in Sessions Case No.396 of 2010 on the file of learned II Additional District and Sessions Judge, (Fast Track Court), at Sangareddy, filed this appeal against judgment, dated 30.11.2011, passed in the said sessions case. By the aforementioned judgment, the Court below has convicted the appellants for the offence punishable under Section 148 I.P.C., and sentenced them to undergo simple imprisonment for one year. They were also found guilty of the offence punishable under Section 302 read with Section 149 I.P.C. and were convicted and sentenced to undergo life imprisonment and also to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo simple imprisonment for three months. They were further found guilty of the offence punishable under Section 448 read with Section 149 I.P.C. and were convicted and sentenced to undergo imprisonment for one year and also to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo simple imprisonment for three months. Further, the appellants were also found guilty of the offence punishable under Section 326 read with Section 149 I.P.C. and were convicted and sentenced to undergo imprisonment for three years and also to pay a fine of

Rs.1,000/- each and in default of payment of fine, to undergo simple imprisonment for three months. They were also found guilty of the offence punishable under Section 324 read with Section 149 I.P.C. and were convicted and sentenced to undergo imprisonment for two years and also to pay a fine of Rs.1,000/- each and in default of payment of fine, to undergo simple imprisonment for three months.

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

(a) That the deceased and the accused were the residents of Girmapur Village of Kondapur Mandal and of same community and they are relatives and neighbours; that accused No.1 had one daughter – L.W.16, who was studying 10th class at ZPHS, Togarpally village at the time of occurrence; that the deceased had ill-intention to use her for his physical desire and in order to fulfil his desire, on 02.12.2009, at the evening hours, he went to ZPHS, Togarpally village, informed her that her mother was in serious condition and was admitted at the Government Hospital, Sangareddy, took her away from there on his motor cycle to Shankerpally Village of Ranga

Reddy and stayed at the house of his relatives, but he was unable to get his desire fulfilled; that on the following day i.e. on 03.12.2009, the accused informed the location of L.W.16 and the deceased by phone to P.W.8; that accused No.1 assured the deceased through phone that they had no rage on him and requested him to handover L.W.16 to him, but the deceased informed accused No.1 that he would hand over L.W.16 to P.Ws.8 and 9 and L.W.15 at Cheryal X Road of Sangareddy Mandal on NH-9; that as per the information of the deceased, P.Ws.8 and 9 and L.W.15 went to Cheryal X Road, picked up L.W.16, came back to the village and handed over her to accused No.1; that in that regard, accused No.1 approached the remaining accused and urged their help to kill to the deceased and they also agreed to help accused No.1 to kill the deceased and accordingly, all the accused hatched a plan and in order to implement their plan, they kept a watch on the movements of the deceased; that on 04.12.2009 in the evening hours, the deceased came to their house; that as per their plan, accused Nos.1, 2 and 8 took axes, accused No.5 took knife, accused Nos.3 and 4 took sticks and accused Nos.9 and 10 took chilly powder and all of them went to the house of P.W.4, broke open the doors of her house by hitting them with the axes; that

all of a sudden all the accused attacked the deceased, accused Nos.9 and 10 poured chilly powder on his eyes and all of them beat the deceased on his head, chin and various body parts with axes, knives and sticks; that meanwhile, P.Ws.2 to 6 and L.Ws.4 and 5 tried to rescue the deceased from the clutches of the accused, but the accused also beat them with axes and sticks and caused severe bleeding injuries to them in a fit of rage; that the accused dragged the deceased to the front yard of the house of P.W.4 and again beat him with axes, knives and sticks indiscriminately, due to which, the deceased had sustained deep injuries on his head, chin and various body parts and he was profuse of bleeding and died on the spot; that the accused fled away from the scene and that thereafter, L.Ws.11 and 12 heard the screams of P.Ws.2 to 6 and L.Ws.4 and 5 and came out of their houses. That P.Ws.2 and 3 and L.Ws.4 and 5 were shifted to the Government Hospital with the help of 108 ambulance. That on 05.12.2009 at 5.00 a.m., P.W.1 – the Field Assistant at Upadi Hami Pathakam, Girmapur Village of Kondapur Mandal, came to Kondapur Police Station and lodged a Telugu written petition.

(b) That on receipt of the complaint from P.W.1, P.W.16 - the Sub-Inspector of Police, Kondapur Police Station, registered a case in crime No.148 of 2009 under Sections 147, 148, 302, 448, 324 read with Section 149 I.P.C.; that during the course of investigation, P.W.16 examined P.W.1, recorded his detailed statement in Case Diary Part-II; that on receipt of information, P.W.17 – the Circle Inspector of Police, Sadasivpet, plunged into action, took up further investigation from P.W.16, verified the investigation done by P.W.16 and found it to be in correct and proper lines. That during the course of further investigation, P.W.17 visited the scene of offence, wherein he secured the presence of panchas - L.W.17 – Patlolla Narsimha Reddy and P.W.10 and in their presence, he examined the dead body and the scene of offence minutely and conducted panchanama; that all the observations made at the scene of offence were incorporated in the observation report; that the sketch of the scene of offence was also drawn in the presence of the aforesaid panchas; that in the course of conducting the panchanama while incorporating the categorical details with respect to the spotting out the material objects at the scene of offence, the incriminating material objects i.e., blood stained earth, control earth, four wooden pieces of door

and six bangle pieces were seized under the cover of panchanama in the presence of the aforesaid panchas and that the photographs of the scene of offence and the dead body of the deceased with special reference of the location of the incriminating objects and other allied details, were taken with the help of P.W.12 – the photographer. That later, P.W.17 held inquest over the dead body of the deceased in the presence of the same panchas; that during the inquest, P.W.17 examined P.Ws.2 to 7 and 12 and L.Ws.4 and 5, recorded their detailed statements and incorporated the same in Case Diary Part – II; that P.W.13 – Dr.Kiran Kumar, Civil Assistant Surgeon, Government Hospital, Sangareddy, conducted autopsy and opined that the cause of death of the deceased was due to “cardio respiratory arrest caused by haemorrhage”; that after the post mortem examination, the clothes of the deceased were seized under the cover of panchanama in the presence of the same panchas and the dead body of the deceased was handed over to the relatives for performing the last rites and that P.W.17 examined L.Ws.11 to 16 – Mandula Yellaiah, Mandula Kishtaiah, P.Ws.8 and 9, Chintal Cheruvu Mallesham and Kum.Chintal Cheruvu Lavanya, respectively, and recorded their detailed statements in Case Diary Part – II.

(c) That P.W.14 – Dr.Athidi Devi, Civil Assistant Surgeon, Government Hospital, Sangareddy, treated P.Ws.2 and 3 and L.W.4 and opined that P.W.3 received injuries, which were grievous in nature and that P.W.2 and L.W.4 received injuries, which were simple in nature. That P.W.15 – Dr.Swapna, Civil Assistant Surgeon, Government Hospital, Sangareddy, treated L.W.5 and P.Ws.4 to 6 and opined that L.W.5 received injuries, which were grievous in nature and that P.Ws.4 to 6 received injuries, which were simple in nature.

(d) That on 11.12.2009 at 6.00 a.m., P.W.17 apprehended accused Nos.1 to 5 and 7 to 9 and interrogated them thoroughly; that during the interrogation, while the said accused were about to confess, P.W.17 secured the presence of panchas – P.W.11 and L.W.20 – Konappagari, recorded the confessional statements of accused Nos.1 to 5 and 8 separately in the presence of the said panchas; that P.W.17 recovered three axes, one knife and two sticks, which were used by the said accused under the cover of seizure panchanama in the presence of the aforesaid panchas and sent the said accused to judicial remand; and that on 15.12.2009, P.W.17 apprehended accused Nos.6, 10 and 11, who, on interrogation, admitted their

guilt of committing the offences, and brought the said accused to Kondapur Police Station, sent them to judicial remand and sent the seized material objects to the Foreign Science Laboratory (F.S.L.), Hyderabad for chemical examination through the Court. Therefore, accused Nos.1 to 11 had committed the offences punishable under Sections 147, 148, 302, 448, 324, 326 read with Section 149 I.P.C. After completion of the investigation, P.W.17 laid the charge sheet.

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

“FIRSTLY:- That you A-1 to A-11 on or about 04-12-2009 in the evening hours were a member of unlawful assembly, and, in prosecution of the common object of the said assembly namely to murder Durgaiah and thereby committed an offence of rioting punishable U/Sec.147 IPC and within my cognizance.

SECONDLY:- That you A-1 to A-11 on or about 04-12-2009 at evening hours were a member of unlawful assembly, and, in prosecution of the common object of that assembly vice committing murder, committed an offence of rioting and at that time were assembled with an axe/knife/stick having knowledge that the weapon may cause death of a

person and with that weapon you attacked the house of Shivamma and thereby committed an offence punishable U/Sec.148 IPC and within my cognizance.

THIRDLY:- That you A-1 to A-11 on or about 04-12-2009 at evening hours committed house trespass by entering into the house of Shivamma with an intention to kill Durgaiah and that thereby you have committed an offence punishable U/Sec.448 IPC and within my cognizance.

FOURTHLY:- That you A-1 to A-11 on or about 04-12-2009 at evening hours voluntarily caused hurt to Sathyamma, Bamma, Ramulu and Mallesham by means of axe/knife/stick which is an instrument used by you is likely to cause death and you thereby committed an offence punishable U/Sec.324 IPC and within my cognizance.

FIFTHLY:- That you A-1 to A-11 on or about 04-12-2009 at evening hours voluntarily caused grievous hurt to Harijan Sattyamma, Bamma, Ramulu and Mallesham by means of an instrument axe/knife/stick which is an instrument for shooting or stabbing etc and thereby committed an offence punishable U/Sec.326 IPC and within my cognizance.

SIXTHLY:- That you A-1 to A-11 on or about 04-12-2009 at evening hours committed murder intentionally causing the death of Durgaiah and thereby committed an offence punishable U/Sec.302 IPC and within my cognizance.

LASTLY:- That you A-1 to A-11 on or about 04-12-2009 at evening hours were a member of unlawful assembly and, in prosecution of the common object of which namely murder, one of the members of you caused murder which offence you likely to be committed in prosecution of the common object of the said assembly and you thereby committed an offence punishable U/Sec.149 IPC, guilty of causing the said murder an offence punishable U/Secs.147, 148, 448, 324, 326 and 302 IPC 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 17, got Exs.P-1 to P-24 marked and produced M.O.Nos.1 to 14. On behalf of the accused, oral evidence was not let in. However, they got Exs.D-1 to D-3 marked. On appreciation of the oral and documentary evidence, the Court below, while acquitting accused Nos.6, 7 and 9 to 11 of all the offences with which they were charged, convicted and sentenced the appellants in the manner as noted hereinbefore.

5. During the pendency of this appeal, appellant No.2/accused No.2 is reported to have died. Therefore, the appeal has abated *qua* the said appellant.

6. At the hearing, Mrs.C.Vasundhara Reddy, learned counsel for the appellants, has submitted that the prosecution has not come out with the true version of the manner and the place of the attack; that the Police suppressed the earliest version of P.W.3 recorded by them at 2.00 a.m. in the hospital and instead, registered the F.I.R. based on the report given by P.W.1, who was not an eyewitness, at 5.00 a.m.; that there was a serious contradiction between the statements of P.Ws.2 and 4 recorded by the Police and their testimony given before the Court on the place of the offence, throwing any amount of suspicion on the entire version of the prosecution as to the place of the offence and that the alleged recovery of M.O.Nos.7 to 9 – axes, had no impact on the case of the prosecution as the F.S.L. report did not detect whether the blood allegedly found thereon was of human origin.

7. Opposing the above submissions, the learned Public Prosecutor (T.S.) appearing for the respondent/State has strenuously argued to sustain conviction of the appellants.

8. We have carefully considered the respective submissions of the learned counsel for both the parties.

9. We shall first deal with the aspect relating to registration of F.I.R. As per the case set up by the prosecution, the offence allegedly took place at 11.00 p.m. on 04.12.2009. P.W.1, who is the paternal uncle of the deceased, gave Ex.P-1 report, which was received by the Police at 5.00 a.m. on 05.12.2009. As per Ex.P-23 – F.I.R., the distance between the place of offence and the Police Station is just 6 kilo meters. Considering the said distance, the delay of almost six hours in submitting the report to the Police has to be necessarily considered as long. No explanation has been offered by the prosecution for such delay. Further, P.W.3 - the maternal aunt of the deceased, who was examined as one of the injured witnesses, stated in categorical terms that after she was taken to the hospital, the Doctor examined her at 1.30 a.m. and the Sub-Inspector of Police recorded her statement at about 2.00 a.m. in the hospital. The Police, however, did not register the F.I.R. based on the statement of P.W.3 – an injured witness, and instead, registered the F.I.R. based on the report given by P.W.1, who on his own showing, stated that when he was at his house, P.W.2 came there at 11.00 p.m. and informed him that her son died. Therefore, as rightly submitted by the learned counsel for the appellants, the Police suppressed the earliest statement of

P.W.3 recorded by them though she was projected not only as an eyewitness but also an injured witness and registered the F.I.R. based on the report of P.W.1, who was only a hearsay witness. In our opinion, in the absence of any explanation offered by the prosecution for not producing the statement of P.W.3, it is reasonable to presume that the prosecution suppressed the real manner in which the attack on the deceased took place and thereby, it severely affected the credibility of its case.

10. There is a serious dispute as to the scene of offence. As per Ex.P-1 — report, all the accused came upon the houses of P.Ws.4 and 7 and attacked the deceased and others. However, when it comes to the charge sheet filed by the Police and the evidence of the witnesses given before the Court, they maintained that when P.Ws.2 to 7 were chit-chatting in the house of P.W.2, all the accused attacked the deceased in front of the house of P.W.2 after breaking open the doors and after dragging him from inside the house and that in that process, they also attacked P.Ws.1 to 4. This version of P.W.2 was repeated by P.Ws.3 to 5. The defence was, however, able to extract Ex.D-2 contradiction from the evidence of P.W.4 with

reference to the statement given by her under Section 161 Cr.P.C., relating to the place where the deceased was attacked, which, translated in English, reads as under.

“While me, my husband and my brother-Durgaiah (the deceased) together were sleeping in my house.”

P.W.17 admitted that as per Ex.P-3 - rough sketch of the scene of offence, the deceased was killed in front of the house of P.W.4. He also deposed that the evidence (sic statement) of P.W.4 discloses that the deceased was sleeping in her house. A perusal of Ex.P-3 - rough sketch clearly shows the dead body of the deceased lying just in front of the house of P.W.4 near a *neem* tree. Obviously, to overcome this contradiction, P.W.4 deposed that there was no *neem* tree opposite to her house. We cannot, however, give precedence to her oral statement over the rough sketch prepared by the Police and as spoken to by P.W.17 - the Investigating Officer.

11. In their evidence, P.Ws.2 to 6 in one voice stated that when they were all chit-chatting in the house of P.W.2 at about 11.00 p.m., the accused attacked them. However, the contradiction in the statement of P.W.2 given to the Police was marked as Ex.D-1 at the instance of the defence to the

effect that the attack took place when the deceased was sleeping after night meal. When there is a serious controversy over the place of offence, the whole version of the prosecution witnesses about their witnessing the incident has to be viewed with suspicion. If they really witnessed the incident, there would not have been any scope for them to come out with varied versions as to the place where the attack took place. Moreover, as per the version of P.W.2, the deceased was dragged, brought out of the house, hacked and killed. P.W.3, however, stated that after being dragged out of the house, the deceased was attacked in the varandah (court yard). A similar version was given by P.W.4 that the deceased was attacked at the court yard in front of the door. P.Ws.5 and 6 also came out with the same version. The Court below has, however, observed based on Ex.P-13 - bunch of photographs, that there was huge pool of blood found in the room itself. It has, therefore, believed that the deceased was attacked inside the room itself. This finding of the Court below contradicts the version spoken to by the alleged eye-witnesses and also Ex.P-3 - rough sketch.

12. A perusal of Ex.P-13 - bunch of the photographs shows that blood stains were found inside the house including on the bed sheet spread on the floor showing that somebody was lying thereon before the attack. It, thus, appears that the deceased was attacked inside the room and was later dragged to the open area situated in front of the house of P.W.4. None of the prosecution witnesses spoke about the attack on the deceased inside the house. This, in our opinion, is a serious contradiction between the version of the alleged eyewitnesses and the evidence on record as depicted from Ex.P-13 - photographs. The Court below has glossed over this serious *lacuna* in the case of the prosecution.

13. Even if the deceased was attacked inside the house, the question, which still remains, is whether the attack took place inside the house of P.W.2 or that of P.W.4. In the light of these serious conflicts and contradictions, it is not safe to accept the version of P.Ws.2 to 4 though they sustained serious injuries. While there is no reason to doubt that P.Ws. 2 to 4 sustained injuries, merely from the said fact, the Court cannot presume that they were the eyewitnesses to the occurrence. The various aspects discussed above throw any

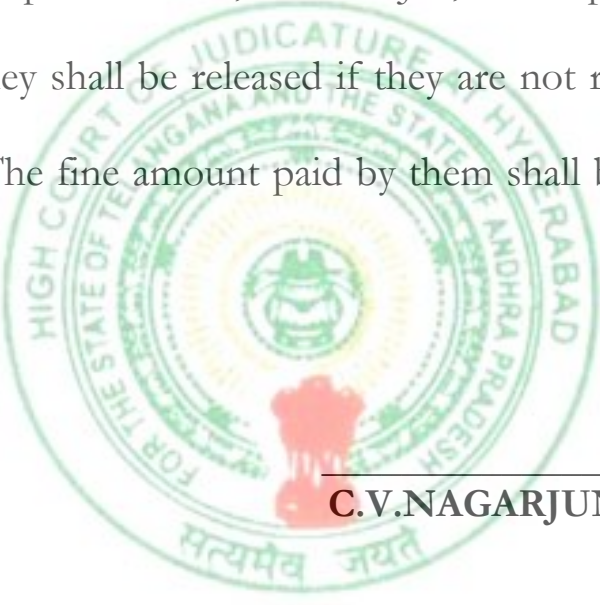
amount of doubt as to whether the occurrence took place in the manner as set up by the prosecution and spoken to by P.Ws.2 to 4.

14. As regards the recovery of M.O.Nos.7 to 9 - axes, it is not in dispute that P.W.3 admitted that these M.Os. are commonly available in the village. Ex.P-24 – F.S.L. report, shows that blood was detected on item Nos.7 to 9, corresponding to M.O.Nos.7 to 9, but their origin could not be determined. Therefore, even if M.O.Nos.7 to 9 were recovered from the possession of some of the accused, they cannot be connected with the crime in the absence of evidence to show that blood detected on them was of human origin.

15. In the light of the above discussion, we have no hesitation to hold that the prosecution failed to prove the guilt of the appellants beyond all reasonable doubt and the Court below has wrongly convicted and sentenced them for various offences as noted hereinbefore.

16. The Criminal Appeal is, accordingly, allowed and the conviction and sentence imposed on appellant Nos.1, 3 to 6, who are accused Nos.1, 3 to 5 and 8, respectively, by learned II

Additional District and Sessions Judge (Fast Track Court) at Sangareddy for the offences punishable under Sections 148, 302 r/w 149, 448 r/w 149, 326 r/w 149 and 324 r/w 149 IPC, *vide* judgment, dated 30.11.2011, in Sessions Case No.396 of 2010 are set aside. The bail bonds of appellant Nos.1, 3 to 6, who are accused Nos.1, 3 to 5 and 8, respectively, shall stand cancelled. Appellant Nos.1, 3 to 6 shall surrender themselves before the Superintendent, Central Jail, Cherlapally. On such surrender, they shall be released if they are not required in any other case. The fine amount paid by them shall be refunded to them.



C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J**08th August, 2018**

GHN/DR

