

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

Criminal Appeal Nos.326, 327, 381 of 2013 and 803 of 2014

COMMON JUDGMENT:

These four appeals arise out of the same judgment, namely judgment dated 06.03.2013, passed by the IV Additional District and Sessions Judge (Fast Track Court) at Karimnagar. Therefore, these appeals are being decided by this common judgment.

By the said judgment, the learned judge had convicted Mr. Sandeavna Raju (Accused No.1), Rapalli Rajaiah (Accused No.2), Ilangovan (Accused No.3) for offences under Sections 302 r/w 109 IPC and 302 r/w 34 IPC. While A. 1 was convicted for offence under Section 302 r/w 34 IPC, while A. 2 was convicted for offence under Section 302 r/w 109 IPC, and A. 3 was convicted only for offence under Section 302 IPC. They were sentenced to life imprisonment, imposed with a fine of Rs.5,000/-, and directed to undergo a simple imprisonment for six months in default thereof.

Briefly stated, the facts of the case are that Ammula Anil (P. W. 1) lodged a complaint (Ex. P. 1) at the Manakondur Police Station, wherein he alleged that *"I am resident of Rangapet of Manakondur mandal completed intermediate, they had two acres of agricultural and at Rangapet outskirts, besides their land the land of his senior paternal uncle who is died therefore his 2 acres of land also cultivating by his father, in the agricultural works he helping his father. To their agricultural land there is cart way situated so the surrounding persons besides six farmers using the said cart way to their respective fields, adjacent to their land the land of his villager*

and caste person Rapalli Rajaiah land is also there but he had no right on the said cart way. To that effect previous year conveyed panchayat and the elders resolved that the said Rajaiah is no way on the cart way and not use the same and on that he agreed. In spite of that the said Rajaiah using the said way and driving his tractor in spite of several warnings. On 24-4-2011 while the complainant, his mother Radhamma, father Laxmaiah went to attend the agricultural works at that time Sandaveni Raju r/o Tamil Nadu state brought harvester machine and the said machine passed on the said disputed way towards the field of Rampalli Rajiah and harvested the paddy crop of Rajaiah and loaded the paddy in the tractor and passing on the disputed way. On that, his father stopped the said Raju and Rampalli. To that effect there is quarrel occurred. On that, the neighbouring land owners Battu Veeresham and Ammula @ Cheepalli Komuraah and some others asked his father to leave the tractor. If anything is there to settle the same before the elders on the next day. On that his father leave the tractor. Later, his father sent his mother, and directed the complainant if again harvester came on the way to inform him. Therefore the complainant stayed at that place till 6:30 p.m. At that time Sandaveni Raju, Rampalli Rajaiah again came with the said harvester on that disputed way. Then the complainant stopped them; then they pushed him. At that time, his father saw and stopped the said harvester. But they did not care about his father, and abused him, and replied that they want to take the machine on that way. What was do by you do. Then the complainant father lay in front of the harvester machine on the way, and questioned the said Raju and Rajaiah how they taken away their machine. Then

intentionally with an intention to kill his father the said Rajaiah directed the harvester driver to drive the harvester on complainant's father and eliminate him. This way the dispute is solved. Then the driver of harvester drove the same due to which the head of his father broken, and heavy bleeding, and died on the spot. Later the said Rajaiah and harvester driver leave the harvester machine, and escaped from the spot. The harvester No.TN-30-T-9981." Finally he requested to take necessary action.

On the basis of the said report, (Ex. P. 1), the police chalked out a formal FIR (Ex. P. 7), namely FIR No.73/2011, for offences under Sections 302 r/w 34 IPC. The police commenced its investigation. Subsequently, the police arrested A. 1 to A. 3. They were put up for trial.

In order to establish its case, the prosecution examined seventeen witnesses, and submitted ten documents, and produced the harvester belonged to Kandasamy Balasubramani (appellant in CrI.A. No. 327 of 2013). After appreciating the evidence, the learned trial court, convicted and sentenced appellant Nos.1 to 3 as aforementioned and directed the confiscation of the harvester. Hence, these appeals before this court, including CrI.A.No.327 of 2013 filed by the owner of the harvester.

Ms. C. Vasundhara Reddy, the learned counsel appearing for accused No. 3 and owner of the harvester, and Mr. P. Prabhakar Reddy, the learned counsel appearing for accused No. 1 and accused No. 2, have raised the following contentions before this Court:-

Firstly, the entire case is based on the testimony of the sole eyewitness, Ammula Anil (P. W. 1). However, before a conviction

can be based on the testimony of a sole witness, the witness must be of a “sterling worth”. However, in the present case, Ammula Anil (P. W. 1) is not a witness of “sterling worth”. For, in order to falsely implicate the appellants, he has fabricated a story, which is belied by the surrounding circumstances. In his testimony, he claims to be an eyewitness to the alleged murder of his father, Laxmaiah. He consistently states that the alleged murder has taken “on his farm land”. However, the site plan (Ex. P. 2) belies this assertion. For, according to the site plan (Ex. P. 2), the dead body of Laxmaiah was discovered lying on the cart way, amongst the farms in the area. The dead body was not discovered lying in the farm of Laxmaiah. Moreover, this witness claims that it is he, who went to the Police Station and lodged the report (Ex. P. 1). However, A. Mahesh (P. W. 16) states that on 25.04.2011 the police was informed that there has been a murder in the village, Rangampet. The police had gone to the village, and had recorded the statement of Ammula Anil (P. W. 1) and others. Therefore, the complaint was registered in the village itself, rather than at the police station. Furthermore and most importantly, according to A. Mahesh (P. W. 16), when the police reached the village, they saw the dead body of Laxmaiah lying in the cart way and prepared the rough sketch and site plan (Ex. P. 2) at the place of occurrence. In case, Ammula Anil (P. W. 1) was really an eyewitness, and as according to the prosecution, the alleged incident had taken place at 6:00 p.m., Ammula Anil (P. W. 1) would not have left his father’s body lying in the cart way till the next morning. Furthermore, even Battu Veeresham (P. W. 3) claims that he had received a telephone call from A. 1, who informed him that Laxmaiah was lying dead.

He claims that he went to the place where the dead body was lying along with L. W. 5, L. W. 6, and Rajaiah and his mother. Moreover, even Ammula @ Seepalli Komuraiah (P. W. 4), and even Rapalli Sampath (P. W. 5) claim that they have heard the news about the death of Laxmaiah; they went to the scene of occurrence. Yet, surprisingly, none of these persons helped Ammula Anil (P. W. 1), the son of the deceased, to bring the body back home. Instead, they left the body lying on the cart way for the rest of the night. According to the learned counsel, such behaviour is extremely abnormal. For, once a person dies away from home, his kith and kin and his friends would lift the body and bring it back home. Therefore, according to the learned counsel, Ammula Anil (P. W. 1), Battu Veeresham (P. W. 3), Ammula @ Seepalli Komuraiah (P. W. 4), and Rapalli Sampath (P. W. 5) are all concocted witnesses. Therefore, the learned trial court should not have relied upon their testimonies for convicting the appellants.

Secondly, according to Ammula Anil (P. W. 1), Ammula Radha (P. W. 2), Battu Veeresham (P. W. 3), Ammula @ Seepalli Komuraiah (P. W. 4) and Rapalli Sampath (P. W. 5), there was a dispute between Laxmaiah and A. 2. For, while Laxmaiah had sold part of his land to A. 1 and other villagers, he had refused to sell any part of his land to A. 2. Further, although, A. 2 wanted to bring the harvester through the fields and take it to the land belonging to A. 1, Laxmaiah would not permit him to use the cart way. According to the learned counsel, it is due to this that animosity had developed between Laxmaiah and A.1 and A.2. Because of the animosity, the appellants have been falsely implicated in the present case.

Thirdly, although the harvester was seized on 04.05.2011 by the police, allegedly at the instance of A. 1, there was nothing on the harvester to indicate that the harvester had gone over the body of a person. For, none of the tyres contained any blood on them. Therefore, even the recovery of the harvester does not connect the accused persons to the alleged crime.

Lastly, according to Dr. B. Jyothi (P. W. 15), who performed the Post-Mortem of Laxmaiah, only part of the head from the right side of the forehead extending to right ear, covering the total right temporal region, was crushed. Moreover, only the right shoulder was fractured. However, if, indeed, the harvester had gone over the entire body, considering the large size of the tyres, a larger portion of the body should have been crushed, rather than just the right side of skull. Therefore, the medical evidence does not support the ocular evidence. Hence, the learned trial court is not justified in convicting the accused persons for the alleged offence.

On the other hand, Ms. Sridevi, the learned Public Prosecutor has vehemently raised the following counter-arguments:-

Firstly, according to the evidence produced by the prosecution, Laxmaiah and his elder brother, Ammula Komuraiah were the owners of the large track of lands. Subsequently, according to Ammula Radha (P. W. 2), the wife of the deceased, her husband had sold parts of the land to the other villagers, namely, Battu Veeresham (P. W. 3), Ammula @ Seepalli Komuraiah (P. W. 4), Mukkera Sadaiah (P. W. 6) and A. 1. Part of the land was also used by the bullock carts of the village, for the villagers to reach their respective lands. Thus, a cart way has been carved out in

the land, which formally belonged to Laxmaiah. Since the land formally belonged to his father, it is for this reason that Ammula Anil (P. W. 1) consistently claimed in his testimony that his father had been killed on “their land”. Hence, even if the site plan (Ex. P. 2) shows the dead body lying on the cart way, it does not contradict the testimony of the sole eyewitness.

Secondly, a conviction can be based on the testimony of sole eyewitness. Since Ammula Anil (P. W. 1) has described the occurrence in detail, since the Post-Mortem Report (Ex. P. 8) and the testimony of Dr. B. Jyothi (P. W. 15) clearly prove that the deceased had suffered a crush injury, the testimony of Ammula Anil (P. W. 1) is supported by the medical evidence. Hence, Ammula Anil (P. W. 1) happens to be a witness of a “sterling worth”.

Thirdly, because of the animosity that had developed between Laxmaiah on the one hand, and A. 1 and A. 2 on the other hand, as Laxmaiah would not permit A. 2 to use the cart way, there is sufficient motive for A. 1 and A. 2 to commit the murder of Laxmaiah. According to the testimony of Ammula Anil (P. W. 1), A. 3 was driving the harvester at the relevant time. It is at the abetment of A. 2 that A. 3 drove the harvester over the body of Laxmaiah, thereby causing his death. Hence, the learned trial court was justified in convicting the A. 1 for the offence under Section 302 r/w 34 IPC, and in convicting A. 2 for the offence under Section 302 r/w 109 IPC, and in convicting A. 3, the driver of the harvester only for an offence under Section 302 IPC.

Fourthly, since the harvester was used as a weapon to commit the murder, the learned trial court was justified in

directing that the harvester should be confiscated. Therefore, the learned Public Prosecutor has vehemently supported the impugned judgment.

Heard the learned counsel for the parties, considered the impugned judgment, and examined the record.

Undoubtedly, a conviction can be based on the testimony of a sole witness, but provided, the sole witness is a trustworthy one. In case, there are glaring contradictions or in case the conduct of the witness is unusual, then such a witness is an untrustworthy one. Therefore, while critically analysing the testimony of the sole eyewitness, the court should also consider the conduct of the witness *vis-à-vis* the surrounding circumstances of the case.

In his testimony, Ammula Anil (P. W. 1) claims that *“my father died about one and half years back near our fields. He was murdered with harvester by A1 to A3. Accused land had no road through our land, yet they passed through our land. Two or three times we objected. There was a panchayat also. Elders also advised not to go through our land. So my father objected it. On that day I and my parents were doing work in our field. A1 to A3 had taken their harvester through our land in our presence. After some time it returned and neared our land. It entered into our field. Our father objected; neighbouring land owners also gathered. My father objected strongly their entry into our land inspite of repeated previous objection. LW.4, LW.3 and others came and intervened, discussed with both parties, and advised to allow the tractor go to village, and advised accused to retain harvester in their field that night, and the matter will be discussed in the morning of next day in the village. Tractor only came to our field before our objection.*

Harvester was not brought. Tractor went to village. My father asked me to watch at beginning of the land to prevent the harvest (sic) if comes. My father was watching at the end of the field. Yet harvester was brought to our field. Though objected, they pushed me aside. So my father came and objected the harvester. All three accused were there. They insisted to take the harvester through our land. Both parties were stubden (sic) in their respective versions. As accused were so firm, my father laid on the road in our field infront of the harvester to prevent it. All three accused did not like it, decided to run over the harvester on my father and moved it run over him. He was crushed and died on the spot. Harvester went to village. My mother left our field after tractor left and before arrival of harvester. So she did not see actual offence. LW.3 and others came there and witnessed it.As it was night we did not go to police station immediately when (sic) there in the morning of next day and lodged complaint. Complaint is Ex.P1.” In the cross-examination, this witness admits that the incident happened at about 6:00 or 6:30 p.m. He also admits that he has completed and passed the intermediate in the middle of 2011.

According to this witness, his father laid on the road “*in our field*” infront of the harvester to prevent it. However, according to the site plan (Ex. P.2), the dead body of Laxmaiah is lying far away from the field belonging to him. In fact, it is lying on the cart way that goes to the field of Laxmaiah and Ammula Komuraiah. The dead body is lying in between the fields of Mukkera Sadaiah and Ammula Komuraiah. Therefore, the claim of Ammula Anil (P. W. 1) that the incident had occurred in the field of Laxmaiah is belied by the site plan (Ex. P. 2). It is, indeed, trite to state that while men

may lie, but contemporaneous documents do not. The site plan was made on 25.04.2011 at 10:00 a.m. Therefore, it is a contemporaneous document. Yet the site plan contradicts the oral testimony of Ammula Anil (P. W. 1).

According to Battu Veeresham (P. W. 3), Ammula @ Seepalli Komuraiah, Rapelli Sampath (P. W. 5) and Mukkera Sadaiah (P. W. 6), they all went and saw the dead body of Laxmaiah lying on the cart way. Yet, surprisingly, Ammula Anil (P. W. 1), the son of the deceased, and these witnesses left the body lying on the cart way for the entire night. For, according to A. Mahesh (P. W. 16), he was working as Inspector of Police at the Police Station. The Police Station received the information on 25.04.2011 that there was a murder in the village, Rangapeta; *"I went there, saw there dead body and prepared its rough sketch and CDF in the presence of Nagula Komuraiah and Thirumal Reddy"*. Therefore, according to this witness, he saw the dead body at the scene of the crime i.e. on the cart way. Therefore, it is rather surprising that although Ammula Anil (P. W. 1), and other witnesses, claim that they have seen Laxmaiah's dead body in the evening at 6:00 or 6:30 p.m., they left the dead body out in the open for the entire night. Such behaviour on part of the son of the deceased and other villagers is rather unusual. For, the normal human conduct would have been to carry the dead body to the house of Laxmaiah, and to keep it safely within the house. Considering the fact that a country-side village would have undomesticated dogs, considering the fact that a dead body lying out in the open, would be prone to attack by such dogs, it is highly unusual for the son and other villagers to leave the body exposed to the dangers of the night. Therefore, such

unusual behaviour on part of Ammula Anil (P. W. 1) casts serious doubts about his being an actual eyewitness to the occurrence.

Moreover, in his testimony, Ammula Anil (P. W. 1) claims that he had gone to the Police Station to lodge the report on the next morning. But, according to A. Mahesh (P. W. 16), he claims that upon receiving the information, it is the police that went to the village and recorded the statement of Ammula Anil (P. W. 1). He further claims that the inquest was conducted over the dead body. According to the inquest report (Ex. P. 9), *“the dead body was lying at the outskirts of Rangampet in agricultural land of Mukkera Sadaiah in Sy.No.1135, on northern side of scene of offence Mukkera Sadaiah agricultural land, on southern side Ammula Komuraiah, agricultural land and way to fields, east and west, on southern side Komuraiah land Battu Veeresham.”* Thus, according to the inquest report (Ex. P. 9), the dead body was lying on the cart way amongst the fields of Mukkera Sadaiah and Ammula Komuraiah. The making of the inquest report commenced at 10:30 a.m. and continued to till 1:00 p.m. The inquest report also establishes the fact that the dead body of Laxmaiah was never taken back home, although, Ammula Anil (P. W. 1) and other witnesses claimed that they had seen the dead body in the evening of 24.04.2011.

Considering the fact that both the site plan (Ex. P. 2) and the inquest report (Ex. P. 9) contradicted the testimony of Ammula Anil (P. W. 1), considering the unusual behaviour of Ammula Anil (P. W. 1) in leaving the dead body of his father overnight on the cart way, this court does not find the said witness to be a “trustworthy” one.

Hence, the learned trial court is not justified on relying on the testimony of the sole eyewitness in order to convict the appellants.

Ammula Anil (P. W. 1) would also have the court believe that at the instigation of A. 2, A. 3 drove the harvester over the dead body of his father. However, harvesters are known to have large size tyres. If the tyre of the harvester had gone over the dead body of Laxmaiah, it is very unlikely that only the right side of the skull would have been crushed. In fact, there should have been more crush injuries on the body. Yet, according to the testimony of Dr. B. Jyothi (P. W. 15) and according to the Post-Mortem Report (Ex. P. 8), the deceased had suffered only two injuries, namely (i) the fracture on the right side of the skull on the temporal part, and (ii) the fracture of the right shoulder. Therefore, even the medical evidence contradicts the ocular evidence of Ammula Anil (P. W. 1). Moreover, although the prosecution claims that the harvester was recovered at the instance of A. 1, but no incriminating evidence would be culled out from the harvester. Therefore, the recovery of the harvester at the instigation of A. 1 does not connect the A. 1 to the alleged offence.

It is rather unfortunate that Laxmaiah has suffered a homicidal death. However, it is the duty of the prosecution to cogently and convincingly prove that the death was caused by appellant Nos.1 to 3. But in a zeal to solve a homicidal death, it seems that the prosecution has presented Ammula Anil (P. W. 1) as an eyewitness, and Battu Veeresham (P. W. 3), Ammula @ Seepalli Komuraiah (P. W. 4), and Rapalli Sampath (P. W. 5) as persons who had arrived at the scene of the offence immediately after the occurrence has taken place. But the fact that these persons had

left the dead body overnight lying on the cart way betrays the effort of the prosecution to turn a case of “circumstantial evidence” into a case of “direct evidence”. This Court is of the opinion that if the learned trial court had meticulously examined the evidence, especially contrasting the statements of the witnesses to the normal human conduct, the learned trial court would have realised that the prosecution is presenting a fabricated case.

For the reasons stated above, all the Criminal Appeals are allowed. The impugned judgment, dated 06.03.2013, in Sessions Case No.282 of 2012 on the file of the IV Additional District & Sessions Judge (Fast Track Court), Karimnagar, is set aside.

The appellant in Criminal Appeal No.381 of 2013 (accused No.1), namely Sandeavna Raju, S/o Venkataiah, is acquitted of the offence punishable under Section 302 r/w 34 IPC.

The appellant in Criminal Appeal No.803 of 2014 (accused No.2), namely Rapalli Rajaiah, S/o Rayamallu, is acquitted of the offence punishable under Section 302 r/w 109 IPC.

The appellant in Criminal Appeal No.326 of 2013 (accused No.3), namely Ilangoan, S/o. Karpan, is acquitted of the offence punishable under Section 302 IPC.

The fine amount, if any, paid by appellant in Criminal Appeal No.381 of 2013 (accused No.1), namely Sandeavna Raju, S/o Venkataiah, the appellant in Criminal Appeal No.803 of 2014 (accused No.2), namely Rapalli Rajaiah, S/o Rayamallu, and the appellant in Criminal Appeal No.326 of 2013 (accused No.3), namely Ilangoan, S/o. Karpan, shall be refunded to them.

Since the accused No.3- Ilangoan, S/o. Karpan, is still languishing in jail, he shall be set at liberty forthwith, if he is not required in any other criminal case.

Since the accused No.1- Sandeavna Raju, S/o Venkataiah, and the accused No.2- Rapalli Rajaiah, S/o Rayamallu, are on bail, their bail bonds shall stand cancelled. They shall surrender before the concerned Prison authorities to enable them to complete the formalities for their release.

The M.O.1- Harvester bearing No.T.N.30-T-9981 along with Standard Tractor 345 Chasis No. PY 53105019967/ SCTTSS, Engine No.PY 3029 D1 57830, which was confiscated to the State in terms of the impugned judgment, shall be released to the appellant in CrI.A.No.327 of 2013 (owner of the harvester), namely Kandasamy Balasubramani, S/o Kadasamy, after duly complying with the legal formalities.

Miscellaneous petitions, if any pending, shall stand dismissed.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 19th March, 2019
Tsr