



BAIL SLIP

The Petitioner / Accused No.1 viz., Nagaraja Reddy, S/o.Sampankiri Reddy was directed to be released on interim bail as per order of this Court dated 29.06.2021 and made in Crl.MP No.6463 of 2021 in Crl.A.No.34 of 2019 and subsequently surrendered before the Superintendent of Prison, Central Prison, Vellore on 09.07.2021 as per order of this Court dated 13.07.2021.

The Petitioner / Accused No.3 viz., Sridhar Reddy, S/o.Nagireddy was directed to be released on interim bail as per order of this Court dated 04.06.2021 and made in Crl.MP No.6023 of 2021 in Crl.A.No.34 of 2019 and subsequently surrendered before the Superintendent of Prison, Central Prison, Vellore on 25.06.2021 as per order of this Court dated 13.07.2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2022

DELIVERED ON : 31.03.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

Crl.A.No.34 of 2019

1.Nagaraja Reddy
2.Sridhar Reddy

..Appellants/A-1&A-3

Vs.

State rep. by
The Inspector of Police
HUDCO Police Station
Hosur Taluk
Krishnagiri District
(Crime No.251 of 2004)

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment and order dated 20.10.2018 passed by the I Additional District and Sessions Judge, Hosur in S.C.No.7 of 2007.



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For Appellants : Mr.V.Gopinath,
Senior Counsel
for Mr.V.Raja Mohan

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.

This criminal appeal is directed against the judgment and order of conviction and sentence dated 20.10.2018 passed by the I Additional District and Sessions Judge, Hosur in S.C.No.7 of 2007.

2. The prosecution story runs thus :

2.1. The deceased Rajappa belongs to Kolla Naidu community and the accused viz., A1 to A13 are from Reddy community and both of them hail from Oozhiyalam village in Krishnagiri District. Radha (P.W.3), wife of Rajappa, was the President of the local Outreach Women Self-Help Group.

2.2. The said self-help group purchased a land in the Oozhiyalam village and wanted to build a compound wall around the said land, for which, the contract for building the same went to the Naidu community people, on account of which, there were quarrels between the Reddys and Naidus. One such quarrel had ensued sometime in the year 2002, in connection with which, criminal cases were registered against both parties in the Bagalur Police Station and both parties were facing prosecutions in the Court of the Judicial Magistrate, Hosur.

2.3. While that being so, on 14.09.2004, around 10 a.m., Rajappa left home in his TVS-50 motorcycle (M.O.8) along with his elder brother Narayanappa (P.W.1). While the brothers viz., Rajappa and Narayanappa (P.W.1) were proceeding towards the Court, A-1 to A-5 waylaid them near the check post, sprinkled chilli powder on the face of Rajappa and hacked him to death.

2.4. Thereafter, the Reddy group went to the village and pelted stones at the house of Rajappa and Koopaliappa (P.W.4), loudly proclaiming that they had just finished off Rajappa and the same fate would befall the others too.



2.5. Narayanappa (P.W.1) escaped from the place of attack, ran to the village and informed Radha (P.W.3) about the attack and returned to the place of occurrence with Radha (P.W.3) and others.

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2.6. With regard to the attack on the house of the Naidu community people, the son of Koopaliappa (P.W.4), rushed to Bagalur Police Station to lodge a complaint, whereas, Koopaliappa (P.W.4) came to the check post and found Rajappa dead on the road.

2.7. On information, Rajasekar (P.W.11), Village Administrative Officer, came to the place of occurrence, to whom, Narayanappa (P.W.1) gave a statement, which was written in Tamil and was treated as a complaint (Ex.P1). This statement of Narayanappa (P.W.1) was given by Rajasekar (P.W.11) to Duraisamy (P.W.15), Sub-Inspector of Police, HUDCO Police Station, based on which, a case in HUDCO P.S. Crime No.251 of 2004 was registered on 14.09.2004 at 13.00 hrs. for the offences under Sections 147, 148, 341 and 302 IPC against 5 accused viz., Nagaraja Reddy, Nagi Reddy, Sridhar Reddy, Krishna Reddy and Ranganatha Reddy and the printed FIR was marked as Ex.P16. The FIR reached the jurisdictional Magistrate at 03.30 p.m. on the same day i.e., on 14.09.2004, as could be seen from the endorsement thereon.

2.8. Investigation of the case was taken over by Muthamizh Mudalvan (P.W.16), Inspector of Police (in short "the I.O."), who went to the place of occurrence and prepared the observation mahazar (Ex.P6) and the rough sketch (Ex.P17).

2.9. From the place of occurrence, the I.O. seized the following items under the cover of mahazar (Ex.P7):

- i. TVS-50 motorcycle bearing registration No.TN29 Q 71417 (M.O.8),
- ii. a pair of brown colour slipper (M.O.9),
- iii. a blood stained stick (M.O.5), and
- iv. a small polythene cover containing chilli powder (M.O.10).

2.10. The I.O. conducted inquest over the body of Rajappa and the inquest report was marked as Ex.P18. The body of Rajappa was sent to the Government Hospital, Hosur, where, Dr.Gnanameenatchi (P.W.13) performed autopsy and noted 7 cut injuries all over the body of Rajappa and also detected chilli powder in his eyes. She also noticed that there were burn like injuries on the back of Rajappa and so, she took a portion of the skin and sent it to the Tamil Nadu Forensic Sciences



Department, for examination and report. The examination report (Ex.P23) showed that hydrochloric acid was detected in the skin tissue. Dr.Ganameenatchi (P.W.13) gave her final opinion in Ex.P15 as under :

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"Cause of death : Died of injury to the vital organ brain."

2.11. The I.O. arrested Nagi Reddy (A-2), Sridhar Reddy (A-3), Krishna Reddy (A-4) and Ranganatha Reddy (A-5) on 22.09.2004 and based on their confession statements, recovered some material objects like, billhooks (M.O.1 to M.O.4, M.O.13, M.O.16), stick (M.O.5) and danda (M.O.17).

2.12. Nagaraja Reddy (A-1) surrendered before the Judicial Magistrate, Krishnagiri on 23.09.2004 and on 01.10.2004, he was taken into police custody.

2.13. During the course of investigation, it came to light that along with the actual assailants viz., A-1 to A-5, A-6 to A-13 were also involved in the offence and they all had allegedly conspired to get rid of Rajappa, a prominent figure in the Naidu community.

2.14. Sample drawn from the seized packet of chilli powder was also sent through the jurisdictional Magistrate to the Forensic Sciences Department and the examination report (Ex.P23) shows that the sample tested was chilli powder.

2.15. After completing the investigation, the I.O. filed a final report in P.R.C.No.16 of 2005 in the Court of the Judicial Magistrate No.II, Hosur, for the offences under Sections 120-B, 147, 148, 149, 341, 302 and 212 IPC against 13 accused.

2.16. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.7 of 2007 and was made over to the Additional District Court, Hosur, for trial. Charges for the aforesaid offences were framed against them and when they were questioned, they pleaded "not guilty". During trial, Nagi Reddy (A-2) died on 19.09.2018.

2.17. To prove the case, the prosecution examined 16 witnesses and marked 25 exhibits and 18 material objects.

2.18. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances against them, they denied the same. No witness was examined from the side of the accused nor any document marked.



2.19. After considering the evidence on record and after hearing either side, the trial Court, vide judgment and order dated 20.10.2018 in S.C.No.7 of 2007, acquitted A-4 to A-13, but, convicted A-1 and A-3 as under :

Name of the accused	Provision under which convicted	Sentence
Nagaraja Reddy (A-1) and Nagi Reddy (A2)	Section 341 IPC	1 month simple imprisonment each
	Section 302 IPC	Life imprisonment and fine of Rs.1,500/-, in default to undergo 6 months rigorous imprisonment each

The aforesaid sentences were ordered to run concurrently.

2.20. Challenging the aforesaid conviction and sentence, they have filed the instant criminal appeal.

2.21. It is pertinent to point out here that the State has not preferred any appeal against the acquittal of A-4 to A-13.

3. Heard Mr.V.Gopinath, learned Senior Counsel representing Mr.V.Raja Mohan, learned counsel on record for the appellants and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor.

4. That Rajappa belonged to Naidu community, hailed from Oozhiyur village, his wife is Radha (P.W.3) and his brothers are Narayanappa (P.W.1) and Koopaliappa (P.W.4), are not in doubt. Similarly, the fact that Rajappa's death was a homicide and that it occurred in the morning around 10'o clock on 14.09.2004 has also been established beyond a cavil.

5. The short question that arises for consideration in this appeal is, whether the appellants were part of the gang that attacked Rajappa.

6. The case of the prosecution is that A-1 to A-5 were the assailants and A-6 to A-13 were operating from behind. The names of A-1 to A-5 find a place in the complaint of Narayanappa (P.W.1) and therefore, they find a place in the FIR. As stated above, Nagi Reddy (A-2) died during trial.

7. The trial Court had acquitted A-4 and A-5, on the ground that Narayanappa (P.W.1) has stated about the individual overt acts of A-4 and A-5, especially, the places on which, they had attacked Rajappa. To support that, the post-mortem certificate did not show corresponding injuries. As regards A-1 and A-3, the trial Court has convicted them, based on the testimony of



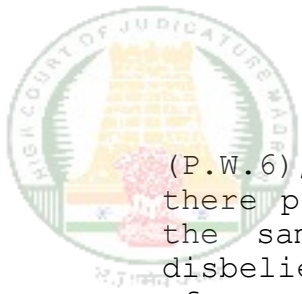
14. Even in the deposition of the witnesses, the Judge has recorded that Narayanappa (P.W.1), Koopaliappa (P.W.4) and Chinnammal (P.W.6) are fluent in Telugu and not in Tamil and therefore, the services of one Venkatesh, Advocate has been requisitioned for translation. In his deposition, Narayanappa (P.W.1) has written his name in Telugu as his signature and Koopaliappa (P.W.4) and Chinnammal (P.W.6) are illiterates and they affixed their left thumb impression.

15. The question is, whether Narayanappa (P.W.1) accompanied his brother Rajappa on the fateful day in the TVS-50 motorcycle. Apart from Narayanappa's (P.W.1's) evidence, we have the evidence of Radha (P.W.3) and Koopaliappa (P.W.4), who have stated that on the fateful day, Narayanappa (P.W.1) and Rajappa went by their TVS-50 motorcycle to the Court in the morning on 14.09.2004.

16. Narayanappa (P.W.1) has further stated that while they were proceeding towards the check post, A1 to A5, armed with deadly weapons, stopped them and sprinkled chilli powder on the face of Rajappa. Up to this extent, the testimony of Narayanappa (P.W.1) appears credible. He was sitting in the pillion and after the attack commenced, he must have run away from the place. Though he has deposed that he hid behind a bush and saw the attackers causing various injuries to Rajappa, the said portion of evidence appears far-fetched.

17. As for the ground of delay in the registration of FIR, be it noted, it cannot be expected that in all cases, the FIR has to be registered with dispatch, promptitude and clockwork precision. There can be myriad reasons for the delayed registration of an FIR. In the instant case, as stated above, the incident had occurred at 10.45 a.m. and the FIR has been registered at 01.00 p.m., even according to the learned Senior Counsel appearing for the appellant. Thus, the span of 2¼ hours between the incident and the lodging of the complaint (Ex.P1), cannot be said to be a delay to vitiate the prosecution case, for, it is quite natural for Narayanappa (P.W.1) to get himself out of the trauma, viz., witnessing his own brother being brutally attacked by a mob with billhooks and dandas, and to go to the police station for lodging a complaint. In fact, the Supreme Court has, time and again, held that delayed registration of an FIR is neither illegal nor will it make the prosecution case vitiated and that whether the delayed registration of an FIR would vitiate the prosecution case, has to be decided on the facts and circumstances obtaining in each case. [See Ravinder Kumar vs. State of Punjab (2001) 7 SCC 690].

18. Now, let us examine the second incident viz., the evidence of Radha (P.W.3), Koopaliappa (P.W.4) and Chinnammal



(P.W.6), who were in the village, when the gang led by A-1 came there proclaiming that they had done away with Rajappa and that the same fate would befall them. We have no reasons to disbelieve the version of these witnesses because, such behavior of accused involved in caste violence, is not a surprise. In caste violence, people of the dominant caste exhibit such behaviour as a matter of pride and to assert that their supremacy would resort to attacking the houses of the other caste men.

19. Therefore, on a cumulative reading of the evidence of Narayanappa (P.W.1), we are convinced that Narayanappa (P.W.1) went along with his brother Rajappa in the TVS-50 motorcycle (M.O.8) and on the way to the Court, the ambush had occurred. The fact that chilli powder was recovered from the place of occurrence as well it was detected in the eyes of Rajappa during post-mortem, amply corroborates the version of Narayanappa (P.W.1). Just because this did not find a place in the complaint (Ex.P1) given by Narayanappa (P.W.1), we cannot completely brush aside the same.

20. According to the police, Narayanappa (P.W.1) gave the statement to Rajasekar (P.W.9), who, thereafter, came to the police station and gave the statement. This aspect has been belied by Narayanappa (P.W.1), who has stated that when he gave the statement, the police were present. We are inclined to believe the version of Narayanappa (P.W.1), which is more natural than that of Duraisamy (P.W.15), because, after the broad daylight attack on Rajappa in a public road near the check post, the police and Rajasekar (P.W.9) would have come to the place. Narayanappa (P.W.1) was fluent in Telugu and his statement in Telugu would have been translated by Rajasekar (P.W.9) and the police would make it appear that Rajasekar (P.W.9) has come to the police station and given the statement. For such remissness in investigation by the police, the evidence of Narayanappa (P.W.1), cannot be disbelieved.

21. As regards Sridhar Reddy (A-3), we find that he was arrested by the police within a few days after the incident, whereas, they have shown his arrest only on 22.09.2004. This makes the prosecution case against him (A-3), a little doubtful.

22. As regards Nagaraja Reddy (A-1), he was in abscondance after the incident and he himself voluntarily surrendered before the Magistrate on 23.09.2004.

23. In view of the foregoing discussion, we are of the view that the prosecution has proved the case, as regards Nagaraja Reddy (A-1) beyond a peradventure and as regards, Sridhar Reddy (A-3), the benefit of doubt is extended and he is acquitted.



In the result, this criminal appeal is partly allowed in the following terms :

- i. The conviction and sentence imposed on Nagaraja Reddy (A-1) by the trial Court are confirmed.
- ii. Sridhar Reddy (A-3) is acquitted of all the charges and he shall be released forthwith, unless his presence is required in connection with any other case. The bail bond executed by him shall stand discharged and the fine amount paid if any, shall be refunded.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

gya

To

1. The I Additional District and Sessions Judge, Hosur.
2. -do- through The Principal Sessions Judge, Krishnagiri.
3. The Judicial Magistrate II, Hosur.
4. -do- through The Chief Judicial Magistrate, Krishnagiri.
5. The Inspector of Police,
HUDCO Police Station,
Hosur Taluk, Krishnagiri District.
6. The Superintendent of Prison,
Central Prison, Vellore.
7. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.V.Raja Mohan, Advocate SR. No.21533

CrI.A.No.34 of 2019

PA (CO)
PR (05/04/2022)