

Note: The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated. 19-07-2021 in CrI.M.P.No.1 of 2021 in CrI.A. No.180 of 2019

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWELFTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE P.SREE SUDHA**

CRIMINAL APPEAL NO: 180 OF 2019

Appeal under Section 374(2) of Cr.P.C against the Judgment dated 22-10-2010 passed in S.C.NO.702 of 2007 on the file of the IV Additional Sessions Judge (FTC), Warangal.

Between:

Peerelli Komuraiah, S/o. Rajaiah, Age- 40 years, Occ- Agriculture, R/o. Nagaram (V), Bhupalpally (M), Warangal District, Telangana State.

...Appellant/Accused No.2

AND

The State of Telangana, through S.H.O., Police Station Bhupalapalli, Warangal., Represented by Public Prosecutor, High Court of Telangana, Hyderabad.

...Respondent

Counsel for the Appellant: Ms. PENDIYALA SUHASINI REDDY

Counsel for the Respondent: Additional Public Prosecutor

The Court delivered the following: JUDGMENT

**HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
HONOURABLE SMT JUSTICE P.SREE SUDHA**

CRIMINAL APPEAL No.180 of 2019

JUDGMENT: (*Per. Hon'ble Smt. Justice P.Sree Sudha*)

This appeal is directed against the judgment, dated 22.10.2010, passed in S.C.No.702 of 2007 by the learned IV-Additional Sessions Judge (FTC), Warangal, whereby the appellant/A-2 was convicted of the offence punishable under Section 302 read with section 34 of I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for six months.

2. The case of the prosecution, in brief, is that on 16.08.2006 at 12.30 hours, one Gouda Rajamma (P.W.1), wife of Gouda Rajaiah (hereinafter referred to as the deceased) lodged a written complaint (Ex.P1) before the Sub Inspector of Police, Bhupalpally Police Station stating that there were land disputes between the deceased and A-1 and A-2. On 13.08.2006 at about 9.00 A.M. when the deceased was returning from the Kirana shop, both the accused beat the deceased, as a result of which, the deceased

sustained grievous injuries and he was in the house for four days. Thereafter, on 16.08.2006 at about 9.00 A.M. when the deceased accompanied by his wife left the house to go to hospital at Warangal for taking treatment and while they were waiting for a bus at Nagaram bus-stand, A-1 and A-2 came there with knives and sticks and attacked the deceased with knives and killed him and when P.W.1 tried to rescue the deceased, the accused threatened her at point of knife and that she ran away from the scene of offence and thereafter when P.Ws.3 and 4 came there, the accused ran away from the scene of offence. Basing on the said complaint, the Sub Inspector of Police (L.W.20) registered a case in Crime No.133 of 2006 under Section 302 r/w 34 of I.P.C. During the course of investigation, P.W.14-Inspector of Police examined and recorded the statements of P.Ws.1 to 4, visited the scene of offence, conducted scene of offence panchanama in Crime Details Form in the presence of P.W.10 and another, seized blood stained earth, controlled earth and held inquest over the dead body of the deceased. Subsequently P.W.12-Civil Assistant Surgeon, Government Community Hospital, Parkal, conducted

post mortem examination over the dead body of the deceased and opined that the cause of death of deceased was due to shock and haemorrhage as a result of multiple injuries. Subsequently, A-1 and A-2 surrendered before the Court and they were taken for police custody and P.W.14 interrogated the accused in the presence of P.W.11 and another and that the accused voluntarily confessed about commission of offence and also about the extra-judicial confession made by them before one Jakkula Sarangapani (L.W.14) and recorded confessional statement of the accused, seized the knife, which was used in the commission of offence from the house of A-1 in the presence of mediators and after completion of investigation, P.W.14 filed charge sheet against the accused for the offence punishable under Section 302 r/w 34 of I.P.C.

3. A Charge under Section 302 r/w 34 of I.P.C. was framed against the accused. The plea of the accused was one of total denial and claimed to be tried. The prosecution in order to prove its case against the accused examined P.Ws.1 to 14 and got

marked Exs.P1 to P14 and M.Os.1 to 8. On behalf of the accused, no witness was examined and no document was marked.

4. The learned IV-Additional Sessions Judge, Warangal, on appraisal of entire evidence, both oral and documentary, held that the prosecution has brought home the guilt of A-1 and A-2 beyond all reasonable doubt for the offence punishable under section 302 r/w 34 of I.P.C., and accordingly convicted and sentenced the accused to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for six months. Aggrieved by the said conviction and sentence, the appellant/A-2 preferred this appeal.

5. During the pendency of the proceedings, A-1 (Bouthu Babu) died on 22.12.2011 at Government M.G.M. Hospital, Warangal, due to acute severe asthma with cardio respiratory failure. Hence, this appeal is against A-2 only.

6. The point that arises for consideration is whether the prosecution could able to establish the charge framed under Section 302 r/w 34 of I.P.C. against appellant/A-2 beyond all reasonable doubt?

7. Learned Counsel for the appellant submits that P.W.1, who is the wife of the deceased, has given contradictory version not only in chief-examination, but also in the cross-examination in respect of the overt acts attributed to the appellant and her evidence shows that when the appellant caught hold of her, she raised hue and cry and that P.W.3 and other villagers came to the scene of offence. It is further submitted that the evidence of P.W.1 shows that both the accused were armed with knives, but the confession and recovery as per the evidence of P.W.11, knife (M.O.3) was recovered from the possession of A-1 only. It is further submitted that the evidence on record shows that motive was attributed to A-1 only and not against A-2 and as such the solitary evidence of P.W.1 is neither clinching nor convincing as against the appellant to convict him for the offence with which he was charged and, therefore, the appellant/A-2 is entitled to benefit of doubt.

8. On the other hand, the learned Additional Public Prosecutor contended that there is sufficient material to show that the appellant/A-2 was responsible for the commission of offence

and, therefore, the conviction and sentence passed by the trial Court is justified and no interference is called for.

9. P.W.1, who is the wife of the deceased and who gave Ex.P1 complaint to the police, reiterated the contents of her complaint and her chief-examination. She stated that their land and the land of accused are adjacent lands and there are land disputes between them and accused. The patta land fell to them and the forest land (Podu land) fell to A-1 and their land was given to A-1 on lease by some other persons about 10 years back and that A-1 raised cotton crop in that land. She further stated that on the date of incident, A-1 stabbed the deceased with a knife and she was present there and witnessed the incident. She further stated that while she was running from the scene of offence, one A.Sampath (P.W.3), Ex-Sarpanch of the village, met her on the way and that she requested him to rescue her husband. She further stated that A-1 hacked the deceased with a knife on his neck and A-2 threatened her to kill by placing the knife on her and they stabbed the deceased and inflicted injuries at five or six places and that the deceased died within five or six minutes and

thereafter the accused fled away. P.W.1 in her cross-examination admitted that their land and the land of A-1 are not adjacent lands and there are no land disputes between them and A-1 and they have not given any complaint in respect of leased out land, but one Pochaiah gave complaint to village elders as her husband damaged his cotton crop.

10. P.W.2, who is the daughter of the deceased and P.W.1, stated that three days prior to the incident, A-2 beat her father near Kirana shop and she came to know about the incident through her sister Anusha and that P.W.1 accompanied her father on the date of incident. In the cross-examination, P.W.2 stated that there were land disputes between her father and one Kommu Pochaiah and that there were no disputes between her father and one Kandhula Guravaiah with regard to boundaries of land. She admitted that she did not state to the police that A-2 beat her father three days prior to the incident. She further admitted that A-1 took the land from one Kommu Pochaiah for cultivation and a dispute arose between her father and the said K.Pochaiah in respect of the said land and that there was no panchayat took

place between her father and the accused in respect of the said land.

11. P.W.3, who is an Ex-Sarpanch of the village, stated in his evidence that on 14.08.2006 the deceased informed him that both the accused beat him on the previous day of incident with regard to the boundary dispute between him and A-2 and that he advised the deceased he would discuss the matter after Independence day. He further stated that on 16.08.2006, one RTC driver informed him that near second bus-stop of Nagaram, one person was killed and one lady was crying and then he proceeded to the scene of offence and noticed the dead body of the deceased by the side of the road, where P.W.1 alone was present and on enquiry, P.W.1 informed him that when A-2 caught hold of the deceased, A-1 stabbed him with a knife. In the cross-examination, P.W.3 stated that there were disputes between the deceased and one K.Pochaiah with regard to Podu land. The accused never complained against the deceased, but the deceased informed him that both the accused beat him due to land and boundary disputes. He further stated that he was at the bus stop

of the village at the time of offence and the distance between the 1st bus-stop and the 2nd bus-stop is about 1 ½ K..M. and he was the first person to reach the scene of offence on knowing the incident.

12. P.W.4, one of the Ward Members of the Grampanchayat of the village, stated in his evidence that there were land disputes between the deceased and A-1 and A-2 and three days prior to the date of incident, when both the accused disputed with the deceased near the kirana shop of one Rajamma, he separated them. He further stated that he heard that both the accused killed the deceased by stabbing him and he went to the spot and noticed the dead body of the deceased with an injury on the forehead. In the cross-examination, he stated that the deceased was his paternal uncle and prior to the date of incident, there was no panchayat took place between the accused and deceased. He further stated that there were land disputes between the deceased and one Pochaiah.

13. P.W.5, who is an eyewitness to the incident, and P.W.6, who is a circumstantial witness, did not support the case of the prosecution as they turned hostile.

14. P.W.7 is a photographer who took photos of the deceased at the scene of offence.

15. P.W.8, who is a circumstantial witness, stated in his evidence that there were land disputes between the deceased and A-1. He further stated that when A-1 raised cotton crop in the land, the deceased damaged the said crop by saying that the land belongs to him and no panchayat was took place in respect of the said dispute. He further stated that A-1 killed the deceased due to the said cotton crop dispute.

16. P.W.9, who is a resident of Nagaram village, stated that there was a land dispute between the accused and deceased and a panchayat was held about three years back and that the said land was given by one Pochaiah to A-1 on lease. He further stated that the deceased damaged the cotton crop of A-1 raised in the said land and he advised both the parties not to quarrel with each

other. He further stated that there was a rumour in the village that the deceased was killed by the accused.

17. P.W.10 is a panch witness for the scene of offence and inquest. P.W.11 is a panch witness for confession of the offence by A-1 and for recovery of Knife (M.O.3) from the rafter of the house of A-1. In the cross-examination, P.W.11 stated that he was an accused in two criminal cases. He further stated that there were no blood stains on M.O.3.

18. P.W.12 is the Civil Assistant Surgeon, Government Community Hospital, Parkal, who conducted post mortem examination over the dead body of the deceased on 17.08.2006 and issued Ex.P12-Post Mortem report, opined that the cause of death of the deceased was due to shock and haemorrhage due to multiple injuries and the injuries can be caused with a sharp edged weapon like M.O.3-Knife.

19. P.W.13, one of the panchayat elders, stated that the accused murdered the deceased due to land and boundary disputes. In the cross-examination, he stated that A-2 requested him to conduct a panchayat in respect of Podu land dispute and

that he acted as one of the elders on behalf of A-2. He further stated that he came to the Court at the instance of P.W.1 and deposed as per the instructions of P.W.1.

20. P.W.14 is the Investigating Officer, who filed charge sheet against the accused. He stated that initially the accused made an extra judicial confession before one J.Sarangapani (L.W.14), who surrendered the accused before the Court on 26.08.2006. In the cross-examination, he admitted that M.O.3-Knife does not contain blood stains as per Ex.P11-Panchanama. L.W.14 is not examined by the prosecution for the reasons best known to them.

21. As per the evidence on record, some of the witnesses stated that there were land disputes between the accused and deceased and some of the witnesses stated that the accused are in no way concerned with the land disputes of the deceased. Admittedly, the deceased damaged the cotton crop raised by A-1 and he was also having boundary disputes with A-2 and as such A-1 and A-2 with an intention to eliminate the deceased attacked him on 13.08.2006 and again on 16.08.2006 and stabbed him with a knife. As per the prosecution, P.W.1, who is the wife of the

deceased, is an eyewitness to the occurrence. But, she clearly stated that A-1 stabbed the deceased with a knife and A-2 only threatened her to kill by placing a knife on her. P.W.1 has not made any specific allegation regarding the overt acts of A-2 against the deceased. Though she stated that immediately after the occurrence, she informed the incident to P.W.4, he clearly stated that he went to the spot only after coming to know about the death of the deceased and noticed the dead body of the deceased with an injury on his forehead. P.W.1 also stated that while she was running from the scene of offence, P.W.3, who is an Ex-Sarpanch of the village, met her on the way and that she requested him to rescue her husband. But, P.W.3 stated in his evidence that he came to know about the incident through one RTC driver and that he proceeded to the scene of offence and noticed the dead body of the deceased by the side of the road. He further stated that through P.W.1, he came to know that while A-2 caught hold of the deceased, A-1 stabbed him with a knife. Hence, P.W.3, who has reached the scene of offence immediately

after the occurrence, also not made any specific allegation against A-2.

22. A perusal of the evidence on record, it is evident that there were boundary disputes between A-2 and the deceased. Some of the witnesses stated that a panchayat was conducted about three or four years back and some of the witnesses stated that no panchayat was conducted regarding the land dispute between A-2 and deceased. The motive for the offence is that since there were land disputes between A-1 and A-2 and the deceased, the accused with an intention to eliminate the deceased attacked him with a knife and stabbed him to death. When A-2 caught hold of the deceased, A-1 caused grievous injury to the deceased with a knife, as a result, deceased died. Therefore, A-2 was also convicted by the trial Court for the offence punishable under Section 302 read with section 34 of I.P.C. Section 34 of I.P.C. reads as under:

“Acts done by several persons in furtherance of common intention:- When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

23. No doubt, A-2 was also present along with A-1 at the time of occurrence. It was held by the trial Court that criminal act was done by both the accused in furtherance of common intention and as such both of them are liable for that act in the same manner as if it was done by A-2 alone. Since A-1 died during the pendency of the proceedings, the criminal case against him stands abated. The allegation against A-2 is that he stabbed the deceased with a knife along with A-1. There are no specific overt acts against A-2 either by P.W.1 or by any other witness who has seen him immediately after the occurrence. It is for the prosecution to prove the guilt of A-2 beyond all reasonable doubt and if there is any doubt, the said benefit of doubt is to be extended to him. In this case, the prosecution miserably failed to prove any specific overt acts against A-2 in killing of the deceased. P.W.1, who is an eyewitness to the incident, clearly stated that when A-2 threatened her to kill, she ran away from the place of occurrence and informed the incident to P.W.3 and requested him to rescue her husband. It clearly shows that even P.W.1 is not an eyewitness to the occurrence.

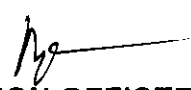
24. For the foregoing reasons, we are of the view that the prosecution has failed to prove the guilt of the appellant beyond all reasonable doubt and as such he is entitled to benefit of doubt.

25. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed against the appellant/A-2 for the offence punishable under Section 302 r/w 34 of I.P.C., by judgment dated 22.10.2010 passed in S.C.No.702 of 2007 by the IV-Additional Sessions Judge (FTC), Warangal, are hereby set aside and he is acquitted of the said offence under Section 235 (1) Cr.P.C. The appellant/A-2 shall be set at liberty forthwith, if he is not required in any other case. The bail bond of appellant/A-2 is hereby cancelled and his sureties are discharged. The fine amount, if any, paid by the appellant shall be refunded to him.

M.Os.1 to 8 shall be destroyed after appeal time is over.

Sd/- B.S. CHIRANJEEVI
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The IV Additional Sessions Judge (FTC), Warangal (with records)
2. The Judicial first class Magistrate, Parkal. Warangal
3. The Superintendent, Central Prison, Cherlapally, Medchal-Malkajgiri District
(By Special Messenger)
4. The Station House Officer, Bhupalpalli Police Station, Warangal District.
5. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
6. One CC to Ms. PENDIYALA SUHASINI REDDY, Advocate [OPUC]
7. Two CD Copies

PSR

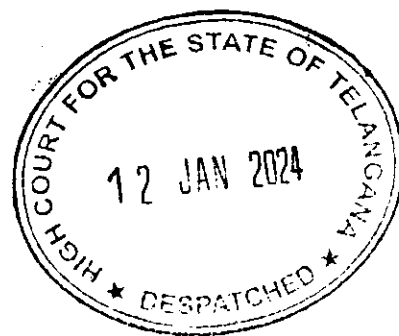


HIGH COURT

DATED:12/01/2024

JUDGMENT

CRLA.No.180 of 2019



ALLOWING OF THE CRIMINAL APPEAL.

10

12/1/2024