

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Criminal Appeal Nos.1129 & 1132 of 2002

(Dated : 26-02-2010)

Between:-

Chirrabona Rajaiah (A-4)
(Appellant in Crl.A.No.1129 of 2002)

Dasari Latchaiah (A-1)
Dasari Latchamma(A-2)
Keshaboina Devakamma (A-3)
(Appellants in Crl.A.No.1132 of 2002)

..Appellants

A n d

State of A.P rep. by
Public Prosecutor

...Respondent

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Criminal Appeal Nos.1129 & 1132 of 2002

COMMON JUDGMENT:

These two Criminal Appeals are directed against the judgment dated 26.9.2002 passed in Sessions Case No.206 of 2001 on the file of the II Additional Sessions Judge, at Nalgonda, whereby and whereunder, the learned Additional Sessions Judge found A-1-Dasari Latchaiah, A-2-Dasari Latchamma, A-3-Keshaboina Devakamma and A-4-Chirraboina Rajaiah guilty for the offence under Section 326 read with 34 of IPC and convicted them accordingly and sentenced each of them to suffer rigorous imprisonment for two years and pay a fine of Rs.500/- each in default to suffer simple imprisonment for two months.

2. The prosecution case, in brief, is:-

A-1-Dasari Latchaiah and A-2-Dasari Latchamma are husband and wife and A-3-Keshaboina Devakamma is their daughter. A-4-Chirraboina Rajaiah is brother-in-law of A-1. A-1 to A-3 are residents of Yerrsanigudem village, and whereas A-4 is resident of Jammamasjid, Nalgonda. Yapala Ram Reddy is also resident of Yerrasanigudem. A-1 and A-2 had a son by name Dasari Yadaiah. He received injuries three years prior to his death in an accidental fall from a double bullock cart. He took

treatment in various hospitals and ultimately, he succumbed to the injuries while undergoing treatment in Government Hospital, Nalgonda on 03.12.2000 at 12.00 hours. A-1 to A-4 suspected that Yapala Ram Reddy practiced sorcery on Dasari Yadaiah. On 03-12-2000 at 13-00 hours, Yapala Ram Reddy was taking she buffaloes in front of the house of A-1 to A-3 to his fields and after covering a distance of 100 feet, A-1 to A-4 followed him and attacked him near tank bund. It is alleged that A-1 beat him with an axe on head, and whereas A-2 to A-4 beat him with sticks in pursuance of their common intention to do away his life. He received bleeding injuries because of the blows given on him by A-1 to A-4 and as a result, he fell down. Pw-3-Yapala Andamma who is wife of Yapala Ram Reddy received information that her husband Yapala Ram Reddy was lying in river bed with injuries on his person. Since she has been suffering from heart ailment and other ailments for the last 20 years, she could not move out from the house to reach the river-bed. She requested Lw-2-Yapala Srilatha to inform of her husband lying with injuries in the river-bed to her sister Kasarla Anjamma (Pw-4) and her sister's son Kasarla Venkat Reddy (Pw-1), who were at their agricultural field. Lw-2 Srilatha went to the agricultural field and informed the same to Pws.1 and 3. Pws. 1 and 3 rushed to the scene of occurrence and found Yapala Ram Reddy lying with bleeding injuries on his person. Pws.1 and 4 enquired Yapala Ram Reddy as to how he sustained injuries. There upon, Yapala Ram Reddy stated to them that A-1 beat him with an axe on his head and A-2 to A-4 beat him with sticks and caused injuries to him. Pw-1 brought a tractor and shifted Yapala Ram Reddy to the village. Pw-3 Yapala Andamma saw her husband Yapala Ram Reddy with injuries on his person in

the village. Thereafter, Yapala Ram Reddy was shifted to P.S., Kattangur on a tractor. Pw-4 Anjamma, Lw-6-Parvathalu accompanied Yapala Ram Reddy to the Police Station. Pws.1 and 6 went ahead of the tractor to the Police Station on a scooter to the P.S., where Pw-1 presented Ex.P-1 report before the S.H.O., Kattangur. Pw-10-V.Laxmaiah, Head Constable received Ex.P-1 report and registered a case in Crime No.127 of 2000 under Section 324 read with 34 of IPC and issued Ex.P-12 F.I.R. He examined Yapala Ram Reddy and recorded his statement under Section 161 Cr.P.C. He sent injured Yapala Ram Reddy to the Government Hospital, Nalgonda for treatment by the same tractor in which he was brought to the police station. He proceeded to the scene of offence, conducted scene of offence panchanama and prepared rough sketch of the scene in the presence of Lw-10 Yapala Dharma Reddy and Pw-5-Kukudala Dasaratha Reddy. Ex.P-2 is the observation report and Ex.P-3 is the rough sketch of the scene. Pw-2-Shaik Hussain, a Constable of P.S.Kattangur, accompanied injured Yapala Ram Reddy to the Hospital. The doctor at Government Hospital, Nalgonda examined injured Yapala Ram Reddy and declared him as brought dead. On receipt of death intimation, Pw-12 M.Sreedhar Reddy, Sub Inspector of Police, Kattangur P.S altered the Section of Law from 324 read with 34 IPC to 302 read with 34 IPC and filed Ex.P-13 Memo of Alteration of Section of Law before the Judicial First Class Magistrate, Nakrekal. He examined Pw-2 and recorded his statement under Section 161 Cr.P.C. Pw-13 G.Siva Ramulu, C.I of Police, Nakrekal took up investigation, examined Pws.3, 4, 6, Lw-6 Parvathalu and Lw-8 Ram Reddy and recorded their statements. He conducted inquest over the dead body of Yapala

Ram Reddy (hereinafter called `deceased') in the presence of Pw-7 and Lw-12 Nageshwar Reddy. The opinion arrived at by the panchas, on hearing the witnesses examined during the inquest, came to be incorporated in column No.15 of the inquest report. Ex.P-5 is the relevant entry in the inquest report with regard to cause of death of the deceased. He effected seizure of blood stained clothes from the dead body of the deceased, which have been exhibited as M.Os.1 to 4. Ex.P-6 is the panchanama pertaining to seizure of M.Os. 1 to 4. After the inquest, the dead body was sent for Post Mortem Examination.

3. Pw-8 Dr. Shoba Rani conducted autopsy over the dead body of the deceased on 04.12.2000 between 12.30 PM to 2.30 PM. She found the following external and internal injuries on the dead body of the deceased.

External injuries:-

- 1) Laceration 6"X1"X1" on frontal and parietal regions on right side
- 2) Laceration 1X1/2"X1/2" over the upper lip right side
- 3) Laceration 1"X1/2"X1/2" over lower lip left side
- 4) Laceration 2"X1/2"X1/2" on left wrist
- 5) Contusion 5"X5" on right fore arm
- 6) Laceration 1"X1/2"X1/2" left leg
- 7) Laceration 1/2"X1/2"X1/2" left knee
- 8) Laceration 2"X1"X1" back of left knee

Internal injuries:-

- 1) Fracture of right parietal and frontal bone with extensive hemorrhage in dural space.
- 2) Fracture of upper jaw on right side with loss of all teeth on right side
- 3) Fracture of both bones of right fore arm

She opined that the death of the deceased is due to head injury caused between 18 to 24 hours prior to commencement of Post Mortem Examination. Ex.P-7 is the Post Mortem Examination report. Ex.P-8 is the relevant portion in the Post Mortem report with regard to the cause of death.

4. Pw-13 arrested A-1 to A-3 on 12.12.2000 at Yerrasanigudem village and interrogated them in the presence of Pws.9 and 11. He recovered the weapons used in the commission of offence, which have been exhibited as M.Os 5 to 7, in pursuance of confession statements of A-1 to A-3 under the cover of panchanamas. He forwarded the material objects to F.S.L. Ex.P-14 is the F.S.L report and Ex.P-15 is the requisition. After completing investigation, a charge sheet came to be submitted before the Judicial Magistrate of First Class, Nakrekal. The learned Magistrate took the charge sheet on file as P.R.C No.19 of 2001 and committed the case to the Sessions Division, Nalgonda as the offence under Section 302 IPC is exclusively triable by the court of Sessions. The learned Sessions Judge took the case on file as S.C.No.206 of 2001 and made over the same to the II Additional Sessions Judge, Nalgonda for disposal according to law. On hearing the prosecution and the accused, the learned Additional Sessions Judge framed a charge under Section 302 read with 34 IPC, read over and explained the same to the accused, for which the accused pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the accused for the offence with which they stood charged, prosecution examined 13 witnesses as Pws. 1 to 13 and marked 15 documents as Exs.P-1 to P-15 and

exhibited seven material objects as M.Os. 1 to 7. The plea of the accused is one of total denial of the case. A-4 further pleaded that on the date of offence he was not in the village. He examined A.Narayana Reddy, a retired C.E., Zilla Parishad, Nalgonda, as Dw-1.

6. The learned Additional Sessions Judge, on considering the evidence brought on record and on hearing the prosecution and the accused, found that A-1 to A-4 are responsible for the death of the deceased. However, since they had no intention to do away his life while causing injuries to him, they were found not guilty for the offence under Section 302 read with 34 IPC and instead, they were found guilty for the offence under Section 326 read with 34 of IPC, convicted them accordingly and sentenced each of them to suffer rigorous imprisonment for a period of two years and pay a fine of Rs.500/- each in default to suffer simple imprisonment for two months, by judgment dated 26.9.2002.

7. Assailing the judgment of conviction and sentences, Accused 1 to 3 filed Criminal Appeal No.1132 of 2002 and Accused No.4 filed Criminal Appeal No.1129 of 2002.

8. Heard Sri C.Praveen Kumar, learned counsel appearing for the appellant/A-4 in Criminal Appeal No.1129 of 2002 and Sri N.Subba Reddy, learned counsel representing Sri K.Raghuveer Reddy, learned counsel for appellants/A-1 to A-3 in Criminal Appeal No.1132 of 2002 and learned Additional Public Prosecutor for the respondent-State.

9. Sri C.Praveen Kumar, learned counsel appearing for A-4 submits that the overt acts attributed to A-4 are not supported by medical evidence, and therefore, A-4 is entitled to acquittal. A further submission has been made that since the incident occurred in a close proximity of the house of A-1 to A-3, the presence of A-4, who is no other than the brother-in-law of A-1 is not sufficient to infer that A-4 shared common intention with A-1 to A-3. A further submission has been made that Ex.P-1 presented by Pw-1 is silent with regard to the oral dying declaration allegedly made by the deceased to him and it indicates that the oral dying declaration was pressed into service so as to implicate the accused in this case. A further submission has been made that one Ch.Ram Reddy, who is the brother-in-law of the deceased and who is working as Head Constable in the Police Station, is instrumental in foisting the case against the accused. In elaborating his argument, learned counsel took me to the Post Mortem report, which has been exhibited as Ex.P-7.

10. In support of his submissions, learned counsel placed reliance on the decision of Supreme Court in **Heikrujam Chaoba Singh v. State of Manipur**^[1]. In the cited case, declarations were made before two persons, one in the ambulance and another in the hospital, only the brothers of the deceased examined to prove the declaration but not other two disinterested persons who were present. The prosecution did not offer any explanation for their non-examination. Much emphasis has been laid by the learned counsel on paragraph 3 of the judgment, which reads as hereunder:-

“ An oral dying declaration no doubt can form the

basis of conviction, though the Courts seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the Court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability. We are, therefore, called upon to examine the evidence of Pws.2 and 5 to find out whether the Courts below were justified in relying upon their testimony and in believing the statements alleged to have been made by the deceased while being carried to the hospital in ambulance and thereafter while he was an indoor patient in the hospital itself. So far as the statement in the ambulance is concerned, it was made to Pw2 who is the brother of the deceased. Pw2 while was coming in a jeep towards the scene of occurrence saw the ambulance van and therefore, thought that his younger brother *Hera Singh* is possibly being taken in the same ambulance van and coming to know that his guess is correct boarded the ambulance van. He stated in his evidence that on inquiry about the injuries sustained by his brother *Hera Singh* the injured told him that he had been given blows by *Heikrujam Chaoba Singh* with a dao, *Yumlembam Paka Singh* with a hockey stick and another person with a lathi. In his cross-examination, he candidly admitted that there were three or four persons inside the ambulance when his brother told him the names of his assailants but none of those disinterested persons have been examined by the prosecution to corroborate said Pw2. He also admitted in his cross-examination that those persons who were in the ambulance were present near him when his brother stated the words and yet the

prosecution has not offered any explanation as to why none of those persons were examined who could have been disinterested persons deposing about the dying declaration said to have been made by the deceased inside the ambulance while he was being carried to the hospital. While according to the evidence of Pw2 the deceased told him that the appellant *Chaoba Singh* gave him a duo blow but according to Pw5 to whom the deceased made a declaration in the hospital, the deceased told him that *Chaoba Singh*, the appellant held a thang and Paka Singh had a hockey stick. Intrinsically, therefore, the so called dying declaration made by the deceased to Pw2 is different from the declaration made by the deceased to Pw5. Pw2 happens to be the elder brother of the deceased. In the aforesaid premise, we do not think it safe to hold the evidence of Pw2 to be reliable and, therefore, the oral dying declaration as deposed to him by him cannot be pressed into service for bringing home the charges leveled against the accused/appellant”.

11. Learned counsel appearing for A-1 to A-3 while adopting the argument of Sri C.Praveen Kumar contends that the oral dying declaration of the deceased are pressed into service at the instance of Lw-8 Ch.Ram Reddy, Head Constable, who is no other than the brother-in-law of the deceased.

12. Learned Additional Public Prosecutor submits that Pws.2 and 10 are the police officers and they have no motive to speak false against the accused. They consistently stated that by the time the deceased was brought to the P.S., he was conscious and was able to speak. A further submission has been made that the evidence of Pw-10 is crystal clear that the deceased attributed

overt acts to A-1 to A-4 in his statement recorded under Section 161 Cr.P.C and that itself is sufficient to establish beyond reasonable doubt that A-1 to A-4 are the persons responsible for the death of the deceased.

13. In support of his submissions, learned Additional Public Prosecutor placed reliance on the judgment of Supreme Court in **Paras Yadav v. State of Bihar**^[2], wherein it has been held by the Supreme Court that omission on part of Investigating Officer to record dying declaration of deceased is not much material when the dying declaration and prosecution version was corroborated by medical evidence.

14. The prosecution examined 13 witnesses to substantiate the charge levelled against the accused, who are four in number. Pw-3 is the wife of the deceased. Pw-4 is the sister of Pw-3 and Pw-1 is son of Pw-3. Pw-2 is the Constable who accompanied the deceased to the Hospital. Pw-5 is panch witness for scene of offence, Pw-6 is the person, who accompanied Pw-1 on a scooter to the police station, where Pw-1 presented Ex.P-1 report before the police. He did not support the prosecution case to the extent of deceased informing him as to the persons responsible for causing injuries. Prosecution declared him hostile and marked a portion of 161 Cr.P.C statement as Ex.P-4. Pw-7 is the panch witness for inquest held on the dead body of the deceased. Pw-8 is the doctor who conducted Post Mortem Examination on the dead body of the deceased and issued Ex.P-7 Post Mortem Examination report. Pws 9 and 11 are panch witnesses for arrest of A-1 to A-3 and recovery of weapons used in the commission of the offence. They did not support the prosecution and the

prosecution declared them hostile. Pw-10 is the Head Constable who received Ex.P-1 report from Pw-1 and registered a case in Crime No.127 of 2000 under Section 324 read with 34 IPC. He also examined the deceased and recorded his statement under Section 161 Cr.P.C. He also speaks of the deceased being stated to him that A-1 beat him with an axe on his head, A-2 beat him with stick on his cheek, lips and on right leg, A-3 beat with stick on his left hand and on left leg and A-4 beat him with stick on his right wrist and on the right ankle. Pw-12 is the Sub Inspector of Police who recorded the statement of Pw-2 and altered the Section of Law from 324 read with 34 IPC to Section 302 read with 34 IPC. Ex.P-3 is the memo of alteration of Section of Law. Pw-13 is the Investigating Officer.

15. There is no dispute that the deceased met with a homicidal death. The question is whether the accused are the persons who caused injuries to the deceased, for which he succumbed on the way to the hospital ?

16. The entire case rests on oral dying declaration of the deceased. Three witnesses; Pws.1, 4 and 10 speak of the oral dying declaration of the deceased. Pws.1 and 4 stated that they came to know of the deceased lying with injuries in a stream through Lw-2 Srilatha. They immediately rushed to the scene and found the deceased lying with bleeding injuries on his person. They enquired him as to how he sustained injuries and thereupon, the deceased told them that A-1 to A-4 beat him and caused injuries. Pws.1 and 4 shifted the deceased to the village by a tractor and from there to the Police Station by the same tractor.

Pws.1 and 6 went ahead of the tractor to the Police Station where, Pw-1 presented a report, which formed basis for registering a case in Crime No.127 of 2000 against A-1 to A-4 for the offence under Section 324 read with 34 IPC.

17. Pws.1 and 4 are nephew and sister-in-law of the deceased. Pw-1 presented Ex.P-1 report with the police, which formed basis for registering a case. In Ex.P-1 report, Pw-1 did not spell out the oral dying declaration made by the deceased to him. Such is the situation, his subsequent version that the deceased made dying declaration to him when he found the deceased with bleeding injuries on his person at the scene creates some doubt in the mind of the Court. Be that as it may, Pw-10 is a Head Constable, who examined the deceased and recorded his statement. He testifies that the deceased stated to him that A-1 beat him with an axe on his head, A-2 beat him with stick on his cheek, lips and on right leg, A-3 beat with stick on his left hand and on left leg and A-4 beat him with stick on his right wrist and on the right ankle. He has no motive to speak false against the accused. Pw-2 is the Constable who accompanied the deceased to the hospital from the police station. He categorically stated that Pw-10 examined the deceased and thereupon, the deceased stated to him that he was beaten by A-1 to A-4. Pw-6 is also an independent witness, though he did not support the prosecution in toto. But, he supported the prosecution to the extent that the deceased was able to speak when he was brought to the police station.

18. The fact that the witness has been declared hostile by the prosecution, does not result in the automatic rejection of his evidence. Even the evidences of hostile witnesses if it finds

corroboration from the fact of the case may be taken into account while judging the guilt of an accused, vide decision in **Leela Srinivasa Rao vs. State of Andhra Pradesh**^[3].

19. The evidence of Pw-2 corroborates the testimony of Pw-10 to the extent that the deceased was able to speak when he was brought to the police station. The evidence of Pw-2 and Pw-10 proves the oral dying declaration of the deceased. Even if the evidence of Pws 1 and 4 is discarded with regard to oral dying declaration of the deceased, the evidence of Pws 2 and 10 proves oral dying declaration of the deceased beyond reasonable doubt.

20. According to the version of the prosecution, A-4 beat the deceased with a stick on right wrist and right ankle. But, the doctor, who conducted Post Mortem Examination, did not notice any injuries on the right wrist and right ankle of the deceased. However, in the absence of any direct evidence and the case being based on oral dying declarations, inconsistency between the ocular testimony and medical evidence gains much importance. On the date of the incident, the son of A-1 and A-2 died and A-4 being brother-in-law of A-1 might have come to the village to see dead body of son of A-1 and A-2. In these circumstances, mere presence of A-4 at the scene, which is situated in a close proximity of the house of A-1 and A-2 is not sufficient to infer that A-4 shared common intention of doing away the life of the deceased with A-1 to A-3. The trial Court has not considered the discrepancy in the ocular testimony and the medical evidence with regard to the overt acts attributed to A-4. Therefore, I find it difficult to sustain conviction of A-4 for the offence under Section

324 read with 34 of IPC. Accordingly, the conviction and sentences imposed on A-1 to A-3 for the offence under Section 326 read with 34 of IPC is confirmed and whereas the conviction and sentence imposed on A-4 is set aside.

21. Accordingly, Criminal Appeal No.1129 of 2002 is allowed setting aside the conviction and sentence of appellant/A-4 Chirraboina Rajaiah for the offence under Section 326 read with 34 of IPC passed against him in S.C.No.206 of 2001 on the file of II Additional Sessions Judge, at Nalgonda, and he is acquitted of the same. The fine amount, if any, paid by the appellant/A-4 shall be refunded to him. The bail bonds furnished by him shall stand cancelled.

Criminal Appeal No.1132 of 2002 is dismissed confirming the conviction and sentence of appellants 1 to 3 viz., Dasari Latchaiah (A-1), Dasari Latchamma (A-2) and Keshaboina Devakamma (A-3) for the offence under Section 326 read with 34 of IPC passed against them in S.C.No.206 of 2001 on the file of II Additional Sessions Judge, at Nalgonda. The bail bonds furnished by them shall stand cancelled. Appellants/A-1 to A-3 are directed to surrender before the trial Court to serve out the remaining sentence.

B.SESHASAYANA REDDY, J

Dt.26-02-2010
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THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

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Criminal Appeal Nos.1129 & 1132 of 2002

[\[1\]](#) 1999(2) ALD (CrI.) 890(SC)

[\[2\]](#) AIR 1999 SUPREME COURT 644

[\[3\]](#) 2004 AIR SCW 1254