

**THE HONOURABLE SRI JUSTICE N.V. RAMANA
AND
THE HONOURABLE SRI JUSTICE G. KRISHNA MOHAN REDDY
CRIMINAL APPEAL No. 106 of 2009**

DATED: 31-01-2013

Between:

The State of A.P., rep., by the Public Prosecutor, High Court of A.P.,
Hyderabad

... Appellant

And

Sanivarapu Harikrishna and four others

... Respondents

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JUDGMENT: (per Sri N.V. Ramana, J)

The State through Public Prosecutor filed this criminal appeal challenging the judgment of acquittal dated 27-11-2006 passed by the I Additional Sessions Judge, Nellore acquitting the respondents – accused in S.C No. 543 of 2003 for the offences under Sections 148 and 302 IPC.

According to the prosecution, the accused and the deceased Sanivarapu Masthanaiah are residents of Jaladanki Village and the deceased is the father of PW 1. Baliya community in Jaladanki Village was divided into two groups. The accused and their relatives belong to one group and the other group is lead by one Gurramkonda Ramanaiah. The deceased and his family members belong to the group of Gurramkonda Ramanaiah. There were disputes between accused No.1 and Gurramkonda Ramanaiah. Altercations took place between the two groups near Andhra Bank, Jaladanki. In the said quarrel, one Mukkiri Koteswara Rao sustained injuries and while undergoing treatment, he died in Bollineni Hospital, Nellore. A report was given against PW 1 and the deceased in the said case. On the intervening night of 03-07-2003 and 04-07-2003 at 2.00 AM, all the accused formed themselves into an unlawful assembly armed with deadly weapons like axes, iron rod, iron hammer and a stick and with a common object of killing the deceased raided his house and attacked and beat him when he was sleeping in the open place of his house on a cot. PW 1 heard the cries of the deceased. Then he and his wife PW 2 woke up and came out and found accused Nos.1 and 2 giving blows on the head of the deceased with axes. PW 1

also noted accused No.4 giving a blow on the head of the deceased with an iron rod and accused No.3 giving a blow on the head of the deceased with a hammer and accused No.5 giving blows with a stick on the head and legs of the deceased. On account of the said injuries, the brain matter of the deceased came out of the head and he died on the spot. PWs 1 and 2 raised cries. Then the accused left the spot. On hearing the cries, neighbours also came there and PW 1 went to Jaladanki Police Station to give report. At that time, the Sub Inspector of Police was not present in the station and one Constable who was present informed the Sub Inspector of Police over phone, and then, he gave report to the Sub Inspector of Police. At 9.00 AM, PW 14 - the Circle Inspector of Police, Kavali Circle and PW 13 - the Sub Inspector of Police, Jaladanki Police Station went to the scene of offence, examined the witnesses, held inquest over the dead body of the deceased and utilized the services of dog squad and sent the dead body of the deceased to the hospital for post mortem examination. The material objects seized were sent to the RFSL for analysis. On 31-07-2003 at 4.00 PM, on information, PW 14 along with the mediators rushed to Kavali bus stand and reached bus shelter at Vengalrao Nagar, Kavali and arrested accused Nos.1, 2, 4 and 5 and recorded their confessional statements and the accused led PW 14 and others to a place near to the house of accused No.5 and PW 14 recovered the

weapons which were used by the accused in the commission of the offence and seized them under cover of mediators report. The seized properties were also sent to FRSL, Guntur for analysis. PW 15 after completion of investigation filed the charge sheet.

The court below has framed charges under Sections 148 and 302 IPC and the respondents - accused pleaded not guilty for the said charges and claimed to be tried.

In order to establish the said charges, the prosecution examined PWs.1 to 15 and got marked Exs. P-1 to P-26 and MOs 1 to 10. No oral

evidence was adduced by the accused in defence but Exs.D-1 to D-3 were marked on their behalf.

The Sessions Judge, having appreciated the entire evidence available on record, held the respondents – accused not guilty of the charges under Sections 148 and 302 IPC framed against them and accordingly acquitted them for the said charges. Questioning the same, the State preferred the present appeal.

Learned Additional Public Prosecutor appearing for the State contended that there is direct evidence of PWs 1 and 2 who are eye witnesses to the incident and who immediately reported the matter to the police and, therefore, their evidence cannot be discarded. He further contended that recovery of weapons, particularly MO 4 seized by the police from the kitchen of accused No.3 is established. He further contended that the motive for the accused to commit the offence is faction rivalry which is also established by the prosecution. Thus, he contended that the appeal be allowed.

The learned counsel appearing on behalf of the respondents - accused contended that the evidence of PW 1 cannot be believed as he is an interested witness and not an eye witness. He only gave Ex.P-1 report. PW 1 has improved his version and added many things in his evidence which he has not stated in Ex.P-1 report. In view of faction prevailing in the village between the accused and the deceased, the evidence of PW 1 cannot be believed. According to the learned counsel, PW 2 was not present at the scene of offence as she herself stated in her evidence that she was at kottam and, therefore, her evidence cannot be believed. He also contended that PW 1 stated that he went to the police station and gave report at 9.00 AM, whereas PW 2 in her evidence stated that when the police came to the scene of offence, she has given the complaint and has also affixed her thumb impression. Therefore, the trial Court has rightly rejected the case of the prosecution and acquitted the respondents – accused and there is no reason for this Court to interfere with the well considered judgment of the trial Court.

The point that arises for consideration in the present appeal is whether the prosecution could establish the guilt of the respondents - accused for the offences punishable under Sections 148 and 302 IPC beyond all reasonable doubt?

The case of the prosecution is that on 03-07-2003 when the deceased was sleeping in the open place of his house on a cot, PW 1 heard the cries of the deceased. Immediately, he and his wife PW 2 woke up and came out and found accused Nos.1 and 2 giving blows on the head of the deceased with axes. PW 1 also saw accused No.4 giving a blow on the head of the deceased with an iron rod and accused No.3 giving a blow on the head with a hammer and accused No.5 giving blows with a stick on the head and legs of the deceased and committed the murder of the deceased due to faction rivalry in the village.

To support its case, the prosecution examined PW 1, the son of the deceased; PW 2, the wife of PW 1; PW 3, the brother of the deceased; PWs 4 and 5 neighbours of the deceased; PW 6, son of the deceased; PW 7, mediator to the scene of offence observation report, inquest report and recovery of MO 4 from the possession of accused No.3; PW 8 is the Constable in CID dog squad; PW 9 is the photographer who took the photos of the deceased on the requisition of the police; PW 10 is the Constable who sent the dead body of the deceased for post mortem examination; PW 11 is the doctor who conducted autopsy over the dead body of the deceased; PW 12 is a neighbour of the deceased; PW 13 is the Sub Inspector of Police who registered the crime and PWs 14 and 15 are the investigating officers.

To prove that the deceased died a homicidal death, the prosecution has examined PW 11, the doctor who conducted post mortem examination over the dead body of the deceased on receipt of requisition from PW 14 and found the following external injuries:

“1. Irregular lacerated wound of about 10 cms x 10

cms x bones exposed; brain matter exposed from the left frontal bone.

2. Complete fracture of left frontal bone and brain matter came from the bony fracture.

3. Complete fracture of right and left maxillary bones of the face present.

4. Blood clots and dust and frank blood present in the injured areas.

5. Left eye ball crushed and opened left orbit.

6. Complete fracture of Nasal bones and nose is depressed.”

On internal examination, PW 14 found the following observations:

“1. Scalp intact.

2. Skull: Fracture of left frontal bone and right and left maxillary bones and nasal bones fractured.

3. Brain: Coming from the left frontal bone and on cut section congested.

4. Mouth opened, teeth exposed, tongue and pharynx normal. Partially digested food material about 200 gms present in the stomach.”

PW 11 opined that the deceased died due to shock and hemorrhage due to head injury. Thus, by examining PW 14, the prosecution could establish that the death of the deceased is homicidal.

To prove that the appellants - accused caused the homicidal death of the deceased, the prosecution had examined PWs 1 and 2.

PW 1 who is the son of the deceased is the complainant. According to him, there were disputes between accused No.1 and Gurramkonda Ramanaiah in respect of a house site. In September, 2001 an altercation took place between the two groups near Andhra Bank, Jaladanki. In the said altercation, one Mukkiri Koteswararao sustained injuries and succumbed to the injuries at Bolineni Hospital, Nellore while

undergoing treatment. As himself and his father are associated with Gurramkonda Ramanaiah, a false case was foisted against himself and his father also. Since then, groups are being maintained. He stated that on the date of incident at 9.00 PM, the deceased was sleeping in the open place of their house on a cot and at that time light was glowing. Himself and his wife PW 2 were sleeping in the paka which is near to the open place. In the night at about 2.00 PM, he heard cries of the deceased. On hearing the cries, himself and PW 2 woke up and came out to the open place and saw the accused attacking the deceased. According to him, accused Nos.1 and 2 dealt blows on the head of the deceased with axes. Accused No.4 dealt a blow on the head of the deceased with an iron rod. Accused No.3 with a hammer dealt a blow on the head of the deceased. Accused No.4 dealt blows on the head and legs of the deceased with a stick. On account of the injuries sustained by the deceased, brain matter came out of his head and he died on the spot. When PWs 1 and 2 raised cries, all the accused left the spot. The neighbours came to the spot after the accused left and he went to Police Station, Jaladanki to give report to the police. At that time, the Sub Inspector was not present in the police station and the Constable who was present informed the Sub Inspector over phone and Ex.P-1 is the report given by him to the Sub Inspector of Police. Thereafter at 9.00 AM, PWs 14 and 13, the Sub Inspector of Police and the Circle Inspector of Police came to the scene of offence and examined himself and PW 2 and conducted formalities.

In his cross examination, PW 1 stated that he is not the scribe of Ex.P-1, but admitted the signature on it as his own. He further stated that he has slept away from his father in a kottam and that he went to the police station at about 4.00 AM. He further admitted that the distance between the scene of offence and the police station is only one kilometer. He also admitted that it is not mentioned in Ex.P-1 report that a light was burning at the place where his father was sleeping and that himself and PW 2 raised alarms after the accused left the scene. He saw

the attack on the deceased from a distance of 15 feet. He further admitted that himself and the deceased are accused in a murder case. He however denied the suggestions that Mos 1 to 5 were not identified by him earlier and the police have planted them and he is identifying them for the first time in the Court and that the deceased was not attacked with MOs

1 to 5.

PW 2 who is the wife of the deceased corroborated the evidence of PW 1 with regard to the accused attacking the deceased and attributing overt acts to the accused. According to her, PW 1 went to the police station to give report, and later on, the police came to the scene of offence and examined her. In the cross examination, she admitted that the incident is witnessed by PW 1 and herself from the kottam and being afraid they raised alarm and cries from the kottam itself. She denied the contents in Ex. D-2 wherein she stated that recently they separated and constructed a house and living by the side of the house of the deceased and that on questioning as to why they are beating the deceased, the accused ran away armed with weapons. In the cross examination, she also stated that her husband has given a written report to the police when they came to the scene of offence. She further stated that her husband dictated the contents of the report and police wrote it and she also affixed her thumb impression on the said report.

From the above evidence it is clear that PW 1 who is an eye witness to the incident in the report Ex.P-1 stated that on the date of incident at about 2.00 AM all the accused have attacked and killed the deceased who was sleeping outside the house with iron rods, axes and sticks and on hearing the cries of the deceased he came out of the house and all of them ran away. However, he has improved his version in the evidence before the Court and attributed specific overt acts to each of the accused as if he witnessed the incident. Similarly, except mentioning the names of the weapons in the complaint, no specific overt act was attributed to any of the accused. Further MO 4 hammer was not at all

referred to in the report Ex.P-1.

The presence of PW 2 at the scene of offence is also doubtful because PW 1 in the report Ex.P-1 stated that after hearing the cries he came out of the house and all the accused ran away. Nowhere in the complaint it was mentioned that PW 2 was also present along with him and accompanied him. But in his evidence he has stated that on hearing the cries of the deceased, himself and PW 2 woke up and saw the accused attacking the deceased. Apart from that, PW 2 in her statement given to the police under Section 161 Cr.P.C stated that recently they separated and constructed a house and living by the side of the house of the deceased. However, she denied the same in her cross examination and stated that herself and PW 1 slept in a kottam next to the house of the deceased and saw the incident from the kottam. Further, she has stated in her cross examination that PW 1 gave a written report to the police when they came to the scene of offence, whereas PW 13 who is the Investigating Officer stated in his evidence that PW 1 came to the police station at 9.00 AM and gave Ex.P-1 report to him. Hence, the version of PW 2 that PW 1 gave report when the police came to the scene of offence cannot be believed.

PW 1 in his evidence stated that neighbours came to the spot after the accused left and he went to Police Station, Jaladanki and gave report. He further stated that as the Sub Inspector was not present one Constable who was present in the police station informed PW 13 - the Sub Inspector of Police over phone and that he gave Ex.P-1 report to PW 13 and that at 9.00 AM, PWs 13 and 14 came to the scene of offence. But in the cross examination, PW 1 stated that he went to the police station at about 4.00 AM to give report and PW 13 was not present at that time. As the police constable who was present there asked him to give the report to PW 13 he went to his house along with the report and again went to the police station alone. Again he stated that he gave report when PWs 13 and 14 came to the scene of offence at 9.00 AM and he did

not make any signature in the report in the presence of PWs 13 and 14.

In view of the above discrepancy as regards the time and place of giving of report Ex.P-1, it appears that there are two or more reports given to the police. Thus, there is discrepancy with regard to the report Ex.P-1 in this case. In addition to this, except the evidence of PW 1 who is the son of the deceased and who is also accused in a murder case along with the deceased, there is no other independent witness who has seen or narrated the incident. Further, though specific overt acts against each of the accused are not mentioned in the report Ex.P-1, PWs 1 and 2 in their evidence narrated as if they witnessed the incident and attributed overt acts to each of the accused.

As regards MO 4 hammer, PW 7, a panch witness has stated in his evidence that the hammer MO 4 was found in the bathroom of accused No.3, whereas in Ex.P-6, mahazar it was mentioned that MO 4 was found in the kitchen of accused No.3. There is also discrepancy with regard to recovery of MO 4 in the evidence of PW 7 as well as PW 14 since in his evidence PW 14 stated that MO 4 was found in the kitchen of accused No.3. It is well settled that unless there is clear evidence of an eyewitness with regard to usage of weapon mere seizure of weapon by the investigating officer in the presence of mediators is not sufficient to hold that the very same weapon was used for causing the injuries.

Taking all these facts into consideration, the trial Court after appreciation of evidence rightly dismissed the appeal disbelieving the case of the prosecution and the prosecution having utterly failed to bring home the guilt of the accused for the charges levelled against the respondents - accused, we are of the considered opinion that the Court below has rightly acquitted the accused and the same needs no interference by this Court.

In the result, the appeal is dismissed confirming the judgment dated 27-11-2006 passed by the I Additional Sessions Judge, Nellore in

S.C No. 543 of 2003.

N.V. RAMANA, J

G. KRISHNA MOHAN REDDY, J

31st January, 2013
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