

**HON'BLE SRI JUSTICE G. SHYAM PRASAD  
AND  
HON'BLE SRI JUSTICE M. VENKATA RAMANA**

**CRIMINAL APPEAL No.1128 of 2013**

**JUDGMENT:** *(Per Hon'ble Sri Justice G.Shyam Prasad)*

This criminal appeal arises out of the Judgment dated 08.10.2010 passed in S.C.No.341 of 2007 on the file of the VIII Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry, convicting A-1-Madda Surya Prakasha Rao for the offence under Section 302 IPC and sentencing him to suffer rigorous Imprisonment for LIFE and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for three months.

2. The brief facts of the case of the prosecution are that the Inspector of Police, Korukonda, laid charge sheet against A1 appellant here in and A2 for the offence under Section 302 read with 34 IPC on the file of the Court of III Additional Judicial First Class Magistrate, Rajahmundry, and the case was registered as PRC No.14 of 1994 on 12.5.1994. On appearance of A-1 and A-2, the copies of documents were furnished to them and the case was committed to the Sessions Court under Section 209 Cr.P.C. The learned II Additional Sessions Judge, East Godavari at Rajahmundry registered the case as SC No.306 of 1994 (PRC No.14 of 1994).

3. After appearance of both the accused, charges were framed on 13.2.1995 for the offence under Section 302 r/w.34 IPC, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried. Subsequently, as the accused no 1 is absconding, Non-Bailable Warrant (NBW) was issued against

A-1, as he has failed to appearance before the court on 19.06.1995. Thereafter, on 13.5.2010, A-1 was produced on execution of NBW before the learned VIII Additional Sessions Judge, Rajahmundry. Later in view of the orders in Crl.M.P.No.485 of 1995 dated 09.09.1997, the case was separated against A-1, vide SC No.341 of 1997 as per the orders of the Court and proceed against A-2.

4. The SC No.306 of 1994 was disposed of on 30.03.1998, by convicting A-2 for the offence under Section 323 IPC.

5. During trial of S C No. 341 of 2018 , the witnesses PWs.1 to 10 were examined and documents Exs.P1 to P19 were marked, and based on the evidence, A-1 was convicted for the offence under Section 302 IPC.

6. Aggrieved by the impugned judgment of the court below, the present appeal has been preferred by the appellant/A-1.

7. Heard the arguments of the learned counsel for the appellant and the learned Public Prosecutor.

8. Learned counsel for the appellant submits that there is abnormal delay in registering the FIR. The delay in lodging FIR, has not been explained, which is fatal to the case of prosecution. The police have planted the witnesses to prove its case.

9. It is further argued that the recovery of the material object the knife is not proved satisfactorily by the prosecution. The alleged confessional statement of the accused was recorded 53 days after the incident, which lead to the discovery of the material objects and therefore, the recovery is not proved.

10. It is further submitted that the motive for commission of the offence has not been proved.

11. It is further argued that PWs.1 to 4 are all interested witnesses and there are discrepancies in their evidence, as such, the appellant is entitled for benefit of doubt.

12. The learned Additional Public Prosecutor submits that the trial Court relying on the evidence of the prosecution, convicted A-1 for the offence under Section 302 IPC and the grounds urged by the council for appellant have been met by the trial court, and sought for dismissal of the appeal.

13. On consideration of the submissions of appellant the evidence of the prosecution witnesses and their credibility is to be considered.

14. P.W.1 is the wife of the deceased. Her testimony reveals that the houses of the accused and the deceased are situated in the same locality . Prior to the incident her husband went along with A-1, A-2 and LW.2-Ijjana China Venkatesulu @ Ravi, to Sukuma village for digging bore wells. Thereafter, her husband and LW.2 alone went to Sukuma Village for digging bore wells on the request of their mastery, without informing A-1 and A-2.

15. It is the testimony of P w 1 that on 19.12.1993 at 4.00 P.M. A-1 hacked her husband with a knife on his stomach. PW.1 and LW.2-Ijjana China Venkatesulu @ Ravi tried to catch hold of her husband while he falling on the ground, but he fell down on the ground and died on the spot. On the same day evening at 6.00 p.m. P.W.1 went to the VAO-LW.6-T.Yedukondalu and gave a report about the incident. In turn, the VAO has submitted his report along with her report to the police. Both the reports have been recorded in the FIR.

16. In fact, he was examined as Pw 5. His role was only receiving complaint from PW.1 and giving information to the police. In fact the FIR was only to set the criminal law into motion. Any person can give a report with regard to a non-cognizable offence. The witness, P.W.1 being wife of deceased went to him and gave a report on 09.12.1983 and he brought the incident to the notice of the police by his report.

17. In fact, P.W.1 informed the incident to the VRO, who was examined as P.W.5, whose testimony reveals that he prepared a report and went to police station and submitted the same. Therefore, the delay has been explained by the prosecution in lodging the FIR. There are no reasons forth coming for disbelieving the version of prosecution in respect of delay in lodging FIR.

18. It is revealed in the cross-examination of PW.10 that during investigation of this case, on 09.12.1993 at about 10.30 p.m., he received a phone call from PW.12-Sub Inspector of Police, but he did not proceed to the scene of offence as it became dark. Therefore, he resumed investigation on the next day morning.

19. In this regard, the testimony of PWs.1 to 4 is relevant. PW.1 states that on 09.12.1993 at 4.00 p.m. A1 hacked her husband with a knife on his stomach at the house of LW.9-Rayudu Narasayya, on the ground that her husband and LW.2-Ravi went to Sukuma village without informing the said fact to A1 and A2. It is evident that P.W.1 is an illiterate. Due to lapse of long time, she is unable to say the contents of Ex.P1. No doubt she stated that she cannot identify the weapon which was used in the commission of offence. The denial of suggestion was struck off which shows that there was a manipulation in the testimony against prosecution. the

struck off portion not even initialled by the presiding officer. It is clearly brought to light that A-1 took labourers to Sukuma village for digging bore-wells and A-1 used to distribute money to labourers who accompany him. Therefore, there is motive for the accused for commission of the offence, as the deceased went to Sukuma village without informing him. The only suggestion made to this witness is that due to previous grudges between her husband and A-1, A-1 has been implicated in this case, which was denied by the witness. In fact, nothing is elicited in the cross-examination to disbelieve her testimony with regard to witnessing the incident of A-1 stabbing the deceased with a knife except that she could not identify knife. This suggestion is not material as due to the long lapse of time the memory of the witnesses might have faded.

20. The testimony of PW.2 reveals that on the fateful day at 4.00 p.m., the deceased was standing by the side of the road holding his daughter. He called his wife-PW1 and asked her to take his daughter. In the meantime, A2 came there and told the deceased that they have to settle the dispute with regard to the money, and asked him not to go to the work. In the meanwhile, A1 also came there. A-2 had a scuffle with the deceased, and A1 hacked the deceased with a knife on the abdomen of the deceased. Thereafter A1 and A2 left that place.

21. The evidence of PW.3 corroborates the testimony of P.Ws.1 and 2 on the aspect of the A-1 hacking the deceased on his abdomen. The testimony of P.W.3 reveals that on the fateful day at about 4.00 p.m., when she was present at the water tap, which is situated in a vacant site for fetching water from the bore well, she

witnessed A1 and the deceased quarrelled with each other and in the meanwhile, A1 came armed with a knife and hacked the deceased on his stomach. In fact, she did not speak about the presence of A-2 at the scene of offence. But, she has clearly deposed that she saw A-1 hacking the deceased with a knife on his stomach.

22. The testimony of P.Ws.1 to 3 corroborated with that of P.W.4 on material aspects. PW.4 is another eye witness to the incident, who spoke about witnessing the incident of A-1 hacking deceased on his stomach with a knife.

23. According to the prosecution, PWs.1 to 4 are the eye witnesses to the incident. They have spoken in their chief-examination that A-1 hacked the deceased with a knife. No doubt, there are some minor discrepancies in the evidence of witnesses and about the presence of A2 at the scene of offence. But, in the light of the evidence of P.Ws.1, 3 and 4, the incident is proved. Though, all witnesses are related to the deceased, their evidence is reliable, consistent and trustworthy and do not cast any shadow of doubt in the light of their cross-examination. The motive for the commission of offence is proved by the evidence of PW.1, which is corroborated by the testimony of the eye-witnesses P.Ws.2 to 4.

24. On consideration of the facts and circumstances of the case, it is obvious that the deceased along with A.1 and A.2 and LW.2 went to coolie work for digging bore-wells to Sukuma Village. Thereafter, the deceased and LW.2 again went to Sukuma village for digging bore-wells on the request of Maistry without informing A-1 and A-2. On that, A.1 bore grudge against the deceased, as he went along with others for digging of bore-wells without informing

him, as he was sending the labour and distributing money among all the labourers. Therefore, A-1 bore grudge against the deceased, has committed the offence on 09.12.1993 at about 4.00 pm. by hacking him with a knife on his stomach while he was in front of the house of PW.6. The same was witnessed by PWs.1 to 4. L.W.2 and P.W.1 tried to catch hold of the deceased while he was falling down on the ground. But he fell on the ground and died on the spot because of the injury received by him on his abdomen. P.W.1, then gave a report to VRO-PW.5 under Ex.P.1, who in turn drafted another report under Ex.P.2 and she along with PW.5 went to police station on the next day morning and lodged Ex.P.1 and P.2 complaints to the police.

25. No doubt, P.W.1 stated in her cross-examination that she cannot identify the weapon, which was used in commission of offence and she cannot even say the author of Ex.P.1-complaint. In fact, it is an evident fact that P.W.1 is an illiterate. The testimony of P.Ws.2 to 4 corroborates with the testimony of P.W.1 about the incident of A-1 stabbing the deceased in his stomach. There are no valid reasons coming forth for implication of A-1 in a heinous crime like murder.

26. PW.2 is niece of the deceased. She stated that on the fateful day at about 4.00 pm., while the deceased was standing by the side of the road holding his daughter called his wife to take her. In the meantime, A.2 came there and asked the deceased not to go to coolly work, as he intends to settle the dispute in respect of sharing of wages. In the meantime, A.1 also came there. Then A.2 picked up quarrel with the deceased and then A.1 hacked the deceased with a knife on his abdomen, thereafter, both the accused

left the scene of offence. PW.1 and LW.2 tried to catch hold of the deceased but the deceased fell down and died on the spot.

27. PW.5 is a retired VRO. He was present and drafted observation of scene of offence-Ex.P3, inquest report-Ex.P4 and Mediator's report-Ex.P5. The defence suggested that he is a false witness planted by the police, which was denied by the witness. In fact, P.W.5 is a retired VRO, who is an independent witness.

Though it is suggested to this witness that there are disputes between A-1 and P.W.1's family, the same were not brought on record. Therefore, the testimony of P.W.5 cannot be disbelieved.

28. On 22.01.1994 between 10.00 am and 11.00 am Korukonda Police called him and LW.7 and they all went to the field of Akula Sitaramayya where the accused showed them the knife used by him for commission of the offence and it was seized by the police in their presence under a cover of Panchanama-Ex.P.5. This witness in his cross-examination denied the suggestion that due to political rivalry between their family and accused, and due to disputes between A.1 and PW.1's family, with the assistance of police, the accused was implicated in this case. In fact, the accused did not prove that due to political rivalry the accused was implicated in this case.

29. No doubt, PW.6, who is the circumstantial witness, did not support the version of prosecution, therefore, his testimony is not of any help to the case of prosecution.

30. PW.7 is the photographer, who took photographs of the dead body of the deceased at the scene of offence. The photographs



and the negatives were marked as Exs.P.11 to P.14 and P.7 to P.10 respectively, which support the case of prosecution.

31. The post mortem examination was conducted by the Civil Surgeon working at the District Hospital, Rajahmundry, examined as P.W.9. He conducted autopsy over the dead body of the deceased and found the following injuries:

“An incised wound about 6k’ long x 3’ width and 3’ depth on left and below the inguinal ligament.”

32. Ex.P15 is the Post Mortem Examination Certificate opining that the deceased would have died due to shock and haemorrhage, due to cut of major vessels, which clearly corroborates the testimony of the eye witnesses.

33. The testimony of the Investigation Officer clearly proves the recovery of M.O.1 from the accused, which is alleged to have been used in the commission of the offence. PW.10 recorded statements of the witnesses and got photographed the scene of offence, seized the blood stained earth and controlled earth, conducted inquest over the dead body of the deceased, and sent the dead body for post-mortem, and arrested A.2, sent him to judicial custody. The weapon seized is a knife with a wooden handle and the length of the wooden portion is 16.6”. The Investigation Officer has described the weapon as a wooden handled curved knife measuring about 24”.

34. The contention of the defence counsel is that there is discrepancy with regard to the weapon involved in commission of the offence, as it was not a knife, but, it was a wooden handled knife like a sickle. In fact, in the light of the testimony of the direct

witnesses and the nature of the injury suffered by the deceased as spoken by P.W.9-Medical Officer, the cause of death was due to the cut of major vessels in the lower abdomen, which proves the case of prosecution beyond all reasonable doubt. The learned Sessions Judge has appreciated the evidence on record had given cogent reasons for recording conviction.

35. We are not inclined to interfere with the findings of the learned Sessions Judge in convicting the appellant/A-1 for the offence under Section 302 IPC.

36. In view of the foregoing reasons, we are of the considered view that the judgment of the trial Court dated 08.10.2010 in S.C.No.341 of 2007 on the file of the VIII Additional Sessions Judge (Fast Track Court), East Godavari District at Rajahmundry does not require any interference.

37. In the result, the criminal appeal is dismissed.

Miscellaneous petitions pending if any, shall stand closed.

---

**JUSTICE G.SHYAM PRASAD**

---

**JUSTICE M.VENKATA RAMANA**

31.08.2019  
Js/gvl/Mjl/\*

**HON'BLE SRI JUSTICE G. SHYAM PRASAD  
AND  
HON'BLE SRI JUSTICE M. VENKATA RAMANA**

**CRIMINAL APPEAL No.1128 of 2013**

**Judgment by**  
*(Per Hon'ble Sri Justice G.Shyam Prasad)*

Js/Gvl/Mjl/\*