

Thagarakunta Nagi Reddy and Other Vs. State of a

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Court : Andhra Pradesh

Decided On : Feb-05-2014

Judge : L.Narasimha Reddy and the Hon'Ble Sri

Appellant : Thagarakunta Nagi Reddy and Other

Respondent : State of a

Judgement :

THE HON'BLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE M.S.K.JAISWAL Criminal Appeal No.1046 of 2009 05-02-2014 Thagarakunta Nagi Reddy and others...appellants.

State of A.P....Respondent Counsel for appellants:Sr.K.Suresh Reddy Counsel for Respondent : Public Prosecutor HEAD NOTE: ?.Cases referred THE HON'BLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE M.S.K.JAISWAL Criminal Appeal No.1046 of 2009

JUDGMENT

: (Per the Hon'ble Sr.Justice L.Narasimha Reddy) As many as five accused were tried for the offence punishable under Section 302 read with 149 I.P.C.in S.C.No.618 of 2005 by the Court of Sessions Judge, Ananthapur.

It was alleged that all the accused killed one Balamma, with common objective.

The trial Court held that the charges framed against the accused are proved, and accordingly, convicted and sentenced them to undergo imprisonment for life for the offence under Section 302 read with 149 I.P.C., and fine of Rs.200/- each was also imposed.

The sentence of Rigorous Imprisonment for two years was imposed for the offence under Section 148 I.P.C., apart from fine of Rs.100/-, on each.

Both the sentences were directed to run concurrently.

The case has certain dimensions of civil disputes also.

The version of the prosecution, in brief, is as under: One Sr.Obireddy, who was the resident of Kattakindapalli Village, had two wives, by name, Naramma and Balamma (deceased).Obireddy died without any issues, and after his death, partition has taken place between his two wives.

The property of Naramma is said to have been looked after by her nephew-A.2.

It was alleged that A.2 squandered the property and his eye fell upon the properties of Balamma.

LW-1, Venkat Reddy (no more).brother of the deceased, was helping Balamma in the administration of her properties.

Mother of A.2, by name Yeramma, filed O.S.No.40 of 2003 in the Court of Principal Senior Civil Judge, Anantapur, against Balamma, claiming half share in the properties of the latter.

Balamma, in turn, filed O.S.No.654 of 2003 in the same Court, against A.2, and her sons - A.4 and A.5, for the relief of perpetual injunction, in respect of the same property.

On 17.11.2004, PWs.1 and 2, two labourers.were said to have been engaged by Balamma to work in a field, where Jawar and Sunflower crops were existing.

After sometime, Balamma and Venkat Reddy are said to have proceeded from their village to the field along with cattle.

After reaching the field, Venkat Reddy was said to be taking rest under the neem tree, whereas PWs.1 and 2 were at a distance in the field.

Venkat Reddy is said to have noticed that A.1, son-in-law of A.2, came to that place in a jeep driving it by himself stopped at the field of Balamma.

As many as nine persons, including A.1 to A.5 are said to have alighted from the jeep.

A.3, wife of A.2, is said to have caught the tuft of Balamma and pushed her down, and thereafter, rest of eight persons attacked her indiscriminately, resulting in her instantaneous death.

Venkat Reddy is said to have rushed to the spot.

On hearing his cries, PWs.1 and 2 are stated to have reached the spot, but the accused threatened them by showing sickles.

It was alleged that Venkat Reddy reached the village and from the place of occurrence, and proceeded to Anantapur Rural Police Station, and submitted a complaint under Ex.P.4, narrating the incident, as mentioned above.

The Station House Officer registered a case in Cr.No.165 of 2004, under Sections 147, 148 & 302 read with 149 I.P.C., and issued FiRs.Information Report, under Ex.P.5.

The police reached the scene of occurrence, caused panchanama and thereafter, sent the dead body for post-mortem examination.

During the couRs.of investigation, the names of four persons, i.e., A.3, A.4, A.8 and A.9, mentioned in the FiRs.Information Report were deleted, said to be, on the orders of the Superintendent of police, Anantapur.

The following charges were framed against A.1 to A.5: ".1.

That you A.1 to A.5 herein on the 17th day of November, 2004 at about 12.00 noon in the Dry land known as 'Regati Chenu' belonging to one Balamma (deceased herein) situate one K.M.West of Kattakindapalli village, were members of unlawful assembly with the common object of murdering Balamma aged 60 years w/o B.Obireddy of Kattakindipalli village and in pursuance of the said common object, you committed the offence of rioting and at that time A.1, A.4 and A.5 were armed with hunting sickle and you A.1 to A.5 thereby committed an offence punishable under Section 148 I.P.C.and within my cognizance.

2.

That you A.1 to A.5 herein, on the same date, and time and during the couRs.of same transaction as mentioned in charge No.1 above and in prosecution of the common object of such unlawful assembly, did commit murder, by intentionally or knowing, causing the death of Balamma, aged 60 yeaRs.w/o B.Obireddy of Kattakindapalli village, to wit, A.3 of you caught Balamma and pulled her down and while A.1, A.2 and A.4 of you caught hold of her, A.5 of you cut her throat and then A.2 and A.3 dragged her body inside the chollam crop and thus you thereby committed an offence punishable under Section 302 I.P.C.read with section 149 I.P.C.and within my cognizance."

After completing the committal procedure, trial was undertaken and PWs.1 to 8 were examined and Exs.P.1 to P.10 were filed.

The contradictions in the statements of PWs.1 to 3 were marked as Exs.D.1 to D.9.

M.Os.1 to 9 were also given the markings.

The trial Court found all the accused, guilty of the offences punishable under Section 302 read with 149 and 148 I.P.C., and convicted and sentenced all of them, as mentioned above.

Sr.T.Bali Reddy, learned Senior Counsel for the accused, submits that the very arrival of as many as nine persons to commit the murder of Balamma was said to be in a jeep and the same is evident from Exs.P.4 and P.5, but it has totally

negated the evidence of PWs.1 and 2.

He submits that even during the investigation, it was found that major portion of Ex.P.4 was not correct at all and that resulted in the deletion of as many as four accused and presenting a different version altogether giving up the theory of the accused using the jeep.

He submits that PW.1 categorically stated that LW.1, the complainant sustained serious injuries to his legs and was not in a position to move, except with the aid of the vehicle and it is just unthinkable as to how he went from the village to the field at a distance of three kilometers by walk.

Learned Senior Counsel further points out that there were serious disputes among the three wives of LW.1, the brother of the deceased, and it has been elicited through PW.1 and other witnesses that the deceased was responsible for the performance of two other marriages of LW.1.

He submits that the trial Court ignored the serious contradictions between the statements recorded under Section 161 Cr.P.C., and the deposition of PWs.1 to 3, in the Court.

He contends that there is discrepancy between the version of the prosecution, on the one hand, and the one, which is evident from the post-mortem report, on the other.

Learned Public Prosecutor for the State submits that though names of nine persons were mentioned in the FiRs.Information Report, it was found in the couRs.of investigation that the accused herein alone participated in the crime, and thereby, the names of other four persons were deleted.

She contends that the deletion of the names of some of the accused, during the investigation, does not at all weaken the case of prosecution.

She contends that all the accused have a common motive and objective and their intention was to eliminate Balamma, so that, they can get the landed property, irrespective of the result of the civil disputes that were pending between the

parties.

She contends that the discrepancies pointed out by the learned Senior Counsel are trivial in nature and the trial Court has taken correct view of the matter, by appreciating the oral and documentary evidence from the correct perspective.

Two charges, as extracted above, were framed by the trial Court and the nature of allegations against all the accused are common.

All the accused are from the same family, A.2 and A.3 are spouses; A.4 and A.5 are their sons and A.1 is their son-in-law.

The motive attributed to the accused to commit the murder of Balamma is, to grab the property held by that woman.

It has already been mentioned that the deceased was the second wife of Obireddy, and A.2 is closely related to the fiRs.wife, by name Naramma.

The record discloses that while the accused were on the side of Naramma, LW.1, the brother of Balamma, was supporting her.

The entire case of the prosecution turns upon the version presented in Ex.P.4, as corroborated by PWs.1 and 2, who are said to be the eye-witnesses.

LW.1 was not examined in the Court, since he died before the trial commenced.

It has already been mentioned in Ex.P.4 (and thereby, in Ex.P.5).that A.1 drove a jeep to the place where the deceased was watching the cattle and as many as nine persons alighted from it.

The names of four accused - A.3, A.4, A.8 and A.9, namely Pedda Narayana Reddy, Bhaskar Reddy, Beduthuru Kullaireddy and Beduthuru Yerra Kullaireddy, were deleted, said to be on the instructions of Superintendent of Police.

If one takes into account the nature of allegations made in Ex.P.5, it is evident that they are common and no separate acts are attributed to any one of them.

That being the case, it is un-understandable as to how the same allegation was retained against A.1 to A.5.

The Investigating Officer, who deposed as PW.8, did not furnish any specific reason for exclusion of those four persons.

The place of occurrence is at a distance of three kilometers from the village.

Two aspects become relevant in this regard.

The fiRs.is that LW.1 - Venkat Reddy, was said to have reached that place along with Balamma, one hour after the arrival of PWs.1 and 2, i.e., around 9.00 A.M.In the cross-examination, the following was elicited from PW.1: "...LW.1 Venkat Reddy received injuries on his both legs and his both legs were crushed.

He was unable to move without help of the sticks.

Without help of any vehicle he was unable to travel."

It was not even mentioned that any vehicle was used by Venkat Reddy to reach the field, which requires travelling of three kilometeRs.As regards the theory of the accused herein and four otheRs.coming to the spot in a jeep, the following was elicited from PW.1: ".I did not observe whether any jeep came to the scene of offence along with accused Kullayi Reddy, Yerra Kullai Reddy, Pedda Narayana Reddy and Bhaskar Reddy."

Her attention was drawn to the statement recorded under Section 161 Cr.P.C.It is necessary to refer to the contradicting portion, which is marked as Ex.D.1: ".At about 12.00 noon 1.Tagarakunta Nagireddy 2.

Chinna Narayana Reddy, 3.

Pedda Narayana Reddy, Suryanarayana Reddy, his son Bhaskar Reddy, Sanjamma W/o Chinna Narayana Reddy, Sreenivasa Reddy, Venkatanarayana Reddy, Beduthur Kullaireddy, Beduthur Yerra Kullaireddy all came there in a jeep and rushed towards Balamma (Ex.D.2)".

Similar contradiction was elicited from PW.2.

There existed serious doubt as to PWs.1 and 2 being the eyewitnesses.

The reason is that PW.1 was examined five days after the date of incident.

Something needs to be said about the nature of injuries found on the body of the deceased.

Post-mortem report - Ex.P.8 revealed only two injuries and one of them is said to be fatal.

If nine accused (later reduced to 5) attacked a person, it is highly improbable that the attack, if true, would result in only one injury.

It is not as if that the defence was aimed only at extricating the accused.

The alternative theory of there being internal feud and disputes within the family of LW.1 was not only suggested, but also was elicited to be true, to a larger extent.

From PW.1, it was elicited that LW.1 i.e.Venkat Reddy, brother of Balamma, had three wives, by name, Nagamma, Laxmidevamma and Dasthagiramma and that the second and third marriages were conducted at the instance of Balamma.

It was also suggested that Nagamma and her son were living separately and had a feud with Balamma suspecting her role in the disturbance caused to their family.

The evidence of PW.2 proceeded on the same lines.

It has already been mentioned that PW.8, the Investigating Officer, was not able to explain several inconsistencies and omissions.

Further, there is hardly any correlation between the medical evidence and the oral and documentary evidence.

From the limited discussion undertaken by us in the preceding paragraphs, what becomes clear is that, a) the very version of the prosecution that the accused herein along with four others reached the scene of occurrence in a jeep, stood

belied not by the defence, but by the prosecution itself; b) the presence of LW.1 - Venkat Reddy, the complainant at the scene of occurrence, becomes highly doubtful on account of the fact that he is virtually immobile, due to crushing of his legs in an accident and his inability to move except through a vehicle and that no one has spoken to about LW.1 using any vehicle either to reach the place of occurrence or to travel to his village and thereby to Ananthapur, for submission of complaint.

Considerably long time has intervened between the occurrence of incident and submission of compliant under Ex.P.4 and its reaching the Magistrate.

While the incident is said to have occurred at 12.00 noon, the complaint is said to have been submitted at 5.00 P.M.and it reached the Magistrate at 10.30.

P.M.The delay remains unexplained.

The recording of statement of PW.1, five days after the date of incident, throws any amount of doubt on her being the eyewitness.

The allegation against all the nine persons named in Ex.P.5 were uniform and common and exclusion of four names therefrom without any specific reason, waters down the allegations against the accused.

In the result, the criminal appeal is allowed.

The conviction and sentence ordered in S.C.No.618 of 2005 on the file of the Sessions Judge, Anantapur, dated 28.08.2009, against the appellants-accused are set aside.

The appellants- accused shall be set at liberty forthwith, if they are not required in any other case.

The fine amount, if any, paid by the appellants-accused shall be refunded to them.

The miscellaneous petition filed in this appeal shall also stand disposed of.

_____ L.NARASIMHA REDDY, J.

_____ M.S.K.JAISWAL, J.

Dated:05.02.2014

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