



Non-Reportable

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.2132 OF 2011

Thatireddigari Maheswara Reddy

... Appellant

versus

State of Andhra Pradesh

... Respondent

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant-accused no.2 has been convicted for the offences punishable under Sections 148 and 302 of the Indian Penal Code, 1860 (for short, 'the IPC'). There were eleven accused who were charged with the murder of one Shiva Prasad Reddy (for short, 'the deceased') by hacking him with hunting sickles. The accused were charged with offences punishable under Sections 120-B, 148 and 302 of the IPC. Accused nos.5 and 9 died during the pendency of the trial. The Trial Court found that the charge under Section 120-B of the IPC has not been proved against any accused. The Trial Court also found that accused nos.6, 7 and 8 were not guilty

of any offence and were acquitted. The Trial Court convicted accused nos.1 to 4 and accused nos.10 and 11 for the offences punishable under Sections 148 and 302 of the IPC.

2. Apart from the present appeal, there were appeals preferred by the co-accused bearing Criminal Appeal nos. 2130 and 2131 of 2011. By the order of this Court dated 13th July 2023, the appeals were disposed of as the learned counsel representing the appellants therein made a statement that the appellants have been granted permanent remission. Therefore, they were not pressing the appeals. The appellant, in this appeal, was enlarged on bail. However, the order dated 13th July 2023 records the statement of the learned counsel for the appellant that the appellant-accused no.2 has decided to surrender so that his application for permanent remission can be considered. Therefore, this Court directed that after surrendering, if an application is made by the appellant-accused no.2 for a grant of permanent remission, the same shall be decided within six weeks from the date of making the application. However, the order dated 4th October 2023 records that the appellant-accused no.2 has changed his mind and decided not to surrender. In the said order, it is recorded that the learned counsel appearing for the appellant-accused no.2 stated that the appellant-accused no.2 wants to prosecute the appeal on merits.

3. PW-1 and PW-3 are brothers of the victim of the offence, who are the eye-witnesses. Apart from PW-1 and PW-3, PW-2

was also an eye-witness. The prosecution's case is that the deceased was a practising lawyer at Gooty. The deceased and his brothers were residing in Peddavadugur village. Every day, the deceased used to travel from his residence to the Court at Gooty by his motorcycle. The deceased had contested the election for the post of President of the Water Users Association of Peddavadugur village against the appellant-accused no.2. The election was won by the appellant-accused no.2. The allegation is that accused no.1 and other communist party leaders helped the appellant-accused no.2. A couple of months after the election, the Excise Police raided the house of the appellant-accused no.2 and seized illicit brandy and accordingly, a case was registered against accused no.2. According to the prosecution case, the appellant-accused no.2 suspected that the deceased was responsible for the raid and seizure. The incident occurred on 26th July 1997. Twenty days before the said incident, the Congress party had convened a meeting in the village, and the deceased was elected as convenor of the Congress party. It is the case of the prosecution that the Excise Police also booked a case against accused no.1, who carried an impression that the deceased was responsible for the action taken by the Excise Police. On the date of the incident, the deceased left the village between 9:00 am and 9:30 am and proceeded to the Court at Gooty. On the same day, PW-1 to PW-3 had visited Pamidi village. After completing the work, at 5:00 pm, the three prosecution

witnesses boarded a truck at Pamidi, which gave them a lift to Miduthuru crossroads. After getting down from the truck, they were waiting for a conveyance to reach their village. In the meanwhile, they saw the deceased coming from Gooty side on his motorcycle. While he was negotiating a curve near Miduthuru at 6:00 pm, PW-4, by raising his hand, requested the deceased to stop his motorcycle. The deceased stopped the motorcycle and told PW-4 that he could not accommodate him. After that, the deceased went some distance ahead and the accused persons, armed with hunting sickles, came from nearby bushes and attacked and hacked the deceased on various parts of his body. When PW-1 to PW-3 rushed to help the deceased, the accused threatened them and ran away. Though PW-1 to PW-3 shifted the deceased to a Government hospital at Gooty, he was declared dead before admission. PW-1 to PW-3 supported the prosecution. However, PW-4 to PW-6 did not support the prosecution and were declared hostile. The Trial Court and the High Court believed the testimony of PW-1 to PW-3.

SUBMISSIONS

4. The learned counsel appearing for the appellant-accused no.2 submitted that PW-1 and PW-3 were interested witnesses, being the deceased's brothers. They were chance witnesses. Admittedly, PW-1 to PW-3 were together. The learned counsel submitted that the evidence of PW-1 to PW-3 cannot be treated as a gospel truth. PW-4 to PW-6 did not

depose before the Trial Court about the presence of the appellant-accused no.2 at the time of the incident. The learned counsel submitted that the prosecution did not establish the motive for the murder. He, therefore, submitted that once the testimony of PW-1 to PW-3, who were interested witnesses, is discarded, it is a case of no evidence against the appellant-accused no.2. The learned counsel appearing for the respondent-State supported the impugned judgment.

CONSIDERATION OF SUBMISSIONS

5. We have carefully perused the prosecution witnesses' evidence, and especially the evidence of PW-1 to PW-3. PW-1 knew the accused. In his evidence, he has ascribed a specific role to the accused. He stated that his deceased brother initially received injuries on his left elbow dorsum part at the hands of accused no.1 by use of hunting sickles. The appellant-accused no.2 attacked his deceased brother on the head. Accused no.11 assaulted the deceased on the left hand below the wrist on the dorsum part and also attacked his lips. Accused no.10 assaulted the deceased on the left side of the neck. Accused no.3 assaulted the deceased on his left thigh below the hip. Accused No. 4 assaulted the deceased on the left side of the back. Both PW-2 and PW-3 have assigned similar roles to the accused. Their examination-in-chief is very consistent on this part. After carefully perusing their cross-examination, we find that no material contradictions or omissions have been brought on record. As far as PW-4,

PW-5 and PW-6 are concerned, they did not support the prosecution by stating that at the time of incident, the deceased was attacked by some unknown persons. PW-5 is the owner of a hotel. PW-1 to PW-3 were sitting near the hotel just before the incident. PW-6 was running a tea stall near the hotel of PW-5.

6. As PW-1 and PW-3 are closely related to the deceased, we have meticulously examined their testimony. We find their testimony is reliable. No material contradictions or omissions have been brought on record in their cross-examination. Only because an eye witness is a member of the deceased's family, *per se*, the evidence of such a witness cannot be discarded. If the evidence of an eyewitness who is a close relative of the deceased is cogent, reliable and credible, it can always be relied upon. Regarding the role of appellant-accused no.2, the evidence of PW-1 to PW-3 is consistent. All three of them have ascribed a clear role to the appellant-accused no.2 of assaulting the deceased with a hunting sickle. In this case, even the evidence of PW-2 is very reliable, who is not related to the deceased.

7. Apart from the testimony of these three witnesses, which is very consistent, there is no dispute about the identity of the accused as accused nos.1 to 4, 10 and 11 were known to these three prosecution witnesses. There was a recovery of hunting sickles at the instance of accused nos.1 to 4. The handles of the hunting sickles were found stained

with human blood. Moreover, there is no delay in lodging the complaint by PW-1.

8. The evidence of PW-19, Dr Ranganna, who conducted the post-mortem, shows that the deceased suffered a total of 16 injuries. The cause of death is due to shock and haemorrhage due to multiple injuries. The medical officer opined that the injuries could be caused by hunting sickles. He gave this opinion after the seized hunting sickles were shown to him. In the circumstances, there is no reason to disturb the judgments of the Trial Court and the High Court.

9. Accordingly, the appeal is dismissed. We grant time of one month to the appellant-accused no.2 to surrender for undergoing the remaining sentence. After the appellant-accused no.2 surrenders, we direct the respondent-State to consider the case of the appellant-accused no.2 for grant of permanent remission in accordance with the applicable policy after taking into consideration the fact that the co-accused have been granted the benefit of permanent remission. The respondent state shall take appropriate decision within a period of two months from the date on which the appellant-accused no.2 surrenders.

.....J.
(Abhay S. Oka)

.....J.
(Pankaj Mithal)

**New Delhi;
July 08, 2024.**