

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MONDAY, THIS THE EIGHTH DAY OF DECEMBER

TWO THOUSAND AND TWENTY FIVE

SPECIAL DIVISION BENCH

PRESENT

HONOURABLE SRI JUSTICE K.SURESH REDDY

And

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CRIMINAL APPEAL No.2170 of 2018

JUDGMENT: *(per Justice K.Suresh Reddy)*

The sole accused in S.C.No.93 of 2018 on the file of the Court of learned XIII Additional District and Sessions Judge, Narasaraopet, is the appellant. He was tried and convicted by the learned Additional Sessions Judge under Section 302 IPC and was sentenced to suffer imprisonment for “**life**” and also to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to suffer simple imprisonment for three (03) months.

2. Substance of the charge is that, on 11.07.2017, at about 07.30 AM, the accused hacked one Bhukya Rupla Naik (hereinafter referred to as “deceased”) on the backside of right ear with an Axe, causing his death, thereby committed an offence under Section 302 IPC.

3. Case of the prosecution as emanated from the evidence of prosecution witnesses, briefly, is as follows:

i) The accused as well as the prosecution witnesses are residents of Bridge Tanda, Kanumalacheruvu Panchayat, Bollapalli Mandal, Guntur District. The deceased was also resident of same village. PW.1 is the elder brother of the deceased and PW.2 is the son of PW.1. PW.4 is relative of the deceased. PW.5 is the nephew of the deceased. PW.3 is the resident of neighboring village. It is alleged that the deceased used to do witchcraft in the village and there were rumors that due to the witchcraft of the deceased, the father of the accused was suffering from tuberculoses, for the last five (05) years and the elder brother of the accused died about 2 ½ years back in a road accident. Due to which, the accused developed grudge against the deceased and was waiting for an opportunity.

ii) While so, in the early hours of 11.07.2017, the accused went to his fields to remove the bushes around the tomb of his brother. On the same day morning, PW.1 and the deceased went to their fields. PW.1 and the deceased were returning from the fields at about 07.30 AM. The deceased was proceeding ahead of PW.1 and the accused was removing bushes near the tomb. At that juncture, the accused noticed the deceased coming on the road. Immediately, the accused hacked the deceased on the back side of the neck with an Axe and went away. PW.1 having witnessed the incident, went to the deceased and tried to shift him to the hospital. PW.3 who was proceeding with a trolley auto rickshaw bearing registration No.AP27 TW 8485 stopped the vehicle and witnessed the incident. The accused said to

have threatened PW.3 with dire consequences, if he reveals the incident to anyone. As such, PW.3 left the place, without informing anyone. The accused also went to his fields. Having witnessed the incident, PW.1 went to the Police Station and gave a report. PW.11-the then Sub Inspector of Police, Bandlamottu Police Station received Ex.P1 report from PW.1, at about 10.00 AM on 11.07.2017. PW.1 in his report has stated that while the deceased was proceeding to his house from the fields, a trolley auto rickshaw bearing registration No.AP27 TW 8485 driven by PW.3 came in a rash and negligent manner and hit the deceased from the back side Due to which, the deceased fell down and died on the spot. On the basis of said Ex.P1-report, PW.11-the then Sub Inspector of Police registered a case in Crime No.654 of 2017 for the offence under Section 304-A IPC. He issued copies of FIR to all the concerned. FIR was marked as Ex.P10. He visited the scene of offence situated near Bridge Thanda Village and found the dead body. He prepared an observation report-Ex.P5, in the presence of PW.9 & another. He also prepared rough sketch-Ex.P11, at the scene of offence. He also photographed the scene of offence under Ex.P12. He held inquest over the dead body in the presence of PW.9 & another. Inquest report is marked as Ex.P3. During the course of inquest, he recorded statements of PW.1 & others. He shifted the dead body of the deceased to Government Hospital, Vinukonda, for postmortem examination.

iii) PW.8-the then Civil Assistant Surgeon, Narasaropet conducted autopsy over the dead body. He found the following external injury on the dead body of the deceased:

“A cut injury over the back of neck, extending from back of neck from left side to right external ear measuring 15 X 2 X 4 cm.”

He opined the cause of death was due to shock and hemorrhage from a head injury with sharp object. He further opined that the above injury cannot be possible in a road accident. He issued postmortem certificate-Ex.P4.

iv) While so, on 20.07.2017, PW.6-the then Panchayat Secretary, Kanumala Cheruvu, produced PW.3 along with a statement-Ex.P2 recorded from PW.3. Report of PW.6 was marked as Ex.P13. It is stated in the said report that on 11.07.2017, while PW.3 was proceeding in his trolley auto rickshaw, he saw the accused hacking the deceased, at the scene of offence. On the basis of Ex.P2 and P13, PW.11 altered the FIR from Section 304-A IPC to Section 302 IPC. He issued altered Memo-Ex.P14. Further investigation was taken over by PW.12-the then Inspector of Police, Bondlamotu Police Station. On 20.07.2017, having received the information, PW.12 went to Bondlamotu Police Station, received the CD file in Crime No.54 of 2017 and took up investigation. He secured the presence of PW.3 & PW.7 and recorded their statements. Thereafter, he visited Bridge Thanda

Village and secured the presence of PW.4 & PW.5 and recorded their statements. On 21.07.2017, he secured the presence of PW.1, PW.2 & others and recorded their statements. He filed a memo before the learned Judicial Magistrate of First Class, Vinukonda requesting to delete the name of PW.3 from array of accused and to add the present accused in the said crime.

v) On 27.07.2017, the accused appeared before PW.9-the then Village Revenue Officer, Kanumalacheruvu Village and confessed about the commission of offence. He recorded statement of the accused under Ex.P6. Thereafter, he produced the accused before PW.11 along with his report Ex.P7. PW.11 produced the accused before the PW.12, where PW.12 recorded the statement of the accused, in the presence of PW.10 & another. On the confession made by the accused, PW.12 recovered blood stained T-shirt-MO.3 and blood stained axe-MO.4 from his house under a Panchanama-Ex.P9. He also recorded statement of PW.9, who produced the accused before PW.11 on 31.07.2017. He forwarded the material objects to RFSL. RFSL report was marked as Ex.P15. After receiving all the documents and after completion of investigation, PW.12 filed charge sheet.

4. In support of its case, the prosecution examined PW.1 to PW.12, marked Exs.P1 to P15 and exhibited MOs.1 to MO.4.

5. When the accused was examined under Section 313 Cr.P.C., he denied the incriminating material appearing against him.

6. Relying on the evidence of PW.1 & PW.3, learned Additional Sessions Judge convicted the appellant as aforesaid.

7. Heard Sri Challa Srinivas Reddy, learned counsel appearing for Sri G.Ch.Srinivasa Rao, learned counsel for the appellant and Sri Marri Venkata Ramana, learned Additional Public Prosecutor representing the State.

8. Learned counsel for the appellant strenuously contends that according to the prosecution, PW.1 was an eyewitness who gave Ex.P1 report. In his report, PW.1 stated that PW.3 drove the trolley auto rickshaw in a rash and negligent manner and hit the deceased from behind, due to which, the deceased fell down and died on the spot. On the basis of Ex.P1-report, PW.11 registered a crime under Section 304-A IPC. He further contends that after nine (09) days from the date of incident, the prosecution changed its version and came up with a new version stating that the accused hacked the deceased on the backside of the neck with MO.4-Axe. As such, after nine (09) days from the date of accident, the prosecution could setup the present version. Hence, it can be said that there is no eyewitness to the accident. As such, he requests this Court to allow the Appeal by setting aside the conviction and sentence recorded by the learned Additional Sessions Judge.

9. On the other hand, Sri Marri Venkata Ramana, learned Additional Public Prosecutor opposed the Appeal contending that it is the accused who hacked the deceased on the backside of the neck with MO.4-Axe. He further contends that the ocular version of the prosecution witnesses is corroborative

by the medical evidence of PW.8, coupled with the postmortem certificate-Ex.P4. As such, he requests this Court, to dismiss the Appeal by confirming the conviction and sentence recorded by the learned Additional Sessions Judge.

10. We have carefully perused and analyzed the entire evidence on record.

11. According to the prosecution, motive for the accused to kill deceased is that the latter performing black magic, due to which the father of the accused affected with Tuberculosis, for the last five (05) years and elder brother of the accused died in a road accident. As such, motive suggested by the prosecution is because of the witchcraft performed by the deceased, the accused killed the deceased. Absolutely, there is no evidence on record to show that the father of the accused is suffering from tuberculosis and also there is no evidence to show that the brother of the accused died in a road accident. Further, no villager was examined to show that the deceased was practicing witchcraft in the village. As such, the prosecution miserably failed in establishing the motive for the accused to kill the deceased.

12. Coming to the actual incident that took place on 11.07.2017, at about 07.30 AM, PW.1 in his report-Ex.P1, has specifically stated that PW.3 drove his trolley auto rickshaw in a rash and negligent manner and hit the deceased from the back side resulting in death of the deceased. On the basis of Ex.P1 report, PW.11 registered a crime under Section 304-A IPC. From 11.07.2019,

the investigating officer kept quite without doing anything, except preparing observation report and rough sketch of scene of offence. It is only on 20.07.2017, when PW.6 produced PW.3, the FIR was altered from Section 304-A IPC to 302 IPC. Further, PW.8-the then Civil Assistant Surgeon conducted postmortem over the dead body on the same day i.e., on 11.07.2017 at about 02.45 PM and concluded at about 04.45 PM. He signed the postmortem certificate on 12.07.2017. In the Postmortem Certificate-Ex.P4, the doctor has clearly stated that the said injury is not possible in a road accident. In spite of the same, the investigating officers PW.11 and PW.12 kept quite. It is only after PW.6 produced PW.3 before PW.11, the offence was altered to Section 302 IPC and till such time, it is PW.3 who was accused in the present crime, which was initially registered under Section 304-A IPC. It is only after nine (09) days, i.e., on 20.07.2019, the prosecution came up with the present version.

13. PW.3 in his evidence has categorically stated that he witnessed the accused hacking the deceased at about 07.30 AM on 11.07.2017. But he kept quite without informing anyone, till 20.07.2017. PW.3 in his evidence has stated that the present crime was registered against him under Section 304A IPC. PW.3 in his evidence has further stated that on 11.07.2017 itself, he came to know that he was accused in the present crime. Though PW.3 was aware that he was accused in the present crime, which was registered under Section 304A IPC, he did not inform anyone till 20.07.2017. It is only

after nine (09) days, PW.3 came forward with the present version. Except the evidence of PW.1 and PW.3, there is no other material available on record. As already pointed out, P.W.1, in his earliest version, stated that it is a case of accidental death caused by PW.3. However, PW.3, in his evidence, stated that he witnessed the appellant/accused hacking the deceased at about 7:30 AM on 11.07.2017. As such, the evidence of PW.1 and P.W.3 is mutually contradictory. Since PW.3 came forward on the ninth day, despite having knowledge that he was already implicated in the present case on 11.07.2017 itself, we are not inclined to place any reliance on his evidence. So far as PW.1 is concerned, though he claims to be an eyewitness to the incident, in his earliest version he stated that PW.3 caused the accident. Subsequently, he changed his version and, for the first time during the course of trial, came up with the present version before the Court. As such, we are not inclined to place any reliance on the divergent versions given by PW.1. The evidence of PW.1 and PW.3 does not inspire confidence of this Court, as the said version is belated. If PW.3 had really witnessed the incident, he ought to have informed the police on 11.07.2017 itself or at least on the very next day, particularly when he was aware that he had already been implicated in the present case as accused. The explanation offered by PW.3 for not approaching the Police, on the ground that the appellant/ accused had threatened him with dire consequences, cannot be accepted. Even after 20.07.2017, the alleged threat would have continued, and therefore, the reason given by him cannot be accepted. Hence, we are not inclined to

accept the belated version of P.W.3, as his evidence does not inspire confidence of this Court.

14. In view of the above facts and circumstances, the conviction and sentence recorded by the learned Additional Sessions Judge is not sustainable and the same is liable to be set aside.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded by the XIII Additional District and Sessions Judge, Narasaraopet, in S.C.No.93 of 2018 dated 19.07.2018, under Section 302 IPC, is hereby set aside. The appellant/accused is acquitted accordingly. Fine amount, if any, paid by the appellant shall be refunded. As the appellant was granted bail by this Court *vide* I.A.No.01 of 2024 on 04.04.2024 in terms of ***Batchu Rangarao & Others vs. State of A.P***¹, the appellant/accused is directed to surrender before the concerned Court and complete the formalities.

Consequently, interlocutory applications, if any, pending shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE SUBBA REDDY SATTI

Date: 08.12.2025
PSA

¹ {2016(3) ALT (Criminal) 505 (AP)}

HONOURABLE SRI JUSTICE K SURESH REDDY
And
HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CRIMINAL APPEAL No.2170 of 2018
(Per Hon'ble Sri Justice K.Suresh Reddy)

Date: 08.12.2025

PSA