

## IN THE SUPREME COURT OF INDIA

## CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.721 OF 2003

NAGESHWAR REDDY

Appellant (s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

## O R D E R

This appeal is directed against the judgment of the Courts below convicting the appellant

under Section 302 of the Indian Penal Code (for short 'I.P.C.') and sentencing to imprisonment for life.

Originally there were five accused in the case. The Trial Court convicted all of them under Sections

120-B, 143, 144, 147, 148 and 302 read with Section 149 of the I.P.C. However, on appeal the High

Court maintained the conviction of the appellant alone under Section 302 I.P.C. Rest of the accused

were acquitted. The convicted accused has filed the present appeal, after obtaining leave under Article

136 of the Constitution of India.

Briefly the facts are that: one Ramasubba Reddy and his watchman Sheik Dawood were

murdered on 10th October, 1997. Accused no.1, who is the appellant before us and original Accused

no.5 are the sons of the younger brother of Ramasubba Reddy. While A-2 to A-4 were the friends of

these two accused. The deceased Ramasubba Reddy belonged to Andhra Pradesh but had settled down

in Raichur in Karnataka while his younger brother Hussaini Reddy, whose sons are A-1 and A-5,

stayed back in a nearby village of Andhra Pradesh. They were financially not doing well. They used to

seek financial help from Ramasubba Reddy. It is alleged that A-1 and A-5 along with their friends A-2

to A-4 hired a vehicle to visit the house of Ramasubba Reddy. The driver of the vehicle is one Shabbir

Sab -PW 8. The vehicle was stopped at a distance from the house of Ramasubba Reddy. A-1 to A-4 went

inside the house of Ramasubba Reddy at about 8.30 p.m. after leaving the vehicle at a distance from the

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house. A-5 stayed back in the vehicle. Some evidence has been led that a quarrel took place between the

deceased and the accused persons inside the house. There is also evidence that all the accused persons

left the house and went back to their native place in the same vehicle which was waiting at a distance

from the house of Ramasubba Reddy. The accused persons were arrested on 24.10.1997 i.e. two weeks

after the alleged incident. After the arrest, on personal search of A-1 and A-3 conducted inside the

police station, a pistol is said to have been recovered from A-1 and a knife from A-3. The prosecution

has further led the evidence that at the instance of A-1 certain gold ornaments were recovered from the

house of one Naryana Reddy, C.W.27. These ornaments were identified by the daughter-in-law of

Ramasubba Reddy to whom they belonged. Narayana Reddy has not been examined as a witness.

The High Court has relied on certain circumstances enumerated in the judgment which are

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a) Accused 1 & 5 are nephews of deceased Ramasubba Reddy and were unemployed.  
They

used to demand money by way of financial help frequently from Ramasubba Reddy, their uncle;

b) Accused 1 to 5 had engaged a tempo Trax belonging to PW 12 which was driven  
by PW

8 Shabbir Sab. They came to Raichur on 10.10.97 in the said tempo Trax;

c) A-1 to A-4 quarrelled with Ramasubba Reddy while A-5 stayed back in the veh  
icle;

d) A-1 to A-5 returned in the same tempo Trax to their village;

e) All the accused were arrested on 24.10.97 when the Inves  
tigating Officer recovered

M.O.1 pistol from accused no.1 and M.O.2 a knife from accused no.3, on a personal search of th  
ese two

accused in the police station;

f) Accused A-1 made a voluntary statement Exh.P-58 leading to the recovery of  
M.O.s 3 to

10 from the house of C.W.27 Narayana Reddy of Kurnool which were ceased under the Mazhar Exh.P  
-

5.

On the basis of evidence on record the High Court held the accused no.1 to be g  
uilty of the

charge of murder under Section 302 I.P.C. The main reasons which weighed with the  
High Court for

holding A-1 guilty were his presence in the house of Ramasubba Reddy on date of in  
cident and the

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recovery of the gold ornaments and M.O.s 3 to 10 at a distance from the house of Narayana Redd  
y. The

High Court rightly did not rely on the evidence regarding recovery of pistol from A-1 on  
his personal

search in the police station.

We have heard the learned counsel for the parties. It is important to note that Narayana

Reddy from whose house the recovery of ornaments M.O.s 3 to 10 is said to have been made, has not

been examined. This is a serious lapse. He alone would have been in a position to say from whom he

received those ornaments and how they were found in his house. Therefore, the recovery of the

ornaments at the instance of A-1 by itself does not persuade us to hold that A-1 is guilty of murder of

Ramasubba Reddy. It is not known when the ornaments were stolen and by whom. The present is the

case of circumstantial evidence in which every fact has to be proved beyond any reasonable doubt. If the

evidence of recovery of ornaments is held not to be enough to convict A-1, we are left with only the other

fact i.e. presence of A-1 in the house of Ramasubba Reddy on 10.10.97 at about 8.30 p.m. That by itself

is not enough to establish that he committed the murder of Ramasubba Reddy and his watchman Sheikh

Dawood.

As a matter of fact, the High Court has observed in para 18 of its judgment as under :

"The presence of accused no.1 alone with other accused is established by the

prosecution by examining PWS 3,5 & 13. In the absence of any direct evidence

regarding the overt acts committed by Accused Nos.2 to 4 who were present there, it

cannot be stated that they also committed overt acts against the deceased persons as

injuries were caused only by one knife MO-2 seized by the prosecution. We

disbelieve the recovery of MO-2 from the person of accused no.3. Therefore, t  
here

is no perfect proof of involvement of other accused persons i  
n the commission of

murder....."

We fail to understand as to how the case of accused no.1  
can be differentiated from the

case of A2 to A4. There is no evidence of any overt act on part of A-1 also. On the  
reasoning of the

High Court accused A-1 should have also been acquitted. The same reasonin  
g equally applies to the

case of A-1. Therefore, we are unable to appreciate how could the High Court convict A-1 of t  
he murder

of Ramasubba Reddy and the watchman Sheik Dawood while acquitting rest of  
the accused persons.

As a result the conviction of the appellant under Section 302 I.P.C. f  
or the murder of Ramasubba

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Reddy and Sheik Dawood is hereby set aside. The appeal is accordingly  
allowed. The accused be

released forthwith if not required in any other case.

.....J.

(ARUN KUMAR)

.....J.

(B.N. SRIKRISHNA)

NEW DELHI;

15TH FEBRUARY, 2005

ITEM NO.101

COURT NO.10

SECTION II

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 721 OF 2003

NAGESHWAR REDDY

Appellant (s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

Date: 15/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN KUMAR

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)

Mr.R.Sundaravaradan, Sr.Adv.

Mr.G.N.Reddy, Adv.

for Mr. V.G. Pragasam,Adv.

For Respondent(s)

Mr.Anil K.Mishra, Adv.

Mr.A.Rohen Singh, Adv.

for Mr. Sanjay R. Hegde,Adv.

UPON hearing counsel the Court made the following

O R D E R

Appeal is allowed in terms of the signed order.

(G.V.Ramana)

(Veera Verm

Court Master

Court Maste

(Signed order is placed on the file)

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