

**IN THE HIGH COURT OF ANDHRA PRADESH :: AT
AMARAVATI**

* * * *

Criminal Appeal No.1113 of 2007

Between

Vonumu Appayamma and others

.... Appellants

And

The State of Andhra Pradesh,
Rep. by its Public Prosecutor

.... Respondent

JUDGMENT PRONOUNCED ON : 05.03.2025

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY :

1. Whether Reporters of local newspapers : YES/NO
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : YES/NO
marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : YES/NO
see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY****+ Criminal Appeal No.1113 of 2007**

% 05.03.2025

Vonumu Appayamma and others

...Appellants

Vs.

\$ The State of Andhra Pradesh,
Rep. by its Public Prosecutor

... Respondent

!Counsel for the Appellants : Sri A. Ravi Shankar

^Counsel for the Respondent : Public Prosecutor

<Gist :

>Head Note :

? Cases referred:

APHC010158282007



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3327]

WEDNESDAY, THE FIFTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

**PRESENT
THE HONOURABLE SRI JUSTICE K. SREENIVASA REDDY**

CRIMINAL APPEAL NO.1113 OF 2007

Between:

Vonumu Appayamma and others

...APPELLANTS

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor

...RESPONDENT

Counsel for the Appellants:

1.A RAVI SHANKAR

Counsel for the Respondent:

1.PUBLIC PROSECUTOR (AP)

The Court made the following JUDGMENT:

A1 to A4 and A6 in Sessions Case No.10 of 2004 on the file of the learned II Additional District and Sessions Judge (Fast Track Court), Srikakulam are the appellants in the present

Criminal Appeal. As A5 and A7 died pending trial, the case against them was abated.

2. The appellants/A1 to A4 and A6 were tried by the learned Additional Sessions Judge for the offences punishable under Sections 302 and 201 IPC.

3. Substance of the charge is that, on the intervening night of 21/22nd August, 2003, at about 01.00 hours, at Yathapeta village, A1 to A4 and A6 along with A5 and A7 caused the death of one Alupana Ramu (hereinafter referred to as 'the deceased') and threw the dead body of the deceased in the casuarinas tope of one Alupana Laxmana Rao with an intention to screen the evidence, thereby committed the offences punishable under Sections 302 and 201 IPC.

4. After completion of trial, learned Additional Sessions Judge convicted A1 of the offence punishable under Section 304-Part I read with 109 IPC and sentenced her to undergo Simple Imprisonment for a period of ten (10) years and also to pay fine of Rs.5,000/- (Rupees Five Thousand only), in default to undergo Simple Imprisonment for a period of six (6) months. A2 to A4 and A6 were convicted of the offence punishable under Section 304-Part I IPC and sentenced to undergo Rigorous Imprisonment

for a period of ten (10) years each and also to pay fine of Rs.5,000/- (Rupees Five Thousand only) each, in default to undergo simple imprisonment for a period of six (6) months each. A1 to A4 and A6 were further convicted of the offence punishable under Section 201 IPC and sentenced to undergo Simple Imprisonment for a period of one year each and to pay fine of Rs.500/- (Rupees Five Hundred only) each, in default to undergo simple imprisonment for a period of three (3) months each. The substantive sentences were directed to run concurrently. It was further directed that out of the total fine amount, an amount of Rs.25,000/- shall be paid to PW.2 Alupana Suryam, the wife of the deceased, as compensation in terms of Section 357 of Cr.P.C. A1 to A4 and A6 were found not guilty of the offence punishable under Section 302 IPC and they were acquitted of the said offence.

5. Case of the prosecution, briefly, is as follows.

i) A1 is the mother of A2 and other accused are the neighbours and supporters of A1 and A2. It is alleged that the deceased had got illicit intimacy with the wife of A2 and he used to visit her house now and then in the absence of A2. Likewise, on the intervening night of 21/22nd August 2023, at about 01.00

hours, the deceased took PW.4 and LW.8 along with him to his coconut tope for watching and from there, at about 02.00 hours, he went to the house of A2. In the absence of A2, the deceased entered into the house of A2 and met the wife of A2. At that time, PW.4 and LW8 were waiting outside the house. After sometime, A1, the mother of A2, woke up and noticed the deceased and wife of A2 in a compromising mood on a cot and then she caught hold of hair of the deceased and dragged him out and quarrelled. Meanwhile, A2 to A7 also reached there after rabbit hunting and all the accused beat the deceased with sticks and iron rods indiscriminately and caused his instantaneous death. PW.4 and LW.8 saw the beatings of the accused and out of fear they ran away. A2 to A7 are alleged to have thrown the dead body of the deceased in the casuarinas tope of one Alupana Laxmana Rao with an intention to screen the evidence.

ii) On 22.08.2003, at about 06.00 AM, one Talayari of Kuppili village went to the office of PW.1 and informed that one dead body was lying in casuarinas tope of one Alupana Laxmana Rao. Then, he proceeded to the said tope along with Talayari and found the dead body with injuries all over the body. They identified him as the deceased. PW.1 kept the Talayari at the

scene of offence and went to the Police Station at Etcherla and submitted a report. Ex.P1 is the report submitted to the police.

iii) On 22.08.2003, at about 15.50 hours, PW.9 – the Sub-Inspector of Police, Etcherla Police Station, received Ex.P1 report from PW.1 and registered the same as a case in Crime No.88 of 2003, under Section 174 Cr.P.C., as the cause of death was not known. Ex.P16 is the original FIR submitted to the jurisdictional Magistrate. Thereafter, PW.9 left the Police Station along with PW.1 and visited the scene of offence. They secured PWs.1 and 7 and others and observed the scene of offence in their presence under cover of a mediators report Ex.P2 drafted by PW.1. PW.9 prepared the rough sketch of the scene of offence under Ex.P17. He conducted inquest over the dead body of the deceased in the presence of PWs.1, 2, 3 and others. During the course of inquest, PW.9 recorded Section 161 Cr.P.C., statements of PWs.1, 2, 3 and others. Thereafter, he sent the dead body of the deceased to the Government Hospital, Srikakulam for post-mortem examination.

iv) PW.12, the Civil Assistant Surgeon, conducted autopsy over the dead body of the deceased on 23.08.2003 and issued Ex.P21 post-mortem certificate. According to PW.12, the cause

of death was due to shock and haemorrhage due to fracture of ribs on both sides of chest, precipitated by remaining injuries.

v) On 25.08.2003, at about 10.30 PM, PW.11, the Inspector of Police, was informed by PW.9 about the alteration of FIR in Crime No.88 of 2003 from Section 174 Cr.P.C., to Section 302 IPC. On 26.08.2003, PW.11 commenced his investigation, proceeded to Etcherla Police Station and collected express FIR and verified the investigation done by PW.9. Then, PW.11 left Etcherla Police Station along with PW.9 to the scene of offence. PW.11 secured the presence of PWs.1 to 3 and others and recorded their statements. On 27.08.2003, PW.11 proceeded to the scene of offence and secured the mediators and prepared scene of observation report under Ex.P4. PW.11 further prepared rough sketch of the scene of offence under Ex.P19. He also examined PWs.5, 6 and others and recorded their statements. On 31.08.2003, PW.11 along with PW.9, other staff and mediators PWs.8 and 10, proceeded to Ananthapuram road junction in two jeeps and arrested the accused. The accused are alleged to have made a confessional statement before PW.11. After seizing the weapons, PW.11 filed charge sheet and the same was taken

on file as PRC No.30 of 2003 on the file of the learned Judicial Magistrate of First Class, Srikakulam.

6. By an order, dated 21.01.2004, the learned Magistrate committed the case to the Court of Session and later the same was numbered as SC No.10 of 2004 and made over the case to the Court of the learned I Additional District and Sessions Judge, Srikakulam. Subsequently, the same was transferred to the Court of the learned II Additional District and Sessions Judge (Fast Track Court), Srikakulam, for disposal.

7. On appearance of accused Nos.1 to 4 and 6, charges under Sections 302 and 201 IPC were framed, read over the contents and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

8. In support of its case, the prosecution examined PWs.1 to 12, marked Exs.P1 to P21 and exhibited MOs.1 to 7.

9. When A1 to A4 and A6 were examined under Section 313 Cr.P.C., they denied the incriminating material appearing against them and reported no defence evidence, except marking Exs.D1 to D3.

10. The learned Additional Sessions Judge, on appreciation of entire oral and documentary evidence on record, convicted and

sentenced A1 to A4 and A6 as aforesaid, vide impugned judgment dated 21.08.2007. Aggrieved by the said judgment, the present Criminal Appeal has been preferred.

11. Learned counsel for the appellants submitted that entire prosecution case rests on the solitary testimony of PW.4, who is none other than the person worked under the deceased. He submitted that PW.4 was examined by the police at a belated stage i.e. four days after the incident, and his evidence is not corroborated by any independent evidence. He further submitted that PWs.2 and 3, who are the wife and father of the deceased, did not state anything with regard to the alleged incident. He further submitted that the evidence of PW.4 is not trustworthy and his evidence cannot be taken into consideration, conviction cannot be based on the same. He submits that if the evidence of PW.4 is excluded from consideration, there is no other evidence to connect the accused to the alleged crime.

12. On the other hand, learned Additional Public Prosecutor appearing on behalf of the respondent/State submitted that PW.4 is the sole eye witness to the incident in question. According to him, out of fear, PW.4 left the place and he could not inform anyone about the incident immediately, but after lapse of four

days he came back and stated about the alleged incident that had taken place. He further emphasised that there is corroboration to the evidence of PW.4 in the form of evidence of PW.2, who stated that the alleged incident is said to have taken place in front of the house of A2. He further submitted that the judgment passed by the learned Additional Sessions Judge is correct and does not call for any interference by this Court.

13. The point that arises for determination is whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

14. Heard. Perused the record.

15. PW.1 is a retired Village Panchayat Secretary and basing on the information given by Talayari of Kuppili village he went to the Police Station and lodged a report Ex.P1. PWs.2 and 3 are the wife and father of the deceased. According to PW.2, on the fateful day, the deceased had taken his dinner and slept in the house and in the midnight, at about 01.00 AM, she saw the deceased leaving the house and she thought that the deceased was going to the cattle shed to tie the cattle. At about 04.00 AM, she woke up and asked her mother-in-law (LW.4) about the deceased and LW.4 replied that the deceased might have gone

to the fields as usual and he would come back. The evidence of PW.3 is only to the effect that he came to know about the death of the deceased on the next day through his wife. In view of the same, much credence cannot be given to the evidence of PWs.2 and 3 for the reason that they only speak to the fact that the deceased left the house in the night.

15. PW.4 is the only eye witness, who is alleged to have seen the incident. According to PW.4, he used to work under the deceased and cultivate the lands of the deceased. He along with the deceased and one Vanam Thavitayya (LW.8) used to pluck coconuts in the coconut topes belonging to owners and used to sell the same at Visakhapatnam in a Van for profit. On the date of the incident, in the morning, PW.4, the deceased and LW.8 plucked the coconuts in the coconut topes, loaded the same into D.B. Cart and sent the same to Visakhapatnam. On that night, PW.4 and LW.8 slept on the thrashing floor of the deceased. In the midnight, the deceased came to them and woke them up. Thereafter, all of them proceeded to the coconut topes and the deceased went to the house of A2 and asked PW.4 and LW.8 to wait near the house of A2. Accordingly, they both waited near Banyan tree. Within 15 minutes, PW.4 noticed an altercation

between A1 and the deceased. In the course of said altercation, other accused A2 to A7 came there, after hunting rabbits. When A2 enquired with A1 about the altercation, A1 informed that the deceased came to their house at that night. On hearing the same, A2 to A7 raised a dispute with the deceased for his visiting their house at that midnight. On the instigation of A1, A2 to A7 beat the deceased with crowbars and pushed down the deceased. On seeing the same, PW.4 along with LW.8 escaped from the scene due to fear and came back four days thereafter.

16. PWs.5 and 6 did not support the prosecution case and they were treated hostile by the prosecution. PWs.7 and 8 are the panch witnesses for the inquest and seizure of weapons.

17. A perusal of the entire evidence on record goes to show that except the evidence of PW.4, who used to work under the deceased, there is absolutely no other independent evidence to connect the accused to the alleged crime. The evidence of PW.4 goes to show that, on the fateful day, he is alleged to have gone along with the deceased and another in the night at about 01.00 AM to the casuarinas topes. Thereafter, the deceased went to the house of A2 and asked PW.4 and another to remain near the house of A2. When a direction was given to PW.4 and another to

stay at casuarinas topes, it is not known as to why PW.4 and another went to the house of A2 along with the deceased. There is any amount of ambiguity as to whether the deceased directed PW.4 and another to remain at casuarinas topes or not. Irrespective of the said fact, PW.4, being the worker of the deceased, is alleged to have witnessed the incident of A2 to A7 attacking the deceased. If really, PW.4 was present at the scene of offence, he might have gone to the rescue of his master, when the latter was being attacked. In the absence of that, at least he might have made hue and cry or raised an alarm to the extent that making others to wake up and come to the rescue of the deceased. The behaviour of PW.4, secreting himself behind one of the trees and not coming forward to rescue the deceased, appears to be abnormal. Having observed the alleged offence, no prudent person would go away from the place for a period of four days out of fear. The statement of PW.4 was recorded by the police at a belated stage i.e. after four days of the alleged incident. If PW.4 is an eye witness to the occurrence, he would have gone to his house and intimated about the incident to the inmates of the house. Quite surprisingly, none of the things has been done by PW.4. PW.4 appears to be a planted witness and

his evidence does not inspire confidence. Since the statement of PW.4 was recorded by the police at a belated stage i.e., four days after the alleged incident, it throws doubt on the trustworthiness of the evidence of PW.4. In view of the aforesaid reasons, this Court is of the opinion that the evidence of PW.4 cannot be placed in the category of wholly reliable. If the evidence of PW.4 is excluded from consideration, there is no other legal evidence to connect the appellants herein to the alleged crime.

18. In view of the aforesaid facts and circumstances, this Court is of the opinion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt. Therefore, the impugned judgment passed by the learned Additional Sessions Judge is liable to be set aside.

19. Accordingly, the Criminal Appeal is allowed and the conviction and sentence passed by the learned II Additional District and Sessions Judge (Fast Track Court), Srikakulam, in the judgment in SC No.10 of 2004, dated 21.08.2007 are set aside. The appellants/A1 to A4 and A6 are acquitted of the charges levelled against them and they are set at liberty. The bail bonds, if any, shall stand discharged. Fine amount, if any, paid by the appellants shall be refunded to them.

HON'BLE SRI JUSTICE K. SREENIVASA REDDY

Criminal Appeal No.1113 of 2007

Date:05.03.2025

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