

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
CRIMINAL APPEAL No. 262 of 2014

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JUDGMENT:

This appeal is filed under Section 378 Cr.P.C. by the State challenging the judgment dated 06.09.2011 in S.C.No.365 of 2010 of the Principal Assistant Sessions Judge, Warangal.

The case of the prosecution as culled out from the charge sheet is that on 05.10.2008 at about 9.00 p.m. A.1 was found quarrelling with his mother P.W.5. On seeing this, P.W.2, brother of A.1, intervened and questioned A.1 as to why he was quarrelling with P.W.5. A.1 abused him in filthy language and attacked him. Meanwhile, P.W.1 along with his brother P.W.3 and his mother P.W.4, tried to rescue P.W.2. A.1 picked up an axe and attacked P.W.2 causing injury to his nose. He also beat him and caused injuries to his mouth and backside of ear. A.1's son Raju beat P.W.3 with stick and caused injury on his left shoulder. A.4 beat P.W.3 with stick and caused injuries in his right hand fingers. A.2 beat P.W.4 with stick and caused injury on the left hand below the arm. The aforesaid attack was allegedly made during night time by A.1 to A.4 in view of a land dispute. On telephonic information, 108 ambulance arrived at the scene of offence and the injured were shifted to Government Hospital, Parkal. Thereafter, they were referred to M.G.M. Hospital for better treatment.

On the basis of the complaint lodged by the defacto complainant, a case in Crime No.107/2008 under Section 326

r/w Section 34 IPC was registered and investigation was taken.

During course of investigation, the Sub-Inspector of Police, Chityal examined the defacto complainant and recorded his statement. He also examined five witnesses including one injured and recorded their statements. He also visited the scene of offence and drafted the crime details form in the presence of mediators. Thereafter, he altered the Section of law by adding Section 306 IPC r/w Section 34 IPC. Further investigation established that A.1 committed the offence punishable under Section 307 r/w Section 34 IPC and A.2 and A.4 committed the offence punishable under Section 324 r/w Section 34 IPC. Since A.3 was a juvenile, he was produced before the Juvenile Court. Therefore, A.1, A.2 and A.4 were charge sheeted and the Additional Judicial First Class Magistrate, Parkal committed the case to the Court of Session for disposal.

On appearance of A.1, A.2 and A.4, a charge under Section 307 IPC was framed against A.1 and charges under Sections 324, 325 and 307 r/w Section 34 IPC were framed against A.2 and A.4 and the charges were read over and explained to them in Telugu. They pleaded not guilty and claimed to be tried.

Prosecution examined P.Ws.1 to 15 and got marked Exs.P.1 to P.24 and M.O.1. After closure of prosecution evidence, A.1, A.2 and A.4 were examined under Section 313 Cr.P.C. and the incriminating material against them was put to them. They denied their guilt. They marked Exs.D.1 to D.4.

After considering the evidence on record, the Court below acquitted A.1 of the offence punishable under Section 307 IPC and also acquitted A.2 and A.4 of the offences punishable under Section 307 r/w 34 IPC and Sections 324, 325 IPC.

Challenging the same, this appeal is filed.

The learned Public Prosecutor contended that there were no doubt minor discrepancies in the evidence adduced by the prosecution and though the medical evidence corroborated the prosecution case, the Court below acquitted the accused erroneously relying on the minor discrepancies in the prosecution evidence and also on the ground of delay in lodging FIR and sending copy thereof to the Magistrate with a delay of 8 days. He contended that the findings of the Court below are therefore erroneous and liable to be set aside in appeal.

The counsel for the accused/respondents, on the other hand, contended that the prosecution witnesses did not support the case of the prosecution and there are discrepancies in their evidence which were inconsistent with the prosecution case and therefore the accused are entitled to benefit of doubt. He further contended that there is unexplained delay of about 24 hours in giving complaint to the police and the FIR was also sent to the Magistrate 8 days after it was issued. He contended that all these factors were rightly taken into account by the Court below for acquitting the accused.

The point for consideration is, whether the Court below had acted correctly in acquitting the accused of the charges framed against them?

POINT:

It is not disputed that P.Ws.1 to 6 and A.1 to A.3 are related to each other. P.W.2 and A.1 are brothers, P.W.5 is their mother and P.Ws.1 and 3 are sons of P.W.2. P.W.4 is the wife of P.W.2, P.W.6 is the niece of P.W.2; A.2 is the wife of A.1; and A.3 and A.4 are their children.

According to P.W.1, A.3 beat him with stick on his right hand fingers and A.4 beat P.W.3 with stick on his right shoulder. But according to P.W.2, A.3 beat P.W.3 with stick on his left shoulder and A.4 beat P.W.1 with stick on his right hand fingers. P.W.3 stated in his evidence that A.3 beat him with stick on his left shoulder. Although the evidence of P.Ws.2 and 3 with regard to the injury sustained by P.W.3 is corroborated by the medical evidence of P.W.12, the discrepancy in the evidence of P.Ws.1, 2 and 3 with regard to the overt acts of A.3 and A.4 create a doubt about the veracity of their evidence. P.W.4's evidence is inconsistent with the evidence of P.W.1 with regard to the overt acts of A.3 and A.4. While P.W.4 stated that the clothes of P.Ws.2 and 3 were not stained with blood, P.W.6 stated that the clothes of P.Ws.1 and 3 were stained with blood. While P.W.1 stated in cross-examination that there are cut stones, concrete stones and sticks at the scene of offence, P.Ws.2 to 5 denied this. These discrepancies also throw a doubt about the prosecution case.

According to P.Ws.1, 2 and 3, the incident took place on 05.10.2008 at 9.00 p.m. But, Ex.P.1 complaint was lodged on 06.10.2008 at 8.15 p.m. almost 24 hours later. P.W.2 denied that there was any delay in lodging the complaint. P.W.3 stated that after the incident, P.W.1 secured 108 ambulance and they went to Government Hospital, Parkal for treatment; that although the Police Station, Chityal is on the way to Parkal village, P.W.1 stated in cross-examination that P.Ws.1 to 3 did not go to the said Police Station while going to the Government Hospital, Parkal. P.W.3 also stated that P.W.1 did not inform the police about the occurrence of the incident over telephone. According to P.W.3, he did not go to the police station in view of severe injuries sustained by them. However, according to the medical evidence of P.W.12, P.Ws.1, 2 and 4 sustained simple injuries and only P.W.3 sustained grievous injury. In this view of the matter, the explanation of P.W.3 with regard to the delay in lodging the complaint is not satisfactory.

Also Ex.P.22 FIR issued on 06.10.2008 was dispatched 8 days later to the learned Magistrate and no explanation is offered for this delay by the prosecution. This delay creates a suspicion about possible embellishment in the prosecution version and would be fatal to the case of the prosecution.

Since the injury on P.W.3 was on his left shoulder and not on any vital organ and the injuries on the persons of P.Ws.1, 2 and 4 are simple in nature, it is doubtful if any bleeding injuries were caused to them by A.1 to A.4 and it clearly disproves the prosecution case that A.1 to A.4 were having an

intention to kill P.Ws.1 to 4. It is possible that on account of land dispute between the accused and the prosecution witnesses, the accused were falsely implicated in the case.

The presumption of innocence of the accused, which rightly exists at the commencement of trial, was reinforced by the acquittal of the accused by the trial Court. It is settled law that if the view taken by the trial Court is a possible view, the appellate Court in exercise of its power under Section 378 Cr.P.C. ought not to interfere with the judgment of the trial Court.

In this view of the matter, I am of the opinion that the trial Court has correctly appreciated the evidence on record and come to the conclusion that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. Therefore, I do not find any merit in the appeal and the same is liable to be dismissed.

Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending in the appeal shall also stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

2nd February, 2015
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THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA
RAO

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