

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Crl.A.No.415 of 2015

JUDGMENT:

This Criminal Appeal is filed challenging the judgment dated 07.08.2008 in S.C.No.195 of 2006 of the Assistant Sessions Judge, Kavali, acquitting the respondent/accused for having committed the offences punishable under Sections 332, 307 IPC and Section 27 of Indian Arms Act.

2. The case of the prosecution is that PW.1 is the Sub-Inspector of Police, Bitragunta and PW.2 is the Police Constable attached to Bitragunta Police Station and when they were on patrolling duty on the intervening night of 21/22.08.2004 at Kapparala Tippa Centre on N.H.5 Road, they found two motor cycles, coming to the centre and on the instructions of PW.1, PW.2 stopped the two motor cycles and enquired the persons. It is the further case of the prosecution that PW.2 identified one of the pillion riders as an accused in several murder cases and warrants are pending against him; and that the accused picked up a knife from his motor cycle and fisted PW.2 on his face and chest and attempted to kill him. In the meanwhile, PW.1 opened one round fire into air and thereafter, the accused escaped from the scene of offence, leaving the knife. It is alleged that PW.1 seized the knife under the cover of police proceedings and PWs.3 and 4 witnessed the offences.

3. PW.1 registered the police proceedings as Crime No.118 of 2004 under the above provisions of law and issued FIR. P.W.5 is a doctor of a private hospital, who treated PW.2 and issued Ex.P.5-wound certificate. PW.6-investigated into the matter and filed charge sheet showing the accused as absconding.

4. Learned Additional Judicial Magistrate of I Class, Kavali registered the case as PRC.No.7 of 2006 and committed the same to the Court of Sessions, Nellore, where it was numbered as S.C.No.195 of 2006. It was then made over to the Assistant Sessions Judge, Kavali for trial.

5. The charges punishable under Sections 332 and 307 IPC were framed against the accused, read over and explained to him in Telugu, but he pleaded not guilty.

6. The prosecution examined PWs.1 to 6 and marked Exs.P.1 to P.6. and M.O.1-knife.

7. After completion of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to incriminating material appearing against him in the evidence of prosecution and he denied the same.

8. On consideration of the evidence on record, the Court below acquitted the accused.

9. Questioning the same, this Criminal Appeal is filed.

10. Learned Public Prosecutor representing the State contended that the evidence on record amply establishes the guilt of the accused and therefore, the trial Court erred in acquitting the accused on technical grounds and the said decision of the Court below cannot be sustained.

11. Learned counsel for the respondent/accused however, contended that the judgment of the Court below is correct and does not suffer from any infirmity. He also contended that PW.1 might have mis-used one bullet and to account for that he foisted the false case against the accused.

12. According to the prosecution, on the intervening night of 21/22.08.2008 at Kapparala Tippa Centre on N.H.5 road, while PW.1 and PW.2 doing patrolling duty, the accused came on motor cycle and when stopped by PWs.1 and 2, they picked up knife from their motor cycle, fisted PW.2 on his face and chest and then attempted to kill him. It is further alleged that PW.1 took out pistol and opened one round of fire into the air and that the accused escaped from the scene of offence leaving the knife.

13. Although, PWs.3 and 4 were alleged to be eye witnesses, they did not support the prosecution version in the Court and did not incriminate the accused in any way. The Additional Public Prosecutor was permitted to cross-examine PWs.3 and 4, but it did not yield any result.

14. PW.1 admitted that he did not know the vehicle number of the motor cycle allegedly intercepted by them in the police proceedings and he did not mention his service pistol number while answering the specific question. PW.1 also stated that there were no autos where the incident allegedly occurred. Contradicting the evidence of PW.1, PW.2 stated that they had noted the vehicle number on a paper, but he did not give it to the investigating officer. He further stated that there are 4 or 5 autos at the centre at the time of incident, but they did not call the auto drivers to participate in the proceedings. Of course, he also stated that he do not know how many warrants were pending against the accused and no one informed about the NBWs against the accused.

15. PW.6, the investigating officer stated that PWs.3 and 4 were present at the time of incident, contradicting the evidence of PW.1 that no body was present there. The prosecution did not place any evidence like GD entries or station records before the Court to show that PWs.1 and 2 were on patrolling duty at the time of incident at Kapparala Tippa. PW.6-the investigating officer admitted in his cross-examination that he do not verify the GD entries on 21.08.2008 to know about the movements of PWs.1 and 2 and they did not verify the register to know how many bullets PW.1 had withdrawn from armoury. He stated that the Station House Officer would maintain a register regarding the weapons and bullets etc. Since the case of the prosecution is that one round of ammunition was fired by PW.1, PW.6 is expected to verify the register pertaining to the service pistol provided to PW.1 and the bullets drawn by him etc.

16. The knife-MO.1 has been seized without complying with the provisions of Section 100(4) Cr.P.C. which mandates that two or

more independent and respectable inhabitants of the locality should be witnesses to the search and a panchanama of the items found at the time of search should be prepared. PW.2, the alleged victim had stated that there are 4 or 5 autos available at the centre, PW.6, investigating officer, who also confirmed this ought to have examined those auto drivers as independent witnesses for the seizure of M.O.1. Admittedly, there are Government hospitals at Bitragunta and Kavali. The injuries sustained by PW.2 were only abrasions and not serious injuries. No explanation is furnished by the prosecution why PW.2 went to a private doctor and obtained Ex.P.5-wound certificate, when he could have gone to the Government Hospital at Bitragunta or Kavali. Ex.P.5, the alleged wound certificate also does not mention the time of incident, date of examination and particulars of the alleged injuries.

17. Having regard to the facts and circumstances, I fee that the prosecution has miserably failed to establish the guilt of the accused. The trial Court has rightly acquitted the respondent of the above offences and no case has been made out by the prosecution for interference by this Court.

18. Therefore, there are merits in the Criminal Appeal and the same is accordingly dismissed.

19. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01.04.2015

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THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

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