

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1647 of 2007

JUDGMENT:

The Criminal Appeal is preferred by the State against the Judgment dated 05.09.2005 passed in S.C.No.227 of 2002 by the Court of the Assistant Sessions Judge, Nuzvid, whereby the learned Judge acquitted the accused for the offence under Section 307 IPC.

The case of the prosecution, as recorded by the trial Court, is as follows:

L.W.1 Macherla Mangal is the inter caste marriage wife of the accused on love affair. She is the daughter of L.W.2 Banavath Dheniya. The accused is having grudge and enmity against L.W.1 in connection with the subject matter of offence in Crime No.112 of 2001 of Vissannapeta P.S., and was awaiting for an opportunity to wreck vengeance against her and to kill her. On the afternoon of 11.03.2002 at about 3.00 p.m., when L.W.1 was at her home in Maremanda, the accused went to her house, having armed with knife with an intention to kill her due to grudge and enmity, tried to cut over her neck with knife by threatening her that he will kill her and he must kill her, but L.W.1 escaped from it and when raised her left hand across it, the knife was hit on her hand, causing a severe cut injury on her left hand. If L.W.1 did not escape, her neck would have been certainly cut away. While L.W.1 was raising cries that the accused was killing her, Nandamuri Purnachandra Rao, Nandamuri Srilakshmi, Banavath Durga, Banavath Madhu (Lws.3 to 6) came on hearing her cries and when they came across, the accused again took out a stick which was there and dealt severe blows on her body indiscriminately by threatening her that he will kill her at any time. After L.W.2 came from outside, L.W.1 informed the incident to her father. Then L.W.1 accompanied by L.W.2 came to the P.S., on the same day and reported the matter in the Police Station.

This Court heard the arguments and perused the records.

Before the Court below, to substantiate the case of the prosecution, P.Ws.1 to 10 were examined and Exs.P.1 to P.5 were marked. On behalf of defence, D.Ws.1 and 2 were examined and no document was marked.

The main witness in the present case is P.W.1, who is the injured person. Even according to the prosecution, no other witness claims to be the eye witness to the occurrence concerned. The learned trial Judge appreciated the evidence, more particularly the evidence of P.W.1, coupled with the evidence of P.W.4, the Doctor, who treated the injured, P.W.1 and acquitted the accused. The relevant observations of the Court below while acquitting the accused are as follows (paragraphs 32 and 33).

If really the accused made attack on P.W.1 with a knife and when P.W.1 received bleeding injury on left fore arm, the prosecution must have produced the weapon said to have been used by the accused for the commission of offence. In the instant case, the prosecution has failed to produce the weapon said to have been used by the accused during the course of the trial. The Court also asked the learned A.P.P., and adjourned the case for cause production of the knife alleged to be used by the accused. But the police did not produce the knife and mentioned in this aspect that knife was not seized by P.W.10. Therefore, it is the burden on the part of the prosecution to produce the material object which is knife alleged to be used by the accused for the commission of offence. Apart from it, P.W.10 did not examine neighbours of the scene of offence by name Bhaskara Rao, Nageswara Rao and Chalapathi Rao, who were at either side of the house of P.W.1 as they were residing at Hyderabad. In this aspect, except the oral evidence of P.W.10, there is no evidence on record to show that the neighbours of P.W.1 were not examined as they were residing at Hyderabad. Therefore, it is the duty of the prosecution to examine the neighbours of the scene of offence to prove the case of prosecution and also to support the evidence of prosecution and on the other hand, the oral evidence of P.W.1 was not supported with medical evidence and also the weapon said to have been alleged to be used by the accused was not seized by the P.W.10 Investigating Officer and as per the evidence of P.W.4, Medical Officer, the injury on the body of

P.W.1 might have been caused with blunt object but not caused with a sharp edged weapon like knife. Admittedly there were family disputes between P.W.1 and the accused. Ex.P.4 is the FIR and on careful perusal of Ex.P.4, FIR, it was sent to the Court on 13.03.2002, whereas the alleged offence took place on 11.03.2002 at 3.00 p.m. At the same time, the prosecution has failed to explain the delay of two days for sending Ex.P.4 to the Court. Hence, the evidence of P.W.1 is not believable with regarding to the alleged incident took place on the day of incident.

... On the other hand, D.Ws.1 and 2 are defence witnesses who were examined on behalf of the accused. Their evidence is no way useful to the case of the prosecution as they did not speak about the incident. Whereas as per the evidence of P.Ws.1 and 2, P.W.1 is not the legally wedded wife of the accused. Therefore, the evidence of D.Ws.1 and 2 came to be looked into.

On perusing the above observations of the Court below, this Court is of the view that learned Judge has taken into consideration the fact of non-production of weapon and that the evidence of the Medical officer, P.W.4 contradicts the evidence of P.W.1, injured, and came to the conclusion that the prosecution failed to establish its case and as such, acquitted the accused for the offence under Section 307 IPC.

This Court is of the view that the Judgment of the trial Court is in accordance with law and it does not suffer from any infirmity or perversity and the acquittal recorded by the trial Court needs no interference by this Court.

The Criminal Appeal is accordingly dismissed. Miscellaneous applications, if any pending in this appeal, shall stand dismissed.

JUSTICE RAJA ELANGO

02.08.2016
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