

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL APPEAL NO.928 OF 2010

DATED:14-03-2016

Between:

Shaik Mitti Nazeez Hussain @ Reddy
and another ... Appellants/Accused Nos.1 and 2

And

The State of A.P.,
Through SHO, I Town P.S., Ananthapur
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANTS: Mr. N. Aswartha Narayana

COUNSEL FOR THE RESPONDENTS: Public Prosecutor (AP)

THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

Accused Nos.1 and 2 in Sessions Case No.673 of 2009 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Anantapur, instituted this appeal against the judgment under which they were convicted for the offence under Section 302 read with Section 34 of Indian Penal Code (IPC) and sentenced to suffer imprisonment for life and to pay a fine of Rs.200/- (Rupees two hundred only) each, in default to suffer rigorous imprisonment for a period of two months.

2. The case of the prosecution in brief is that the deceased was a resident of Amidala Street, Old Town, Anantapur. He was the only son to his parents, besides three sisters. The two elder sisters were married. After the death of his parents, he, along with his younger sister, was residing with P.W.3. The accused are also the residents of Anantapur Town. The deceased was addicted to alcohol after the death of his parents. On 18.3.2009 at about 5.30 p.m., the deceased left the house of P.W.2 in an auto belonging to P.W.5 – an auto driver and a friend of the deceased. They visited the house of the de facto complainant – P.W.1, who is no other than the brother-in-law of the deceased and husband of P.W.3, waited for sometime, picked up P.W.3 and dropped her at Tower Clock. The deceased and P.W.5 proceeded to Tapovanam near Narayanapuram, for visiting the house site of the deceased. While returning from there, P.W.5 found one customer due to which the deceased came to front seat and after dropping the passenger in the auto at Old Town, he again brought a passenger back to Tapovanam. While returning to Old Town in the same auto, the deceased purchased liquor near Suryanagar Bridge and consumed the same in the auto. They reached Lalbund Street

Circle at 7.00 p.m. and found P.W.4 along with L.W.7. The deceased gave cash of Rs.200/- to P.W.4. P.W.5 dropped the deceased at Tadipatri bus stop and went away. The deceased visited the Chowdeswari Wines at Gooty Road Circle and asked for three ounces of cheap liquor, but P.W.12, the shop keeper, refused to sell the liquor loose. At that time, appellant No.1 (accused No.1) visited the same Wine Shop and asked P.W.12 for three ounces of cheap liquor and the same was also rejected by the latter. As both the deceased and accused No.1 wanted to consume liquor, they proposed to purchase a quarter bottle of cheap liquor jointly and share the same. Accordingly they purchased a quarter bottle and consumed the same together.

3. The acquaintance with accused No.1 and the deceased developed into friendship during chitchatting and they both proceeded towards Gooty road and on the way accused No.2, who is a friend of accused No.1, joined them. P.W.6 and L.W.12 witnessed accused Nos.1 and 2 in the company of the deceased and they were all proceeding towards Gooty Road at about 10.00 p.m. At about 10.15 p.m., on the same night P.Ws.10 and 14 were attending calls of nature and found the deceased and the accused quarrelling loudly at 80 feet road, Vinayakanagar Outskirts, Anantapur, and they reached the scene of offence and identified the accused, but they could not identify the deceased as they never saw him before. During the quarrel, the deceased beat accused No.1, and in retaliation, accused No.1 pushed the deceased down due to which he fell on the ground and on the instructions of accused No.1, accused No.2 picked up used cement bricks from roadside debris and both the accused threw the cement bricks on the head and other parts of the body of the deceased and caused severe bleeding injuries to him. P.Ws.10 and 14 interfered and tried to stop the accused from beating the deceased but the latter threatened them with dire consequences and tried to assault them. Being young, P.Ws.10 and 14 could not resist the accused and ran away from the spot. On the next day, P.Ws.10 and 14 came to know

about the murder, visited the scene of offence, identified the deceased, but did not reveal anything about the incident to anyone, being afraid of the accused. During the enquiry by the Police in the vicinity of the scene of offence, they came forward and narrated the occurrence of the offence.

4. On the complaint of P.W.1, P.W.13 registered the case as Crime No.108 of 2009 for the offence under Section 302 of IPC and P.W.15 investigated the case. On 30.3.2009, at 4.00 p.m., P.W.15 arrested the accused at RTC Cross Roads, Gooty Road, Anantapur, in the presence of P.W.9 and L.W.16. During the course of examination both the accused admitted their involvement in the commission of the offence and revealed that on the night of 18.3.2009 while the accused were going along with the deceased to the house of accused No.2, the deceased started passing comments on the women and on that, they picked up a quarrel with the deceased which led to his murder. P.W.11, the Professor and Head of the Department of Forensic Medicine, Government Medical College, Anantapur, who conducted autopsy over the dead body of the deceased, opined that the death was due to cranio cerebral injury (head injury) as a result of lacerated injury on the head.

5. In order to prove its case, the prosecution has examined P.Ws.1 to 15 and marked Exs.P.1 to P.12 and also produced M.Os.1 to 11. On behalf of the defence, no one was examined but Ex.D.1 was marked.

6. On appreciation of the oral and documentary evidence, the Court below has rendered the judgment convicting and sentencing the appellants as noted above.

7. Mr. Aswartha Narayana, learned counsel for the appellants, submitted that the entire case of the prosecution is so artificial, which is wholly unworthy of acceptance. That as P.Ws.10 and 14, the alleged eye-witnesses, have turned hostile, the prosecution case rested on circumstantial evidence and it has failed to supply many missing links in the chain of circumstances connecting the accused with the

commission of the offence. The only witness, argued the counsel, who allegedly last saw the deceased in the company of the accused was P.W.5, and in the face of his admission that he has not seen the accused before 18.3.2009, the failure of the Police to conduct Test Identification Parade (TIP) is fatal to the case of the prosecution. That the motive pleaded by the prosecution is highly artificial and that the whole case set up by the prosecution is based on a fabricated story to make the appellants scapegoats instead of identifying the real culprits and prosecuting them for the murder of the deceased.

8. Mr. Posani Venkateswarlu, learned Public Prosecutor, however, strongly defended the judgment of the lower Court and argued with conviction that even though P.Ws.10 and 14 have turned hostile, the evidence of P.Ws.5 and 6 is sufficient to nail the appellants and that the lower Court has rightly found them guilty, and convicted and sentenced them appropriately.

9. Having regard to the respective submissions of the learned counsel for the parties, the point that arises for consideration is whether the appellants are guilty of murder of the deceased and their conviction and sentence are sustainable.

10. Before advertng to the evidence on record pertaining to the alleged commission of offence by the appellants, we would like to discuss the motive as set up by the prosecution, for, in a case based on circumstantial evidence, motive plays a vital role and absence of proof of strong motive, will render the case of the prosecution weak, entitling the accused to the benefit of doubt. As noted hereinbefore, it is the pleaded case of the prosecution that when the deceased wanted loose sale of liquor, the Manager of the Liquor Shop (P.W.12) refused the same, that when accused No.1 was also in the same position at the liquor shop as the deceased was, both came to an understanding that they will buy a quarter bottle and that both of them will consume the liquor, and accordingly they have bought and consumed the liquor. It is the further case of the prosecution that during that time their

acquaintance turned into friendship and they have proceeded towards Gooty Road after accused No.2 joined them on their way. After they went there, a quarrel ensued between them. The whole case set up by the prosecution appears incredulous. The deceased and accused No.1 allegedly saw each other for the first time at the liquor shop and their urge to take liquor has brought them together. Thus far so good. Once they shared the liquor, one cannot believe that they will become such thick friends that they decided to go to a desolate place during the dead of the night. The prosecution tried to project the deceased as a person having the habit of taking alcohol everyday. As could be seen from the evidence of P.W.1, the deceased was working in Reliance Life Insurance in Dharmavaram and from the charge sheet it is evident that he owns a house site at Tapovanam near Narayanapuram. These admitted facts would make it very clear that the deceased was not a penniless person and, on the contrary, he was not only an employee with Reliance Life Insurance, but he was also owning some property and therefore it is not possible to believe that he did not have the money to buy one quarter bottle of cheap liquor. As per P.W.4's version, at about 7 - 7.30 p.m. on the date of the occurrence, the deceased gave him Rs.200/-. If the deceased did not have adequate money left with him even for buying a quarter bottle of cheap liquor, it defies any reason or logic in his needlessly giving a sum of Rs.200/- to P.W.4. Indeed, in his evidence P.W.4 has stated that he cannot tell the reason why the deceased gave Rs.200/- and that normally he will not give money to him. Thus, the plea set up by the prosecution that due to lack of adequate money to buy one quarter bottle of cheap liquor, the deceased came to an understanding with accused No.1 and shared the liquor is hard to believe. Another thing which looks highly unnatural is that an employee who has possessed some assets would wander during odd hours with the persons who were strangers till a few minutes before, without any purpose. When this story of the prosecution is not worthy of acceptance, the Court

cannot believe its further theory that after reaching the scene of offence, a quarrel ensued between the accused and the deceased, leading to the former killing the deceased. In the light of the above discussion, we hold that the prosecution has miserably failed to prove the motive on the part of the appellants to kill the deceased.

11. We shall now discuss the evidence relating to the alleged commission of offence by the appellants. P.Ws.10 and 14, who are alleged to have witnessed the commission of the offence by the appellants, turned hostile. The only other evidence which is worth considering is that of P.W.4 – a cousin of the deceased, P.W.5 – an auto driver and a close friend of the deceased, and P.W.6 – a room-boy in the hotel in which P.W.1, who is no other than the brother-in-law of the deceased, was working as the Manager. These persons, who are so well connected either through relationship, or friendship or employment, as the case may be, are interested witnesses and therefore their evidence has to be closely scrutinized.

12. In his evidence, P.W.4 stated that the deceased was working at Dharmavaram and he was having the habit of taking alcohol now and then. That at about 7.00 – 7.30 p.m. on 18.3.2009, when himself and L.W.7 were at Lalbund Circle in Anantapur, the deceased and P.W.5 came in an auto and the deceased gave him Rs.200/-. Even if his evidence is to be believed, it only shows that the deceased was last seen by him in the company of P.W.5 and the accused nowhere figured in his evidence. Hence, his evidence is of no use to the prosecution.

13. Coming to the evidence of P.W.5, he deposed that he along with the deceased went to Narayanapuram. He took the deceased in his auto to the house site of the deceased and thereafter himself and the deceased came to Surya Nagar where the latter has consumed alcohol, that they then went to Lalbund Circle in the auto where P.W.4 and L.W.7 were seen, that the deceased gave P.W.4 Rs.200/-, that then himself and the deceased went to Tadipatri bus stop in the auto at

about 8.00 or 8.30 p.m., and that the deceased got down at that place and went away towards post office side. Significantly, to a suggestion by the defence, this witness has denied that the deceased used to consume alcohol always, but used to consume alcohol now and then heavily. His evidence shows that the deceased was not an addict of alcohol from which it could be presumed that he would not have lost control on himself under the influence of alcohol and gone along with two strangers aimlessly during late night.

14. P.W.6 is the only crucial witness now left in the field. As noted above, he is a room-boy in the hotel of which P.W.1, brother-in-law of the deceased, is the Manager. According to him, he went to one Dhaba called JB Dhaba along with one Muthyalappa and another friend at about 7.00 p.m. On the night of the occurrence they had dinner there and while they reached a place called five lamps circle in Gooty Road, at about 10.00 or 10.30 p.m. they have observed the deceased along with two unknown persons. He has further deposed that after having a talk with the deceased, he has returned to the hotel and that on that day his duty was from 10.00 p.m. to 10.00 a.m. on the following day. In his cross-examination he has stated that they reached the place where they have met the deceased at about 10.15 p.m. and the hotel from that place is about 1½ k.ms. If his shift duty was to commence from 10.00 p.m., he might not have reached the hotel at least before 10.30 p.m. Being a room boy he is expected to report to duty at 10.00 p.m. and not to spend his time with such leisure as being unmindful of his duty time, taking dinner at a far away Dhaba, more so when the hotel in which he is working as room boy serves food items, as admitted by him. It is highly unusual for a person like P.W.6 earning a meager salary of Rs.3,000/- per month to go to a Dhaba for taking food, when it is available in the hotel in which he is working, by spending Rs.400/- or Rs.500/- for himself and his friends, at the risk of reporting to duty late. The witness was not even sure as to whether the bill in Dhaba was Rs.400/- or Rs.500/-. Thus, naturality

and truthfulness elude the evidence of P.W.6. Another serious lacuna which renders his evidence incredulous is the failure of the investigation agency to conduct TIP for him. In his cross-examination he has stated that he has seen the accused for the first time in the company of the deceased on the fateful night only at Five Lamps Circle and that he is seeing them again on the day of recording of evidence in the Court. He has further stated that he has not described to the police personnel about the colour, height, age and other features of the accused. If the witness had no past acquaintance with the offenders, it is the duty of the investigation agency to conduct TIP in order to lend credibility to his testimony. The investigation agency miserably failed in their duty to conduct TIP which renders the whole evidence of P.W.6 unworthy of acceptance.

15. On the strength of the discussion undertaken above, this Court is of the opinion that the prosecution has utterly failed to prove that the appellants are the real offenders. It failed to let in any evidence which is worthy of acceptance to link the appellants with the commission of the offence. In our opinion, the appellants, who are complete strangers to the deceased, had no reason to go to the extent of killing the latter.

16. For the above-mentioned reasons, the judgment of the lower Court is not sustainable and the same is accordingly set aside. The conviction and sentence recorded against the appellants are set aside. The appellants are set at liberty and they shall be released forthwith unless they are required in connection with any other offence. The fine amount, if any, paid by the appellants, shall be returned to them.

17. The appeal is accordingly allowed.

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C.V. NAGARJUNA REDDY, J

14-03-2016

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