

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

CRIMINAL APPEAL Nos.1559/2010 & 51/2011

DATED:-19-12-2016

Between:

B.Raju and others

..... APPELLANTS

AND

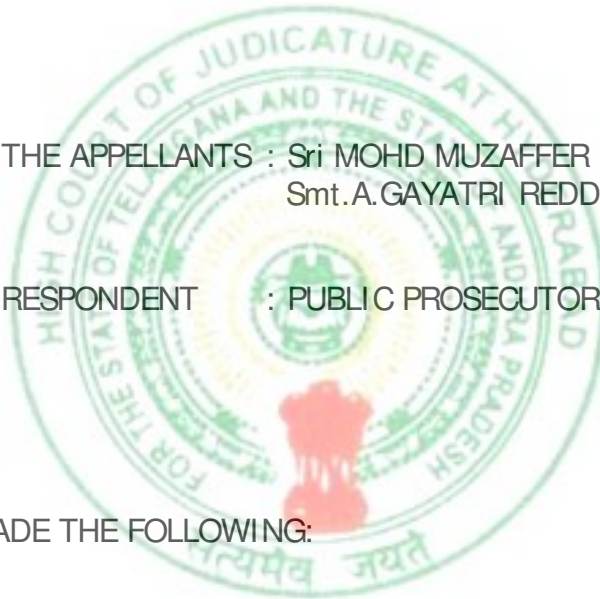
State of Andhra Pradesh, rep.by Public Prosecutor
High Court of Judicature at Hyderabad

.....RESPONDENT

COUNSEL FOR THE APPELLANTS : Sri MOHD MUZAFFER ULLAH KHAN
Smt.A.GAYATRI REDDY

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (TG)

THE COURT MADE THE FOLLOWING:



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

CRIMINAL APPEAL Nos.1559/ 2010 & 51/ 2011

COMMON JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

These two criminal appeals are filed against judgment dated 30.11.2010 in Sessions Case No.39 of 2010 on the file of the Metropolitan Sessions Judge, Hyderabad, by and under which, the learned Sessions Judge recorded conviction against Accused Nos.1 to 4 for the offences under Sections 120-B, 302 and 307 r/w.34 IPC as under:

2. Accused Nos 1 to 4 were sentenced to undergo rigorous imprisonment for a period of two years each for the offence under Section 120-B IPC, rigorous imprisonment for a period of two years each and to pay a fine of Rs.500/- each for the offence under Section 307 r/w.34 IPC, and imprisonment for life and to pay a fine of Rs.500/- each for the offence under Section 302 IPC., with default sentences.

3. Crl.A.No.1559/2010 is filed by Accused Nos.3 & 4. Crl.A.No.51/2011 is filed by Accused Nos.1 & 2.

4. For convenience, the appellants are referred to as "the accused".

5. It was reported that Accused No.2, being a woman, has been released by the State during pendency of the appeals.

6. The case of the prosecution is that the accused and P.Ws.1 to 4 are neighbours and residents of D.No.13-03-601/3, 1st floor, Ganesh Bhavan Building, Ziaguda, Hyderabad, and that there were disputes with regard to payment of electricity consumption charges. That bearing grudge in mind over the said disputes, at about 2.00 AM on the intervening night of 24/25.04.2009, while all the family members of PW 1

were sleeping, the accused persons poured acid on all of them, due to which, the minor son of PW 1, by name Seshu Kumar (hereinafter referred to as "the deceased"), aged 16 years, and the remaining family members sustained burn injuries. All the injured were treated at Osmania Hospital and Seshu Kumar succumbed to burn injuries on 10.05.2009.

7. PW 1 lodged a complaint before PW 17-S.I.of Police, Kulsumpura Police Station on 25.04.2009, which was registered as Cr.No.107/2009 under Section 307 r/w.34 IPC initially. Copies of FIRs were sent to all the concerned. PW 17 recorded the statement of PW 1 and visited the Hospital and recorded the statements of PWs 2 to 4. PW 17 visited the scene of offence, apprehended the accused and recorded the confessional statement of A1 in the presence of PW 10, and seized the material objects from the house of A1. PW 16-the jurisdictional Magistrate, recorded the dying declaration of the deceased. PW 18-C.I.of Police, Kulsumpura Police Station took up investigation on 10.05.2009, altered the section of law by adding Section 302 IPC, conducted inquest over the dead body of the deceased in the presence of PW 8 and another, and sent the dead body of the deceased for post mortem examination. After completion of the investigation, PW.18 filed the charge sheet.

8. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 18 and marked Exs.P1 to P17 and M.Os.1 to 3. On behalf of defence, Exs.D1 & D2 were marked.

9. After taking into consideration the oral and documentary evidence on record and having heard the submissions of both sides, the learned Sessions Judge convicted the appellants/accused and sentenced them, as stated supra.

10. Learned counsel for the appellants submitted that the trial court failed to see that there is no direct witness in this case and only on suspicion, the innocent accused were involved in the present case. Learned counsel further submitted that basing on the evidence of the interested witnesses, the trial court recorded conviction. It is further submitted that even in the dying declaration, the deceased did not state about the role of the accused in committing the offence. He has submitted that the trial court failed to see that there is no legal evidence to convict the accused for the offences alleged against them.

11. The learned Public Prosecutor for the State of Telangana, strongly supported the case of the prosecution and sought to sustain the judgment of the trial Court.

12. The point for consideration is as to whether the prosecution proved its case against the appellants beyond reasonable doubt so as to sustain the conviction and sentences or whether it needs to be set aside, modified or varied?

13. According to the prosecution, the incident is said to have taken place in the intervening night of 24/25.04.2009 (i.e., at about 02.00 a.m., on 25.04.2009). P.Ws.1 and 2 are the parents of P.Ws.3, 4 and the deceased (Seshu Kumar). He succumbed to the burn injuries on 10.05.2009 while P.Ws.1 to 4 sustained certain burn injuries which are undisputedly caused by sulphuric acid.

14. In a multi-storied residential building, there are tenants in different portions. P.Ws.1 to 4 and the deceased were tenants in one portion on the first floor whereas A.1 and A.2 who are the son and mother are the tenants in the adjacent portion. A.3 and A.4 who are brother and sister are said to be the tenants of another portion on the same floor.

P.W.5 is the owner of the building. P.W.6 is a tenant on the second floor and P.W.7 is a tenant on the first floor. P.Ws.6 and 7, the independent witnesses, turned hostile during trial and denied any knowledge about the circumstances in which P.Ws.1 to 4 and the deceased sustained the burn injuries. The rest of the witnesses are panch witnesses and official witnesses and spoke about the inquest being held on the deceased (P.W.8), scene of offence panchanama (P.W.9), confession said to have been allegedly made by A.1 (P.W.10) leading to the recovery of a tin and a mug (M.Os.1 and 2) which however did not contain any substance. P.W.11 is the Medical Officer who conducted autopsy over the dead body of the deceased and found the following injuries and issued post-mortem report – Ex.P.7:-

- 1) Infective corrosive chemical burns present over head and neck, and front and back of chest. Both the upper limbs, upper half of the front abdomen upto umbilicus;
- 2) Yellowish green pus slopping off from the burn injuries, no red line margins;
- 3) Oropharynx mucus membrane whitish in colour; and
- 4) Charring of tissues present here and there.

P.Ws.12, 13 and 14 are the Medical Officers who treated P.Ws.1 to 3 and issued wound certificates – Exs.P.8 to P.10. P.W.15 is the panch witness for seizure panchanama – Ex.P.11. P.W.16 is the Metropolitan Magistrate who recorded the Dying Declaration of the deceased which is marked as Ex.P.13. P.Ws.17 and 18 are the Investigating Officers.

15. The case of the prosecution, as stated above, is that due to trivial misunderstandings between the families of P.Ws.1 to 4 and A.1 to A.4 in the matter of sharing the consumption of electricity charges, there were hostilities in between them, as a result of which, A.1 to A.4 conspired

and when P.Ws.1 to 4 were sleeping in their portion by keeping the door open in view of the hot climate, A.1 to A.4 are alleged to have thrown acid with the help of a mug from a distance of about 2 ft., from the door of the portion of P.Ws.1 to 4. The independent witnesses did not support the case of the prosecution. Therefore, excepting for the evidence of the injured witnesses viz., P.Ws.1 to 4, there is no independent corroboration forthcoming. The evidence of the injured witnesses needs to be considered with utmost care and caution for the reason that the motive that is alleged for the accused to commit the heinous crime of throwing acid in the mid-night on as many as five persons is fragile. It may be stated here that when P.Ws.1, 3 and 4 say that there were misunderstandings between the co-tenants in the matter of sharing the electricity charges and they used to frequently quarrel on it, P.W.2 specifically denied that there were any differences or disputes in between the co-tenants of the first floor including the accused and P.Ws.1 to 4. Excepting for this motive, nothing is placed on record to hold that the accused had any serious grudge against the prosecution witnesses to commit the crime. It is in the evidence of P.W.1 that since a year prior to the incident, there is separate sub-meter for consumption of electricity to the portion of the accused. If that be the case, there is no scope for there being any hostilities in between the co-tenants, with regard to payment of electricity charges, P.W.2 clearly asserted that absolutely there were no quarrels or disputes in between the families staying in the first floor portion. It is also admitted that the landlord-P.W.5 had been insisting for sometime in the past the family of P.W.1 to vacate the portion.

16. Learned Counsel appearing for the appellants/accused submitted that it is difficult to believe that when P.Ws.1 to 4 were sleeping

inside their portion by keeping their front door open for getting fresh air, A.1 to A.4 who were occupants of different portions, could have thrown acid from a distance of two feet away from the main door that was kept open and that would have fallen on as many as five persons, the most of which is said to have been fallen on the deceased boy, aged about 15 years, who succumbed to the burn injuries about 18 days thereafter. Learned Counsel further pointed out that if the wounds certificates of P.Ws.1, 2 and 3 and also the injuries on the person of the deceased are carefully analyzed, it becomes difficult to believe that the acid was thrown on them from a sufficiently far off place with the help of a mug. If really that has happened, the injuries on the persons should be on either side of their bodies i.e., either on the left portion or on right portion or front since they were all sleeping. The Doctor who conducted post-mortem examination on the deceased boy found the injuries on head and neck, and front and back of chest, and also on both the upper limbs and upper half of the front abdomen. Even if the boy was sleeping facing upside, he would not have sustained injuries on the back of his chest. Similarly, according to the Medical Officer-P.W.12, P.W.2 sustained burn injuries on her right upper limb and left upper limb and anterior trunk and also on her back. P.W.1 has also sustained 15% burn injuries on his right shoulder, beneath the left upper arm and on the right side of his back. In view of the above evidence, it becomes difficult to believe that all the five injured have sustained burn injuries when acid is thrown on them from a far off place with the help of a plastic mug. It is not the case of the prosecution that the accused have entered the portion of the house of P.Ws.1 to 4 since it is alleged that they have thrown the acid from about two feet away from the door of the portion of P.W.1 which was kept open.

17. The other circumstance relied upon by the appellants which creates any amount of suspicion about the allegation is the fact that when the incident is said to have taken place at 02.00 a.m., all the four injured and the deceased went to the hospital at 04.00 a.m. They were all attended by the Medical Officers as stated above. It is recorded in the medical certificates of the injured witnesses and also spoken to by the Medical Officers that when they were admitted, the injured persons told them that they sustained burn injuries as some unknown persons have thrown acid on them. According to the material prosecution witnesses, they have seen the accused who were their neighbouring tenants immediately after the acid was thrown on them and it is also in their evidence that they have identified them with the help of a tube-light which was glowing in the open place in between the portions of P.W.1 and A.1 to A.4. If that is true, there is no need whatsoever for all the injured witnesses to inform the hospital authorities at 04.00 a.m., that unknown persons have thrown acid on them. It is not as though that the injured witnesses were in critical condition or have sustained burn injuries of such magnitude that they could not have given the correct version to the Medical Officer. As already stated, P.W.1 sustained just 15% burn injuries whereas P.W.2 sustained 25% burn injuries. The teenaged daughters of P.Ws.1 and 2 have also sustained simple burn injuries. Therefore, the fact that all the injured witnesses have stated at the earliest point of time at 4.00 AM that some unknown persons have thrown acid on them, gives scope for a reasonable doubt about the complicity of the accused. For the first time, when the complaint was lodged at 08.30 a.m., by P.W.1, he has named the accused as the persons who have thrown the acid on them.

18. In view of the above contradiction, the other material evidence on record which is the Dying Declaration of the deceased recorded by the Magistrate-P.W.16 also becomes suspicious. The Dying Declaration of the deceased was recorded by P.W.16 at 01.00 p.m., on 25.04.2009. The claim of the deceased at that belated time that it is the accused who have thrown the acid on them cannot be accepted in view of the fact that at the earliest point of time all the family members of the deceased namely P.Ws.1 to 4 did not say that it was the accused who had thrown acid on them.

19. As noted above, the evidence of P.Ws.1 to 4 which is not corroborated by any independent witness is also found to be inconsistent and not reliable. It is in the evidence of P.W.1 that in the night they were sleeping in the portion and at about 12.00 in the mid-night his deceased son woke up and went out to answer calls of nature and returned and told P.W.1 that some incident may happen and that they should be careful since he saw A.1 to A.4 in the open place in between the portions of P.W.1 and the accused. P.W.1 further claims that in view of the said alert given by his deceased son, they did not go to sleep but were merely pretending as if they are sleeping. It is in his further evidence that at about 02.00 a.m., all the accused have thrown acid on them. If really the deceased boy has informed P.W.1 at about 12.00 in the midnight itself that they are suspecting some foul play in A.1 to A.4 standing in the open place in between the portions of P.W.1 and the accused at the dead end of the night, P.W.1 being the eldest member of the family would have taken some preventive measures but would not have merely pretended as if they are sleeping and in spite of such suspicion, would not have left the door open without closing the same. He did not even try to ascertain or enquire

from the accused as to why they are standing there at the dead end of the night since it is in the evidence of the prosecution witnesses that all the tenants in the portions will go to sleep by 10.00 pm., or 11.00 p.m.

20. According to the prosecution witnesses, at the time of scene of offence panchanama – Ex.P.11, certain bedsheets and pillows (M.O.3) were seized. When they were confronted to P.W.1, he stated that those objects do not belong to them. In the cross-examination, P.W.1 admitted that his portion is a two room tenement and there is one bath room in the second room of the portion. There is also a bath room in the open area adjacent to the house of the accused. When there is a bath room within the tenanted portion of P.W.1, there would not have been any need for the deceased boy to go into the open place and use the bath room adjacent to the portion of the accused. P.W.1 also admitted that since about a year prior to the incident, they are having different sub-meters for the consumption of electricity and that being the case, there would not have been any scope for there being any quarrels or disputes in between P.W.1 and the accused in the matter of sharing the electricity consumption charges since that it is the only motive which is attributed to the accused for having committed the heinous the crime.

21. P.W.2 is the wife of P.W.1 and it is clearly admitted by her that there were no quarrels or disputes in between them and the accused families. She also refused to identify M.O.3 – bed sheets as belonging to them.

22. P.W.3 is a teenaged daughter. In the cross-examination, she admitted that she has not seen any person before acid fell on them and only after acid was thrown, she woke up and saw the accused running away. Similar is the evidence of another teenaged daughter-P.W.4.

According to her, there is no separate sub-meter for the electricity consumption for the different portions on the first floor and therefore there used to be quarrels between them. This is contrary to the evidence of P.W.1.

23. In view of the nature of the evidence of P.Ws.1 to 4, which is not supported by any independent witness, it will not be safe for basing the conviction against the appellants/accused.

24. In view of the foregoing discussion, we are unable to sustain the conviction recorded by the trial Court against the appellants/accused. The evidence on record, at best, raises a suspicion against the accused, but as is well settled, suspicion howsoever strong it may be, cannot take the place of proof. The accused are therefore entitled to the benefit of doubt.

25. In the result, the Criminal Appeals are allowed. The conviction and sentences recorded against the appellants/accused for the offences punishable under Sections 120-B, 302 r/w.34 and 307 r/w.34 IPC in the judgment, dated 30.11.2010, in Sessions Case No.39 of 2010, on the file of the learned Metropolitan Sessions Judge, Hyderabad, are set aside. Consequently, the appellants/accused Nos.1, 3 and 4 shall be set at liberty forthwith, if they are not required in any other case or crime. The fine amount, if any, paid by them shall be refunded to them.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 19.12.2016
Dsr/smr