

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

CRIMINAL APPEAL No.1493 of 2010

DATED:- 23-11-2016

Between:

State of Andhra Pradesh, rep.by the
Public Prosecutor

..... APPELLANT

AND

Reddi Sai Ramakrishna Prasad and 6 others

.....RESPONDENTS

COUNSEL FOR THE APPELLANT : PUBLIC PROSECUTOR (AP)

COUNSEL FOR RESPONDENTS : Sri K.SURESH REDDY
Smt.C.VASUNDHARA REDDY
Sri T.V.JAGGI REDDY
Mrs.D.SANGEETHA REDDY



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 No.1493 of 2010

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

Respondents Nos.1 to 7/Accused Nos.1 to 7 were charged before the VII Additional Sessions Judge, Kakinada in Sessions Case No.25 of 2007 for the offence punishable under Section 302, 120-B and 109 IPC, but were acquitted of the said charges vide judgment dated 16.11.2009. Challenging the said judgment, the present appeal is filed by the State.

2. For convenience, the respondents are referred to as "the accused".

3. The case of the prosecution in brief is as follows:

In 1996 A.1 and Reddi Lakshmana Rao (hereinafter referred to as "the deceased") migrated to Kakinada from their native village Gummleru and both of them started finance business and wine shop jointly under the name and style of Sri Swamy Ayyappa Finance at Kakinada. While the deceased was looking after the finance business, A.1 was looking after the wine shop. A.1 had grievance against the deceased that the latter was getting huge share in the profits but offering meager share to him. A1 had also placed the matter before the father of the deceased and requested him to advise his son and settle the accounts, but his attempts proved futile and hence he bore grudge against the deceased.

4. A.2 is a borrower who took loan from the deceased and he failed to pay the loan amount. He met A.1 and asked him to advise the deceased to make a settlement of his loan, but his attempts also went futile.

5. A.4 was working as a clerk in the wine shop and he had grievance against the deceased for not enhancing his salary. A.3 is a Home Guard. A.3 to A.7 are the close associates of A.2. On 26.01.2005 A.1 and A.2 with the assistance of A.3 to A.7 hatched a plan to kill the deceased and had a meeting at the finance office in the absence of the deceased. The said conversation was happened to be heard by PW 6- Tatapudi Chittiyya, who visited the office at that time. PW 6 in turn informed the said conspiracy to the deceased, but the deceased had not taken the issue seriously.

6. The deceased was having illicit intimacy with one Andev Vijayalakshmi who was living in Maduranagar and maintaining her as his kept mistress and the said fact was known to the accused. The accused decided to kill the deceased when he came to the house of his kept mistress. In the process of executing their conspiracy, on the direction of A.1, A.6 purchased three Reliance Cell mobile phones. He kept one of them i.e., mobile bearing No.9390218212 with him, mobile bearing No.9390208649 was given to A.2, and the other mobile bearing No.9390299368 was given to A.3. A.2 got purchased a knife through PW 8-Settpalli Kanaka Mahalingeswara Rao and provided the same to A.3 to A.5 and A.7.

7. All the accused decided to kill the deceased on 07.03.2005. Pursuant to their plan, A.2 & A.7 waited near Gail Energy bridge on Kakinada to Samalkota road to convey the movements of the deceased to A.1, A.3, A.4 and A.5 who were waiting at Janachaitanya layout near Maduranagar. On 07/08.03.2005 midnight A.2 & A.7 found the deceased coming on his motor cycle bearing No.AP5N2499 from Marripadu village towards Sarpavaram and informed the same to A.1, A.3, A.4 and A.5.

When the deceased was proceeding through Janachaitanya layout, A.1, A.3, A.4 & A.5 waylaid and A.3 hacked the deceased on his throat. When the deceased fell down from his motorcycle, A.3 again hacked him indiscriminately, as a result of which the deceased died on the spot. Later, A.1, A.3, A.4 and A.5 informed the death of the deceased to A.2 and A.7 over mobile phone. All of them met at Autonagar colony and later left the place.

8. On 08.03.2005 morning PW 1 found the deceased lying in a pool of blood and informed the same to PW 2, who in turn informed A.1. A.1 with a view to shield himself, lodged a report before PW 23-the Sub-Inspector of Police, Indrapalem P.S, who registered the same as Cr.No.33/2005 under Section 302 IPC. PW 24-the Inspector Police visited the scene of offence and prepared Ex.P12-scene observation report and conducted inquest over the dead body of the deceased in presence of mediators and sent the same for post mortem examination. PW 22 conducted post mortem examination and issued Ex.P16 post mortem report.

9. On 28.03.2005, A.2 approached PW 21-Chinnimilli Jaggarao, Panchayat Secretary, Indrapalem and confessed his guilt and narrated the conspiracy. PW 21 handed over A.2 to police with his report. The Inspector of police-PW 24 recorded the confessional statement of A.2 in the presence of mediators. During course of investigation, PW-24 arrested all the accused on different dates, and after the completion of investigation, he filed the charge sheet.

10. The plea of the accused is one of denial.

11. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 24 and marked Exs.P1 to P34 and M.Os.1 to 20. On

behalf of defence, Exs.D1 to D6 were marked, but no oral evidence was adduced. Based on the oral and documentary evidence, the learned Additional Sessions Judge has acquitted all the accused of the charges leveled against them, observing that the prosecution has failed prove the guilt of the accused beyond reasonable doubt.

12. Learned Public Prosecutor submits that the Court below has not appreciated the evidence on record in proper perspective and has erroneously acquitted the accused and hence, the appeal.

13. On behalf of the respondents/accused it is submitted by the learned Counsel that absolutely there is no material, leave alone legal evidence, to connect the accused with the crime, that since none of the witnesses whose evidence is material for determining the guilt or otherwise of the accused have supported the case of the prosecution, the Court below has recorded the finding of acquittal. He has further submitted that there are no grounds to interfere with the judgment of the trial court and hence the appeal is liable to be dismissed.

14. The point for consideration is whether the judgment acquitting the accused is erroneous warranting interference with the same.

15. We have carefully considered the respective submissions of the learned counsel for both the parties and perused the record.

16. There is no eyewitness in the instant case and the entire case of the prosecution rested upon circumstantial evidence, which evidence is with regard to the relevant facts from which, one can, by the process of reasoning, infer about the existence of such facts in issue or *factum probandum*. There are catena of authorities of the Apex Court on the aspect of determining the guilt or otherwise of a person in the dock, based on circumstantial evidence.

17. It is settled law that in order to sustain a conviction in a case based on circumstantial evidence, the chain of circumstances from which the conclusion of guilt is drawn should be fully proved, such circumstances must be conclusive in nature, there should be no gap left in the evidence and it must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. Further, the circumstances must be of a clinching and definitive character unerringly leading to the inference about the guilt of the accused. Absence of motive in a given case is something that cannot be lightly brushed aside. Similarly, a mere non-explanation on the part of the accused cannot lead to the proof of guilt against him and the prosecution cannot be absolved of its obligation to prove its case against the accused beyond all reasonable doubt. The circumstances so proved should be shown to be closely connected with the principal fact sought to be inferred from those circumstances. The cumulative effect of the circumstances must be such as to negative the innocence of the accused.

18. In a nutshell, in cases based on circumstantial evidence, to sustain a conviction, the evidence on record should establish the following aspects:-

- 1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- 2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- 3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that

within all human probability the crime was committed by the accused and none else; and

- 4) the evidence must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

19. Whether the evidence on record sought to be relied upon by the prosecution meets the above requirements or not, is to be gathered from the ocular and documentary evidence.

20. This is an appeal by the State questioning the acquittal of the accused by the trial Court and the scope of interference contemplated in such appeals is limited. In *Sadhu Saran Singh v. State of U.P.*¹ the Supreme Court held as under:

“18. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, in the case of *Sambasivan and Ors. v. State of Kerala* : (1998) 5 SCC 412, has held:

The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal are well settled. *The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction.* But where on the basis of evidence on record two views are

¹ AIR 2016 SC 1160

reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal.

19. This Court, in several cases, has taken the consistent view that the appellate Court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate Court, on scrutiny, finds that the decision of the Court below is based on erroneous views and against settled position of law, then the interference of the appellate Court with such an order is imperative.”

21. In *Selvaraj v. State of Karnataka*² a three Judge Bench of Supreme Court held as under:-

“13. In coming to this conclusion, we are reminded of the well settled principle that when the court has to exercise its discretion in an appeal arising against an order of acquittal, the Court must remember that the innocence of the accused is further re-established by the judgment of acquittal rendered by the High Court. Against such decision of the High Court, the scope of interference by this Court (Sic:with) is an order of acquittal has been very succinctly laid down by a three-Judge Bench of this Court in *Sanwat Singh v. State of Rajasthan*: 1961 (3) SCR 120. At page 129, Subba Rao, J. (as His Lordship then was) culled out the principles as follows:

9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in *Sheo Swamp* case (1934-34) 61 I.A. 398 afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on

² (2015) 10 SCC 230

those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

22. The cardinal principle of criminal jurisprudence is that an accused is innocent of the crime alleged unless contrary is proved. In cases of acquittal, the said presumption of innocence gets strengthened and in order to disturb such findings, it is required to be shown by the prosecution that the trial Court has grossly erred in appreciating the evidence, misread the evidence, drew illogical conclusions and on irrelevant hypothesis acquitted the accused.

23. Adverting to the facts of the present case, the deceased Lakshmana Rao and A.1 were business partners. The deceased had been looking after the joint finance business and A.1 was looking after the wine shop. A.1 had grievance against the deceased of monopolizing, not maintaining transparency and not finalizing the accounts. A.2 was one of the borrowers of the said finance company and he had grievance against the deceased for not settling his dues in spite of recommendations from A.1. A.4 was working as a clerk in the Wine shop and he had grievance against the deceased for not enhancing the salary. A.1 and A.2 who had motives for different reasons against the deceased, conspired with other accused i.e., A.3 to A.7 and hatched a plan to eliminate the deceased. The dead body of the deceased was found on 08.03.2005 at Janachaitanya Layout of Madhuranagar. Basing on the written report given by A.1, the Sub-Inspector of Police (PW.23) registered the same as Cr.No.33 of 2005. Thereafter, the Inspector of Police (PW.24) inspected the scene of offence, prepared Observation Report Ex.P.12 and conducted inquest (Ex.P.13) in the presence of PWs.19 and 20. PW.22 conducted post-mortem examination over the dead body and issued Ex.P.16-report.

24. There is no dispute insofar as the factum of the deceased having been murdered on the intervening night of 07/08.03.2005 at the place where it is alleged, but who is the author and the perpetrator of the crime is the point in issue.

25. The prosecution relied upon the theory of there being strong motives for the accused to kill the deceased in pursuance of a conspiracy and that A2 made an extra-judicial confession in the presence of a Panchayat Secretary-PW.21 which led to the recovery of certain objects such as two wheeler, mobile phones, blood stained clothes etc.

26. In a case based on circumstantial evidence, motive plays a predominant role in determining the guilt of the accused. Existence of motive should be sufficiently strong enough to infer that the accused had a grouse of such magnitude that they would go to the extent of physically liquidating their prey.

27. The prosecution has placed the oral evidence of PWs.4, 5 and 6 to show the existence of motive. PW 4 is the father of the deceased. He deposed that his son and A.1 were running finance business, wherein A.1 was the sleeping partner, that there arose some misunderstandings between them, that one year prior to the incident, A.1 informed him that the deceased was not allowing him to manage the finance business and demanded for settlement of account, that he advised A.1 to collect amounts from the borrowers for settling his dues, that A.1 did not give any reply, that his son purchased lands by selling his building, and that A.1 questioned him that had his son purchased land in the name of A.1 at Nayakampalli, he would have also got good amount on those lands.

28. PW 5, the wife of the deceased, deposed that her husband and A.1 were running finance business under the name and style of Ayyappa Finance, that A.6 was working in the said finance, that A.1 developed grudge towards her husband as he used to send A.1 for collection of amounts, that A.1 developed grudge as her husband did not purchase lands in the name of A.1, that A.2 was running Brandy shop with the finances of her husband, that her husband instructed A.1 to collect amounts from A.2 immediately, but that A.1 was postponing the same.

29. PW 6, who is native of Gimmileru, deposed that since 10 years prior to his death, the deceased was running finance business, that he was in the habit of borrowing money from the deceased, that in the year 2005 he went to Ayyappa Finance at about 4 p.m, at that time the deceased was not in the office, that he saw A.1, A.6 and 5 others in the office discussing something by keeping the main door partly open, and that he heard the said persons conspiring to kill the deceased.

30. The court below observed that the motive attributed by PWs 4 and 5 is based on hear say evidence, that is said to have been informed by the deceased to them that A1 developed grudge against the deceased as he was not settling the accounts of Ayyappa Finance to specify his share and not purchasing of land in his name at Nayakampalli. The evidence of PWs 4 and 5 is very remote and unbelievable that A1, A2 and A6 had conspired together with ill-motive to kill the deceased.

31. From the above discussion, we have no hesitation in holding that the prosecution miserably failed to prove the existence of any motive leave alone strong motive for causing the death of the deceased.

32. The other circumstance is the extra-judicial confession said to have been made by A.2 in the presence of the Panchayat Secretary-PW.21. PW 21 deposed that on 28.03.2005 at 10 a.m when he was in the office, A.2 came to him and informed that he was one of the accused in the murder case of the deceased-Reddi Lakshmanarao, occurred on 07.03.2005 and narrated the conspiracy, that his Junior Assistant K.Mosha drafted the confession statement of A.2 under Ex.P15, that he handed over A.2 to the police along with Ex.P15, that as per Ex.P15, the police recovered M.O.12-Yamaha motorcycle, M.Os.13 & 14 mobile phones, that the police apprehended A.1 and A.3, who led the police party to the canal bund and produced MO 7 knife, which was hidden under the canal bund, and that he drafted 3 to 4 mediators reports.

33. The testimony of PW 21 would go to show that he has no prior acquaintance with A2 before his surrender. It is highly improbable that an accused would make any confession to a stranger about committing a murder. PW 21 is an obliging witness of police, as he admitted that he acted as mediator in 3 or 4 cases and drafted mediators reports. His character is very essential to take into confidence about the manner in which A2 approached him and made the extra judicial confession. After discussing the evidence of PW 21, the Court below observed that no reliance can be placed on his evidence to believe that A2 surrendered before him and gave Ex.P15 confessional statement, and that it is not safe to rely on the evidence of PW 21.

34. Extra-judicial confession is a weak piece of evidence and unless the evidence on this aspect inspires the confidence of the Court, reliance cannot be placed thereon. In the instant case, A.2 is said to have confessed his guilt in the presence of PW.21 who is an utter stranger to

A.2 and even that is made more than three weeks after the dead body of the deceased was discovered. Till such time, there is nothing on record to show that the needle of suspicion was pointing towards A.2 or his other accomplices. Therefore, for the reasons stated above, the prosecution could not clinchingly establish that it can rest its strength on this circumstance of the extra-judicial confession alleged to have been made by A.2 in the presence of PW.21.

35. The other circumstance that is relied upon by the prosecution is that some of the accused were seen loitering around in the midnight at the place where the incident took place and for this purpose it relied upon the evidence of PWs.13 and 14.

36. PW 13 deposed that on the date of Sivarathri festival in the year 2005 he was going to Samalkot in order to worship Lord Shiva, that at 12.30 a.m, on the way at Gas Bridge, he saw A.2 and A.7 discussing with each other, that when he questioned them, they told that they got some work.

37. PW 14 deposed that he used to run an auto between Samalkot and Kakinada, that one day prior to Sivarathri festival in the year 2005, he went to Samalkot along with passengers to the Railway station, that at about 12 mid night, on the way to Kakinada, at Janachaitanya road, he saw A.1, A.3 and two others talking to each other parking their motorcycles beside them, that he know A1 and A.3, that he stopped the auto and enquired them as to whether their vehicle was giving any trouble, that they told him there was no trouble and that they got some work there.

38. The court below while discussing the evidence of PW 13, observed that the evidence of PW 13 is unnatural and improbable to accept because on the date of Shivarathri festival, to go in Samalkot, he would have preferred to go in a short cut way to reach Samalkot, but he preferred to go in circuitous way which is 5 k.m long, that if PW 13 and (Sic:LW 17) were going on the cycle, how they had identified A.2 and A.7 and that PW 13 had not whispered that he had noticed A.2 and A.7 with the help of plying vehicles light or with the help of their cycle light.

39. The court below also while discussing the evidence of PW 14, observed that there is no evidence that he got an own auto, that further if the evidence of PW 14 is accepted, he would drive the auto through a convenient passage, that half of the auto's light was black taped, that the height of the auto light is about two feet from the ground, that there are babool trees by the side of Janachaitanya layout and also by the side of the pathway, that there are no electrical lines, and that therefore, it would have been impossible for PW 14 to notice A.1 and A.3 by sitting in his auto with the help of auto light.

40. A perusal of evidence of these witnesses shows that the same is artificial. There is no doubt that they are the planted witnesses and their evidence is untrustworthy.

41. With regard to the conspiracy, the relevant evidence that is relied upon by the prosecution is that of PW.6. PW 6 deposed that he is a native of Gummileru, that he used to borrow amounts from the deceased, that about 10 to 15 days after Sankranthi festival, he went to Ayyappa finance at about 4 pm, that he did not find the deceased in the office, that he saw A.1, A.6 and 5 others in the office and they were discussing

something by keeping the main door partly opened, that he heard that they were discussing that at any cost Lakshmanarao must be killed, that A.1 told those words to A.6, that A.6 informed A.1 that he already brought 5 persons for that purpose, and that A.1 told A.6 that he is ready to spend any amount for that purpose.

42. Though PW 6 stated that he has no land of his own and he used to cultivate the lands on lease, he has not produced any lease deed nor mentioned the name of his landlord. If A1 really uttered with A6 that the deceased must be killed, PW 6 being close friend of the deceased, he would have certainly brought the said information to the notice of the deceased while he was taking loan from him or at least to PWs 4 or 5. PW 6 has not whispered about the alleged conspiracy among the accused till he was examined by the police. Further in his cross examination, PW 6 stated that A1 did not refer the name of the deceased during the conversation with A6. After discussing elaborately the evidence of PW 6, the Court below observed that his testimony appears to be unnatural and that he is nothing but planted witness after due deliberations.

43. In order to judge the veracity of a witness his overall conduct needs to be carefully analyzed. The evidence of PW.6 leaves no room for doubt that the same is highly unreliable and cannot be trusted for the reason that his conduct in not alerting the deceased about the conspiracy is quiet inconsistent with the natural conduct of a prudent person, more particularly, in view of his proximity with the deceased.

44. As already observed, the powers of the Appellate Court for interference in an appeal against acquittal are well settled to the effect that where on the basis of evidence on record two views are reasonably

possible, the Appellate Court cannot substitute its view in the place of that of the trial Court and that only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions there from that the Appellate Court can interfere with the order of acquittal. In the instant case, we have carefully perused the entire material evidence on record and also the Judgment under appeal. The learned Sessions Judge has minutely discussed the evidence on record and for valid and cogent reasons concluded that the evidence of the material witnesses cannot be relied upon and consequently acquitted the accused. The reasoning adopted by the learned trial Judge is logical and upon reappraising the evidence on record we are of the opinion that there is no scope for there being any view other than that has been taken by the learned Sessions Judge while acquitting the accused. Therefore, we see no merits in the appeal of the State and the same is liable to be dismissed.

45. In the result, the Criminal Appeal is dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 23rd November, 2016
Dsr/Smr