

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

Criminal Appeal No.924 of 2010

Dated: 09th March, 2016

Between:

Pangi Simhachalam

...Appellant/Accused

And

The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad.

...Respondent

Counsel for the appellant: Mrs.Shanthi Neelam

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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JUDGMENT: (per CVNR, J)

This appeal by the sole accused in S.C.No.109 of 2009 on the file of the learned VIII Additional District & Sessions Judge, (Fast Tract Court), Visakhapatnam, is against his conviction for the offence under Section 302 IPC and sentencing him to undergo imprisonment for life and also to pay a fine of Rs.100/-, in default of payment of fine, to suffer simple imprisonment for a period of one month, *vide* judgment, dated 08.02.2010, in the aforementioned Sessions Case.

The case as projected by the prosecution is briefly stated hereunder:

The accused is the resident of Ganneruputtu Village, K.Kodapalli (P), G.Madugula Mandal. PW.1 is the resident of the same village and brother of one Pangi Laxmayya (hereinafter referred to as 'the deceased'). On 02.12.2008, at 20.40 hours, the accused went to the house of PW.2 and on seeing the deceased being present there, questioned him as to why he has stolen his footwear, while stating that he had stolen his footwear earlier, and picked up quarrel with him. While the accused and the deceased were shouting at each other, PWs.2 and 4 have pacified and sent them to their respective houses. The accused, bearing grudge against the deceased, proclaimed that he will kill the deceased and went to his house and came out with a crowbar, attacked the deceased near the house of PW.5 and beat him with the crowbar on head and caused severe bleeding injuries. PW.7 called 108 ambulance, through which the deceased was taken to CHC, Paderu, where he was admitted by PW.1, Pangi Yerranna and Pangi Bheemanna (LWs.3 and 4

respectively). PW.1 lodged a report at G.Madugula Police Station for necessary action, on 03.12.2008 at 17.15 hours.

PW.10 registered the said report as Crime No.49 of 2008 for an offence punishable under Section 324 IPC., on the same day i.e., 03.12.2008 and commenced investigation. During the course of his investigation, he visited the scene of offence in the presence of PW.8 and Pangi Chellayya (LW.18), drafted the scene of offence observation report, prepared rough sketch of the scene of offence, seized one iron crowbar under the mediators report, arrested the appellant on 04.12.2008 at 08.00 hours and produced him in the Court of the learned Judicial First Class Magistrate, Paderu, for judicial custody. On 05.12.2008, at 4.45 hours, the deceased succumbed to injuries at CHC, Paderu, while undergoing treatment. PW.1 again lodged a report at G.Madugula Police Station on 05.12.2008 at 9.30 hours. PW.10 altered the Section of law from Section 324 IPC., to Section 302 IPC., and intimated the same to PW.11, who took up further investigation of the case. During the course of his investigation, PW.11 visited the CHC, Paderu and conducted inquest over the dead body of the deceased in the presence of PWs.1 to 3, Pangi Yerranna and Pangi Bheemanna (LWs.3 and 4 respectively) as witnesses and PW.8, Pangi Balanna (LW.16) and three others as panchayatdars under the cover of an inquest report. During the course of inquest, he examined and recorded the statements of PWs.1 to 3, Pangi Yerranna and Pangi Bheemanna (LWs.3 and 4 respectively) under Section 161(3) Cr.P.C., took the photographs of the dead body of the deceased and sent the dead body to the Medical Officer, Paderu for post mortem examination to know the exact cause of death. He also visited the scene of offence in the presence of PW.8 and Pangi Chellayya (LW.18), drafted the scene of offence observation report, prepared a rough sketch of the scene of offence, seized (1) blood stained light orange colour panche (lungi) (MO.2), (2) blood stained light rose colour white stripes towel (MO.4), (3) blood stained light black colour

stripes white colour half hands shift (MO.3), (4) blood stained soil (MO.5) and (5) control earth (MO.6) under the cover of mediators report and sent the MOs. to RFSL., Visakhapatnam, for analysis.

PW.9, who conducted autopsy over the dead body of the deceased, issued Ex.P5 post mortem certificate and opined that the deceased would appear to have died due to cardio respiratory arrest and secondary due to head injury.

N.Adinarayana (LW.20), who conducted analysis over the MOs., issued Ex.P16, RFSL analysis report, duly opining that blood was detected on item Nos.2, 4 and 6 to 9 with human origin and blood stains on item Nos.6, 7 and 8 of 'O+' blood. After completion of investigation, PW.11 filed charge sheet.

In support of its case, the prosecution examined PWs.1 to 11 and marked Exs.P1 to P17, besides producing MOs.1 to 6. On behalf of the defence, no oral evidence was let in. However, a portion of statement of PW.2 under Section 164 Cr.P.C., was marked as Ex.D1.

On appreciation of oral and documentary evidence, the Court below has rendered the judgment as referred to above.

At the hearing, Smt.Shanthi Neelam, learned counsel for the appellant/accused, has advanced the following submissions:

(i) that there was an inordinate delay in giving police report on the alleged occurrence and therefore, this unexplained delay is fatal to the case of the prosecution,

(ii) that the oral evidence of PWs.1 to 7 is replete with self-contradictions, rendering their evidence wholly unreliable,

(iii) that though the deceased has survived for three days after the alleged occurrence, the prosecution failed to record his statement or get his statement recorded by the Judicial Magistrate of First Class concerned and non-explanation of the prosecution in this regard throws any amount of doubt on the very credibility of its case and

(iv) that the evidence of PWs.1 to 7, on the face of it, appears

to be tutored, with a view to falsely implicate the appellant and therefore, it is not safe to convict the appellant based on such tutored evidence.

Opposing the above submissions, the learned Public Prosecutor (AP) has tried to sustain the judgment of the Court below by arguing that the minor contradictions apart, the evidence of PWs.1 to 7 is trustworthy and all of them being eyewitnesses, their evidence cannot be disbelieved on account of such minor contradictions. He has further argued that the witnesses being tribals, their testimony cannot be construed in a strict sense, as in the case of educated witnesses, and on examining the case of the prosecution from their perspective, there can be no doubt that the prosecution has brought home the guilt of the appellant beyond all reasonable doubt.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the evidence on record.

At the outset, we need to consider whether there was unexplained delay in giving the police report, for the law is well settled that the delay in giving report is likely to lead embellishments and false implications.

It is not in dispute that the alleged occurrence has taken place at about 8.30 pm on 02.12.2008. In Ex.P8, FIR, in column '8' relating to the reasons for delay in reporting by the complainant/informant, it is stated "tried for a compromise in the presence of elders in the panchayat". A perusal of the FIR further shows that the report was received at 17.15 hours on 03.12.2008. Thus, there is a clear gap of 20 hours between the time of occurrence and the time of reporting the occurrence. In our opinion, the alleged compromise talks do not constitute a valid explanation for the long delay in reporting the occurrence. The very fact that some compromise talks were allegedly initiated itself would give rise to a reasonable presumption that there would have been consultations and confabulations leading to false

implications as well. Therefore, in our opinion, absence of proper explanation of delay in reporting the alleged occurrence and registration of FIR is fatal to the prosecution case.

One other area, which has inherently weakened the case of the prosecution, is non-recording of the statement of the deceased. In his evidence, PW.11 has clearly deposed that the deceased was alive for three days i.e., from 03.12.2008 to 05.12.2008, after the occurrence. He has not given any reason whatsoever for not recording the statement of the deceased by the police and not intimating the jurisdictional Magistrate with a request to record the statement of the deceased. In the absence of any explanation forthcoming from the police in this regard, any amount of doubt is cast on the case of the prosecution. After all, the deceased, who was alive for three days after the occurrence, would have been the best person to testify about the real offenders and the manner, in which the offence has taken place. The fact that the police have miserably failed to take advantage of the deceased surviving for three days after the occurrence and getting his statement recorded by the jurisdictional Magistrate, coupled with the fact that no medical evidence of the treatment of the deceased for all those three days during which he has survived, was placed by the prosecution before the Court, renders the whole case of the prosecution untrustworthy.

Coming to the oral evidence, PWs.2, 3, 5, 6 and 7 are stated to be the eyewitnesses. The version of the prosecution of the manner of occurrence as spoken through the above-mentioned witnesses is that on 02.12.2008 between 7.00 pm and 8.00 pm, the deceased was at the house of PW.2. On seeing the deceased, the accused came there and questioned the deceased as to why he has stolen the footwear, while stating that the deceased has stolen his footwear earlier. An altercation ensued in which the deceased has caught hold of the neck of the accused. PW.4, who was also present there at that time, pacified both the accused and the deceased and sent them to their

respective houses. That on going to his house, the accused took out an iron crowbar and attacked the deceased from behind when the latter has reached the place in front of the house of one Matam Chinnammi on his way to his house.

PW.1, who is the natural brother of the deceased, is not an eyewitness. PW.2, in whose presence the accused allegedly attacked the deceased, deposed in his evidence that after he has separated the accused and the deceased from the altercation at his house, he has taken the accused to the latter's house by force and later the accused has beaten the deceased with a crowbar on his head at the house of Mattam Chinnammi and he has seen the crowbar in the hands of the accused. In his cross examination, he stated that after he has returned to his house from the house of the accused, when he was at the threshold of his house, the accused has attacked the deceased and that on hearing the screams of the surrounding people, he went to the place of the incident. He has further deposed "by the time I went there, Laxmayya fell down with an injury on the head. By the time I went there, I did not observe whether the accused was there or not. It was dark at that time. But several people are there but I cannot say their names." The witness also stated that there were no street lamps and it was a dark night and that it was too dark to identify the people unless one is very close to the other.

The evidence of PW.2 as discussed above would clearly show that there is a marked variation in his versions between his chief examination and cross examination. In the chief examination, he has spoken as if the incident has taken place in his presence and that he has seen the crowbar in the hands of the accused. However, in the cross examination, he has deposed that by the time, he went to the scene of offence, he saw the deceased falling down and he did not observe whether the accused was present there or not.

Now, let us see what the other alleged eyewitnesses deposed in this regard. PW.3 stated that on 02.12.2008 at about 8.30 pm, he

heard galata at the house of PW.2, that when he went there, he found that there was an altercation between the accused and the deceased over a pair of footwear, that PW.2 has separated them and sent them to their respective houses and that when the deceased was passing through the house of Matam Chinnammi and PW.5, PW.3 was following the deceased to his house and when the deceased reached the place near the house of Matam Chinnammi, the accused beat him with an iron crowbar on his head. He has further stated that PW.2 while coming from behind caught hold of the accused and snatched the crowbar of the accused with a view to prevent further beating. This statement of PW.3 is at complete variance with the evidence of PW.2 who in his chief examination only stated that he has seen the crowbar in the hands of the accused and it is not his version that he has snatched the crowbar from the hands of the accused with a view to prevent further attack. As noted above, in his cross examination he has stated that by the time he went to the scene of offence, he saw the deceased falling down with an injury on his head and he did not observe whether the accused was present at that time or not. Further, PW.3 who is no other than the nephew of the deceased and aged 25 years deposed that he could not intervene when his uncle was being attacked by the accused due to fear. In our opinion, the conduct of this witness is highly unnatural as a young person of his age especially hailing from a rural area, he could not show the courage of intervening and trying to prevent the accused from further attacking the deceased.

PW.4 also repeated the version of PW.3 as regards the role of PW.2 in rushing to the scene of offence and taking iron crowbar from the hands of the accused and similarly PWs.5 to 7 followed the suit by making parrot like repetition.

The learned Public Prosecutor submitted that being rustic villagers hailing from an agency area, the evidence of the witnesses shall not be scrutinised in a strict manner as they are not expected to give consistent versions on account of their illiteracy and ignorance.

We are afraid, we cannot accept this submission. It is not the case of the prosecution that the eyewitnesses are not worldly wise. Even an illiterate witness with ordinary mental faculties is expected to state what-all he has witnessed. If they are speaking the truth, there is no scope for any inconsistency among the so called eyewitnesses. Mere lack of education or knowledge has no relevance at all in coming out with the true version of a person of ordinary prudence whether literate or illiterate. If the prosecution witnesses have come out with the true version about the person who has attacked and the manner in which the attack has taken place, there would not have been such wide inconsistency between the evidence of PW.2 on one side and that of PWs.3, 5, 6 and 7 on the other. If PW.2 had intervened and snatched the crowbar as spoken to by the remaining witnesses, there is no reason for the said witness not to have stated so. Since PW.2 has admitted in his cross examination that he has not seen the actual attack and he has reached the scene of offence after the deceased fell down with an injury and he did not observe whether the accused was present at that time or not, there is no reason to disbelieve his version. Similarly, we cannot believe the version of PWs.3, 5, 6 and 7 which is at complete variance with what has been spoken to by PW.2 regarding the role he has played when the offence has allegedly taken place.

Furthermore, PW.11, Investigating Officer, has stated in his cross examination about the version given out by PWs.1, 2, 4 and 5 at different stages as under:

“The statements made by PW1, PW2 and PW4 & PW5 made (sic) before the Magistrate, Paderu U/s 164 CrPC statement are different to what they stated before me in 161 CrPC statement. It is true that the witnesses 1, 2, 4 & 5 have given two different versions in their statements made before me and before the Magistrate, Paderu to some extent.”

This statement made by PW.11 also renders the evidence of the alleged eyewitnesses wholly untrustworthy. On a careful analysis of the entire evidence on record, we are of the opinion that the

prosecution failed to prove that the offence has taken place in the manner as alleged by it. On account of several infirmities in investigation and inconsistencies in the evidence as referred to above, we hold that the prosecution failed to prove the guilt of the accused beyond reasonable doubt.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 08.02.2010, in Sessions Case No.109 of 2009, on the file of the learned VIII Additional District and Sessions Judge (FTC), Visakhapatnam for the offence punishable under Section 302 IPC., are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

09th March, 2016
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