

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.837 OF 2016

JUDGMENT:

1. This appeal is filed by the State challenging the Judgment dated 28.11.2011 passed by the Principal Assistant Sessions Judge, Warangal, in S.C.No.358 of 2010.

2. The case of the prosecution is as follows:

On 4.10.2009 at about 3.30 p.m., while the de facto complainant and his brother were proceeding from Kazipet to Bapujinagar, A1 called them to his house and abused them in filthy language. A1 along with A2 to A4 attacked them and beat the brother of the de facto-complainant with an iron rod on his head with an intention to kill him in furtherance of their common intention, in view of the property disputes. On the basis of the complaint lodged by the de facto complainant, a case in Crime No.237 of 2009 was registered and investigated into. After completion of the investigation, charge sheet was filed against respondents Nos.1 to 4. The learned II Additional Judicial First Class Magistrate, Warangal, took the case on file and committed the same to the Court of Sessions, Warangal. The learned Sessions Judge, Warangal made over the same to the learned Principal Assistant Sessions Judge, Warangal, for disposal.

3. The trial Court framed a charge against A1 to A4 for the offence under Sections 307 r/w 34 IPC, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 11 were examined and Exs.P1 to P11 and M.O.1 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court having found respondents-accused not guilty for the charge levelled against them, acquitted them. Aggrieved by the same, the State filed the present appeal.

6. Learned Additional Public Prosecutor submitted that the prosecution has proved its case by adducing oral and documentary evidence and that the medical evidence also supports the case of the prosecution and that the trial Court has not appreciated the evidence in a proper perspective.

7. From the material on record and the evidence, it is evident that P.Ws.1 and 2 stated overt acts of the accused before the trial Court whereas P.W.9-investigating officer stated in his cross-examination that P.Ws.1 and 2 did not state before him about the overt acts of the accused. The witnesses viz., P.Ws.4, 5, 6 and 7, who are cited as independent witnesses, did not support the case of the prosecution. The evidence of P.W.3, who is none other than the sister of P.W.1 and who is cited as eye witness, is inconsistent with her own statement made under Section 161 Cr.P.C. There are many improvements in the evidence of P.Ws.1 to 3. In the circumstances, the trial Court has not given much credence to their evidence.

8. Further, it is evident that the occurrence took place at about 3.30 p.m., whereas the complaint was lodged at 8.30 p.m. From the evidence of P.W.1, it is evident that the distance between the scene of offence and the police station is two kilometres and a person can reach the police station to the scene of offence on motor cycle or auto rickshaw within 15 minutes. But there was no explanation for the delay in lodging the complaint.

9. From the evidence of P.W.1, it is evident that A1, who is the paternal grand father of P.Ws.1 to 3, performed the marriage of P.W.1 and also maintained P.Ws.1 to 3 from the date of death of their father till 2003. A2 and A3 are the paternal uncles and A4 is the paternal aunt of P.Ws.1 to 3. In view of the relationship among the parties and the evidence of P.W.1 that A1 performed the marriage of P.W.1 and maintained P.Ws.1 to 3 till 2003 and in view of the improvements in the evidence, the trial Court disbelieved the evidence of the prosecution witnesses.

10. The observations made by the trial Court in the judgment under appeal indicate the fact that the prosecution witnesses improved their version before the trial Court, which amounts to contradictions. The independent witnesses turned hostile. The medical evidence is also against the oral evidence given by the witnesses. Considering the observations made by the trial Court, this Court is of the view that the judgment of the trial Court does not warrant any interference and therefore, the appeal is liable to be dismissed.

11. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE RAJA ELANGO

Date : 1.9.2016

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DATED 1.9.2016

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