

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE Ms. JUSTICE J. UMA DEVI

Criminal Appeal No.34 of 2011

Date : 19-06-2017

Between:

Dasari Gottam Veeranna
and another

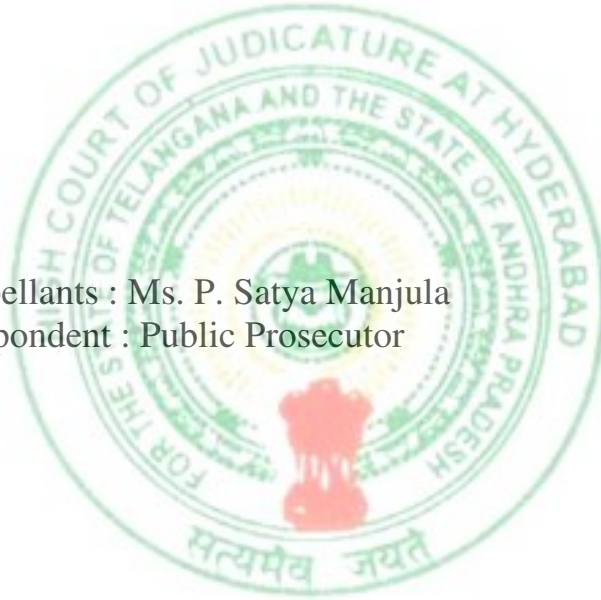
.. Appellants

and

State of Andhra Pradesh,
Represented by Public Prosecutor

.. Respondent

Counsel for appellants : Ms. P. Satya Manjula
Counsel for respondent : Public Prosecutor



The Court made the following:

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

This criminal appeal arises out of Judgment dated 3-12-2010 in S.C.No.69/2010 on the file of the learned VI Additional District & Sessions Judge (FTC), Prakasam Division, Markapur, whereby the appellants were convicted for the offence under Section 302 IPC and Section 302 r/w. Section 34 IPC, respectively, and sentenced to life imprisonment and also to pay a fine of Rs.500/- each, in default to undergo simple imprisonment for one month. Appellant No.2 was also convicted under Section 324 IPC and was sentenced to rigorous imprisonment for two years.

The case of the prosecution is that PW-1 and PW-3 were the wife and mother of one Pulicherla Naganna (the deceased) and residents of Thummalabailu village, Dornala Mandal and that they live by attending to coolie work. That in the morning on 14-12-2008, the deceased, PW-2 and the appellants/accused went into the nearby forest for coolie work; that when appellant No.1 was playing his radio in a high pitch, the deceased requested him to reduce the volume as it was causing annoyance; that thereupon the appellants picked up a quarrel with the deceased, bore grudge and were waiting for an opportunity to wreak vengeance against the deceased and PW-2; that in the evening all of them returned to Thummalabailu and that the deceased informed PW-1 about the dispute on that night itself. It is further the case of the prosecution that on 15-12-2008, PW-1, the deceased and PW-2 attended the marriage of their relatives at Thummalabailu and were returning home; that when they reached the bus stop centre, at about 9 p.m., the appellants noticed the

deceased and PW-2 going home and came over onto the road from their house; that appellant No.2 shot an arrow against the deceased which pierced into his stomach; that appellant No.1 shot an arrow against the deceased which pierced into the left side of his chest due to which he died at the spot; that the appellants escaped from the scene; that PW-2 was shifted to Primary Health Centre, Dornala for treatment in an ambulance and that after first aid, PW-2 was referred to the Government General Hospital, Kurnool for better treatment. That after the dead body of the deceased was taken to the Primary Health Centre, Dornala, PW-9, Sub-Inspector of Police, Dornala Police Station, recorded the statement of PW-1 on 16-12-2008 at 02.00 Hours, registered the same as a case in Cr.No.79/2008 under Sections 307, 302 r/w. Section 34 IPC at 03.00 Hours and sent express FIRs to all the concerned Officers. PW-11, the Inspector of Police, took up the investigation, secured the presence of PW-5 and LW-9, visited the scene of offence, prepared a rough sketch thereof and also prepared an observation report duly attested by PW-5 and LW-9; that during the observation of the scene of offence, PW-11 seized the blood stained earth and control earth in the presence of mediators under the cover of mahazar duly attested by the mediators; and that PW-11 got the scene of offence photographed by PW-7. That PW-11 examined the dead body of the deceased in the presence of PW-5 and L.Ws.6 and 7, examined PW-1, PW-3, PW-4 and LW-5 and recorded their statements; that he has also held inquest over the dead body of the deceased on 16-12-2009 from 8 a.m. to 11 a.m., prepared Ex.P-3 inquest report and sent the dead body to the Government Hospital, Markapur for

conducting autopsy. That PW-11 sent the material objects preserved by PW-6 to the Regional Forensic Science Laboratory, Guntur for analysis. That on 17-12-2008, PW-11 arrested appellant No.2 at Shivasadan, interrogated him in the presence of PW-5 and LW-9 and as per the confessional statement seized a bow and sent him to judicial custody. That on 10-3-2009, PW-8 arrested appellant No.1 at Thummalabailu, and on his confessional statement seized the bow used for commission of the offence and three other arrows under mahazarnama duly attested by PW-5 and LW-9 and sent appellant No.1 to judicial custody and that after completion of the investigation, laid the charge sheet against the appellants.

The appellants/accused denied the charges framed against them and claimed to be tried.

Before the trial Court, to bring home the guilt of the appellants/accused, the prosecution examined PW-1 to PW-11 and marked Exs.P-1 to P-10. No oral or documentary evidence was adduced on behalf of the defence. After trial, the appellants/accused were found guilty of the charges and were accordingly convicted and sentenced by the trial Court as stated supra. Hence, the appellants/accused preferred the present criminal appeal.

At the hearing, the learned Counsel for the appellants submitted that the lower Court has seriously erred in convicting the appellants based on the interested testimony of PW-1 to PW-4; that the alleged occurrence was stated to have taken place during night in an open area under cover of thick forest topes and therefore there was no possibility of PW-1 to PW-4,

the alleged eye witnesses, identifying the assailants. That PW-8, the Investigating Officer, categorically admitted that the bow and arrow seized under Ex.P-5 panchanama were not produced before the Court, thereby casting a serious cloud on the entire case of the prosecution. That MO-1 – arrow piece, allegedly retrieved from the body of the deceased, was not sent to Forensic Science Laboratory for its opinion and that it was not safe to convict the appellants based on such defective investigation.

Opposing the above submissions, the learned Public Prosecutor for the State of Andhra Pradesh, commended the correctness of the Judgment of the lower Court.

Having regard to the respective submissions of the learned Counsel for the parties, the point that arises for consideration is whether the conviction and sentence of the appellants/accused is justifiable?

PW-1 to PW-4 were examined as eye-witnesses. Among these witnesses, PW-2 is also an injured witness. Therefore, his evidence enjoys the highest credibility. In his chief-examination, PW-2 stated that the deceased was his uncle; that PW-1 and PW-3 were the wife and mother of the deceased; that a day prior to the occurrence, himself, the deceased and the appellants/accused along with others went for coolie work in the forest; that appellant No.1 was carrying a radio and listening to the programmes; and that when the deceased asked him to reduce the volume of the radio, a quarrel ensued between the deceased and appellant No.1. PW-2 further deposed that on the date of occurrence, himself, the deceased, PW-1 and PW-3 attended a marriage at Thummalabailu; that they were all returning from the marriage at about 9 p.m. and reached the

bus stand of their village; that both the appellants were having bamboo bows and arrows; that appellant No.2 released an arrow from his bow which pierced the witness's stomach, and that appellant No.2 released an arrow from his bow which pierced into the chest of the deceased, who died on the spot. That immediately after the incident, both the appellants/accused fled away from the spot and that the villagers secured an ambulance by making a phone call in which appellant No.2 was taken to the hospital at Dornala and that later he was taken to the Government Hospital on the fourth day after the occurrence. In his cross-examination, PW-2 stated that the distance between the deceased on the one side and the accused on the other side was about 50 to 100 ft. He denied the suggestion that some unknown offenders having disputes with the deceased might have caused his death and that due to mistaken identity he was deposing falsely against the appellants.

PW-1 and PW-3, the widow and the mother of the deceased, fully corroborated the testimony of PW-2.

PW-4, an independent eye-witness, stated in his evidence that he had also attended the marriage on the night of occurrence; that at about 9 p.m. on that day when he was returning from the marriage, he saw PW-1 to PW-3 and the deceased going ahead of him at a distance of 50 yards; that by the time they reached the bus stand of Thummalabailu he saw appellant No.2 releasing an arrow which hit the abdomen of PW-2 whereas appellant No.1 released an arrow from his bow which hit the chest of the deceased; that the deceased died on the spot and that the appellants ran away from the scene. PW-4 further deposed that the

injured PW-2 was taken in an ambulance to the hospital and that under the moonlight he has witnessed the incident. The witness denied the suggestion that the marriage was over by afternoon, that he left for home after the marriage and that he did not witness any incident on that night. A specific suggestion was put to the witness that as Tummalabailu is a forest village, under the shade of trees there was no possibility of the moon light being available during that night. This suggestion was denied by the witness. PW-4 further admitted that bows and arrows were normally available in every household of their village. He has also denied the suggestion that he did not state before the Police that he has identified the appellants in the moonlight as the culprits and that he was deposing falsely as tutored by the Police.

PW-1 to PW-4 are interested witnesses. However, the law is well settled that the evidence of a witness cannot be discarded merely because he is an interested witness, but however, the Court must be cautious in analysing such testimony and discard the same only if it is unnatural or self contradictory. A careful analysis of the evidence of PW-1 to PW-4 does not reveal any contradictions between their testimonies on material aspects. All these witnesses in unison clearly narrated the incident without contradictions. Their evidence reveals that there was moonlight which is also implicitly admitted by the defence as evidenced from the suggestion put to PW-4 that due to the shade of the trees in Thummalabailu there was no possibility of moonlight being available at the time of occurrence. The evidence on record therefore clearly proves that when the incident occurred there was moonlight, by the aid of which

PW-1 to PW-4 could easily identify the appellants/accused as the assailants. Though a suggestion was put to the witnesses that there was no enmity between the appellants on the one side and the deceased on the other side, no suggestion was put to any of them, and in particular PW-2, who was an eye witness to the incident taken place on the day prior to the occurrence for such an incident, that a “quarrel” between the deceased and the appellants did not take place. It thus appears that the quarrel between the deceased and PW-2 on the one side and the appellants/accused on the other side, which had taken place on the previous day, was the root cause for the appellants/accused nursing grudge against the deceased and PW-2, leading to their killing the deceased and injuring PW-2.

The testimony of an injured witness enjoys highest credibility, for, not only his presence at the scene of occurrence is proved but also he is not expected to shield the real assailant and falsely implicate innocents.

In **Balwan Vs. State of Haryana**¹, the Supreme Court held (para-16) :

“It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.”

In **Chikkarangaiah and others Vs. State of Karnataka**², the Supreme Court held (para-46):

“That being the position, we find no reason why an injured witness instead of giving the name of real assailants would unnecessarily implicate other people falsely who were not the real assailants.....”

¹ 2014(13) SCC 560

² 2009(17) SCC 497

It is not the pleaded case of the defence that there was previous enmity between the two groups giving rise to false implication of the appellants due to such enmity. On the contrary, as per the suggestions put to the prosecution witnesses, it is the case of the defence that there were no disputes at all between the two sides. PW-2, who suffered an arrow injury, is therefore not expected to depose falsely against the appellants.

As regards the submission of the learned Counsel for the appellants that the prosecution failed to produce the bow which was allegedly seized under Ex.P-5 mahazarnama, no doubt PW-8 – the investigating officer, admitted that he did not produce the same in Court. In our opinion, while the prosecution failed to explain the reason for non-production of the bows and arrows especially after they were seized, this lapse on the part of the investigating agency is not fatal to the prosecution case as in a case based on the evidence of eye-witnesses, seizure of weapon loses its significance, more so, when the ocular evidence of the witnesses is supported by medical evidence.

In **Manjit Singh Vs. State of Punjab**³ the Supreme Court held (para-33):

“As far as non-seizure of the bloodstained clothes and bloodstains from the seat of the car are concerned, it does not create a dent in the prosecution version. In this context, the authority in *State of Rajasthan v. Arjun Singh (2011(9) SCC 115)* can profitably be referred to. In the said decision the Court has opined that absence of evidence regarding recovery of used pellets, bloodstained clothes etc., cannot be taken or construed as no such occurrence had taken place. It has been further observed that when there is ample unimpeachable ocular evidence and the same has received corroboration from the medical evidence, even the non-recovery of weapon does not affect the prosecution case.”

(Emphasis supplied)

³ 2013(12) SCC 746

In **Mritunjoy Biswas Vs. Pranab**⁴, the Supreme Court held (paras 34 & 35):

“In *Lakshmi v. State of U.P. (2002(7) SCC 198)* this Court has ruled that : (SCC p.205, para-16):

“Undoubtedly, the identification of the body, cause of death and recovery of weapon with which the injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the prosecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder.”

In *Lakhan Sao v. State of Bihar (2000(9) SCC 82)* it has been opined that (SCC p.87, para 18):

“The non-recovery of the pistol or spent cartridge does not detract from the case of the prosecution where the direct evidence is acceptable.”

In the instant case, PW-6, the Doctor who conducted autopsy over the dead body of the deceased and issued Ex.P-6 – post mortem certificate, deposed that he had seen a male body placed in the mortuary room along with an arrow entered in the body below the level of left nipple; that on dissection it was found that the injury passed into the heart through 6th inter costal space on left liver chest and that on internal examination he has found stabbing injury passed into left ventricle of heart and came out from the posterior wall and damaged the left lower lobe of the lung. He has opined that the deceased would appear to have died of shock and haemorrhage because of the injury to the vital organs i.e., heart and lung. PW-6 identified MO-1 as the metal tip of the arrow removed from the body of the deceased and handed over the same to the

⁴ (2013) 12 SCC 796

appellants. The only suggestion worth mentioning put to this witness was that the injuries on the body of the deceased may have been possible by a fall in drunken state.

PW-10, the Civil Assistant Surgeon, Government Hospital, Kurnool, who examined PW-2 deposed that he found an arrow injury which is a lacerated one, 3 cms. above and lateral to umbilicus. He has further deposed that he has got the chest and abdomen of PW-2 X-rayed and found no bony injury on the chest and that the X-ray of the abdomen revealed a radio opaque foreign body at the level of L3/L4 vertebra on the left side. PW-10 described the injury as simple in nature. This witness was not even cross-examined by the defence.

As per the testimony of P.Ws.1 to 4, the deceased was hit with arrow on his chest while PW-2 received arrow injury on his abdomen. Ex.P-6 – post-mortem certificate and Ex.P-10 – wound certificate, of the deceased and PW-2, respectively, and the evidence of PW-6 and PW-10 completely supported the evidence of PW-1 to PW-4, both with respect to the place at which and the nature of injuries sustained by the deceased and PW-2. Such being the case, non-production of the seized material objects with which the appellants/accused have allegedly caused the injuries to the deceased and PW-2, is wholly inconsequential.

From the above discussed evidence, we are of the opinion that the prosecution was able to prove that appellant No.1 hit the deceased on his chest with his arrow while appellant No.2 has injured PW-2 on his abdomen with the arrow released by him from his bow.

We are not impressed with the submission of the learned Counsel for the appellants that non-sending of the arrow-head to the Forensic

Science Laboratory is fatal to the case of the prosecution. When there is credible evidence on record on the occurrence of offence and also regarding the manner in which the offence was committed by the appellants/accused, the failure of the investigating agency to send the arrow-head for forensic analysis, pales into insignificance. The evidence on record rules out any possibility of false implication of the appellants/accused and there is no reason to doubt the veracity of the testimony of PW-6 who retrieved the arrow-head from the body of the deceased. On defence's own suggestion, every household of the village in question will have bows and arrows and therefore it was not improbable that the appellants have used them to do away with the life of the deceased and injure PW-2. Moreover, PW-1 to PW-4 were examined under Section 161 Cr.P.C. at the earliest point of time after the occurrence and no contradictions could be elicited between their statements so recorded and the evidence given by them before the Court. When the version of the prosecution witnesses is consistent all through, in the absence of any improbabilities or inconsistencies in their evidence, it is safe to rely upon their testimony which, as noted above, has been amply supported by medical evidence.

For the aforementioned reasons, we do not find any merit in this criminal appeal and the same is accordingly dismissed.

Justice C.V. Nagarjuna Reddy

Justice J. Uma Devi

Date : 19-06-2017
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