

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

Criminal Appeal No.131 of 2013

Date: 17.02.2018

Between:

Vadde Kunchepu Moulali,
s/o. Vadde Kunchepu Gokari, Age: 47 years,
R/o. Lingapuram Village, Bandi Atmakur Mandal,
Kurnool District.

.. Appellant/Accused

and

The State of A.P.,
rep.by its Public Prosecutor,
High Court of A.P., Hyderabad.

.. Respondent/
Complainant

Counsel for the appellant: Sri C. Vasundhara Reddy

Counsel for the respondent: Public Prosecutor

The Court made the following:

JUDGMENT (per Hon'ble Sri Justice D.V.S.S. Somayajulu):

This Criminal Appeal is filed by the sole accused against his conviction and sentence imposed in Sessions Case No.279 of 2012 on the file of the III Additional Sessions Judge, Kurnool at Nandyal, through judgment dated 18.12.2012.

2. For convenience, the appellant is referred to as accused.

3. The accused in this case was charge sheeted under Section 302 of the Indian Penal Code (for brevity 'IPC') in Crime No.2 of 2012 on the file of the Bandi Atmakur Police Station. The case of the prosecution is that the accused had enmity with the deceased as the latter and his elder brother took away auto rickshaw being used by the accused and burnt the same and as such the accused failed to repay the loan outstanding of the Auto Rickshaw; that on 10.01.2012 the accused picked up a quarrel with the deceased; pushed him on the ground and hacked him on his head with sickle and that due to that blow deceased fell down; that immediately, PWs.1 & 2 who were witnessing the same, called for an ambulance and shifted the injured to the hospital. On the way to the hospital, he succumbed to injuries, on 10.01.2012 at about 21.00 hours after receiving the information about the murder of the deceased, PW.12, the then Sub-Inspector of Police, Bandi Atmakur Police Station rushed to the Government Hospital, Nandyal and

secured the presence of PW.1 and recorded her statement and then informed the same to PW.8, Inspector of police, Nandyal Rural Circle and on his instructions, he registered the case in Crime No.2 of 2012 and issued FIR. Further investigation was taken over by PW.8. On 11.01.2012, PW.8 held inquest over the dead body at the Government Hospital, Nandyal in the presence of PWs.3 to 5. Thereafter, he forwarded the dead body for post-mortem examination. He then proceeded to the scene and drafted the scene of offence panchanama in the presence of PWs.3 & 5. On 11.01.2012 on requisition, PW.7, the Civil Assistant Surgeon, District Hospital, Nandyal held autopsy over the dead body of the deceased and opined that the cause of death was due to Haemorrhage to vital organ and brain. On 12.01.2012, PW.8 arrested the accused and in pursuance of his statement, at his instance sickle (MO1) was seized in the presence of PWs.4 & 6. He forwarded all the material objects to RFSL. After receiving all documents and on completion of investigation, PW.8 filed the charge sheet.

4. Based on the charge sheet and the material produced by the Investigation Officer, the trial Court framed the following charge:

“That the deceased Vadde Sampangi Chinna Sanjanna and his elder brother Vadde Sampangi Shiva took away your auto from Nandyal and burnt the same as you failed to repay the loan to the deceased Vadde Sampangi Chinna Sanjanna. From then

onwards, you developed enmity against the deceased and waiting for an opportunity to do away the deceased and on 09.01.2012 in the night time, the daughter of the deceased died due to jaundice and on 10.10.2012 at about 11 a.m. after cremation of the dead body of the daughter of the deceased, the deceased after consuming liquor while he was moving in the village abusing others and at about 19-30 hours while the deceased Vadde Sampanti Chinna Sanjanna was at the cattle shed of Ummadi Venkata Reddy, you came there and picked up quarrel with him abusing him as YEMIRAA NAA KODAKKA MAAA AUTONU TEESUKONI VELLI NAASHANAM CHESINDI KAAKA MALLI MAMMALNI TIDUTUNNAVU and so saying you pushed the deceased down to the ground and hacked him on his head thrice with a sickle, as a result the deceased received severe bleeding injuries on his head and died while he was being shifted to the Government Hospital, Nandyal for treatment and thereby you committed an offence punishable under Section 302 IPC.”

5. As the plea of the accused is one of the denial of the charge, the accused went to trial. For the prosecution, PWs.1 to 12 were examined; Exs.P.1 to Ex.P.15 were marked and MOs.1 to 7 were marked. For the defence, Ex.D.1 to Ex.D.10 were marked. .

6. After trial, the accused was found guilty of the offence under Section 302 IPC and convicted u/s.235 (2) Cr.P.C. and he was sentenced to undergo imprisonment for life and pay a fine of Rs.100/-, in default of payment of fine, to suffer simple imprisonment for a period of one month. It is this judgment that is challenged in the appeal.

7. The learned counsel for the accused points out that there is no motive established for the offence. In her cross-

examination, PW.1 clearly admits that there are no disputes between the deceased and the accused with regard to the auto. It is also clearly spoken to by PW.1 in her cross-examination that auto and the outstanding loan, which are supposedly the reason for the murder, were actually obtained by his brother-Galigadu. Therefore, the learned counsel points out that as the accused is not a borrower, the theory of motive set by the prosecution has to fail.

8. The learned counsel for the accused also points out that despite the first information of the offence being conveyed by PW.10, no FIR was registered and that FIR was registered only at the hospital as per PW.12. Therefore, it is the submission of the learned counsel that the FIR is not registered as required under law and it contains improvements with a view to implicate the accused.

9. The learned counsel also strongly relied upon the medical evidence. PW.7 was the Doctor who has examined the deceased and conducted the post-mortem. The Doctor clearly deposed in her cross-examination that the injuries noted in Ex.P.9 are laceration injuries. She admits that if a sharp edged weapon like a sickle (MO.1) is used, it will cause cut lacerations. The Doctor noted that if a sharp edged weapon is used, there will be clean cuts, but the injuries in the present case are not clean cuts. The Doctor also admits that the injuries shown in Ex.P.9 are possible with the weapon like MO.1-sickle. The Doctor also deposed that there are four injuries and to sustain the four injuries, the deceased should

have been attacked four times. The learned counsel points out that as per the charge sheet, the accused attacked the deceased three times only with this sickle. The learned counsel points out that in view of clear and categorical evidence of the Doctor, it cannot be said that the accused killed the deceased with MO.1-sickle.

10. The learned counsel for the accused also points out the discrepancies in the statements recorded therein. Even the lower Court noticed the discrepancies and reproduced the same. However, the Court noticed that the same are not very material and are minor in nature.

11. The learned counsel for the appellant/accused argues that there are inherent discrepancies and inconsistencies in the prosecution case; that there were number of planted witnesses, that the prosecution failed to prove the case beyond reasonable doubt; and that even the medical evidence does not support the case of the prosecution. She also argues that a) motive was not at all established; b) there is a glaring discrepancy about the place of offence of the incident; c) no explanation is given for the presence of PWs.1 & 2 or of PWs.9 & 10 at the alleged scene of offence; and d) the medical evidence does not support the case set up by the prosecution and the Doctor's evidence that MO.1 could not have caused the injuries noted on the deceased is crystal clear. Therefore, the learned counsel for the accused states that the guilt of the accused is not proved beyond reasonable doubt.

12. According to the learned Public Prosecutor, the case has been adequately proved as required under law with reference to both the motive and the occurrence of the incident. Therefore, the learned Public Prosecutor sought to support the judgment of the lower Court.

13. This Court after hearing both the learned counsel notices the following points in the evidence. The case of the prosecution is that the deceased was at the cattle shed of Ummadi Venkata Reddy where the accused picked up a quarrel; pushed him down and hacked him on the head three times with a sickle, whereas the evidence of PWs.1 & 2 is to the effect that the incident took place in front of the house of the accused. This ocular evidence is contrary to the rough sketch of scene of offence panchnama marked as Ex.P.11, which shows that the scene of offence is in the residential premises of Ummadi Venkata Reddy.

14. It could be further seen that the houses of the accused and the deceased are located at some distance from each other, whereas the scene of offence is again a separate spot. No reason is forthcoming why PWs.1 & 2 were present at that point of time and at that particular spot. The fact that both PWs.1 & 2 are interested witnesses and their presence or the reason for their presence as per the deposition is also not clearly explained. There is no evidence available to show what PWs.1 & 2 were doing at that spot when the alleged offence took place. Further, as per PW.1, only she and

PW.2 were present at the spot, whereas according to PW.10, he also came to the spot. However, PW.11 contradicts PW.10 in her cross-examination and states that her husband was not present at the spot. This is directly contrary to what is stated by PW.1.

15. This Court agrees with the submissions made by the learned counsel for the accused. The motive is not established in this case. Neither the presence of the important witnesses nor the exact spot where the offence actually took place is supported by any evidence. The FIR was actually registered much later after a delay which is not explained. To top it all, the Doctor who conducted the post-mortem very clearly deposes that the injuries in this case are not cut lacerations and therefore, she categorically ruled out the possibility of injuries being caused by MO.1-sickle. There is no explanation forthcoming from the prosecution for any of these points.

16. In view of the above reasons, this Court is of the opinion that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. Therefore, he is entitled for acquittal.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in judgment, dated 18.12.2012, in Sessions Case No.279 of 2012 on the file of learned III Additional Sessions Judge, Kurnool at Nandyal, for the offence punishable under Section 302 I.P.C. are

set aside and the appellant/accused is acquitted of the charge framed against him. The appellant/ accused shall, accordingly, be set at liberty forthwith, if he is not required in any other case(s) or crime(s) and the fine amount, if any, paid by him shall be refunded to him.

C.V. NAGARJUNA REDDY, J

D.V.S.S. SOMAYAJULU, J

Date: 17.02.2018
Isn/ghn

