

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.639 OF 2012

DATED 30TH OCTOBER, 2018

Between:

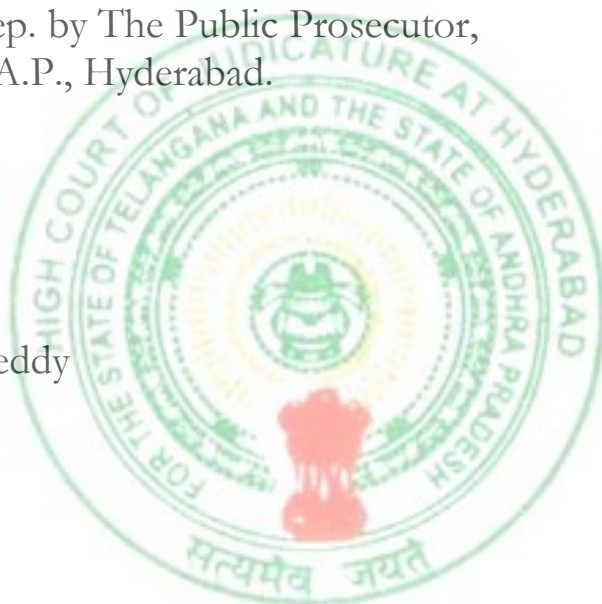
State of A.P., rep. by The Public Prosecutor,
High Court of A.P., Hyderabad.

... Appellant.

AND

Edelli Ranga Reddy

... Respondent.



Counsel for the appellant : Public Prosecutor (A.P)

Counsel for the respondent : None appeared.

THE COURT MADE THE FOLLOWING

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The State of Andhra Pradesh, represented by the Public Prosecutor, High Court of A.P., Hyderabad, filed this appeal against the judgment in S.C.No.29 of 2007, dated 29.04.2010, on the file of the Court of Special Judge for SC/ST (POA) Cases at Warangal (for short, the trial Court), wherein the respondent/accused was found not guilty of the offence punishable under Section 302 IPC., and Section 3(2)(V) of SC/ST (POA) Act, 1989 and acquitted of the same under Section 235(1) Cr.P.C.

2. The case of the prosecution is that on 16.04.2004, the respondent/accused took an amount of Rs.26,000/- from Ajmeera Saraiah @ Jogi Saraiah (herein after referred to as the deceased) on loan basis for his personal expenses by executing a paper, promising to repay the said amount by Ugadi festival with interest at the rate of 2.50% per month. Subsequently, when the accused did not repay the said amount, the deceased used to request him to repay the same and even after repeated requests, the accused did not repay the said amount. The deceased having vexed with the attitude of the accused, abused him in the presence of others, where upon, the accused developed grudge against him. On 5.05.2006 in the early hours, the deceased went to the house of the accused and requested him to

repay the amount, stating that he has to perform the marriage of his daughter. Upon which, the accused replied that he will come over to Buchinaik Thanda and pay the loan amount. On the same day at about 7.00 am., the accused went to the house of P.W.6 at Buchinaik Thanda and on coming to know about the arrival of the accused, the deceased went to the house of .PW.6 and requested the accused to repay the amount. There upon, the accused picked up a quarrel, abused the deceased knowing him to be Scheduled Tribe, fisted in the stomach and forcibly pushed him towards building stair case with an intention to kill him, due to which the deceased fell on the building stair case and died on the spot.

3. On the complaint lodged by P.W.1, younger brother of the deceased, P.W.14, Assistant Sub Inspector of Police, Narsampet, registered a case in Crime No.65 of 2006 and recorded the statements of P.Ws.1 to 5 under Section 161 Cr.P.C. P.W.14 also conducted scene of offence panchanama in the presence of P.W.10 and L.W.11-Challa Malla Reddy. P.W.12 Civil Assistant Surgeon, Narsampet, conducted autopsy over the dead body of the deceased and opined that the cause of death of deceased is due to injury to brain and intestines. P.W.15 Inspector of Police, Narsampet, arrested the accused on 18.05.2006 and remanded him to judicial custody.

P.W.16, Sub Divisional Police Officer, Narsampet, took up investigation in this case and after completion of investigation, he filed the charge sheet.

4. On appearance of the accused, the trial Court framed charges under Section 302 IPC., and Section 3(2)(V) of SCST (POA) Act, 1989. The accused pleaded not guilty for the said charges and claimed to be tried. The prosecution examined PWs.1 to 16 and got marked Exs.P1 to P11 on its behalf. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., and he denied the said evidence. No defence witnesses were examined on behalf of the accused, but Exs.D1 to D8 contradictions were marked in the statements of PWs.1 to 5 recorded under Section 161 Cr.PC.

5. P.W.1 is the de facto complainant and brother of the deceased, P.W.2 is the wife of the deceased, PWs.3 to 5 are the eye witnesses, P.Ws.6 to 8 are the circumstantial witnesses, P.W.9 is the panch witness for scene of offence, P.W.10 is the panch witness for inquest and P.W.11 is the panch witness for confession. P.W.12 is the doctor who held autopsy over the dead body of the deceased, P.W.13 is the Mandal Revenue Officer, who issued Caste Certificates of appellant and deceased, P.W.14 is the Assistant Sub Inspector of Police,

Narsampet, who received complaint from P.W.1, P.W.15 is the Inspector of Police, Narsampet, who arrested the appellant and P.W.16 is the Sub Divisional Police Officer, Narsampet, who filed the charge sheet.

6. On appreciation of the oral and documentary evidence, the trial Court has disposed of the case in the manner as narrated above. Aggrieved by the said judgment, the State filed the present appeal.

7. The learned Public Prosecutor, representing the State of Andhra Pradesh, would submit that the trial Court failed to consider the evidence on record and also failed to consider the evidence of P.W.12, doctor, and erroneously acquitted the appellant and therefore prayed to allow the appeal by setting aside the judgment of acquittal.

8. None appeared on behalf of the respondent/accused.

9. This is an appeal against acquittal. The question of the extent of powers of the High Court to deal with the order of acquittal was taken up by a five Judges' Bench of the Supreme Court in **M.G.Agarwal Vs. State of Maharashtra**¹. The Supreme Court after surveying the case law existing till then observed thus:

¹ AIR 1963 SC 200

"There is no doubt that the power conferred by clause (a) of S.423(1) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. In dealing with such appeals the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanor of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in dealing with the former class of appeal, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasized, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that, however circumspect and cautious the approach of the High Court maybe in dealing with appeals against acquittals, it is undoubtedly entitle to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused"

10. Keeping the aforementioned principle in view, we would now like to consider the instant appeal on merits and to see whether there exist strong and compelling reasons to interfere with the order of acquittal and whether there is absolute assurance of the guilt of the accused upon the evidence on record.

11. P.Ws.1 to 5, who are close relatives of the deceased, stated that when the deceased demanded the accused to repay his loan amount, the accused fisted blow in the stomach and forcibly pushed the deceased, as a result of which, the deceased died. As per the case of the prosecution, P.Ws.3 to 5 witnessed the incident. P.Ws.6 to 8 are the circumstantial witnesses, P.W.9 is the panch witness for scene of offence, P.W.10 is the panch witness for inquest and P.W.11 is the panch witness for confession. There is no independent eyewitness to the incident. Apart from the same, nowhere in Ex.P.1, it was stated by P.W.1 that the accused used caste name and that the incident has happened on the basis of caste. It is mentioned in Ex.P.1 that when the accused pushed his brother (the deceased), he fell down from the building stairs and died. Apart from the same, in his chief examination, P.W.1 deposed that the accused repeatedly abused the deceased in the presence of P.Ws.7 and 8, but P.Ws.7 and 8 in their evidence, stated that when the accused failed to pay the money, the deceased abused the accused.

12. It is necessary to refer to the evidence of P.W.8. In the chief examination, though he had deposed that when the accused failed to repay the amount the deceased abused the accused and on that the accused attacked him, due to which, the deceased died, in his

cross-examination, P.W.8 deposed that it is true that he does not know about the cause of death of the accused. Hence, it can be said that his deposition does not support the case of the prosecution.

13. There is no independent witness to speak about the incident. It is to be noted that P.W.12, the doctor who conducted autopsy, opined that the deceased died due to shock and hemorrhage by receiving injuries to brain and intestine, but no witness had stated that the accused beat on the head of the deceased. P.Ws.3 to 5, who are stated to be the eyewitnesses, as per the prosecution case, are close relatives of the deceased and their evidence does not inspire confidence in order to connect the accused with the commission of offence.

14. In the circumstances of the case, the accused, in our opinion, is entitled to benefit of doubt. In any case, the order of acquittal cannot be converted into an order of conviction solely on the basis of the evidence discussed above. In our opinion, the findings recorded by the trial Court cannot be called perverse and we do not find strong and compelling reasons to interfere with the order of acquittal made on proper appreciation of the evidence on record. Therefore, the appeal is liable to be dismissed.

15. For the aforesaid reasons, the Criminal Appeal is dismissed confirming the judgment dated 29.04.2010 in Sessions Case No.29 of 2007 on the file of the Court of Special Judge for SC/ST (POA) Cases at Warangal.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

Date: 30.10.2018
TJMR

