

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1486 of 2011

JUDGMENT: (*per Hon'ble Smt Justice T. Rajani*)

The appellants prefer this appeal, assailing the judgment of the III Additional District and Sessions Judge, Nellore in S.C.No.239 of 2011 dated 13.12.2011 convicting and sentencing the appellants as under:

A1 to A3 are found guilty for the offence punishable under Section 452 of the Indian Penal Code and sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs.500/- each in default to undergo two months simple imprisonment; A1 to A3 are sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for one month for the offence punishable under Section 302 IPC and A2 is found guilty for the offence punishable under Section 302 read with 34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.100/- in default to undergo simple imprisonment for one month.

2. Tersely the facts of the case, as per the charge sheet are as follows:

A1 to A3 are residents of Janardhan Reddy Colony, Venkateswarapuram, Nellore; A1 and a2 are brothers and A3 is friend of A1 and A2. L.Ws.1 to 3, 7 and 8 are residents of Janardhan Reddy Colony, Venkateswarapuram, Nellore; L.W.4 is resident of Nawabpet, Nellore and L.Ws.5 and 6 are residents of Umareddygunta, Nellore.

The deceased is also resident of Janardhan Reddy Colony, Venkateswarapuram, Nellore and L.W.1 is the wife of the deceased. The deceased is the son of L.W.5 and elder brother of L.W.6. The deceased and L.W.1 loved each other and got married about 1 ½ years prior to 21.09.2009.

A1 is a rowdy sheeter in the Nellore Rural Police Station. The deceased is a pick pocket. About one month prior to 21.09.2009, the deceased shifted his family to Burmashel Gunta of Janardhan Reddy Colony, Venkateswarapuram, Nellore and has been residing in the house of one Khaja Masthan on rent. About 15 days prior to 21.09.2009, A1 to A3 quarrelled with the deceased at Venkateswarapuram centre, in a drunken state and the deceased threatened A3. About one week prior to 21.09.2009, when A1 to A3 were chitchatting at Janardhan Reddy Colony bridge, the deceased and L.W.4 went to the bridge for consuming liquor. The accused and the deceased quarrelled with each other and in that connection, A1 to A3 warned the deceased to leave the colony. There was an altercation between them. Again on 19.09.2009, at about 8 PM, while the deceased and his brother were sitting on the bridge, A1 to A3 came there and questioned the deceased as to why he did not leave the colony so far. In that connection, there was a quarrel between the accused and the deceased and keeping the same in mind, A1 to A3 hatched a plan to kill the deceased.

On 21.09.2009, in the midnight, while the deceased and his wife were sleeping in their house along with their kid, A1 to A3, having made preparation to kill the deceased, came there armed with knives

and sticks. In pursuance of their intention, they knocked the doors and when the deceased opened the doors, the accused trespassed into the house. A2 beat the deceased with a stick over his head and A1 and A3 stabbed the deceased with knives, indiscriminately, all over his body and caused bleeding injury. The wife of the deceased witnessed the occurrence and raised cries. The deceased fell on the ground with injuries. On hearing the cries of the wife of the deceased, L.W.2 came out and found A1 to A3 proceeding from the house of the deceased. L.Ws.2, 3, 7 and 8 rushed to the scene of offence and found the deceased lying on the ground, with bleeding injuries and L.W.1 shifted the deceased to the Government Hospital, Nellore in an auto, where the doctor declared him dead.

L.W.1 gave a report to the Nellore Rural Police Station, based on which a case in Cr.No.296 of 2009 was registered. L.W.18 took up investigation, visited the scene of offence in the presence of mediators, conducted panchanama and seized the material objects from the scene of offence, in the presence of panch witnesses. He visited the hospital and conducted inquest over the dead body of the deceased and later sent it for post mortem examination. He recorded the statement of the witnesses. He effected the arrest of the accused and recorded their confession and after concluding the investigation, charge sheet was laid against A1 and A3 for the offence punishable under Section 302 IPC; A2 for the offence punishable under Section 302 read with 34 IPC; A2 for the offence punishable under Section 324 IPC; A1 and 3 for the offence punishable under Section 324 read with 34 IPC and A1 to A3 for the offence punishable under Section 452 IPC.

The IV Additional Judicial Magistrate of First Class, Nellore, took the case on file for the offences under Sections 452 and 302 read with 34 IPC and after complying with the required legal formalities, committed the case to the Sessions Division by virtue of orders in PRC.No.2 of 2010 dated 22.01.2010. The Sessions Judge, in turn, made over the case to the III Additional District and Sessions Judge, Nellore for trial and disposal in accordance with law. The Court below, on appearance of the accused, framed charges against them for the same offences and after recording the plea of not guilty by the accused, conducted the trial of the case and examined P.Ws.1 to 10, Exs.P1 to P14 and M.Os.1 to 14 on behalf of the prosecution. After concluding the prosecution evidence, the accused were questioned about the incriminating circumstances appearing in the prosecution evidence, which they denied and they did not choose to examine any witness on their behalf.

A1 pleaded that he was implicated in this offence falsely. A2 and A3 also submitted the same and further stated that they were kept in illegal custody.

3. The Court below, after appreciating the evidence and considering the material on record, passed the impugned judgment, against which the present appeal is preferred on the following and other grounds that were urged at the time of hearing:

The Court below ought to have seen that P.W.1 is an interested witness and P.W.4 is a planted witness to prove the motive. The Court below failed to see that P.Ws.2 and 5 did not identify the accused; it ought to have seen that P.W.1 has no knowledge about the previous

incidents between the deceased and the accused and that the names of the accused were falsely mentioned in Ex.P1 report; it ought to have seen that there was no light at the time of the incident; it ought to have seen that the deceased had several enemies and that he was involved in several criminal cases and ought to have acquitted the accused.

4. Heard learned counsel for the appellants and the learned Public Prosecutor.

5. The counsel for the appellants attacks the testimony of P.W.1 with the help of the report given by her. She contends that, in the report, P.W.1 mentions the names of the accused but her evidence given before the Court, that A1 to A3 used to come to their house, talked with the deceased and that she came to know the names of the accused through her husband, were pointed out as omissions and hence, there is no scope for her to know the names of the accused and hence, P.W.1 mentioning the names of the accused, in the report, has to be considered, as having been done, at the instance of the people, who wanted to implicate the accused falsely in this case. By contending as such, she wants to remove P.W.1 from the category of an eye-witness.

6. Learned Public Prosecutor, on the other hand, contends that the evidence of P.W.4 comes in support of P.W.1, as he stated about the accused threatening the deceased prior to the incident.

7. From the above contentions, the following points arise for determination:

1. Whether the omissions pointed out in the evidence of P.W.1 would affect her credibility with regard to her witnessing the incident.
2. Whether the judgment of the Court below is sustainable.
3. To what result.

POINT No.1:

8. The case, in fact, rests mainly on the evidence of P.W.1, as she is the only witness for the incident proper. She, being the wife of the deceased, was present along with the deceased at the time of the incident. As stated by her, their marriage is a love marriage. They put up a family initially at Umareddygunta, Nellore and prior to 20 days of the death of the deceased; they shifted their family to Janardhan Reddy Colony, Venkateswarapuram. Thereafter, she speaks about A1 to A3 coming to their house, talking with the deceased and her knowing about their names through the deceased. She also stated that prior to the death of the deceased i.e. 2 days back, her husband informed her that the accused are threatening him. Speaking about the incident, she states that herself, her husband and her daughter, aged 11 years, were sleeping in the house and at about 12 'O' clock, somebody knocked the door, calling her husband's name. Immediately, her husband woke up and opened the door and A2 beat him with a stick, on his head and the deceased ran into the house in order to save his life. A1 to A3 trespassed into the house and A1 and A2 were holding knives and A3 was having a stick. A1 and A3 hacked the deceased and stabbed him indiscriminately. She cried loudly. Meanwhile, the accused went away from the house and the deceased

fell on the ground, in a pool of blood and she brought an auto and shifted him to Government Hospital, Nellore. Later, she went to the police station and gave a report and thereafter, the police recorded her statement and she identified the clothes worn by the deceased and the weapons used by the accused.

In the cross-examination, as contended by the counsel for the appellants, the facts that A1 to A3 used to come their house, talk with the deceased and she came to know their names through the deceased and prior to the death of the deceased, he informed that the accused were threatening him, are pointed out as omissions. In the cross-examination, she expresses ignorance about the number of theft cases being pending against the deceased and that the deceased having enemies in Umareddygunta as well as Janardhan Reddy Colony.

9. P.W.4 is a witness, who speaks about the threat levelled by the accused against the deceased. He is a resident of Nawabet, Nellore Town and is a lorry driver. He knows P.W.1 and the deceased and also A1 to A3. He speaks about P.W.1 and the deceased setting up family at Umareddygunta prior to the offence. Twenty days prior to the incident, both P.W.1 and the deceased came to Janardhan Reddy Colony from Umareddygunta. 15 days prior to the death of the deceased, when P.W.1 and the deceased were at Venkateswarapuram Centre, at about 7.30 PM, all the accused came there and made a galata with the deceased and threatened the deceased to leave Janardhan Reddy Colony and the accused went away from that place. One week prior to the incident, when himself and the deceased were at a culvert situated near Janardhan Reddy Colony, at about 7.30 PM,

again A1 to A3 came there and quarrelled with the deceased and he intervened and pacified the matter. After the death of the deceased, he went to the Government Hospital and saw the dead body.

In the cross-examination, it was elicited that the deceased was his distant relative, though he could not state about the relationship. He admitted that the deceased was involved in a number of theft cases and he was in jail for some time. He could not state about the ground or reason for the threats made by the accused one week prior to the offence, when they were at the culvert. He stated that that the deceased has number of enemies in Umareddygunta as well as Janardhan Reddy Colony.

10. By virtue of the facts elicited in the cross-examination of P.W.4, the accused succeed in proving that the deceased had several enemies, as he was involved in several theft cases. But, that the same would belie the evidence of P.Ws.1 and 4, is an unmerited argument, if not an absurd one. Some of the enemies killed him, is a fact, that cannot be disputed. When there is ample evidence that those enemies are the accused and that they have killed the deceased, no benefit can be given to them, merely because there are other enemies, who could have killed him.

The evidence of P.Ws.1 and 4 read together, would strongly support the credibility of P.W.1. In the report, when she stated the names of the accused, without mentioning the facts that the accused are known to her and she came to know about their names through the deceased; she might not have felt the necessity to explain the reasons as to how she came to know about the names of the accused.

But the fact that the accused threatened the deceased in the presence of P.W.4 would support the evidence of P.W.1 that the deceased informed her that the accused were threatening him and in that process, he might have informed the names of the accused also to P.W.1. There is absolutely no reason to disbelieve her evidence to that extent. Every omission shall not affect the credibility of a witness. If the reasons for the omissions can be explained on the premise of natural human conduct and other circumstances, they fail to become material. The omissions in the statement of PW.1 are already explained with the help of the evidence of PW.4 and hence, the same shall not affect the otherwise credible evidence of P.W.1 and her evidence can very well be relied upon.

The point is answered accordingly.

POINT No.2:

11. The counsel for the appellants raises yet another untenable contention, which is with regard to the number of injuries on the body of the deceased as spoken to by P.W.9, who is the doctor, who conducted post mortem examination on the dead body of the deceased. His evidence shows that there are several lacerated injuries, incisions and stab injuries on the body of the deceased. The counsel, with the help of the report given by P.W.1, again contends that only three injuries are stated by her in the report and hence, the injuries on the body of the deceased, as spoken to by P.W.9, remain unexplained.

12. The said contention does not find favour with us, as P.W.1 nevertheless stated that the accused stabbed the deceased indiscriminately. Even otherwise, it cannot be expected that a witness

would be able to witness all the injuries and mention the same with precision. The state of mind of a person placed in a situation as PW.1 was placed, is not beyond imagination. The report is given at 4 AM and the incident occurred at 12 midnight in the house of the deceased and from there, the deceased was taken to the hospital and hence, absolutely, no time is lost in giving the report.

13. Even the assumption that someone else might have attacked the deceased and caused the injuries, as stated by P.W.9 and that the accused were falsely implicated in this case, after a thought, gets shattered, as the prudent principle that the victim would not leave the culprits, can be applied in this case, to say that the accused are the culprits and P.W.1 has witnessed the incident and mentioned the names of the accused in the report, which is made at the earliest point of time.

The source of light, which is argued, as not explained, can be expected, as the incident took place inside the house, where presence of light can be assumed. Absolutely no motive for either PW.1 or the police, to implicate the accused falsely, is made out. Hence, in view of the above, we do not feel any necessity to interfere with the judgment of the Court below.

The point is accordingly answered.

POINT No.3:

In the result, the criminal appeal is dismissed, upholding the conviction and sentence imposed on the appellants/accused in

S.C.No.239 of 2011 dated 13.12.2011 by the III Additional District and Sessions Judge, Nellore.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

C. PRAVAEEN KUMAR, J

T. RAJANI, J

July 16, 2018
DSK

