

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice M.Satyanarayana Murthy

Crl.A.No.818 of 2012

Judgment: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Thapetta Maremma, accused No.1, has challenged the legality of Judgment, dated 03-08-2012, in S.C.No.733 of 2011, on the file of the IV Additional Sessions Judge (FTC), Mahabubnagar, whereby she was convicted for the offence punishable under Section 302 IPC, and sentenced to undergo life imprisonment, to pay a fine of Rs.1,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of three months. While convicting the appellant, the learned trial Court has acquitted accused Nos.2 to 7 of the offences punishable under Sections 342, 353 and 302 r/w 149 IPC. Accused No.8 had expired during the pendency of the trial. Therefore, the case abated against him.

Briefly, the facts of the case are that, on 24.08.2009, P.Karemma (P. W. 1) lodged a report (Ex. P. 24) with the Police at Krishna Police Station that “*on the same day around*

4:50 p.m., while she was present in her house, she heard some noise from outside.” When she came out of her house, she found a huge crowd, along with the appellant, and some of the villagers had tied her son, Kunti Mahesh, to a Neem tree and were indiscriminately assaulting him. When she enquired from the villagers, they informed her that allegedly her son had killed one T.Bheemeshappa, the husband of accused No.1, with an axe, while he was sleeping on the elevated plinth outside his house. She further claimed that the motive behind the incident of killing T. Bheemeshappa by her son was that, when her son, Mahesh had asked T. Bheemeshappa for a ride to the Maremma Temple, he had refused to do so. Therefore, in order to take revenge of the sudden death of T.Bheemeshappa, the appellant, the wife of T. Bheemeshappa, along with other villagers, poured kerosene on her son, Mahesh, and burnt him.”

On the basis of the said report (Ex. P. 24) , the Sub-Inspector of Police (P. W. 20), Krishna Police Station, registered a case viz., Crime No.14 of 2009, for the offences punishable under Sections 342 and 302 IPC. During the course of investigation, the Police arrested eight offenders, who were subsequently put up for trial.

In order to support its case, the Prosecution examined twenty-one witnesses, and submitted twenty-nine documents. However, the defence neither examined any witness, nor submitted any documents.

After appreciating the evidence on record, the learned trial Court, while acquitting Accused Nos.2 to 7, convicted the appellant as aforementioned. Hence, the present appeal before this Court.

Mr. H. Prahlada Reddy, the learned Counsel for the appellant, has raised the following contentions before this Court:-

Firstly, out of twenty-one witnesses, fifteen witnesses including many of the eye-witnesses, such as P. Karremma (P. W. 1, the complainant), P. Kunti Hanumanthu (P. W. 2, the father of the deceased), Palle Shantamma (P. W. 3, the sister of the deceased), have turned hostile; they have not supported the case of the prosecution. Hence, the prosecution has relied only on the testimonies of two police personnel. However, even their testimonies are insufficient for convicting the appellant.

Secondly, the learned trial Court had relied upon the testimony of Mohd. Jahangeer (P. W. 13) and E.Goutam (P. W. 14), the two police personnel. However, Mohd. Jahangeer (P. W. 13) has clearly admitted in his cross-examination that he was not an eye-witness. According to him, *"having searched for the auto, he had come back to the temple where he had left Mahesh with E.Goutam (P. W. 14); when he returned to the Temple, he found that Mahesh was burning."* Therefore, the learned trial Court has erred in treating Mohd. Jahangeer (P. W. 13) as an eyewitness of the incident.

Thirdly, even E. Goutam (P. W. 14) stated that he does not know as to who lit the fire. According to this witness, the appellant had brought kerosene in a toddy bottle, and poured it on Mahesh. But as this witness was pushed by the large number of villagers, who gathered there, he could not see as to who lit the fire. According to this witness, *'somebody set fire to Mahesh'*. Therefore, a distinct possibility does exist that any other villager, a member of a huge and agitated crowd, would have lit the fire. The said possibility cannot be ruled out. Hence, the learned trial Court is unjustified in

convicting the appellant for the offence punishable under Section 302 IPC.

On the other hand, Mrs. Sridevi Juvvadi, the learned Public Prosecutor for the State of 'Telangana, has pleaded that according to E. Goutam (P. W. 14), immediately, he was informed by the crowd that it was the appellant, who had lit the fire, and burned Mahesh. This statement of P. W. 14 has further been corroborated by Dr. P. Parvathi (P. W. 18), who performed the autopsy on the dead body, and issued the Post-Mortem Report (Ex. P. 22). According to the Report (Ex. P. 22), Mahesh had sustained 100% burns; the cause of his death was shock due to burn injuries. Thus, according to the learned Public Prosecutor, Mahesh had suffered a homicidal death. Hence, the Prosecution had succeeded in establishing its case beyond a shadow of doubt. She has, accordingly, supported the impugned Judgment.

Heard the learned Counsel for the parties, perused the impugned judgment, and examined the record.

It is trite to state that in a case of direct evidence, the Prosecution is required to establish its case beyond the

shadow of reasonable doubt. The distance between, “may be true” and “must be true”, is a long distance that the Prosecution is required to cover. Even if there is the slightest doubt in the mind of the Court that the incident may have occurred, yet the incident might not have been caused by the alleged offender, the Court is duty bound to give the benefit of doubt to the accused. For, it is a settled principle of common law that it is better to acquit hundred murderers than to hang an innocent man.

In the present case, the learned trial Court has relied upon the testimony of Mohd. Jahangeer (P. W. 13). In his examination-in-chief, he clearly stated as under:-

“I am working as a Head Constable in Kothakota P.S. Previously I worked as Police Constable at Krishna P.S., from 2006 to till June, 2010. On 28-04-2009, at about 5.30 p.m., evening we received telephonic information from one of the villager of Kunal village to Krishna P.S. that quarrel took place in the village. Then myself, and another constable by name (LW-13)-Gowtham went to Kunal village on that day. Then I saw the dead body of one person lying on pial (a platform in front of a house in the village) of a house. The name of the said person is one Bheemeshappa. We came to know that one Mabesh murdered said Bheemshappa with an axe. At that time, we noticed said Mabesh was under a tree near the place where the dead body of Bheemsahappa was lying. At that time, said Mabesh already sustained external injuries. Then myself, and

Goutham intended to shift him to hospital of Makthal village. When we tried to take Mahesh in our two wheeler motor cycle he was not in a position to sit due to that we asked Mahesh to sit at Siva Temple in the village. Then I asked LW-13 Goutham to guard said Mahesh and I left the place along with the Village Surpanch to get some vehicle to shift Mahesh to the hospital. But we couldn't find any auto rickshaw or tractor in Kunisi village. Then myself, the Surpanch of the village returned to Siva Temple where we kept Mahesh. Then I noticed Mahesh was in flames. Then said Mahesh died on the spot due to burns. At that time, about 200 villagers gathered there. Then I informed the incident to S.I., of Police who was in crime meeting at Narayanpet. I came to know that some of the villages poured kerosene on Mahesh and set him on fire. When I enquired LW.13-Goutam he informed me that wife of Bheemshappa poured kerosene on Mahesh and set him on fire. The Inspector of Police recorded my statement."

Moreover, in his cross-examination, he clearly admitted that,

"I was not an eyewitness to the incident i.e., cause of death of Mahesh".

Thus, the learned trial Court was not justified in treating Mohd. Jahangeer (P. W. 13) as an eye witness of the incident.

E. Goutam (P. W. 14), who worked as a Constable in the Krishna Police Station, from July 2008 till June 2011, in his testimony, stated as under:

"On 28-04-2009 at about 5:30 P.M. evening a constable of our police station received telephonic information that

murder took place at Kunisi village. Then myself, and Jahangeer (PW-13) went to Kungsi village on that day in a two wheeler motor cycle. When we reached Kunisi village we saw the dead body of Bheemshappa lying at his house, and then deceased Mahesh was near that place under a tree. Then we apprehended Mahesh and we proceeded towards Shiva Temple of the village. Then PW-13- Jahangeer went into the village to get auto rickshaw to shift Mahesh in the auto to take him to our police station. At that time, I was with Mahesh near Shiva Temple of Kungsi Village. At that time, 200 villagers gathered at Shiva Temple. Then A1- Maremma, wife of deceased Bheemshappa, brought kerosene in a toddy bottle. Then in spite of my protest A1-Maremma poured kerosene on deceased Mahesh. Then villagers gathered there pushed me aside due to that I fell down. After that somebody set fire to Mahesh. In the meanwhile, PW.13- Jahangeer came there and informed me that no vehicle was available. I informed PW-13- Jahangeer that A1- poured kerosene on Mahesh. Then I enquired public gathered there who set fire to Mahesh but no villager informed me anything. Then we informed the incident to S.I. of Police. The Inspector of Police, Makthal enquired me and recorded my statement. A1- T.Maremma, who is present today before this Court was the person who poured kerosene on deceased Mahesh in my presence.

In his cross-examination, he further stated as under:

“I have no prior acquaintance with A.1-Maremma. I came to know through villagers gathered there that person who poured kerosene on Mahesh is by name Maremma, W/o Bheemshappa. I tried to stop A1-Maremma while pouring kerosene by her on Mahesh. I do not know who set fire to deceased Mahesh.”

Thus, even this witness had only seen the appellant pouring kerosene on Mahesh and he had not seen her igniting the fire. It is only upon the information received from the villagers that he has come to know that it is the appellant, who poured the kerosene. Therefore, E.Goutham (PW.14) is not an eyewitness to the igniting of fire by the appellant.

Hence, the possibility that some one in the huge group, which had gathered and was agitating on the alleged murder of T.Bheemeshappa by Mahesh, might have lit the fire cannot be ruled out. Therefore, the benefit of doubt will, necessarily, have to be given to the appellant by this Court.

Moreover, there is a contradiction between the testimony of Mohd. jahangeer (P. W. 3) and E. Coutam (P. W. 14). For the former witness claims that it is the latter witness who told him that the appellant had lit the fire. But the latter witness claims that he has no knowledge about the person who lit the fire. Further, according to the latter witness, he told the former witness that it is the appellant who poured the kerosene. Hence, neither of these two witnesses have seen any one igniting the fire.

Although it is true that the testimony of Dr. Parvathi (P. W. 18) and the Post- Mortem Report (Ex.P.22) does establish that Mahesh had suffered a homicidal death, but the issue before this Court is as to who is the author or the culprit, who has caused the death of Mahesh. As noted above, a distinct possibility does exist that a member in the agitated group of villagers could have lit the fire, which eventually caused sufficient burn injuries on Mahesh and lead to his death. But the guilt cannot be pinpointed upon the appellant. Due to the absence of cogent and convincing evidence, the benefit of doubt has to be given to the appellant.

For the reasons stated above, this appeal is allowed. The conviction and sentence imposed against the appellant for the offence punishable under Section 302 IPC *vide* Judgment, dated 03-08-2012, in Sessions Case No.733 of 2011, on the file of the IV Additional District and Sessions Judge (FTC), Mahabubnagar, is set aside.

As the appellant is on bail, her bail bonds shall stand cancelled. She is directed to surrender before the Superintendent, Central Jail for Woman, Chenchalguda,

Hyderabad, for completion of the legal formalities for her release from the said Jail. On completion of such legal formalities, the appellant shall be released from Jail, if she is not required in any other case. The fine amount, if any, paid by her shall be refunded to her.

(Raghvendra Singh Chauhan, J)

(M.Satyanarayana Murthy, J)

Dt: 12th December, 2018
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