

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD
Crl.A.No.433 of 2012

Date: 11.09.2018

Between:

Kalyanapu Narsinaidu, S/o.Ramudu,
Aged about 23 years, Occ: Cultivator,
R/o Rellivalasa Village,
Poosapatirega Mandal,
Vizianagaram District

... Appellant

And

The State of Andhra Pradesh,
Inspector of Police,
Vizianagaram, rep. by
State Public Prosecutor,
High Court of A.P., Hyderabad

... Respondent

Counsel for the Appellant : Mrs. C.Vasundhara Reddy

Counsel for the Respondent : Public Prosecutor (AP)

The Court made the following:

Judgment: (*Per the Hon'ble Sri Justice C.V.Nagarajuna Reddy*)

The sole accused in Sessions Case No.145 of 2011 on the file of the Special Judge for Trial of Cases under SCs and STs(POA) Act-cum-Additional District and Sessions Judge, Vizianagaram, filed this appeal feeling aggrieved by the judgment dated 03.04.2012, whereby he has been convicted for the offence punishable under Section 302 I.P.C. and sentenced to suffer life imprisonment and also to pay a fine of Rs.1000/- and in default of payment of fine, to suffer rigorous imprisonment for a period of six months. The appellant is also sentenced to suffer rigorous imprisonment for one month for the offence punishable under Section 324 I.P.C.

2. The case of the prosecution, as set out in the charge sheet, is briefly stated as hereunder:

The appellant and the deceased who are relatives, are both residents of Pusapatirega and the house of the appellant is situated by the side of lands and kallam of the deceased; that the appellant picked up quarrels with the deceased and broke his hand about 2 years ago and due to intervention of the elders, the deceased filed a petition before the court, for compounding the offence. That while so, on 21.01.2011 at about 1 p.m., PW-1 and the deceased found the appellant grazing his cattle at the

dung heap of PW-1 and spying the pumpkin creepers and when PW-1 went there and questioned the high handed behaviour of the appellant, he started abusing her and when the deceased took objection about the conduct of the appellant, he immediately retaliated by poking a stick into the mouth of the deceased with force and abused him; that the deceased fell on the ground and the appellant beat him on the left forehead with a stick; that when the deceased's son PW-3 questioned him, the appellant turned against him, slapped him and beat him on his left wrist with the stick; that, PWs-1 and 3 took the injured (deceased) to the Pusapatirega Police Station and on their advice, took him to the Government Hospital, Vizianagaram and on further advice at the Government Hospital, the injured was shifted into 108 ambulance for being taken to K.G. hospital, Visakhapatnam, but he succumbed to the injuries on the way near V.T. Agraharam. That, PW-10 – Head Constable recorded the statement of the deceased in the presence of the duty doctor while he was undergoing treatment and basing on the said statement (which is now to be treated as dying declaration), PW-11 – A.S.I., registered F.I.R. u/s. 324 and 323 I.P.C.; that on receiving the report from PW-1 about the death of her husband, S.I. altered the provision of law into Sections 302 and 324 I.P.C. and PW-13 – Inspector of Police, Bhogapuram circle, took up

the investigation. That, on 22.01.2011, the Inspector of Police inspected the scene (thrashing floor (kallam) of the deceased with pumpkin creepers) at about 7 a.m. in the presence of mediators and seized a stone and a stick, which are the implements used by the appellant for the commission of the offence. That, on 22.01.2011 at about 1300 hours, PW-13 arrested the appellant in the presence of mediators i.e. PW- 7 and another, interrogated him and seized a full hands shift and lungi worn by the appellant, under the cover of mediator's report and produced him with a remand report before the Court. That, the postmortem report disclosed as many as 4 injuries on the deceased, including depression over left frontal bone with fracture present and PW-8 opined that the death is due to hemorrhagic and neurogenic shock due to head injury. PW-9 found one injury on PW-2 and opined that it is simple in nature. That, the RFSL report disclosed that the stone seized from the scene and clothes seized from the appellant, contain human blood and that the stone and shirt of the appellant contained 'O' group blood stains.

3. Based on the charge sheet and the material collected by the police, the Trial Court has framed the following charges:

"Firstly: That you on the 21.1.2011 at 1 p.m., at Rellivalsa village you committed murder of deceased viz., Kalyanapu Narisinaidu by beating him with a stick on his

fore head, resulting which he died on the way to the K.G. Hospital, Vizianagaram, and that you thereby committed the offence punishable under Section 302 I.P.C. and within my cognizance.

Secondly: That you on 21.1.2011 you voluntarily caused grievous hurt to son of deceased viz., Lakshmanarao (LW3) when he questioned you about beating of deceased and that you turned against him, slapped him and beat him on his left wrist with stick and that you thereby committed the offence punishable under Section 324 of I.P.C. and within my cognizance”.

4. As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution has examined PWs.1 to 13, got marked exhibits P1 to P13 and produced MOs.1 and 2. On behalf of the defence, no oral evidence was let in, but it has got Ex.D1 to D3 marked. On appreciation of oral and documentary evidence, the court below has disposed of the case in the manner as noted herein before.

5. Heard Mrs. C.Vasundhara Reddy, learned counsel for the appellant and Mr.Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh.

6. This is a case based on the evidence of PWs.1 to 3, the alleged eye-witnesses, of whom PW-3 is an injured witness besides Ex.P-7, the alleged statement of the deceased recorded by PW-10—Head Constable. In Ex.P-7, the deceased allegedly stated that after the appellant has poked in his mouth with a

stick, he fell down and sustained injury on his head due to his coming into contact with a stone. This version has been spoken to by PWs.1 to 3 also. Further, in Charge No.1, as reproduced hereinabove, the appellant has been specifically charged for murdering the deceased by beating the latter with a stick on his forehead. In Ex.P-4-Postmortem Certificate, a stick injury (three stitches with surrendering abrasion injury) over left side of the occipit of 7 to 8 cms from the left ear, an abrasion injury over left side of eye (left eye) (irregular) longitudinal direction, an abrasion injury on right side of the right eye (longitudinal direction) and depression over left frontal area of the deceased were mentioned. All the three alleged eye-witnesses, *i.e.*, PWs.1 to 3, consistently spoke about the appellant poking a bamboo stick into the mouth of the deceased, pushing him down and beating him with a stone on his head. Thus, the medical as well as the ocular evidence placed by the prosecution before the Court are in direct conflict with charge No.1 framed against the appellant. When the manner in, and the object with which the alleged death was caused are highly discrepant, it gives rise to a serious doubt as to whether the death of the deceased was caused in the manner as pleaded by the prosecution. Strangely, the appellant was asked to defend the charge that he has caused the death of the deceased with a stick.

7. Learned Public Prosecutor submitted that in Ex.P-4-Post-mortem Certificate, which was in the handwriting of P.W-8, what was mentioned as injury No.1 was a 'stitch injury', but in her deposition before the Court, the said injury was mistakenly described as a 'stick injury' while extracting the contents of the Post-mortem report.

8. Learned Public Prosecutor further submitted that even assuming that an error crept in the charge in the form of mentioning that the appellant has caused the death of the deceased by attacking him with a stick, such an error cannot be made a ground to acquit the appellant unless serious prejudice is pleaded and proved.

9. If the injury on the deceased was wrongly described due to mistake, the burden was on the prosecution to elicit clarification from P.W-8 either through her re-examination or further-examination. No such attempt was made by the prosecution in this regard.

10. Though this submission looks convincing at the first blush, on a deeper scrutiny, we do not find any merit therein. It is not the case of the prosecution that there was an error in charge No.1. If the prosecution felt that there was such an error, we find no reason for it not to request the lower Court to correct the same. The fact that no such effort was made shows that the

prosecution has not treated charge No.1 as erroneous or defective.

11. Even assuming that charge No.1 was erroneous, it is the specific case of the prosecution, as reflected from the charge sheet as well as the testimonies of P.Ws.1 to 4, that the appellant has poked a stick into the mouth of the deceased and caused injury with a stone after the latter has fallen down on the ground. Ex.P-4-Post-mortem report has not shown any injury in the mouth of the deceased. Further, as noted hereinbefore, in Ex.P-7-the statement of the deceased, it was specifically recorded that the appellant has poked into the mouth of the deceased with a stick, made him fall down and he sustained bleeding injury on his head coming into contact with a stone. When the prosecution has relied upon Ex.P-7, P.Ws.1 to 4 have come out with a totally different version as if the appellant has hit the deceased with a stone on his left side of his head after the latter was made to fall down after he was poked into his mouth with a stick. Thus, even if we read charge No.1 as pleaded by the learned Public Prosecutor, the same is not proved in view of the contents of the alleged statement of the deceased as recorded in Ex.P-7. Any amount of oral evidence cannot be relied upon if it is in direct contradiction with the alleged statement of the deceased itself.

15. Further, we find from the judgment under appeal that the lower Court has not properly understood the testimonies of P.Ws.1 to 3. Though they have not deposed that the appellant has caused injury on the head of the deceased with a stone, the lower Court has attributed such a version to the said witnesses, which, in our opinion, constitutes perverse appreciation of the evidence.

12. In the light of the above discussion, we are of the opinion that the case of the prosecution, as set up by it, is not only contrary to the charge but is also self-discrepant giving rise to reasonable doubts about the real manner in which the death of the deceased has occurred. In the face of such doubts, the appellant is entitled to the benefit of doubt.

13. As regards charge No.2, P.W-9, who examined P.W-3, found one lacerated injury of 3 x 1 cm size on left forearm, which was described as simple in nature. The medical evidence, thus, corroborated the oral testimony of the witnesses as regards the injury sustained by P.W-3. Therefore, the lower Court has rightly convicted the appellant for the offence under Section-324 IPC framed under charge No.2 and appropriately sentenced him.

14. In the result, the Criminal Appeal is partly allowed by setting aside the conviction and sentence imposed on the

appellant by the lower Court under Charge No.1 for the offence punishable under Section-302 IPC and confirming the judgment to the extent of charge No.2 for the offence under Section-324 IPC. The fine amount, if any, paid by the appellant under charge No.1 shall be returned to him. The bail bonds of the accused shall stand cancelled. The appellant shall surrender before the Superintendent, Central Prison, Visakhapatnam, for serving out the sentence, if any, or for his release as the case may be.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

11th September, 2018

msb/dr

