

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.286 of 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

A1 to A6 in Sessions Case No. 136 of 2011 on the file of the III Additional Sessions Judge, Guntur were tried for the offences punishable under Sections 324 and 302 IPC, and A1 to A5 under Section 201 IPC. Vide judgment dated 17.01.2012, the learned Sessions Judge acquitted all the accused of all the three charges leveled against them. Challenging the said order, PW2, who is the mother of the deceased, filed the present appeal under Section 372 Cr.P.C.

2. The facts, as culled out from the evidence of the prosecution witnesses, are as under:

PW1 is the father, while PW2 is the mother of the deceased. A1 is the elder brother of PW3, A5 is the husband of PW3 and A6 is the sister of A5. PW1 was having a son by name Bhanu Prakash (the deceased) and two daughters Sowjanya and Prasantha Kumari. PW1 knows A1 and A5. At the time of incident, the deceased was studying in I.T.I in Hyderabad. On 22.06.2010, the deceased came to the house of PW1 for vacation. On 14.07.2010, the deceased left their house at 1 p.m., informing that he is going to Guntur to

get an application form in J.K.C. College, Guntur. As he did not return till 11 p.m., PW1 telephoned number of times to his mobile phone, but, there was no response. The deceased did not turn up that night. On the next day, PW1 opened his tea stall at about 6 a.m., and ten minutes thereafter, he received a phone call to his coin box phone, enquiring his name. He disclosed his name as Bala Raju. The caller informed him that his son was found lying with injuries near Railway Park of Nallapadu, and he is calling him based on the telephone number given by the injured. Immediately thereafter, PW1, along with PW2, Bala Mariyadas and Sudhakar went in an auto to Railway Park, Nallapadu at 7 a.m., and found the deceased with several injuries on his head, mouth, hands and teeth. They also noticed a stretcher and 108 ambulance in that premises. Immediately thereafter, the injured/deceased was shifted to Government General Hospital, Guntur.

3. As the injured was not attended to immediately, PW1 enquired him in the presence of PW2 and others, as to what happened. His enquiries revealed that one Srisha was making calls to the injured since six months, and on 14.07.2010, he went to her house, on the information given by her that her husband was not there in the house. After reaching the house of Srisha, both of them went inside and closed the door. Immediately thereafter, the brother of the said Srisha, by name Sunil, came and knocked the door. After opening the door, Srisha ran away from that place. Apprehending danger to his life, the deceased hid himself under a cot, but, the said Sunil (A1) dragged him from underneath

the cot and fisted him in the face. Thereafter, A1 fetched A2 to A4, who were working in his ice company, who also beat the injured/ deceased with wooden plank, belt and stick. The deceased further informed that A5, who is the husband of Srisha and A6, who is the sister of A5 also came to the spot and abused the deceased in filthy language. The deceased further informed that he was scorched by A6 with an atlakada, thereafter he was stripped and then his entire body, including his private parts, was scorched. The deceased also informed PW1 that A5 kicked on his chest after felling him down on the ground. Thereafter, all the six accused took the deceased/ injured to the park and left him there, where he became unconscious.

4. According to PW1, some nurses gave first aid to the injured/ deceased at Government General Hospital, Guntur. The evidence of PW1 further discloses that the doctors informed him to take away the injured after some tests, by prescribing some medicines. As they noticed some injuries on the body of the injured, PW1 and others took him to Katuri Hospital cum Medical College near their village for further treatment. The injured was treated in the said hospital for some time. On 17.07.2010, at about 9.15 p.m., the police recorded the statement of the injured/ deceased in the presence of PW1 and his relatives. On 19.07.2010, on the advice of the doctors at Katuri Hospital, the injured was shifted to Manipal Hospital, Tadepalli, and on the same night, he died in the hospital.

5. Basing on the information received from Katuri Medical College, Guntur, PW10-the Sub Inspector of Police proceeded to the hospital at about 7.45 p.m., on 17.07.2010, along with the constables and recorded the statement of the injured, which is placed on record as Ex.P1. On the basis of the oral statement of the injured, PW10 registered a case in Crime No. 148 of 2010 under Sections 342, 324 read with 34 IPC. Ex.P10 is the F.I.R. He also claims to have recorded the statements of PW1 to PW16, which is placed on record as Ex.P11. PW10, who was investigating the matter, examined PWs 1 and 2 and recorded their statements. On 18.07.2010, PW10 visited the scene of offence, which is the rented house where PW3 (Srisha) was residing as a tenant, and prepared Ex.P6 (scene observation report), which was attested by PWs 7 and 8. He also seized M.Os 2 to 7 under Ex.P6. Thereafter, he got prepared a rough sketch of the scene, which was marked as Ex.P12. After receiving the death intimation of the injured on 20.07.2010 under Ex.P13, he altered the section of law to 302 read with 34 and 342 IPC. Ex.P14 is the altered F.I.R.

6. Further investigation in this case was taken up by PW11-the Circle Inspector of Police, Arundelpet Police Station, Guntur. According to him, after verifying the investigation done by PW10, he visited the scene of offence, verified the earlier reports, and thereafter, proceeded to the mortuary of Government General Hospital, Guntur, where he conducted inquest over the dead body of the deceased, in the presence of PW9 and others. Ex.P5 is the inquest report. At the time of inquest, he examined PW1 and

others. Thereafter, he sent the dead body for post mortem examination.

7. PW8-the Assistant Professor, Forensic Medicine, Government Medical College, Guntur conducted autopsy over the body of the deceased and issued Exhibit P8-the Post Mortem Report. According to him, he noticed number of injuries on the body of the deceased, and opined that the said injuries might have been caused by wooden plank and stick. He also opined that the cause of death was due to multiple injuries.

8. On 24.07.2010, at around 9 a.m., PW11 apprehended A1 to A6 in the presence of PWs 7 and 9, under Ex.P7. He is said to have recorded the confession of the accused, which led to recovery of M.O.1-the cell phone belonging to the deceased from A1, under Ex.P7. After collecting all the necessary documents, a charge sheet came to be filed, which was taken on file as PRC No. 16 of 2010 on the file of the V Additional Munsif Magistrate, Guntur. On appearance, copies of the documents were furnished and after satisfying the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions, where it came to be numbered as S.C.No. 136 of 2011 on the file of the III Additional Sessions Judge, Guntur. Basing on the material on record, charges for the offences punishable under Sections 342, 302 and 201 read with 34 of IPC came to be framed, read over and explained to the accused, to which they denied and claimed to be tried.

9. In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P16 and M.Os.1 to 7. Out of the (11) witnesses examined by the prosecution, PWs 4 and 5 did not support the prosecution case and were treated hostile by the prosecution. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. In order to prove their case, the accused examined DW1, a doctor in Government General Hospital, Guntur and also got marked Exs. D1 to D3.

10. Since the evidence of DW1 and the dying declaration of the deceased runs contrary to the evidence of PW1, coupled with the fact that there is any amount of doubt with regard to deceased making an oral dying declaration to PW1, the learned Sessions Judge acquitted the accused of all the charges leveled against them. Challenging the same, the present appeal came to be filed by PW2, who is the mother of the deceased.

11. The learned counsel for the appellant mainly submits that the dying declarations of the deceased, which were made before PW1 and also before PW10 which formed the basis for the First Information Report, were not at all considered by the trial court. He further submits that if these two statements are taken into account, the same can be made the basis to convict the accused. He took us through the evidence of PWs 2, 3 and also Ex.P10-F.I.R.,

which came to be registered, basing on the statement of the deceased, to show the complicity of the accused in the commission of the offence.

12. On the other hand, the learned counsel for the respondents-accused would contend that the trial court rightly held that the inconsistencies in the two dying declarations, coupled with the evidence of PW1, raise any amount of doubt as to the manner in which the incident took place. Hence, pleads that the finding of the trial court warrants no interference.

13. The point for consideration is whether the trial court was justified in acquitting the accused.

14. It is to be noted here that the present case is an appeal filed against acquittal, and the parameters for interference in an appeal against acquittal, are very limited and narrow. In *Kallu alias Masih and Ors. vs. State of M.P.*, (2006) 10 SCC 313, it is held as follows:

“While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a

different view is possible. The appellate Court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial Court”.

15. It is also to be noted that there are no eye witnesses to the incident, and the entire case is based on the two oral dying declarations, alleged to have been made by the deceased before PW1 and PW10. Therefore, the evidence adduced by the prosecution is required to be tested with the evidence of DW1, the doctor who was examined to speak with regard to the register maintained in the hospital at the time of admission of the injured/ deceased in the said hospital.

16. As per the prosecution case, the first oral dying declaration is said to have been made by the deceased before PW1, who is the father of the deceased. According to PW1, basing on the information from an unknown person, about the body of the injured/ deceased is lying with injuries near Railway Park at Nallapadu, his family members proceeded to the said place, and by that time, they found an ambulance in the premises, and the injured/ deceased was shifted to Government General Hospital, Guntur in the said ambulance. As the doctors did not attend to the injured immediately, PW1 claims to have enquired with the injured, who is said to have narrated the manner in which the

incident took place, and also as to how the accused involved themselves in the commission of the offence. This statement is alleged to have been made in Government General Hospital, Guntur at 2 p.m. on 14.07.2010. The evidence of PW1 would also show that the doctor at the hospital advised him to take the injured with them after prescription of some medicines. Since there were injuries on the body of the injured/ deceased, PW1 and others took the injured to Katuri Hospital, which was situated near their village, for further treatment.

17. From the evidence of PW1, it is clear that the condition of the injured was not so serious by the time he was shifted to Katuri Hospital. Though the injured/ deceased is said to have made a statement before PW1, narrating the manner in which he was attacked, no report was given by PW1 before the police. It is not as if the said statement was made before PW1 alone, as PW1 himself deposed that his wife and other family members were also present at the time when the said statement was made by the injured/ deceased. Three days later, i.e., on 17.07.2010, at about 9.15 p.m., PW10-the Sub Inspector of Police is alleged to have gone to the hospital, pursuant to the information furnished by the said hospital and then recorded the statement of the injured/ deceased. The said statement was admittedly recorded in the presence of PW1 and his family members, which formed the basis for registering a crime.

18. From the evidence of PW1, it is very clear that initially, he never made any report before the police, and three days later, Ex.P1, the statement of the injured/ deceased came to be recorded in the presence of PW1, his wife and other relatives, which was reduced into writing and signed by the injured/ deceased. It is also to be noted that no endorsement of the doctor is found on the said statement, but, the said statement contains the signature of PW2.

19. Having regard to the above, we have to first delve into the issue as to whether really the statement made by the deceased was true and voluntary. When the presence of other family members by the side of the injured was admitted and when the statement came to be recorded in the presence of other family members, we feel that the said statement cannot be considered to be true and made voluntarily by the injured. Possibility of tutoring of the injured and the said statement being an outcome of the said tutoring, cannot be ruled out, more so, in the absence of any other evidence to consider the same.

20. At this stage, it is also required to be noted that the evidence of PW2 also discloses a peculiar procedure that was followed at the time of recording of the statement of the injured/ deceased. While toeing in line with the evidence of PW1, her version is to the effect that on 17.07.2010, at about 9.15 p.m., PW10-the Sub Inspector of Police recorded the statement of the injured, in which her signature was also taken, along with the signature of the injured. Before taking the signature of PW2, PW10

is said to have read over the contents of the said statement to PW2 and later, she signed the same. She further states that at that time, PW10 recorded the statement of the injured, and PW1 and other family members were present at the spot. From the above, it not only falsifies the findings given above with regard to presence of other family members by the side of the injured, but also creates a doubt as the genuinity of the dying declaration, since there is no justification fro PW10, to read over the contents of the dying declaration to PW2 and then take her signature.

21. At this stage, it would be useful to consider the evidence of DW1, who was working as a Casualty Medical Officer in Government General Hospital, Guntur. According to him, on 15.07.2010, at about 7.30 p.m., the injured was brought to Casualty Ward by 108 ambulance, accompanied by PW2. DW1 is said to have noticed three injuries on the body of the injured. The injured is said to have informed him that he was beaten by one known person and five unknown persons at market centre, Guntur, after taking him in a car. It was also stated that the said persons took him to an unknown place at Nallapadu at 6 a.m. on 14.07.2010. Ex.D3 is the copy of the entries in the Accident Register, wherein the information given by the injured was recorded. There is an endorsement on Ex.D3, wherein the word “market centre” was interpolated after affixing cross. This version of DW1 falsifies the evidence of PWs 1 and 2, not only as to the place of incident, but also as to the manner in which the incident took place.

22. Before dealing with the discrepancy, it is to be noted here that no effort was made by PW1 to lodge a report before the police when the injured disclosed about the commission of the offence on 14.07.2010. No reasons are forthcoming as to why he did not lodge a report immediately after he received information from the injured with regard to the manner in which he was assaulted. It is also to be noted that initially, the injured was admitted in Government General Hospital, Guntur by PW1, and though there is a police outpost to the said hospital, no information was given to the police either by PWs 1 or 2, with regard to the admission of the injured in the hospital, and also with regard to the manner in which the incident took place. If really, the injured/ deceased gave information about the incident, definitely, every effort would have been made to set the law into motion.

23. Apart from the above, the evidence of DW1, who prepared Ex.D3-the accident register, would indicate that at the time of admission of the injured in Government General Hospital, Guntur, it was informed to him by the injured that he was taken in a car at market place, Nallapadu by some unknown persons and then attacked. Subsequently, interpolations came to be made with regard to the word "market place", in Ex.D3. From the above, it is clear that the earliest version given by the injured/ deceased to DW1 was something different from the contents of the subsequent statement made by the injured, wherein a new theory, about he going to the house of Srisha and being attacked by the accused, came to be introduced.

24. Having regard to the said discrepancy, and in the absence of any corroborative material, we feel that the trial court was right in rejecting the oral dying declaration and the statement said to have been given by the injured/ deceased (Ex.P1). Having regard to the above, the acquittal of the accused for the offences under Sections 342, 302 and 201 read with 34 IPC by the III Additional Sessions Judge, Guntur in Sessions Case No. 136 of 2011 dated 17.01.2012, warrants no interference.

25. In the result, the Criminal Appeal is dismissed.
Miscellaneous petitions pending, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

30.07.2018
DMG