

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

+ CRIMINAL APPEAL No.656 OF 2012

% 05—11—2018

Bommi Reddy Mohan Reddy and 3 others

...Appellants

vs.

\$ State, by Inspector of Police, Kadiri Rural Circle,
Rep. by Public Prosecutor, High Court of Andhra
Pradesh, Hyderabad

... Respondent

!Counsel for the Appellant : Sri V.V.Raghavan

^Counsel for the Respondent : Public Prosecutor (AP)

<Gist :

>Head Note :

? Cases referred

1. 1971(3) SCC 208
2. (2003) 11 SCC 223



IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

CRIMINAL APPEAL No.656 of 2012

Between:

Bommi Reddy Mohan Reddy and 3 others

....Appellants

And

State, by Inspector of Police, Kadiri Rural Circle,
Rep. by Public Prosecutor, High Court of Andhra
Pradesh, Hyderabad.

....Respondent

JUDGMENT PRONOUNCED ON: 05.11.2018

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.656 of 2012

Date: 05.11.2018

Between:

Bommi Reddy Mohan Reddy and 3 others

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Appellants

and

State

By Inspector of Police, Kadiri Rural Circle,

Rep. by Public Prosecutor,

High Court of Andhra Pradesh, Hyderabad

...

Respondent

Counsel for the Appellants : Sri V.V.Raghavan

Counsel for the respondent : Public Prosecutor (AP)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice T.Amarnath Goud)

This Criminal Appeal is filed by the appellants/accused Nos.1 to 4, against the Judgment, dated 21.06.2012, in Sessions Case No.14 of 2011, on the file of the Additional Sessions Judge, Hindupur (for short, the trial Court). The trial Court convicted the appellants for the offence punishable under Section 452 IPC and sentenced them to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- each, in default, to suffer simple imprisonment for two months. Appellant Nos.1 and 2 were also convicted for the offence punishable under Section 302 IPC., and Appellant Nos.3 and 4 were convicted for the offence punishable under Section 302 read with Section 34 IPC., and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to suffer simple imprisonment for six months. Appellant No.2 was also convicted for the offence punishable under Section 307 IPC., and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for a period of three months. It was directed that the sentences imposed on A.2 shall run concurrently.

Briefly stated, the case of the prosecution is that PW.1 is the son of one Roddam Umadevi (hereinafter referred to as the deceased), who came down to Tanakallu Village, after discarding her husband and started living with her children by running a hotel since

15 years prior to her death. Since two years prior to the date of incident, A.1 developed illicit intimacy with the deceased and was staying in her house. The deceased purchased Sai Family Restaurant Dhaba, situated near Mandlipallil Village of Tanakallu Mandal, by investing huge amount and entrusted to A.1 for maintenance. Six months prior to the date of incident, the said Dhaba Hotel was closed due to losses. The deceased demanded A.1 for repayment of the loan amount advanced to him and thereupon, disputes arose between them and in the panchayat, it was decided that A.1 should pay Rs.80,000/- to the deceased, but A.1 did not pay the said amount. About one week prior to the date of incident, while A.1 was going in front of the hotel of the deceased at Tanakallu Village, the deceased picked up quarrel with him for repayment of the amount and also abused him in filthy language and insulted him in the public.

While so, on the intervening night of 9/10.05.2010 at about 1.00 am., when the deceased was sleeping along with her grandson-PW.2 on a cot in her hotel at Tanakallu, A.1 to A.4 with a common intention to kill her, trespassed into her hotel, and A.1 beat on her head and caused bleeding injuries, while A.3 and A.4 caught hold of the deceased. Upon hearing the cries of the deceased, when PW.2 woke up and witnessed the incident, A.2 beat him with a wooden reaper on his head and caused bleeding injury. On receipt of the information, PW.1 rushed to the place of incident along with PW.7

and shifted the deceased and PW.2 to the Primary Health Centre, Tanakallu, where P.W.10-the doctor gave first aid and referred them to the Government Hospital, Kadiri, where the doctor declared the deceased dead. PW.1 lodged Ex.P.1-complaint in Tanakallu Police Station, upon which, PW.14, Sub-Inspector of Police, Tanakallu Police Station, registered a case in Crime No.28 of 2010 for the offence punishable under Sections 324, 302 read with Section 34 IPC. PW.17, Inspector of Police, Kadiri, took up investigation, recorded the statements of witnesses, conducted inquest over the dead body of the deceased in the presence of PW.13, LW.10-Kanumula Balaraju and LW.21-K.S.Gurunatha. PW.13 conducted scene of offence panchanama Ex.P.6 and seized the material objects in the presence of mediators. After completion of the investigation, PW.17 filed the charge sheet.

On appearance of the appellants, the trial Court framed the charge for the offence under Section 452 IPC., against appellant Nos.1 to 4, under Section 302 IPC., against appellant Nos.1 and 2, under Section 302 read with Section 34 IPC., against appellant Nos.3 and 4 and under Section 307 IPC., against appellant No.2, and read over and explained to them in Telugu, for which, they plead not guilty of the said charges and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 18, got Exs.P.1 to P.17 marked and produced M.Os.1 to 18. No

witnesses were examined on behalf of the appellants/accused, but Exs.D.1 and D.2 contradictions from the statements under Section 161 CrPC., of PWs.1 and 11 were marked. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against them in the evidence of prosecution witnesses, which they denied. After appreciating the evidence brought on record, the trial Court found the appellants/accused guilty and accordingly convicted and sentenced them, as aforestated. Challenging the same, the present appeal came to be filed.

The learned counsel for the appellants would submit that PW.2, who is an eyewitness as per the prosecution, is a tutored witness and he did not state before the Police whether any tube light was burning in the Dhaba at the time of the alleged incident. Therefore, basing on the evidence of PW.2, recording conviction by the trial Court is illegal. He further submitted that there is no material on record to show that at the time of the alleged incident, any of those tube lights was burning and hence the testimony of PW.2 as an eyewitness is not trustworthy. There are no specific overt acts attributed to the accused and the prosecution has failed to link the accused with commission of offence and the injuries sustained by the deceased and therefore, the appellants are liable to be acquitted.

On the other hand, the learned Public Prosecutor would submit that there is no reason to disbelieve the evidence of prosecution witnesses, though there are slight discrepancies. The occurrence of incident is not disputed. The prosecution has proved the guilt of the accused after evaluating the oral and documentary evidence and hence there are no grounds to interfere with the judgment of the trial Court.

We have carefully considered the respective submissions with reference to the evidence on record.

The case of the Prosecution is mainly based on the evidence of PWs.2 and 11- the alleged eye witnesses.

PW.2 is a 13 year old boy studying 9th class and he was, allegedly, staying along with the deceased.

PW.10- Medical Officer of the Primary Health Centre, Kokkanti, stated that on the intervening night of 9/10-05-2010 at about 2.00 a.m., while he was present in his quarters, the deceased and PW.2 were brought in 108 ambulance by PW.1 and others; that he found injuries on the person of the deceased and also on PW.2; and that the deceased and PW.2 were unconscious. In his cross-examination, he deposed that he knew that the case relating to the injured was a Medico Legal Case; that the foremost duty of the Doctor is to record the condition of the injured in the Accident Register maintained by the Hospital; and that he has not mentioned

the injuries of the deceased and PW.2 on any paper or in the Accident Register. He, however, admitted that he has mentioned in the Accident Register that the injuries sustained by the injured were accidental based on the version given out by PWs.1 and 2.

PW.15 is the Doctor at Sri Ramadevi Multi Super Speciality Hospital at Tirupathi, where PW.2 was admitted on 13.05.2010 at 6.00 a.m. He deposed that PW.2 sustained injuries by blunt force of a stick and that he issued Ex.P.13- Wound Certificate on 12.06.2010. In his cross-examination, he has admitted that he has stated in Ex.P.13, that some unknown persons beat PW.2.

From the above discussed evidence, it is clear that before PW.10 and PW.15, varied versions were given by PWs.1 and 2. While before PW.10, they mentioned that the injuries were caused by accident, before PW.15, they have stated that unknown person had caused injuries. Though Ex.P.13 was issued more than one month after PW.2 received the injuries, the names of the offenders were not mentioned therein. Most significantly, in the cross-examination, PW.2 stated that on his enquiry after 13 days of the incident, his mother and father told him as to how he had sustained injuries. This statement completely belies the case of the Prosecution that PW.2 had identified the assailants.

The fact that PW.2 could not have identified the assailants is further evident from his admission that the incident had happened

during the night time, that if there was no light, it was not possible for him to identify the culprits and that he has not stated before the Police whether any tube light was burning in the Dhaba at the time of the alleged incident. The witness however added that as the Police did not ask him, he has not stated the same before them. No doubt in Ex.P.6- First Scene Observation Mahazar, it is stated that three tubelights and one fan were available in the Dhaba. However, there is no material on record to show that at the time of the alleged incident, any of those tube lights was burning. The above discussed shortcomings in the evidence of PW.2 have rendered his testimony wholly untrustworthy. Moreover, this witness was examined one month after the alleged incident. It is not the case of the Prosecution that the witness was unconscious and unable to make statement for one month. A reasonable presumption can therefore be drawn that at 1.00 am, PWs.1 and 2 were sleeping without keeping the tube lights on in the room.

As regards PW.11, he is a chance witness. He deposed that he is a resident of Chinna Ramannagaripalli, which is 3 kms away from Tanakallu; that he went to Kolar to see his ailing father, who is taking treatment in Kolar Hospital; that during his return, he came to Madanapalli, boarded a lorry and got down the same at Tanakallu Bus Stop; that on hearing the moaning of a woman from the hotel, he rushed towards the hotel of the deceased and noticed A.1 and A.2

beating the deceased with neem stick and a reaper; and that A.1 threatened him with dire consequences, if he reveals the same to anybody. In the cross-examination, he admitted that while Tanakallu is situated 3 kms away from his village, Yerraguntapalli bus stop is situated just 2½ furlongs away from his village and that there are autos, Dhabas and Hotels at the said Bus stop. In the face of this admission, it is highly improbable for PW.11 to get down the lorry at Tanakallu bus stop instead of at Yerraguntapalli bus stop to go to his village. He has also failed to file any proof to show that his father was taking treatment in Kolar Hospital in connection with which he allegedly went to Kolar. Moreover, in his evidence there is no whisper about the light burning in the Dhaba at the time of the alleged incident.

The evidence of PW.13- Village Revenue Officer, Tanakallu Village, shows that both PWs.2 and 11 were present during the inquest. However, they were not shown as witnesses in Ex.P.5- Inquest Panchanama. If they were eye witnesses and have identified the assailants, there could have been no reason for them for not disclosing the identity of the assailants to the Police. In Ex.P.5, it is mentioned that the assailants are unknown.

PW.11 has admitted that, after the incident, he went to the house of Masthan Reddy to sleep; that the said Masthan Reddy enquired him as to why he came in the late night and that he did not

state anything to him about the incident due to the threat given by A.1.

In **State of Gujarat vs. Adam Fateh Mohmed Umatiya and others**¹, the Supreme Court disbelieved the evidence of the alleged eye witnesses on the ground that he did not give information to the Police about his having seen the occurrence. In **Joseph Alias Jose vs. State of Kerala**², the Supreme Court rejected the ocular evidence of a witness on the ground that the Prosecution failed to prove from the record, the existence of sufficient light at the time of occurrence during the night. In our opinion, the conduct of PW.11 in not informing anyone including Masthan Reddy, in whose house he slept after the occurrence, is unnatural. Further, PW.3- brother of the deceased, in his evidence, stated that when himself and the Police went to the place of A.1, after occurrence at 2.00 AM, he was sleeping in his Dhaba situated at Railway Station. If A.1 was the real assailant and the occurrence had taken place at about 1.00 a.m., as pleaded by the Prosecution, it is not possible to believe that he would have gone to his Dhaba and slept without the fear of being caught. PW.11 was evidently planted by the Police as an eyewitness though it was highly improbable for him to be present at the place of occurrence at odd hours.

¹ 1971(3) SCC 208

² (2003) 11 SCC 223

On the above analysis, this Court finds that the prosecution's case was fraught with inconsistencies and weaknesses, the fundamental defect being its failure to present the origin and genesis of the occurrence in its full and true form. The lower Court, based on mere suspicion, convicted the appellants without there being any credible evidence. Benefit of doubt would therefore have to be extended to the appellants as the prosecution failed to establish beyond reasonable doubt that they are responsible for the death of the deceased.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants in the judgment under appeal are set aside. The appellants are acquitted of all the offences with which they are charged. The fine amounts if any paid by them shall be returned to them. They shall be released forthwith from the jail, if they are not required in any other case or crime.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 5th November, 2018

Note: L.R. Copies to be marked.

B/o. TJMR