

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.514 of 2012

24.09.2018

Between:

The State of Andhra Pradesh,
represented by its Public Prosecutor,
Hyderabad

..Appellant

and

Yelisetti Kondala Rao @ Giri and two others

..Respondents/accused Nos.1 to 3

Counsel for the appellant: Public Prosecutor (A.P.)

Counsel for the respondents/accused Nos.1 to 3:

Mr.C.Sharan Reddy

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The State filed this appeal against judgment, dated 23.03.2011, in Sessions Case No.352 of 2008, on the file of learned VII Additional Sessions Judge, Kakinada, whereby he has acquitted all the three accused of all the charges.

2. Shorn of avoidable details, we shall straight away refer to the charges framed by the Court below based on the charge sheet filed and the material collected by the investigation agency.

FIRSTLY: that you A-1 and A-2 on or about the 13th day of July, 2007 at about 11 p.m., at the house of Dulla Ratnam (deceased No.1) in Srungavruksham village, committed murder of Dulla Ratnam and Dulla Veerababu when you A-1 caught hold of her legs and you A-2 squeezed the neck of Dulla Ratnam till her death and you also sprinkled petrol on her and Dulla Veerababu and later set fire causing their death and that you thereby committed an offence punishable under Sec.302 of the Indian Penal Code and within my cognizance.

SECONDLY: that you A-3 on or about the same date, time and place as mentioned in charge No.1, in furtherance of common intention of you A-1 to A-3 to do away the lives of Dulla Ratnam and Dulla Veerababu, when you A-3 stood at the gate to watch the passers-by, you A-1 and A-2 committed murder of the above two persons, and thereby you committed an

offence punishable under Sec.302 r/w 34 of the Indian Penal Code and within my cognizance.

THIRDLY: that you A-1 and 2 on or about the same date, time and place as mentioned in charge No.1, did an act, to wit sprinkled petrol on Topati Atchiyyamma and set fire to her and caused grievous injuries to her, with such intention and under such circumstances, you had caused the death of Topati Atchiyyamma, you would have been guilty of murder and that you thereby committed an offence punishable under Sec.307 of the Indian Penal Code and within my cognizance.

AND LASTLY: that you A-3 on or about the same date, time and place as mentioned in charge No.1, in furtherance of common intention of you All A-1 to A-3, when you A-3 stood at the gate to watch the passers-bye, A-1 and A-2 caused grievous hurt to Topati Atchiyyamma by sprinkling petrol on her and setting fire, with such intention and under such circumstances, you would have been guilty of murder and that you thereby committed an offence punishable under Sec.307 r/w 34 of the Indian Penal Code and within my cognizance.”

3. As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 23, got Exs.P-1 to P-27 marked and produced M.Os.1 to 6. On behalf of the defence, no oral evidence was let in. However, they got Exs.D-1 to D-9 marked.

On appreciation of the oral and documentary evidence, the Court below has acquitted all the accused.

4. We have heard the learned Public Prosecutor (A.P.) appearing for the appellant/State and Mr.C.Sharan Reddy, learned counsel for the respondents/accused Nos.1 to 3.

5. The learned Public Prosecutor (A.P.) has mainly relied upon motive, oral testimony of P.Ws.1, 4 and 9 and seizure of M.Os.1 to 6.

6. As regards the motive for accused Nos.1 and 3, the case pleaded by the prosecution is two-fold *viz.*, (i) that on 12.07.2007, the father of accused No.1, who is the Ex-Sarpanch of Srungavruksham village attended the panchayat meeting; that an altercation ensued, during which, Dulla Ratnam (hereinafter referred to as 'deceased No.1') slapped accused No.1's father and openly insulted him; (ii) that on the same day, accused No.3 visited the house of deceased No.1 and took up an altercation and sarcastically stated that they are going to eat palav (biryani) within three or four days.

7. As regards the motive for accused No.2, the prosecution pleaded that the officials of the civil supplies department caught the rice meant for public distribution system when the father of

accused No.2, who with the help of accused No.3, was transporting the rice and accused No.2 thought that at the behest of deceased No.1, the seizure was effected by the officials.

8. The Court below has disbelieved the plea of motive based on the material obtained by the accused under the Right to Information Act, 2005 and referred to their statements recorded under Section 313 Cr.P.C., wherein it has come to light that the father of accused No.1 did not attend the panchayat meeting on 12.07.2007, and that therefore, the alleged incident of slapping him by deceased No.1 does not arise. As regards the seizure of rice, information obtained by accused No.2 revealed that deceased No.1 had no nexus with the alleged seizure. On a careful consideration of the aforementioned material and the reasoning of the Court below, we are of the opinion that the finding rendered by it that the prosecution failed to establish motive for the accused to commit the offences charged does not suffer from any infirmities.

9. With regard to the evidence of P.W.1, he was allegedly sleeping inside the house along with his wife and daughter while deceased No.1 and Dulla Veerababu (hereinafter referred

to as 'deceased No.2') were sleeping on a cot in the front portion of the house along with the husband of deceased No.1 and P.W.4, who were sleeping separately in the same room. P.W.1 further deposed that on hearing the noise, he opened the door and found the flames and also the accused fleeing from the scene of offence after setting both the deceased on fire. Though the prosecution set up the plea that there was electricity, the material produced by the accused during their examination under Section 313 Cr.P.C. showed that the house did not have electricity connection at all. The Court below, on appreciation of evidence, has held that there was no possibility for P.W.1 to identify the assailants when they were allegedly seen fleeing from the scene of offence, in the darkness. The learned Public Prosecutor (A.P.) could not draw our attention to any material sufficient to disturb this finding of the Court below.

10. As regards the evidence of P.W.9, who allegedly saw the accused filling the petrol in a tin in their house, he admitted that except to P.W.1, he has not stated the said fact to any one else including the Police during inquest though he was present at that time. P.W.1 did not state the said fact to the Police or deposed the same in his evidence before the Court below.

Ex.P-11 – F.S.L. report, reveals that item No.1 *viz.*, a brown coloured empty plastic bucket allegedly used for pouring petrol on the deceased along with various other items sent for analysis, did not contain flammable hydrocarbons. Therefore, the Court below has disbelieved the theory of the prosecution that the accused carried the petrol through M.O.3 – bucket and used the same for pouring the petrol on the deceased. For the aforementioned reasons, the testimony of P.W.9 was rightly disbelieved by the Court below.

11. Coming to the evidence of P.W.4, who was sleeping adjacent to the place, where the deceased were sleeping. She candidly admitted that she could not identify the persons, who poured petrol/kerosene and set fire to both the deceased. As rightly opined by the Court below, P.W.4 being the appropriate person to speak about the assailants failed to identify them. Once the evidence of P.Ws.1, 4 and 9 is discarded, the only other material on which the prosecution could rely to establish the link between the accused and the alleged occurrence is seizure of M.O.6 – T-shirt allegedly seized at the instance of accused No.1. The said shirt was sent for analysis of forensic expert. Ex.P-11 report shows that item No.6 – grey coloured T-shirt did not contain flammable

hydrocarbons. The prosecution has, thus, failed to prove the presence of accused No.1 at the time of the alleged commission of the offence. Accordingly, recovery of M.O.6 did not in any manner prove involvement of accused No.1 in the alleged commission of the offence. On a careful consideration of the judgment of the Court below, we are of the opinion that the view taken by it based on proper appreciation of the evidence on record cannot be said to be an incorrect view and that even if another view is possible, this Court in exercise of its appellate jurisdiction cannot substitute such a view with that taken by the Court below.

12. For the aforementioned reasons, we do not find any merit in this appeal and the same is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

24th September, 2018

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