

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

CRIMINAL APPEAL No.982 of 2011

Date: 16.08.2018

Between :

K. Thukaram

... Appellant/A.1

And

The State of A.P., rep. by its Public Prosecutor,
High Court of A.P. at Hyderabad.

... Respondent

COUNSEL FOR APPELLANT : Smt. C. Vasundhara Reddy, for
Sri Suresh Kumar Reddy Kalava

COUNSEL FOR RESPONDENT : Public Prosecutor

THE COURT MADE THE FOLLOWING:

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

CRIMINAL APPEAL No.982 of 2011

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This Criminal Appeal is arising out of the judgment dated 3rd June 2011, in S.C.No.82 of 2010 on the file of District and Sessions Judge , Chittoor, Chittoor District. The appellant is Accused No.1 in SC.No.82 of 2010, convicted for the offences under Sections 302 and 307 IPC and for both the offences sentenced to undergo "Imprisonment for Life" and to pay a fine of Rs.1,000/-, and in default to suffer simple imprisonment for three months, for each offence and both the sentences were ordered to run concurrently. Aggrieved by the impugned Judgement, this appeal has been preferred by the Appellant/A.1.

The brief facts as per the case of the prosecution are that, the Inspector of Police, Palamner, filed charge sheet against the accused A.1 for the offences punishable under Sections 302, 307, 326, 324 IPC, Sections 25(1)(b) and 27 of the Indian Arms Act, and against A.2 for an offence under Section 109 IPC for aiding A.1 in commission of the above offences, and against A.3 and A.4 for the offence under Section 25(1)(b)(a) of the Indian Arms Act.

The learned JFCM, Palamner, has taken cognizance of the offences against A.1 to A.4 and remanded A.1 to Judicial custody. A.2 to A.4 were on bail. On furnishing copies of documents to the accused, the learned Magistrate has committed the PRC.No.34 of 2009 to the Court of Session. The learned Sessions Judge, Chittoor, has framed charges against the accused A.1 to A.4. The accused pleaded not guilty and claimed to be tried for the offences under which they were charged. The Sessions Judge numbered the case as SC.No.82 of 2010 and conducted trial by examining the witnesses PWs.1 to 17 and marking the documents under Exs.P.1 to P.29 and marked material objects MOs.1 to 25 on behalf of prosecution. On behalf of defence, no evidence was adduced, except marking the contradiction Ex.D.1 in Section 161 Cr.P.C. statement of PW.1. The Sessions Judge has found A.1 to A.4 not guilty for the offence punishable under Sections 25(1)(b)(a) and 27 of the Indian Arms Act and acquitted them of the said offences. The appellant herein, who is A.1, was found guilty for the offences punishable under Sections 302 and 307 IPC. The appellant aggrieved by the impugned judgment has preferred this Criminal Appeal.

Heard the arguments of Sri Kalava Suresh Kumar Reddy, learned counsel for the appellant/A.1 and the learned Public Prosecutor appearing for the respondent – State.

The version of prosecution is that A.1 is a habitual offender and he used to snatch chains, rings and cash from the visitors of Forest area and Deer Park at Chittoor. On 04.01.2009 at 10.30 a.m., when the PW.1 and the deceased went on a picnic to a Khaigal Water Falls, the appellant saw them and tried to have sex with PW.1. When the deceased interfered, he fired at the deceased with his pistol. When PW.2 came there to rescue her, the appellant again fired on his right shoulder causing bleeding injuries. The appellant again shot at PW.1, while she was trying to escape from there. There are eye witnesses to the incident. They shifted PW.1 to Government Hospital in an Ambulance. PW.16 – Investigating Officer has visited the scene of offence on 05.01.2009 and conducted the scene of offence panchanama, and seized three empty cartridges, clothes, chappals, blood-stained earth and control earth in the presence of mediators. The material objects were forwarded to FSL. The Medical Officer conducted autopsy over the dead body of the deceased and opined the cause of death was due to a shot injury.

Learned counsel for the appellant submits that the prosecution had relied on the sole testimony of PW.1 to prove the guilt of the accused. It is contended that the testimony of PW.1 is not trustworthy. There is inconsistency in the evidence of PWs.1 and 2 with regard to the occurrence of the alleged incident. It is submitted that the trial Court has not properly appreciated the evidence on record, though

PW.1 did not support the version of the prosecution and PW.8 has admitted in his cross-examination that he did not enter into the houses of A.2 to A.4. It is further submitted that the alleged recovery from their houses cannot be relied upon. The learned counsel, therefore, contended that the appellant is entitled for the benefit of doubt in this case.

The learned Public Prosecutor submits that the prosecution proved the guilt of the accused beyond reasonable doubt. It is submitted that PWs.1 and 2 are the injured eye witnesses to the incident. Therefore, it is argued that PWs.1 and 2 were present at the scene of offence and their testimony can be believed.

Originally, Crime No.3/2009 was registered against Accused Nos.1 to 4 for various offences, and on investigation charge sheet has been filed before the Judicial First Class Magistrate, Palamaner, and the learned magistrate committed PRC No.34 of 2009 to the Sessions Court after complying with the formalities under Sections 207 and 209 of Cr.P.C. The learned Sessions Judge registered the case as Sessions Case No.82 of 2010 against Accused No.1 to 4 and framed charges.

The accused voluntarily pleaded not guilty and claimed to be tried for the charges framed against them. The prosecution has examined the witnesses PWs.1 to 17 and marked the documents under Exs.P.1 to P.29, besides marking material objects under MOs.1 to 25.

On behalf of defence, none were examined, except marking Ex.D.1 - Admissible portion marked in Section 161(3) Cr.P.C. statement of PW.1. On consideration of the evidence and the material on record, the trial Court has disposed of the case convicting A.1 for the offence punishable under Sections 302 and 307 IPC and sentenced him as stated above. As far as Accused Nos.1 to 4 in respect of the charges under Sections 25 (I-B)(a) and 27 of the Arms Act, 1959, they were acquitted of the said offences.

Learned counsel for the appellant/A.1 submitted that the prosecution has relied on the evidence of PW.1 to connect the accused with the crime and except her evidence, there is no other material on record against the appellant/A.1 for the offences alleged against him.

A perusal of the evidence of PW.1 reveals that she developed acquaintance with one Siva Sankar of Bommanapalli village. On 04.01.2009 at about 10.30 a.m., they left Palamaner to Kaigallu Water Falls and stayed there upto 5.30 p.m. and while they were starting for Palamaner, one unknown person came to them and questioned as to why they were there at that time. On enquiry, he stated that he was a Police Officer. The accused slapped Siva Sankar, and caught hold of her hand and asked her to remove her clothes, as he intended to enjoy her. PW.1 stated that when A.1 caught hold of her hand, Siva Sankar enquired. A1 with his revolver fired at him and the bullet hit on the right temporal region of Siva Sankar, and he fell down. Then she

collected her pants and upper garments and ran away from there, leaving her bra, chunni and underwear. That A.1 has again fired at her and she received injury on the right side of her trunk portion. On observing her injury, the person present there telephoned to Ambulance. She was taken to the Government Hospital, Palamaner and was admitted. The S.I. of Police recorded her statement and registered a case in Crime No.3/2009 under Sections 302, 307, 326 and 324 of IPC and Sections 25(1-B)(a) and 27 of the Arms Act, 1959. PW.1 stated that she was summoned to Sub-Jail, Palamaner, where the learned Magistrate had conducted the Test Identification Parade for identification of the culprits, and she had identified A.1, who is the suspect, among 6 other non-suspects.

It is obvious from the cross-examination of PW.1 that she had given identification particulars to the police stating that A.1 was having oval shape face and when compared to A.4, he was taller and he was of 5 feet to 5.75 feet of height. She has also stated that she informed the Magistrate before identification of A.1 that his face was in oval shape and he was of a height of 5 ½ feet.

The testimony of the learned Magistrate, who conducted Test Identification Parade, assumes importance at this juncture. PW.10 is the learned Additional Judicial First Class Magistrate, Punganur, who conducted Test Identification proceedings dated 20.06.2009 under Ex.P.10. His testimony reveals that PW.1 has correctly identified A.1

in the Test Identification Parade. It is also pertinent to note that PW.1 also identified A.1 in the Court as the person who shot at her at the time of incident. Therefore, the Test Identification Parade conducted by PW.10 and identification of A.1 by PW.1 in the Test Identification Parade and also PW.1 identifying A.1 again in the Court would clinchingly prove the fact that A.1 was the person who was responsible for the incident. Therefore, there is no force in the argument raised by the learned counsel for the appellant that the testimony of PW.1 is not sufficient to hold that A.1 has committed murder the of the deceased.

PW.2 is another eye witness to the incident. According to his version, on 04.01.2009 he went to Kaigallu Water Falls at 1.00 p.m. to see the Water Falls. There, he took bath, washed his clothes and slept there till 5.00 p.m. and when he was about to leave that place, he heard a lady weeping i.e., PW.1. He went to her and noticed that one third person was insisting her for sex. He identified A.1 present in the Court as the same third person. At the scene of offence, PW-2 questioned A.1 as to why he fired at PW.1, and on that A.1 fired at his back, and also fired at PW.1. On receiving bullet injury on his back, PW.2 fell down and was taken to Palamaner Hospital in the same vehicle. The S.I. of Police recorded his statement. Thereafter, he was referred to Ruya Hospital, Tirupati, where he had taken treatment for 3 days. Later he was shifted to SVIMS Hospital, Tirupati, where he had undergone treatment for 20 days as an inpatient. He underwent

operation for removal of bullet from his body. Later he was discharged from the Hospital on 30.01.2009. His testimony reveals that he had identified A.1 in the Test Identification Parade conducted by the Magistrate at Sub-Jail, Palamaner. Nothing is elicited in the cross-examination of this witness to disbelieve his testimony.

Thus, the evidence of PWs.1 and 2, who are eye witnesses to the incident, clearly proves the case of the prosecution that A.1 had committed the offence. In fact, PW.2 is an injured eye witness who suffered a bullet injury and undergone treatment, and the bullet was also removed from his body. Therefore, the evidence of PW.2 clearly reveals that he was present at the scene of offence, and was informed about the incident by PW.1 and later PW.2 also received a bullet injury when A.1 has fired at him. The testimony of PWs.1 and 2 clearly prove about the involvement of A.1 in the offence.

The testimony of PW.1 is corroborated by the testimony of PW.5. PW.5 also stated that PW.1 came to his Hotel immediately after the incident and informed him. Then he telephoned to 108–Ambulance and the police. Immediately 108-Ambulance came and took PWs.1 and 2 to the Hospital.

Section 6 of the Indian Evidence Act deals with the relevancy of facts forming part of same transaction. Facts which though not in issue, are so connected with a fact in issue as to form part of the same

transaction, are relevant, whether they occur at the same time and place or at different times and places.

Illustration (a) of the said provision reads as under:

“(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.”

Section 6 of the Evidence Act is *Res gestae*. In BISHNA v. STATE OF WEST BENGAL¹ it is observed that the evidence of the witnesses who immediately came to the place of occurrence of murder, found the dead body of the deceased and other injured victim in unconscious state, and the mother of the deceased was weeping as also injured witnesses present there, is though hearsay evidence, would be admissible. If the witnesses hear about the entire incident from the injured witnesses and other witnesses, including the role played by each of accused and others, the evidence of said witnesses can be considered as corroborative evidence of prosecution witnesses. Their evidence would be admissible in terms of Section 6 of the Evidence Act.

‘*Res gestae*’ – It is necessary to have a clear idea of the term which is frequently found in all books on evidence and is merely used in judgments, Acts, Declarations and incidents accompanying or explaining the transaction of facts in issue or which themselves

¹ AIR 2006 SC 302

constitute the facts or transaction in issue are considered as part of *Res gestae* and admitted as original evidence and not hearsay.

‘*Res gestae*’ means, a fact though not in issue is so connected with the fact in issue “as to form part of the same transaction becomes relevant by itself.” (See : GENTLE VIJAYENDRAN RAO v. STATE OF A.P²).

In the instant case, the witness PW.2, who is an injured in the incident, has informed about the incident to PW.5 immediately after the incident, which amounts to *Res gestae*. Therefore, this cannot be treated as hearsay evidence, as the incident of PW.2 informing PW.5 forms part of the same transaction.

In this regard, the testimony of PW.5 assumes importance and corroborates the evidence of PW.1 about the occurrence of the incident and PWs.1 and 2 receiving injuries in the said incident while A.1 shot at them.

PW.1 sustained the following 2 injuries in the said incident:

- (1) Wound of entrance about 2 x 2 cms over upper quadrant of abdomen circular in nature.
- (2) Wound of exit about 3 x 2 cms over epigastric region, irregular in nature.

PW.2 sustained the following 2 injuries in the said incident:

- (1) Wound of entry about 2 x 2 cms over right shoulder.
- (2) Loss of movements of lower limbs.

² AIR 1996 SC 2791

Their testimony is corroborated by the testimony of PW.5, who is an independent witness. PWs.1 and 2 have identified A.1 in the Test Identification Parade conducted by PW.10. Nothing is elicited in the cross-examination of PW.10 to discredit his evidence with regard to the conducting of Test Identification proceedings under Ex.P.10.

The testimony of PW.10 is trustworthy and reliable and, therefore, the identification of A.1 by the witnesses PWs.1 and 2 cannot be doubted. The trial Court has properly appreciated the evidence of the witnesses PWs.1, 2, 5 and 10 and came to the right conclusion and convicted A.1 for the offences with which he was charged. Therefore, we are of the considered view that the findings of the trial Court do not require any interference.

In the result, the Criminal Appeal is dismissed confirming the judgment dated 3rd June 2011 of the trial Court in S.C.No.82 of 2010 convicting A.1 for the offences punishable under Sections 302 and 307 IPC and sentencing him accordingly.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

16.08.2018.
Msr



**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
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(P.D. Judgment prepared by
Hon'ble Sri Justice Gudiseva Shyam Prasad)

CIRCULATED TO:

Hon'ble Sri Justice C.V. Nagarjuna Reddy
for perusal and approval.

