

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

CRIMINAL APPEAL No.793 OF 2013

JUDGMENT: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Sri Sriharinath for appellants and Smt.Sidevi,the learned Additional Public Prosecutor for respondent.

Accused Nos. 2 and 4 in S.C. No.209 of 2003 in the Court of Principal Sessions Judge, Medak at Sanga Reddy are the appellants herein. A2 and A4 are found guilty and convicted for the offence punishable under Section 302 read with 34 of IPC while acquitting A1 and A3.

The case of prosecution is that the deceased Yelabanti Adivaiah had illegal intimacy with A1-Mariyamma of Madri Village, Koheer Mandal. A1-Mariyamma informed the deceased many a time that her children i.e. A3 and A4 are grown up and the illegitimate intimacy if continues, no one would come forward to marry her daughter i.e. A3. The deceased did not heed the advice of A1 and insisted on continuing with the extra marital relationship he is alleged to have with A1. In the afternoon of 08.04.2013, the deceased went to the house of A1 and demanded for continuation of the relationship and in the process A1 and A3 quarrelled with the deceased. It is the further case of prosecution that A1 and A3 beat deceased with hands and pushed him out. A2 and A4 on coming

to know of the incident have planned to eliminate the deceased. On 08.04.2013, at 16.30 hours A1 to A4 called the deceased to their house, severely beat him with hands and kicked with legs. A1 to A4 took the deceased to the community hall area and once again beat and kicked the deceased severely. A2 and A4 beat the deceased with hands and with a stone on the stomach of the deceased. The deceased fell down on the ground with stomach-ache. The deceased was taken to Government hospital, Zaheerabad and referred to Sigma hospital, Secunderabad where on 16.04.2013, the deceased succumbed to the injuries.

PW.1-Laxmaiah, on 16.04.2013 lodged a report with PW.9 which came to be registered as Crime No.35 of 2013 for an offence punishable under Section 307 read with Section 34 IPC. Upon the death of Adivaiah, on 17.04.2013, the Section of law was altered from Section 307 read with 34 IPC to Section 302 read with 34 of IPC. After completing the investigation, PW.8 the Circle Inspector of Police filed charge sheet, which was taken on file as PRC.No.21 of 2013 on the file of Judicial First Class Magistrate, Zaheerabad. On committal, the same came to be numbered as SC. No.209 of 2013. On appearance of the accused, a charge under Section 302 read with 34 IPC came to be framed, read over and explained to the accused, to which they denied. In support of the case, the prosecution examined PWs. 1 to 10 and marked Exs.P.1 to P7 and MO 1 to prove the charge under Section 302 read with 34 of IPC against A1 to A4. The learned Sessions Judge framed the following points for determination:

- i. Whether the alleged beating of the deceased by the accused is proved beyond all reasonable doubt?
- ii. Whether the prosecution could prove the guilt of the accused for the offences with which they stood charged beyond reasonable doubt?
- iii. To what relief?

The learned Sessions Judge held that the evidence brought on record concludes the guilt of A2 and A4 in murdering Adivaiah and the deceased died on account of the blows dealt on him by A2 and A4. It further opined that the force with which the blows have been dealt with are the cause of the death of Adivaiah. A1 and A3 were acquitted of both the charges.

Sri Siharinath contends that the conviction of appellants by the Sessions Court is unsustainable in law and the Sessions Court in appreciation of prosecution evidence ignored basic circumstances viz. the alleged incident occurred on 08.04.2013. FIR was filed and registered on 16.04.2013 under Section 307 of IPC, the information of death of Adivaiah is received on 16.04.2013, but Sections are altered on 17.04.2013 as if the information is received on 17.03.2013. There is no reliable or direct evidence on the first limb of narration i.e. A1 and A3 beat and pushed deceased out of their house on 08.04.2013, which is stated to be the incident of immediate provocation. The cause of death is inconsistent in Ex.P4 and the recovery of MO1 is not legally proved much less the cause of death could be due to the weapon i.e. MO1 allegedly used by accused.

He further contends that the cause of death as noted in Ex.P7 is: 1) Laprotomi metallic sutured wound over the mid line of the abdomen. 2) Drain tube on both sides of abdomen. 3) Mysentry contusion. 4) both kidney contusion. The approximate time of death that the deceased died at Sigma hospital on 16.04.2013 at 11.05 p.m., as per the death summary.”

According to him, in the absence of evidence on the treatment given at Sigma hospital, Secunderabad, the sequence of events are not established beyond reasonable doubt and the prosecution failed to establish the nature of injuries found on the body of deceased and the weapons with which such injuries would have probably caused by the assailants. In the absence of medical evidence, finding A2 and A4 as guilty is unsustainable. He further contends that PW 1 and PW2 could not be treated as eye witnesses to the alleged incident on 08.04.2013. The evidence of PW3 and PW4 though stated as eye witnesses to believe that these witnesses can be given the credence available to eye witnesses, the statements recorded by the police under Section 162 of Cr.P.C or the chief examination ought to make the Court to believe them as eye witnesses. He points out a few contradictions in the cross examination which we will consider later and contends that by placing reliance on the evidence of PWs 3 and 4 the appellants ought not to have been found guilty and sentenced. The motive for the murder is stated as the resistance of A1 to continue relationship with deceased. There is no evidence on motive or alleged relationship, for precipitation of affair resulting to level of

plotting the murder. Firstly, the prosecution has failed to prove the case beyond reasonable doubt and secondly that the quality of evidence led by the prosecution ought to result in benefit of doubt to the appellants. He prays for setting aside the conviction and to allow the appeal.

The learned Additional Public Prosecutor on the other hand contends that PWs 3 and 4 have spoken to the incident on 08.04.2013 and the contradictions or omissions pointed out from the evidence of these witnesses are not material and no exception to the findings recorded by the Sessions Court can be taken. She fairly submits that in the case on hand, the prosecution for whatever reason could not place evidence either oral or documentary on the happenings in the Government hospital at Zaheerabad or Sigma hospital at Secunderabad. She fairly submits that the *post mortem* report Ex.P7 refers to sutured wound on the abdomen of the deceased and the drain tube on the both sides of the abdomen.

We have noted the submissions of both sides. Let us appreciate the evidence of prosecution.

PW.1 refers to lodging Ex.P1 report dated 16.04.2013 and also about the deceased informing PW.1 at the spot of occurrence that all the accused beat him. In the cross examination, PW1 admits the relationship with the deceased. PW1 speaks to the estranged relationship between the deceased and his wife i.e. PW2. The report was given to Police after eight days of the incident. The improvised statements made between the FIR and the police are

elicited in the cross examination i.e. that the demand of money by A1 and other accused from the deceased. PW1 admits that the deceased is a heavy drunkard and the drinking habit is developed with the development of intimacy with A1. The admission of deceased being a heavy drunkard is argued in the context of deceased suffering from chronic ulcers and the deceased was treated for chronic ulcers and died of such disease. PW2 is the wife of deceased. She deposed that the deceased in Zaheerabad Government hospital told her that he sustained injuries due to the beating by all the accused with stones and that the deceased succumbed to the injuries inflicted on him by the accused. PW2 admits the contradiction between the statement recorded by the police and the statement made in the chief examination i.e she did not inform the police that the deceased informed PW2 that he was beaten by A1 to A4. PW3 is a resident of Madri Village, at about 5.00 p.m., he deposed that he heard some noise and saw A2 and A4 beating the deceased. The important omission in his evidence is that the case of prosecution is that all the accused beat deceased whereas PW3 refers to A2 and A4. In the chief examination, PW3 admits that he did not see A1 and A3 were present. In the cross examination PW3 admits that he cannot give the names of neighbours of community hall.

The prosecution examined B. Raghupathy as PW4 who is an Auto driver and was coming from Gurjuwada to Zaheerabad at the relevant time. He deposed that he came across the accused and the deceased and saw all the accused beating the deceased with

sticks, with their legs and hands indiscriminately. Due to beating, the deceased fell down and later PW.4 claims to have left the spot. In cross examination PW.4 deposed that incident occurred between 4.30 p.m. or 5.00 p.m. He deposed that he cannot give the name of the community hall where the deceased was attacked. In the statement given to police, PW4 stated that he was at community hall at 2.00 p.m. but states that he informed the police that he was at community hall at 4.00 p.m.

N.Rathnaiah-PW5 is also resident of Madri Village. PW5 was examined to depose to the recovery of MO1 from the scene of offence and signing the panchanama. In the cross examination, he admits that there are stones like MO1 available all over the village. PW6 and PW7 are the witnesses in the inquest conducted by PW8-I.O. The contradiction between the contents of inquest report and the statement made in chief examination is brought out by the defence.

Investigating Officer was examined as PW8. In his evidence, PW8 deposed about taking over of the investigation from PW9. The complaint is registered on 16.04.2013 for offence under Sections 304 and 34 of IPC and on 16.04.2013 alteration memo was filed in the court, however, in the charge sheet, it is stated that death intimation was received on 17.04.2013.

The case of prosecution briefly stated is that A1 had illicit intimacy with the deceased. A1 advised the deceased not to come to her house or continue the illicit intimacy, as A3 i.e. her daughter is grown up and such relationship if continued, A3 would

not get married. On the afternoon of 08.04.2013, the deceased had gone to the house of A1 and demanded continuation of illicit intimacy and at that point of time A1 and A3 beat the deceased with hands and pushed him out. The prosecution makes this incident, which is stated to have happened in the afternoon as an immediate provocation for the incident that took place at 5.00 p.m. A close examination of evidence, does not establish the going of deceased to the house of A1 and when deceased visited the house of A1, A1 and A3 beat the deceased with hands and have pushed him out of their house. Thus there is absolutely no evidence on this aspect. The further case of prosecution is that A2 and A4 were not in the house on the afternoon of 08.04.2013, however, on coming to know the incident of deceased visiting the house in the afternoon of 08.04.2013, A2 and A4 have planned to eliminate the deceased and on the same day, called the deceased to their house. When the deceased came to their house, A1 to A4 beat the deceased with hands, kicked him with legs and thereafter have taken him to the community hall area and they beat him with a stone on the stomach of the deceased. The eye witnesses for this incident are PW3 and PW4. The evidence of these witnesses is already appreciated and the presence of PW3 and PW4 at the place or time of occurrence raises doubt in the mind of the Court, for the case of prosecution is that A1 to A4 were present at the community hall. PW3 refers to A2 and A4 beating the deceased and he categorically states that he did not observe whether A1 and A3 being present much less beating the deceased. PW3

speaks about the time of occurrence as 5.00 p.m., whereas PW4 refers to the incident at about 4.30 p.m. or 5.00 p.m. The prosecution has failed to prove the first incident happened in the afternoon of 08.04.2013. The evidence of PWs 3 and 4 does not show that they were either in natural circumstances or on account of their residence etc could be present at the scene of occurrence. The contradictions in their evidence do not inspire confidence to accept that A2 and A4 beat deceased etc. which resulted in the death of deceased. The report is filed on 16.04.2013. There is no reason whatsoever either from PW1 or PW2 about the delay in filing a report as late as 16.04.2013 when the incident has allegedly occurred on 08.04.2013. The prosecution attributes the death on 16.04.2013 to the incident that had happened on 08.04.2014, the sequence of events right from the stage of occurrence till the date of registering FIR changing the Section of offence etc. must prove the sequence of circumstances beyond reasonable doubt. There are sufficient contradictions in the evidence of PWs 1 to 4 on the very occurrence and participation of accused in the brawl. The alleged incident had happened on 08.04.2013 in two spells one in the afternoon and another at 5.00 p.m. On 16.04.2013 at 11.05 p.m., the deceased died. The death report of Sigma hospital refers to the deceased suffering from blunt injury on abdomen and the cause of death is cardiac arrest. No one from Sigma hospital is examined. The *post mortem* report opines that the cause of death was due to blunt injury on abdomen. In the case on hand, the sequence of events from 08.04.2013 up to 16.04.2013 is not placed

by the prosecution. The deceased was found with post operative sutures. The prosecution further failed to establish that MO1 is firstly recovered from the scene of offence and that MO1 is used by the accused for inflicting the alleged injuries on the abdomen. Secondly, MO1 is lethal in nature or size and is capable of inflicting the injuries which could result in the death of deceased. The *post mortem* report shows sutured wound over the mid line of the abdomen. The non-production of evidence on the treatment given to deceased between 08.04.2013 to 16.04.2013 is a vital omission in the case of prosecution. The case sheet from Sigma hospital is not filed and the death report does not refer to performance of operation or presence of sutures on the deceased. After perusing the evidence and for the above reasons, we are convinced that the appellants are entitled to benefit of doubt and accordingly the conviction of appellants under Section 302 read with 34 IPC is unsustainable.

For the above reasons, the Criminal Appeal is allowed setting aside the conviction and sentence imposed on the appellants- Accused Nos.2 and 4 viz., Begari Mogulaiah and Begari yellappa, respectively, by the learned Principal Sessions Judge, Medak at Sanga Reddy, by the judgment dated 09.09.2013 in S.C. No.209 of 2013, for the offence punishable under Section 302 read with Section 34 of IPC and they are acquitted of the charge. The appellants shall be released forthwith, if they are not required to be detained any other case.

As a sequel thereto, miscellaneous applications, if any,
pending in the criminal appeal stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:16.11.2018
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