

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.A.Nos.626 of 2011 & 1086 of 2014

Date:16.07.2018

Crl.A.No.626 of 2011

Between.

K.Srinivasa Kumar

.....Appellant

And.

1. Kimidi Neelam Naidu

2. The State of A.P, repled.,

by the Public Prosecutor, Hyderabad.

.....Respondents

Counsel for the appellant: Mr. C.Sharan Reddy

Counsel for respondent No.1: Mr. O.Kailasanatha Reddy

Counsel for respondent No.2: Public Prosecutor for the State of AP

AND

Crl.A.No.1086 of 2014

Between.

The State of A.P, repled.,

by the Public Prosecutor, Hyderabad.

.....Appellant

And.

Kimidi Neelam Naidu.

.....Respondent

Counsel for the appellant: Public Prosecutor for the State of AP

Counsel for the respondent: Sri O.Kailasanatha Reddy

The Court made the following:

COMMON JUDGMENT: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Criminal Appeal No.626 of 2011 is filed by P.W-2, one of the sons of the deceased.

Criminal Appeal No.1086 of 2014 is filed by the State.

Both these appeals are filed against judgment, dated 29.04.2011, in Sessions Case No.144 of 2009 on the file of the II Additional District and Sessions Judge (Fast Track Court), Srikakulam, whereby it has acquitted the sole accused of the charge under Section-302 IPC.

The case of the prosecution in brief is as follows:

The accused worked as the Sarpanch of Kimidi Village during the period 1996 to 2004; that during the year 2001, anticipating bad reputation to their family because of the accused, his other brothers elected his sister-in-law as the Sarpanch unanimously; that since then, the accused developed grouse over the family members of his other brothers including the deceased; that in the elections of the Water Users Association held in the year 2004, the deceased was elected as the President by defeating the accused; that since then, the accused bore grudge against the deceased and decided to eliminate him and was waiting for an opportunity; that many times, the accused openly proclaimed to see the end of the deceased; and that during the year 2004, the accused beat the deceased, but in

view of the reputation of their family, the issue was not reported to the Police.

That four days prior to the occurrence, while the paddy crop of the deceased was being transported, some crop fell down from the tractor on the threshing floor of the accused; that on seeing the same, the accused threatened the deceased to kill him if a single grain or stack falls in his threshing floor; that on 07.12.2008, at 3 pm., when the deceased visited his threshing floor and was talking with P.W-3, the accused picked up a quarrel and beat him with a stout stick on his head, as a result, he fell down with injuries and became unconscious. That P.W-3 ran into the village and informed P.Ws.1 and 2-sons of the deceased, about the same, who rushed to the scene along with P.W-3 and witnessed the offence; that on seeing them, the accused left the weapon and escaped; and that on the way to the hospital in 108 Ambulance, the deceased succumbed to the injuries. That based on the report given by P.W-1, P.W-9-Sub-Inspector of Police, R.A.Valasa, registered a case in Crime No.103 of 2008 for the offence under Section-302 IPC and issued express FIRs to all the officers concerned.

That P.W-10-Inspector of Police took up the investigation, during which, he examined P.Ws.1 to 5 and L.Ws.5, 6, and 8 to 10-Kimini Seetharami Naidu, Kimidi Vinaykumar, Kimidi Rama

Krishna Naidu, Kimidi Jayalaxmi and Appala Swamy, respectively, recorded their statements, observed the scene of offence in the presence of P.W-7 and L.W.13-Kimidi Sankararao, seized M.Os.1 to 6 under the cover of observation report-Ex.P-17, held inquest over the dead body of the deceased in the presence of L.Ws.12 and 14 to 18 and prepared Ex.P-18-Inquest report; that on his requisition, P.W-8 conducted post-mortem examination on the dead body of the deceased and opined that the deceased died due to shock and haemorrhage and also due to injury to brain; that on 08.12.2009, P.W-10 arrested the accused and sent him for judicial custody; and that on requisition made by P.W-10, L.W-19-Judicial First Class Magistrate, Palakonda, recorded the statements of P.Ws.1 and 2 under Section-164 Cr.P.C. on 03.01.2009 and that of P.Ws.3 and 4 on 27.12.2008. After completion of the investigation and after securing all the required documents, the charge sheet was filed.

Based on the charge sheet and the material produced before it, the Court below has framed the following charge:

“That you the accused on or about 7th day of December 2008 at about 3 pm at the threshing floor by the side of your threshing floor, situated in Regidi Vilalge, Regidi Amadalavalasa Police Station limits, did commit murder by intentionally or knowingly causing the death of your own brother-Kimidi Ramanaidu, by beating him on his head indiscriminately with a stout stick locally known as

“Sirisim stick” and you thereby committed an offence punishable under Section-302 IPC and within cognizance of this Court of Sessions.”

As the plea of the accused was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 10, got Exs.P-1 to P-26 marked and produced M.Os.1 to 6. On behalf of the accused, no oral evidence was let in. However, the defence has got Exs.D-1 and D-5 marked.

On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted above.

Learned Public Prosecutor submitted that the Court below has committed serious errors in disbelieving the evidence of P.Ws.1 to 3, who are eye-witnesses and acquitting the accused. He further submitted that the Court below has relied upon certain minor and insignificant inconsistencies in the evidence of P.Ws.1 to 3 and held the accused not guilty and that therefore, the judgment of the Court below is liable to be reversed.

Learned counsel for the appellant in Criminal Appeal No.626 of 2011, while supporting the submissions of the learned Public Prosecutor, stated that from the testimony of P.Ws.1 to 3 only one view is possible and that the said view

being the accused guilty of commission of offence, the view taken by the Court below in favour of the accused is not a sustainable view.

Mr. O. Kailasanatha Reddy, learned counsel for the accused, opposed the above submissions and argued that there are material contradictions in the evidence of P.Ws.1 to 3, who are highly interested witnesses, and that their testimony does not stand the scrutiny of the Court to hold the accused guilty of committing the offence with which he was charged beyond reasonable doubt. He further submitted that from the evidence on record only one view is possible and that the Court below having taken that view in favour of the accused, there is no scope for this Court to interfere with the said view taken by the Court below.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

The case of the prosecution is based on the evidence of P.Ws.1 to 3, who were examined as eye-witnesses. We shall, therefore, discuss the evidence of each of these witnesses in order to know whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

P.Ws.1 and 2 are no other than the sons of the deceased. P.W-3 is admittedly a farm servant of the deceased. There can, therefore, be no doubt that all the three prosecution witnesses examined as eye-witnesses are not independent witnesses.

The law is well settled that in the case of interested witnesses, the Court has to scrutinize their testimony very closely and minutely to rule out the possibility of their tendering false evidence.

We shall start with the contents of Ex.P-1-report. P.W-1, the first informant, stated in Ex.P-1 that when himself and his brother-P.W-2 were informed that the accused started fight with their father deliberately and was beating him, himself and P.W-2 went running to the threshing floor and saw the accused beating the deceased on his head and body with a stout stick. As the prosecution case goes on, P.W-3, who is the farm servant of the deceased and P.Ws.1 and 2, saw the accused beating the deceased at the threshing floor, which was allegedly 50 yards away from the house of the deceased and P.Ws.1 and 2, and informed the latter about the said incident. Significantly, in Ex.P-1, P.W-1 did not refer to the name of P.W-3 as the source of information about the accused beating the deceased. In his chief-examination, P.W-1 stated that half-an-hour after their return from Rajam after attending a function, P.W-3 came and

informed them that the accused and the deceased were quarrelling and that the accused might beat the deceased and that, there upon himself and P.Ws.2 and 3 went running to the threshing floor.

In his cross-examination, P.W-1 has stated that before the Police and also the Magistrate (LW-19), he stated that P.W-3 informed them that the accused was beating the deceased.

P.W-2, another son of the deceased, however, has a slightly different version to come out with. In his chief-examination, P.W-2 stated that P.W-3 informed them that in the quarrel between the accused and the deceased, the former was beating the latter.

P.W-3 in his evidence stated that when the accused went to the threshing floor and started abusing the deceased, the former out of fear that the accused may beat him, asked P.W-3 to go and get his sons-P.Ws.1 and 2 from his house. Thus, there is a material discrepancy in the evidence of P.W-1 on one side and that of P.Ws.2 and 3 on the other side as regards the information that was passed on to P.Ws.1 and 2 by P.W-3 regarding the actual beating of the deceased by the accused. The failure of P.W-1 to refer the name of P.W-3 as the source of information in Ex.P-1-report coupled with the afore-mentioned discrepancy as regards the fact whether P.W-3 has informed

them that merely a quarrel was taking place or the deceased already started beating the deceased gives rise to any amount of doubt about the credibility of testimony of this witness.

P.W-3 himself has stated that on apprehension that the accused may attack the deceased, he has informed P.Ws.1 and 2 that there is a possibility of the accused beating the deceased. Thus, the evidence of P.Ws.1 and 2 is completely in conflict with that of P.W-3.

All these serious discrepancies throw any amount of doubt on the creditability of testimony of P.Ws.1 to 3 that they are the actual eye-witnesses to the incident.

Another important aspect that seriously affects the case of the prosecution pertains to the place from which P.Ws.1 and 2 witnessed the incident. In his chief examination, P.W.1 deposed that by the time, himself and P.Ws.2 and 3 crossed the curve, they noticed that the deceased was lying on the ground facing the earth and the accused was beating him with a stick on his head. In his cross examination, P.W.1 admitted that he did not specify in Ex.P-1-report and also in his statements given to the Police and before the Magistrate about their seeing the accused beating his father from the curve at a rice mill and that about his father lying on the ground facing the earth. He further added that when they were at a distance of 25 yards from his

father (deceased), the accused stopped beating him. The witness admitted that there is a rice mill of his uncle Sangam Naidu on the outskirts of the village and that, from his threshing floor, one has to come to the road on its west and from there through the culvert, one has to come towards north and then through the main road to reach his house. In the light of this admission of P.W.1, it is clear that the road from the house of P.W.1 to the scene of offence is not straight, but it has a curve. The failure of P.W.1 to refer to the exact spot from which he witnessed the alleged incident, i.e., whether before or after crossing the curve, which is a very material aspect, casts any amount of doubt on the credibility of the testimony of P.W.1 that he noticed the accused attacking the deceased. Evidently, to overcome this deficiency, P.W.1, for the first time in his chief-examination, deposed that after crossing the curve, he noticed that the deceased was being attacked by the accused. Similar is the case with P.W.2. While the very stand of these two witnesses that on the information given by P.W.3, they went to the scene of offence itself is highly doubtful, their omission to state before the Police that after crossing the curve, they witnessed the incident, adds further doubt to the veracity of the evidence of these witnesses that they were the eye-witnesses to the incident.

One other important feature of the case is the conduct of P.Ws.1 and 2. The accused was aged about 58 years at the time of the incident and P.W.1 was 30 years of age and P.W.2 was 39 years of age. Being the sons of the accused at their prime age, the behaviour of P.Ws.1 and 2 in not trying to prevent the accused, who according to their version, propped the stick, with which he allegedly attacked the deceased and ran away, and not chasing accused in order to catch him, is highly unnatural. It is not their case that the accused threatened them when they tried to prevent him. If their father was attacked in their presence, P.Ws.1 and 2, being very young, are expected, at least, to try to catch the accused by raising alarms. No such attempt was made by these two witnesses.

It has come out in the evidence of P.W.1 that there was hectic agricultural activity on the date of the incident. The incident having taken place at around 2.30 p.m., there would have been many people in the adjoining agriculture fields. Surprisingly, not even one person was examined by the Police either during the investigation or before the Court to corroborate the evidence of P.Ws.1 to 3, who as noted above, are interested witnesses. The failure of the prosecution to examine the independent witnesses also creates a serious doubt on the entire version of the prosecution. The prosecution also failed to

connect the accused to the offence through scientific evidence. Though M.Os.1 to 6 – stick, blood stained cloths, blood stained earth and control earth, have been recovered from the scene of offence, the blood group thereon could not be determined by the Forensic Science Laboratory.

In an appeal arising out of acquittal, this Court would not interfere with the judgment of the Court below, if the same is based on a plausible view and even if two views are possible and where the trial Court has taken one such view, the appellate Court would not substitute its view. On a careful perusal of the judgment of the Court below, we have no hesitation to hold that the view taken by it is a plausible view which cannot be interfered with.

In the light of the above discussion, we do not find any reason to interfere with the judgment of the Court below.

These two Criminal Appeals are, accordingly, dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

16th July, 2018

DR/GHN