

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

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 706 of 2011

Date: 18th June, 2018

Between:

Mekkela Rathnaiah

... Appellant

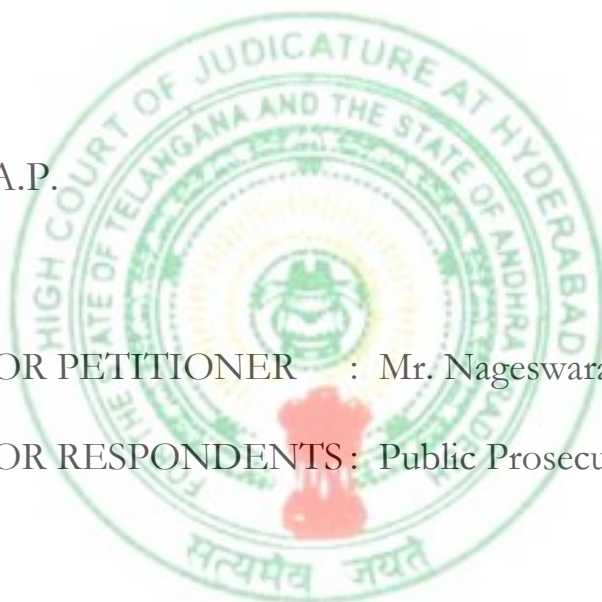
And

The State of A.P.

... Respondents

COUNSEL FOR PETITIONER : Mr. Nageswara Rao Gollapati

COUNSEL FOR RESPONDENTS: Public Prosecutor, AP



THE COURT MADE THE FOLLOWING:

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

This appeal arises out of the judgment dated 13.12.2010 in Sessions Case No.397 of 2007 on the file of Additional Metropolitan Sessions Judge-cum-III Additional Sessions Judge (FTC), Ranga Reddy District, at L.B. Nagar, whereby the appellant/accused was convicted for the offence punishable under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.200/-, in default to suffer simple imprisonment for one month.

2. Brief facts of the case as per the prosecution are under:

On 08.12.2006, at 11.00 hours, PW.1 lodged a complaint (Ex.P1) before the Inspector of Police, P.S., Neredmet stating that he hails from Jadupally village, Melayaputta mandal, Srikakulam district, and is residing in Gokul Nagar, Neredmet, that he and his wife Venkatamma came to Hyderabad about 15 years back for livelihood, and were working as labourers under the accused who is a mason. That the accused used to frequently visit the house of PW.1, mingled with them almost like a member of their family and developed illicit intimacy with his wife – Venkatamma (hereinafter referred to as “the deceased”), that since the last four years, PW.1 and the deceased were running a

Tea stall at Sainathapuram cross roads, that the deceased used to sell tea in the tea stall while PW.1 used to work as a Cook in a house and after completing cooking work, he used to sell tea and biscuits in the tea stall and that the accused used to come to the tea stall and assist the deceased in serving the tea. That the accused was frequently quarrelling with the deceased and therefore she asked the deceased not to come to them but even then he used to visit them. That on 08.12.2006, at 7:00 A.M. the accused while going to his work, came to their tea stall and tried to talk with the deceased, that when the deceased enquired with the accused as to why he came to them again, the accused while questioning the deceased as to how she can ask him not visit her having made him go around her all these days and made him neglect his family, quarrelled with the deceased, beat on her face and head indiscriminately with the hammer which he was carrying in his hand. That PW.1 rescued the deceased from the attack of the accused but as she sustained injuries, he took her to the Gandhi Hospital for treatment, that the neighbours who witnessed the incident rushed to the spot and that the deceased succumbed to the injuries on 08.12.2006 at 9:30 A.M. while undergoing treatment.

PW-13 - the Inspector of Police, P.S. Neredment, on receipt of Ex.P-1 complaint, registered a case in Crime No.454 of 2006 against the appellant-accused for the offence punishable under Section 302 IPC and issued express FIRs to all the concerned and took up the investigation. During the course of investigation, PW-13 recorded the statements of PWs.1 and 2, LWs.3 and 4, PW-3 to PW-7 and LW-10, got the dead body of the deceased photographed by PW-9. He visited the scene of offence, conducted panchanama of the scene of offence – Ex.P-2, in the presence of PW-6 and LW-13, drew the rough sketch of the scene of offence – Ex.P-3, seized the blood stained earth and control earth, blood stained pieces of coconut coir – MO-2, under the cover of Ex.P-2 panchanama, visited the mortuary of the Gandhi Hospital, Secunderabad and held inquest over the dead body of the deceased in the presence of PW-10 and LW-15 under Ex.P-7 and sent the dead body for post mortem examination. PW-8 – Assistant Professor of Forensic Medicine, conducted post mortem examination and opined that the cause of death of the deceased was due to the head injury.

That on 11-12-2006, PW-13 arrested the accused in the presence of PW-11 and LW-17 and upon interrogation the accused confessed the offence and led the Police and PW-11 and

LW-17 to the bush near his hut and brought MO-1 – iron hammer, which was seized under Ex.P-8 panchanama. The material objects seized during the investigation were sent to the Forensic Science Laboratory, Hyderabad, which, after analysis, issued Ex.P-11 report. On the requisition of the Police, PW-7 – Judicial First Class Magistrate, Palamner, conducted Ex.P-4-Test Identification Proceedings. After completion of the investigation, PW-13 filed the charge sheet.

3. Basing upon the investigation and the evidence on record, the learned Additional Metropolitan Sessions Judge-cum-III Additional District & Sessions Judge (FTC), Ranga Reddy District at L.B. Nagar, framed a charge against the accused for the offence punishable under Section 302 IPC, read over and explained the same to the accused. The accused pleaded not guilty and claimed to be tried.

4. In support of its case, the prosecution has examined PW.1 to 13 and marked Exs.P-1 to P-11 and produced MOs.1 and 2. The accused has not examined any witness on his behalf, except marking Ex.D1 to D3 – relevant portions in the statements of PW-1 and PW-2 recorded under Section 161 Cr.P.C., during their cross examination. Upon closure of the

evidence, the accused was examined under Section 313 Cr.P.C. during which he was confronted with the incriminating material appearing against him, which he denied. The trial Court, upon consideration of the evidence, convicted and sentenced the accused as stated hereinbefore.

5. The point for determination in this appeal is whether the judgment of the trial Court suffers from illegality ?

6. Learned counsel for the appellant submitted that the evidence of PW.1 shows that he was not present at the time of occurrence of the incident, that PW.1 has stated in his cross examination that he did not draft Ex.P-1-complaint and he does not know as to who scribed the complaint but it was given in the police station by his son-in-law, that PW-1 being the husband of the deceased was planted in this case and that therefore the case of the prosecution that PW-1 is an eye-witness to the incident cannot be believed. It is also argued that the evidence of PW.2 cannot be believed as he stated that he saw the accused running away from the scene of offence, that by the time he reached the scene of offence, the accused went away to a distance of 200 meters and that therefore there is no possibility of PW-2 identifying the accused.

7. The learned Public Prosecutor submitted that in view of the categorical findings recorded based on the incriminating evidence brought on record, there are no grounds to interfere with the well considered Judgment of the trial Court.

8. As regards the lodging of the complaint, as rightly contended by the learned counsel for the appellant, though PW-1 deposed in his chief-examination that he gave Ex.P-1 complaint to the police, during his cross-examination he stated that he did not draft the complaint, that he does not know who scribed the complaint and that the complaint was given by his son-in-law. He has clearly stated that he does not know as to what was mentioned in the complaint by his son-in-law. However, PW.13 - the Investigation Officer deposed that he received Ex.P1 from PW.1 and registered the case. PW.1 did not state that he went to police station and gave the complaint.

9. The evidence of PW.1 discloses that he attends to cooking work at 7:00 AM in the house of a Bank Manager, and returns home by 8:00 or 8:30 AM, that the distance between his tea stall and the house of the Bank Manager is about half a kilometre, that on the date of incident, he completed Cooking work by 8:00 AM in the house of the Bank Manager, informed

the Manager and left for home and reached their tea stall on his cycle at 8:00 AM. However, the case of the prosecution is that the incident occurred at 7.00 A.M. Therefore, by the time PW.1 reached the scene of offence after finishing his work at 8.00 A.M. at the house of the Bank Manager, the incident must have been over and as such there was no possibility of his witnessing the incident. In the light of the categorical admissions of PW-1 that he had not drafted the complaint, that his son-in-law gave the complaint, and that he does not know the contents of the complaint, his testimony with regard to the contents of complaint and his presence at the scene of offence and witnessing the incident cannot be believed.

10. According to PW.2, at 7.00 A.M. or 7.30 A.M., after hearing some noise he went into the balcony of his flat and ran down to the scene of offence and that he saw the accused from a distance of 200 meters while he was running away after the incident. PW.2 deposed that he saw accused from his backside while he was running away. It is pertinent to note that on the requisition of police, the learned Magistrate (PW7) conducted Test Identification Parade (TIP) on 30.12.2006 for identification of the accused at Cherlapally Central Prison. Ex.P4 is the TIP proceedings. In order to identify the suspect, the Police have

secured the presence of the alleged eye-witnesses to the incident i.e., PW-2 and PW-3, and another - LW-6. PW-7, who conducted the TIP proceedings deposed that PW.2 identified the suspect, that PW.3 and that LW-6 could not identify the suspect. When PW-7 questioned PW-2 as to whether he can give the identification marks of the suspect, he stated that he cannot give such details but he stated that he can identify the suspect if he is shown to him. However, interestingly, during his cross-examination PW-2 stated that he cannot say the colour of the dress worn by the accused on the day of the incident. Therefore, the alleged identification of the accused by PW-2 cannot be believed.

11. PW.3, the alleged eye-witness, deposed that on the date of the incident when he was taking his son to the school at about 7.00 A.M. and came near the tea stall of the deceased, he saw the accused beating the deceased with a hammer. However, PW-3 could not identify the accused during the TIP proceedings. Therefore, his evidence is of no help to the prosecution.

12. PW.4 was the daughter of the deceased. She deposed that on 8.12.2006, her father informed over telephone to her that at about 7:30 AM or 8:00 AM, the accused beat the deceased with

a hammer and that he asked all of them to come over to the tea stall.

13. PW.5 is no other than the husband of PW.4 and son-in-law of PW-1 and the deceased. His testimony reveals that on 8.12.2006, at about 7:00 AM, the milkman informed him that somebody beat the deceased with a hammer at the tea stall and when he was about to go there, he received a telephone call from PW-1 stating that accused killed the deceased.

14. PW.6 is not an eye-witness. His testimony reveals that at about 7:00 AM or 7:30 AM, when he went to the tea stall situated opposite to the tea stall of the deceased he came to know about the incident.

15. According to the prosecution, the incident occurred at 7.00 A.M. As per the version of PW-1, the incident occurred after he returned to their tea stall at 8.00 A.M. from his work place. PW-2 deposed that the incident occurred at about 7 or 7.30 A.M. PW-3, the alleged eye witness who could not identify accused during the TIP proceedings, deposed that the incident occurred at 7.00 A.M. PW-4, the daughter of the deceased, deposed that at about 7.30 or 8.00 A.M. According to the testimony of PW-5, who is the husband of PW-4, the milkman

informed him about that incident at 7.00 A.M. If that is so, the incident must have occurred well before 7.00 A.M. and hence the case of the prosecution that the incident occurred at 7.00 A.M. falls to ground. The prosecution has failed to explain the inconsistency in the evidence of PW-1 to PW-6 with regard to the time at which the incident has occurred.

16. Learned Public Prosecutor argued that the witnesses are rustic villagers, and therefore, the variance in their evidence regarding the time of occurrence may not be taken into consideration. In view of the serious dispute about the time of occurrence as spoken to by the witnesses coupled with the inconsistencies and improbabilities in their versions as pointed out supra, the submission of the learned Public Prosecutor cannot be accepted.

17. The version of the prosecution is that the accused hit the deceased with MO-1-hammer and the same was recovered at his instance. The hammer recovered is a commonly available tool in the market. There are no specific identification marks on MO-1 for its identification and to come to the conclusion that that the same was used in the commission of offence. It is also pertinent to note that there were no blood stains on MO-1 to connect the

accused with the crime. In Ex.P-11-Reort of the Forensic Science Laboratory (FSL), item No.7 is shown as a hammer with wooden handle with dark brown stains. However, there is no report or opinion given by the FSL with regard to the detection of blood group or blood stains on the said item No.7. In the absence of any opinion or report from the FSL with regard to MO-1-hammer, the accused cannot be connected with the crime basing on the recovery. Therefore, the very recovery of MO.1 from the accused also becomes doubtful and the same creates a suspicion that the same might have been planted.

18. For the aforementioned reasons, the testimony of PWs.1 to 6, relied upon by the prosecution, does not inspire confidence to convict the accused. The trial Court has not considered the evidence in proper perspective. On consideration of the entire evidence, we are of the considered view that there is no satisfactory evidence on record to connect the accused with the crime and that the prosecution has failed to prove the guilt of the accused for the offence punishable under Section 302 IPC beyond reasonable doubt.

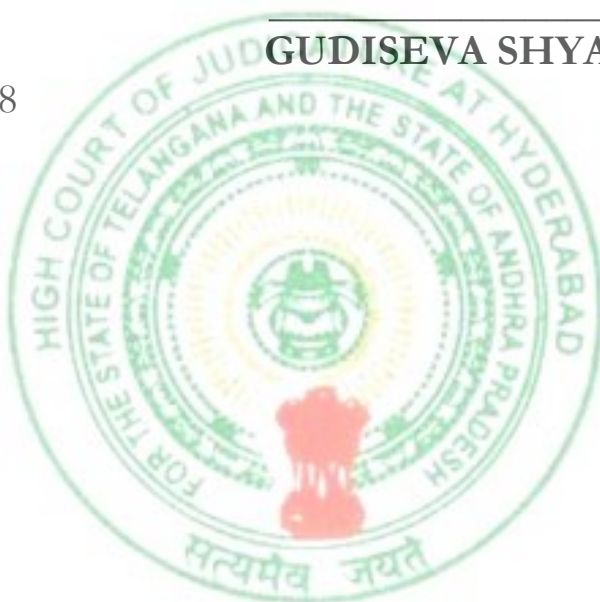
19. In the result, the criminal appeal is allowed and the judgment dated 13.12.2010 passed by the trial Court in Sessions

Case No.397 of 2007 is set aside. The bail bond furnished by the appellant/accused, pursuant to the order of this Court dated 20-12-2016 in Crl.A.M.P.No.2198 of 2016, shall stand cancelled, and the appellant-accused is directed to be released forthwith, if he is not required in any other case.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

18th June, 2018
KSM



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