

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

Crl.A.Nos.701 and 1011 of 2012

Date: 12.11.2018

Criminal Appeal No.701 of 2012

Between:

P.Rameshwaraiah, S/o.P.Laxmaiah,
Aged 33 years, R/o.Raghupathipeta,
Kalwakurthy, Mahaboobnagar

...

Appellant

And

The State of Andhra Pradesh,
through the Public Prosecutor,
High Court of A.P.
and three others.

...

Respondents

Counsel for the Appellant : Mr. R.Mahadev

Counsel for the Respondents: Additional Public Prosecutor (TS) for R1
Mr.Masthan Naidu Cherukuri for R2 to 4

Criminal Appeal No.1011 of 2012

Between:

The State of Andhra Pradesh,
rep. by the Public Prosecutor,
High Court of A.P., Hyderabad

...

Appellant

And

Perumalla Chinna Eashwaraiah,
S/o.Eedamaiah, 44 years,
Madiga, Agriculture,
R/o.Raghupathipeta village
and two others.

...

Respondents

Counsel for the Appellant : Additional Public Prosecutor (TS)

Counsel for the Respondents: Mr.Masthan Naidu Cherukuri

The Court made the following:

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

These two appeals arise out of the same judgment dated 15.04.2011 in Sessions Case No.613 of 2008 on the file of the Special Sessions Judge for Trial of Cases under SCs and STs (POA) Act-cum-VII Additional District and Sessions Judge, Mahabubnagar.

2. By the aforementioned judgment, the lower court has acquitted all the three accused of the charges framed against them. The State filed criminal Appeal No.1011 of 2012, while the *de facto* complainant filed Criminal Appeal No.701 of 2012, against the said acquittal. Before proceeding with the case further, it needs to be noted that A2 i.e. respondent No.2 is reported to have died. The accusation against the respondents is that on 23.04.2008 at 11 hours, they picked up a quarrel with one Perumalla Laxmaiah (for short 'the deceased'); that while A2 and A3 gave fist blows to the deceased by catching his shirt collar, A1 beat him with cart peg on the head of the deceased from behind, due to which the deceased fell on the ground unconscious and died while he was being shifted from Kalwakurthy Government Hospital, on the way to Hyderabad.

3. Based on the investigation and the material produced by the police, the court below has framed the following charges:

“That you, A.1 to A.3 on or about 23.04.2008 at about 11.00 A.M., in the limits of Raghupathipet village, in furtherance of your common intention, did commit murder by intentionally causing

death of Perumalla Laxmaiah by fisting blows on him and beating him with card peg and thereby committed an offence punishable u/s.302 R/w. S.34 of the Indian Penal Code and within the cognizance of the court of Sessions.

That you A.1 to A.3 on or about same day, time and place mentioned in charge No.1 supra, voluntarily caused hurt to Navamma and Durgamma by causing simple injuries over their body, and that you thereby committed offence u/s.324 IPC and within the cognizance of this court.”

4. On behalf of the prosecution, PWs.1 to 14 were examined, Ex.P1 to P25 were marked and MO.1 was produced. On behalf of defence, DWs.1 and 2 were examined. On appreciation of oral and documentary evidence, the lower court has acquitted the accused.

5. Smt.Sridevi Juvvadi, learned Additional Public Prosecutor for the State of Telangana and Mr.R.Mahadev, learned counsel for the *de facto* complainant, argued that the reasoning of the lower court on several aspects is perverse. They referred to the reasons assigned by the lower court for disbelieving the version of PW-1 on the ground that he did not refer to the names of the assailants in Ex.P18 – wound certificate, the failure of PW-1 to attribute specific overt acts in Ex.P1 against the accused and disbelieving evidence of PW-2 also on the said ground.

6. Opposing the above submissions, Mr.Chelukuri Masthan Naidu, learned counsel for the accused, submitted that the evidence of PWs.1 and 2 has not inspired confidence and that even if the reasoning of the lower court is not very satisfactory, if its conclusion is justifiable based on the evidence on record, the High Court in

exercise of its appellate power, will not interfere with the findings of the lower court, merely because two views are possible.

7. We have carefully considered the respective submissions of the learned counsel for both parties. Since the appeals are preferred by the State and the *de facto* complainant, it is permissible for this Court to examine the evidence on record and re-appreciate the evidence *de novo*. Therefore, without confining to the reasons and findings recorded by the lower court, we have independently examined the case of the prosecution with reference to the evidence available on record.

8. PWs.1 and 2 were examined as eye witnesses. Among them, PW1 is an injured witness. Ordinarily, evidence of an injured witness enjoys high probative value as he is not expected to shield the real culprit and falsely implicate an innocent. In order to know whether PW.1 is a truthful witness, we need to proceed from the genesis of the case i.e. Ex.P1- the report given by him to the police, which set the criminal law into motion. PW-1 has stated in his report that the three accused and their wives along with the mother of the accused came in front of the house belonging to the deceased and PW-1 and picked up quarrel with the deceased. He has further stated that one among them caught hold of the shirt collar of the deceased and another beat the deceased forcefully with a cart peg on his head. That, the deceased fell unconscious and immediately they took him

to the government hospital. It is the specific case of the prosecution that PW1 received injuries during the course of the attack of the deceased by the accused. PW-1 did not raise a whisper about his sustaining injuries in Ex.P1 – report. What is more surprising is that in Charge No.2, the accused were charged for the offence punishable under Section 324 IPC for causing injuries to LW-2, wife of the deceased and PW-2. Neither LW-2 was examined as a witness, nor the wound certificate of PW-2 was filed. Though the prosecution filed Ex.P18 – wound certificate of PW-1, the accused as mentioned above, were not charged for causing injuries to the said witness. From a careful examination of the contents of Ex.P1, a serious doubt arises on the truthfulness of the stand taken by PW-1. No person who received injuries would omit to mention the fact of his receiving injuries. If PW-1 was at the scene of offence and had received the injuries and even if for any reason, he failed to mention the same in Ex.P1, the prosecution would not have failed to frame specific charge relating to attack on PW-1 by the accused. The very fact that the prosecution has omitted to frame such a charge and on the contrary it has framed a charge alleging voluntarily causing hurt to LW2 and PW2, shows that PW-1 has not received injuries at the time of the alleged attack of the deceased by the accused. This conclusion of ours would stand fortified by the failure of PW-1 to specify in Ex.P1 as to who among the accused caught hold of his father's shirt collar and who is the other person who has beaten his father with cart peg. No

doubt, as argued by the learned counsel for the appellants, FIR is not an encyclopaedia. However, when PW-1 specifically referred to the three names of the accused, his omission as to which of the two accused caught hold of the shirt of the deceased and which accused has beaten him on the head, is very glaring, raising any amount of doubt about his claim that he was an eye witness. When we consider the evidence of PW-1, he referred to specific overt acts, which is an obvious afterthought. PW-13, the Sub-Inspector of Police, deposed that he gave requisition to the medical officer to treat PW-1 and his father. However, the prosecution failed to file any such requisition. No reasons were forthcoming for its failure to file the requisition, which would have revealed the true manner in which PW-1 has sustained injuries. The inherent shortcomings in Ex.P1 and the evidence of PW-1 as discussed above, renders PW-1 as a whole untrustworthy witness.

9. As regards PW-2, she stated that when she went to the house of her co-sister Niranjanamma situated near the house of PW-1, she heard PW-1, his father and the accused quarrelling, that she saw the accused beating the father of PW-1 with hands and later A1 armed with stick went upon the deceased and beat him on the back side of his head. We find material contradiction as to how PW-2 arrived at the scene, between the evidence of PW1 and PW2. As per the sequence of events narrated by PW-1, PW-2 arrived at the scene on

hearing the cries, after the deceased was attacked. Whereas, as per the version of PW-2, she arrived at the scene on hearing the quarrel and she witnessed the entire occurrence.

10. As regards the overt acts attributed to A3, we find the evidence of PWs.1 and 2 discrepant, in that, while PW.1 deposed that A2 and A3 came upon the deceased and caught hold of his neck, PW.2 deposed that he saw the accused beating the deceased.

11. A serious lacuna in the case of prosecution *qua* PW-2, lies in the fact that while a specific charge was framed against the accused to the effect that they have caused injuries to PW-2, neither she nor PW-1 raised any whisper about the accused attacking PW-2. This serious incongruity in the case of the prosecution renders the evidence of PW-2 incredulous.

12. Once the evidence of PW.2 is rejected, the only other evidence relied upon by the prosecution is the alleged recovery of MO.1. PWs.9 and 10, who are the panch witnesses, turned hostile. Therefore, the lone testimony of PW.14 remains uncorroborated regarding the alleged seizure. Thus, the prosecution failed to prove the seizure of MO.1 from the possession of A1.

13. In the light of the discussion undertaken above and having regard to the fact that the Court below, for its own reasons, held the

accused not guilty of the charges framed against them, we do not find any reason to interfere with the judgment under appeal.

14. Both the Criminal Appeals are, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 12th November, 2018

msb/lur



