

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL Nos.1225 of 2011 AND 1479 of 2011

COMMON JUDGMENT: (*Per Hon'ble Sri Justice C. Praveen Kumar*)

1) Both these appeals are filed against the judgment dated 12.10.2011, passed in S.C.No.171 of 2011 on the file of the Sessions Judge, East Godavari, Rajahmundry. Originally accused Nos.1 to 5 in sessions case, were tried on two charges. The first charge was under Section 302 IPC, for causing the death of one China Maridayya (hereinafter referred to as "the deceased") on 27.05.2010 at 8.00 p.m., at Paghunadhapuram, Rajanagaram Mandal. The second charge was under Section 427 IPC for causing damages to the glass panes of the Indica Car with stones. An additional charge for the offence punishable under Section 326 read with 34 IPC came to be framed for causing injuries to PW.1. Vide judgment, dated 12.10.2011, the learned Sessions Judge, while acquitting all the accused for the offences punishable under Sections 302 and 326 read with 34 IPC and accused Nos.2,3 and 5 for the offence punishable under Section 427 IPC, convicted accused Nos.1 and 4 only for the offence punishable under Section 427 IPC and sentenced them to suffer simple imprisonment for a period of one year and to pay a fine of Rs.2000/- in default to suffer simple imprisonment for a period of two months. CrI.A.No.1225 of 2011 is filed by accused Nos.1 and 4 against their

conviction and sentence for the offence punishable under Section 427 IPC while CrI.A.No.1479 of 2011 is filed by the aggrieved person against the acquittal of the accused for the offences punishable under Sections 302, 326 read with 34 IPC.

2) The case of the prosecution as seen from the evidence on record is as under:

i) The accused are resident of Raghunadhapuram, Rajanagaram Mandal. Accused No.1 is the son of accused No.4 and grandson of accused No.5. Accused Nos.2 and 4 are brothers and sons of accused No.5. Accused No.3 is the maternal uncle of accused No.1. The deceased is the son of Peda Suranna and brother of accused No.5. PWs.1 and 4 are sons of the deceased. From the above, it appears that the accused as well as the prosecution witnesses are interrelated. PW.1 who is said to be the son of the deceased, in his evidence states that accused Nos.1, 2 and 4 are his senior paternal uncle's sons. Accused No.3 is the brother-in-law of accused No.4, while accused No.5 is his senior paternal uncle. The house of PW.1 and the house of the accused are adjacent in the same village. There were disputes between them with regard to discharge of sullage water. On 27.05.2010 at about 8.00 p.m., while PW.1 was reversing his car at the residence of accused No.5, hit the parked motor cycle of accused No.4. Then accused Nos.1, 2, 4 and 5 came out of their house, questioned PW.1 and also broke the window panes of the car. At that time, PW.1 was sitting in the driver seat. In the meanwhile, his father,

mother, Srinu and Hariparasada Rao came out of their house. Accused No.1 picked a brick bat and beat on the left side abdomen, pursuant to which he was shifted to his residence by his family members. At that time PW.2 came to his house and requested them not to quarrel. Meanwhile, accused Nos.1 to 5 came near to the house of PW.1 saying "Vallatho manakenti vesedham randi". So saying accused No.2 beat the deceased on his head with brick bat, while accused Nos.1 and 3 beat on the head of the deceased with sticks causing injuries. Immediately PW.1 shifted the injured to Government Hospital, Rajahmundry, and from there to Government Hospital, Kakinada. PW.1 was treated in Government Hospital, Rajahmundry.

ii) On 27.05.2010 at 10.30 p.m., PW.13-the head constable in outpost police station of hospital, received intimation from the Duty Medical Officer, Government Hospital, Rajamundry, with regard to admission of China Maridayya with a head injury. On receipt of the said information, he went to the MS Ward, recorded the statement of the injured, read over the contents of the same to the injured, obtained his thumb impression and forwarded the same to Rajanagaram Police. Ex.P10 is the intimation and Ex.P11 is the statement recorded.

iii) On 28.05.2010, PW.15-the Sub-Inspector of Police, Rajanagaram, received hospital intimation along with statement of Gonaboina China Maridayya, basing on which, he registered a case in Crime No.122 of 2010 for the offences punishable under Section

324 read with 34 IPC. Ex.P12 is the first information report. His evidence also discloses that a counter case vide Crime No.121 of 2010 also came to be registered for the offence punishable under Section 324 read with 34 IPC against PWs.1 and 5 others. The original first information reports in both the crimes were sent to the Judicial Magistrate of First Class. Thereafter, PW.15 went to Government General Hospital, Rajahmundry, recorded the statement of PW.1 and found the injured Maridayya in an unconscious state. On the same day at about 11.30 a.m., he visited the scene of offence, and conducted a panchanama of the same in the presence of PW.9 and another and also prepared a rough sketch of the scene, which is placed on record as Ex.P13. During observation of the scene, he seized MOs.4 to 7. At the scene of offence, he examined PWs.2, 3 and 6 and recorded their statement. On 29.05.2010, he visited the Government Hospital, Kakinada and tried to examine the injured but found him unconscious. On 30.05.2010 he received Ex.P14, the intimation about the death of the deceased. On the strength of which, he altered the section of law. Ex.P15 is the memo filed for alteration of the first information report. Thereafter, he handed over the investigation to PW.16-the Inspector of Police.

iv) On receipt of the case diary, PW.16 visited the Surgical Ward, Government Hospital, Rajamundry, examined PW.1 but did not record his statement as his statement was already recorded by PW.15. From there he proceeded to Government General Hospital, Kakinada, and held inquest over the dead body of the deceased in

the presence of PWs.10 and 14. Ex.P7 is the inquest report. After conducting inquest, the dead body was sent for postmortem examination.

v) PW.11-the Assistant Professor, Rangaraya Medical College, Government General Hospital, Kakinada, conducted autopsy over the dead body of the deceased and issued Ex.P8 the postmortem examination certificate. The doctor noticed six external injuries and seven internal injuries. According to him, all the injuries are ante mortem in nature, sustained due to hard and blunt force or object. He opined that the cause of death was “due to cranio cerebral injury (head injury) associated with other injuries.

vi) On receipt of credible information, PW.16 secured the presence of PWs.12 and 14, proceeded to the outskirts of Raghunadhapuram village and arrested accused Nos.1 to 5 on 05.06.2016. He interrogated all the accused independently, who confessed about the commission of offence. The confession made by the accused Nos.1 and 3 lead to recovery of sticks which are placed on record as M.O.3. The said recovery was effected under Ex.P9.

vii) On 07.06.2010 he examined PW.5 and recorded his statement. After obtaining all the necessary documents, he filed a charge sheet before the Court of the V Additional Judicial Magistrate of First Class, Rajahmundry, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.171 of 2011.

3) Basing on the material available on record, charges under Sections 302, 326, 427 read with 34 IPC were framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P17 and M.Os. 1 to 8.

5) After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral evidence was adduced on behalf of the accused, but Exs.D1 to D.5 were marked.

6) After considering the oral and documentary evidence, the learned Sessions Judge while acquitting all the accused for the offences punishable under Sections 302 and 326 read with 34 IPC and accused Nos.2, 3 and 5 for the offence punishable under Section 427 IPC, convicted accused Nos.1 and 4 for the offence punishable under Section 427 IPC and sentenced him as stated supra. Challenging the same, these two appeals came to be filed.

7) Learned counsel for the informant/appellant mainly submits that there is no reason for the trial Court to disbelieve the evidence of PW.1. According to him, as PW.1 is an injured eye witness, his presence cannot be brushed aside. He further submits that the failure on the part of PW.1 to explain the grave injuries on the body of the deceased and also filing of counter case cannot be

made the basis to throw out the case. He further states that the evidence of PW.1 along with Ex.P11-the statement of the injured recorded by the police which lead to issuance of the first information report, is sufficient to base a conviction.

8) On the other hand, the learned counsel for the accused would contend that the finding of the learned Sessions Judge basing on the entire evidence on record warrants no interference. He took us through the evidence of the witnesses to show that the prosecution has not come to the Court with clean hands, more particularly with regard to nature of injuries sustained by accused No.4 at the time of the incident. Insofar as the conviction under Section 427 of IPC is concerned, learned counsel for the accused would submit that the learned Sessions Judge erred in convicting accused Nos.1 and 4 on mere surmises.

9) On the other hand, learned Public Prosecutor would submit that the conviction under Section 427 IPC being independent and different cannot be found fault with.

10) In order to appreciate the rival submissions, it would be appropriate to refer to the evidence of the prosecution witnesses.

11) PW.1, who is the injured eye witness, deposed in his evidence that on 27.05.2010 at about 8.00 p.m., while he was reversing his car at the residence of accused No.5, his car hit the parked Hero Honda Motor Cycle of accused No.4. Then accused Nos.1, 2, 4 and 5 came out of their house and questioned him and broken the window glasses of the Car. In the meanwhile, his father, mother,

Srinu, Hariprasada Rao came out of his house. Accused No.1 picked a brick bat and beat on his left side abdomen and he was shifted to his residence. In the meanwhile Yerra Gangaraju @ Gangayya came to his house and requested them not to quarrel. Thereafter, accused Nos.1 to 5 came near to his house, accused No.3 instigated others saying "Vallatho manakenti Vessedham Pandi". Then accused No.2 beat his father on his head with brick bat and accused No.1 beat with a stick. Accused No.3 beat his father with stick on head. With the same stick, accused No.1 beat him on his head. When the inmates of the house raised cries, all the accused left the scene. His father was shifted to Government Hospital, Rajamundry and thereafter to Government Hospital, Kakinada, where he died. He admits that accused Nos.1, 2, 4 and 5 also gave a report against his father pertaining to the same incident.

12) PWs.2 and 3, who are the independent eye witnesses to the incident, did not support the prosecution case and they were treated hostile. Though they were cross-examined nothing came to be elicited.

13) PW.4, who is the son of the deceased, deposed that on 27.05.2010, while he was returning to his house, there was a quarrel near the residence of accused No.5. By the time he reached the house of accused No.5, accused Nos.1, 2, 4 and 5 broken the glasses of Car. In the meanwhile, his parents came to the scene which is situated opposite to the house of accused No.5.

Accused No.1 pocked on the left side of abdomen of his father with a brick bat. In the meanwhile Yerra Gangaraju @Gangayya (PW.2) came to his house and requested them not to quarrel. Thereafter, accused Nos.1 to 5 came near to his house, and accused No.3 instigated others by saying "Vallatho manakenti Vessedham Randi". Then accused No.2 beat his father on his head with brick bat and accused No.1 beat with a stick. Accused No.3 beat his father with stick on head. With the same stick, accused No.1 beat him on his head. When the inmates of the house raised cries, all the accused left the scene. His father was shifted to Government Hospital, Rajamundry and thereafter to Government Hospital, Kakinada, where his father died on the 3rd day.

14) PW.13-the head constable in outpost police station of Government Hospital, Rajahmundry, received intimation from the Duty Medical Officer about the admission of one Gonaboina China Mariyadayya in the hospital. Immediately, he proceeded to the MS ward, recorded the statement of Gonaboina China Maridayya and obtained his thumb impression on it. Ex.P11 is the statement. Basing on the said statement PW.15-the Sub-Inspector of Police, Dowaleswaram, registered a case in Crime No.122 of 2010. PW.15-the Sub-Inspector of Police, deposed that he also registered a counter case in Crime No.121 of 2010 against PWs.1 and others.

15) P.W.1 and P.W.4 are none other than the sons of deceased who in one voice stated that when P.W.1 Gonaboyina Vishnu was reversing his Indica Car, hit against the parked motorcycle of A.4.

According to P.W.4 Gonaboyina Srinu, A.1, A.2, A.4 and A.5 dragged P.W.1 from the car, removed towel from the neck and pulled him out. They did not speak anything about the injuries caused on the body of the deceased at the scene situated on the road opposite to the house of A.5. It is to be noted that P.W.1 did not disclose about dragging by A.1, A.2, A.4 and A.5 from the car, removal of towel from his neck and pulling him out. Thus, the oral evidence of P.W.1 Gonaboyina Vishnu is contrary to the testimony of P.W.4 Gonaboyina Srinu on the material aspect of dragging and pulling P.W.1 Gonaboyina Vishnu from the car.

16) The statement of the deceased under Ex.P.11 was recorded by the Head Constable of out post police station, Government Hospital, Rajahmundry between 11.40 and 12.30 mid-night on 27-5-2010, and also obtained the thumb impression of Gonaboyina China Maridayya (deceased) on Ex.P.11. As seen from the statement of the deceased (Ex.P11), on the night of 27-5-2010 at about 8.30 p.m., his son (PW.1) while reversing his Indica Car, hit the motorcycle of accused No.4 and the motorcycle fell down. Immediately, Accused Nos.4, 2 and 1 together beat PW.1 with iron rods on the head, as a result of it, he sustained bleeding injury. When, he intervened to rescue him, accused No5, 4, 2 and 1 beat him with iron rods on his head, left flank, left leg, causing bleeding injuries. Immediately, he was taken to the Government hospital by his son Srinu (P.W.4). Thus, the basis for setting the criminal law into motion is Ex.P.11 which indicates the earliest version of the prosecution, assumes importance. If the contents of Ex.P.11 are

taken, the incident took place on the road, opposite to the house of A.5 Gonaboyina Peda Apparao, but not at the house of Gonaboyina China Maridayya (deceased). The contents of Ex.P.11 cannot be doubted and the deceased was able to narrate the time, date and manner of occurrence including his profession and other personal details.

17) As per Ex.P.11, the incident took place on the road opposite to the house of A.5, where the Indica Car hit the motorcycle and it was not at the house of China Maridayya as spoken by P.Ws.; 1 and 4. It is an improvised or improved version of P.Ws. 1 and 4 so as to create a separate scene of offence to attribute aggression against A.1 to A.5 separately i.e. independent of the incident that occurred opposite to the house of A.5.

18) Further, Ex.P.11 shows the correct place of occurrence and is supported by the evidence of P.Ws. 14 and 15 and Ex.P.13, evidencing shifted the scene of offence from the road to house of China Maridayya (deceased). Hence, it is established by evidence available on record that the scene of offence is opposite to the house of P.W.4-Venkata Ramana on the road. Though P.Ws. 1 and 4 spoke about the scene of offence being the house of China Maridayya (deceased), the same is not believable as it was not supported by any documentary evidence. Except the evidence of P.Ws.1 and 4, there is no other evidence available on record to prove the circumstances of the case.

19) Admittedly, there were disputes between two families and the cause of the incident in the present case was only due to hit of the motorcycle by P.W.1 while reversing his Car. The appellants also lodged a report against PW.1 and others. As seen from the medical evidence, accused Nos.1 and 4 also sustained injuries. As it is a case and counter case, the trial Court rightly disbelieved the evidence of PWs.1 and 4 while acquitting the accused.

20) In the absence of any evidence, we hold that the circumstances relied upon by the prosecution remained un-proved and they cannot be made the basis to reverse the findings given by the trial court.

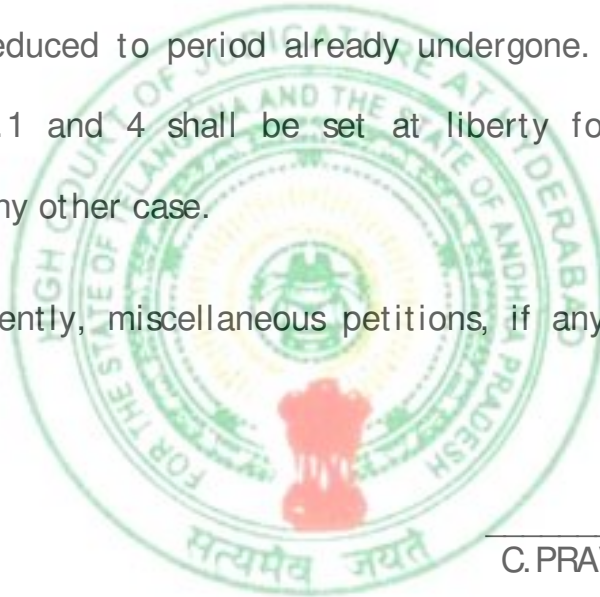
21) Having regard to the above, the acquittal of all the accused for the offences under Sections 302 and 326 read with 34 IPC warrants no interference.

22) Insofar as the offence punishable under Section 427 IPC is concerned, it is to be noted that the material on record including the photos and evidence available on record shows that the glass panes of the Indica car were damaged. The photos taken by P.W.6 and observation report under Ex.P.6 and Ex.P.3 show that there was extensive damage to the car. The observation report under Ex.P.6 also discloses the damage caused to the Indica Car bearing No.AP.5 BM 275. The consistent evidence of P.W.1, P.W.4 and the mediator present at the time of observation report and the evidence of Inspector of Police establish that the accused 1 and 4 caused damage to the Indica Car. The reason for causing damage is

hitting of motorcycle parked on the road while reversing the Indica Car. Hence, we find that the conviction and sentence of accused Nos.1 and 4 for the offence punishable under Section 427 IPC warrants no interference. Taking into consideration the manner in which the incident happened, the sentence of imprisonment is modified to the period already undergone.

23) Accordingly, CrI.A.No.1479 of 2011 is dismissed and CrI.A.No.1225 of 2011 is allowed in part. The sentence of imprisonment of one year for the offence punishable under Section 427 IPC is reduced to period already undergone. Consequently, accused Nos.1 and 4 shall be set at liberty forthwith, if not required in any other case.

24) Consequently, miscellaneous petitions, if any, pending shall stand closed.



C.PRAVEEN KUMAR, J

T. RAJANI, J

11.07.2018
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