

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL APPEAL No.541 of 2012

Date: 25.09.2018

Between:

Selvadasu Raghavudu and 2 others

....Appellants/ Accused Nos.1 to 3

And:

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

...Respondent

Counsel for the Appellants No.1 : Sri D.PURNACHANDRA REDDY

Counsel for the Appellants Nos.2 & 3 : Sri T.PRADYUMNA KUMAR REDDY

Counsel for Respondent : PUBLIC PROSECUTOR (AP)

The Court made the following:



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&
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JUDGMENT: (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused Nos.1 to 3, in Sessions Case No.206 of 2011, on the file of the VIII Additional District & Sessions Judge (FTC), Chittoor, filed this appeal against the judgment, dated 17.04.2012, whereby, they were convicted for the offence punishable under Section 302 R/W.Sec.34 IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- each, and in default of such payment, to suffer simple imprisonment for three months each. Accused Nos.1 to 3 were also convicted for the offence punishable under Section 341 R/W.Sec.34 IPC and sentenced to suffer simple imprisonment for one month each.

2. The substance of charge sheet is that on 25.12.2009 at about 9 p.m on the way leading to Gollamadugu near Kotur village in front of rice mill of one Damodhar Reddy, all the accused wrongfully restrained Dinakaran (hereinafter referred to as "the deceased") and in pursuance of their common intention, beat him with metal bracelet and belt buckle on his head and body due to which, the deceased sustained and succumbed to grievous injuries while undergoing treatment.

3. The accused were charged by the court below as under:

FIRSTLY: That you A1 to A3 on 25th day of December, 2009 at about 9.00 p.m, on the way leading to Gollamadugu near Kotur village in front of rice mill of one Damodhara Reddy with common intention wrongfully restrained one Dinakaran (deceased) and that you thereby committed an offence punishable U/sec.341 read with 34 of the Indian Penal Code and within my cognizance.

SECONDLY: That you A1 to A3 on the same day, time and place and during the same transaction as mentioned in charge No.1, supra, in furtherance of common intention did commit murder by intentionally or knowingly committing the death of deceased Dinakaran. A1 and A3 of you bet him with metal bracelet on the back of the head. A2 of you bet him with belt buckle on his head and body, due to the injuries sustained by him, he fell on the ground and died on 03.01.2010 at about 01.40 p.m at S.V.R.G.G.Hospital, Tirupati and that you thereby committed an offence punishable U/sec.302 read with 34 of Indian Penal Code and within my cognizance.

4. As the plea of the accused is one of denial, the prosecution conducted trial, during which, it has examined PWs 1 to 17, got Exs.P1 to P14 marked and produced M.Os.1 and 4. On behalf of the accused, no oral evidence was adduced. However, Exs.D1 and D2 were marked on their behalf.

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

6. We have heard Sri T.Pradyumna Kumar Reddy, learned counsel for appellants Nos.2 & 3, Sri D.Purnachandra Reddy, learned counsel for appellant No.1, and the learned counsel, representing the Public Prosecutor for the State of Andhra Pradesh.

7. We shall first discuss the case of the prosecution regarding motive. The prosecution alleged that about 10 years prior to the incident, PW 1, the father of the deceased, purchased a house site with a hut situated thereon from Selvadas, the father of Accused No.1, for a total consideration of Rs.15,000/- under an unregistered sale deed, dated 16.12.1997. That after the said purchase, PW 1 has removed the hut and constructed a terraced house in its place and has been residing in the said house along with PW 2, his wife, his deceased son, and PW 3, the wife of the deceased. That about 6 months prior to the incident, Accused No.1 came to the house of PW 1 and

demanding him to return the house as he has not signed the sale deed (Ex.P1), that PW 1 has sent Accused No.1 away with a request not to raise any dispute, that on 25.11.2009 at about 7 p.m, the deceased went to the house of his sister PW 7 in Gollamadugu village to bring her to their house for Christmas, and that the deceased, PW 7 and PW 8 have started from the latter's house to go to Bommasamudram situated at about 1½ kilometers from the house of PW 1 by walk. That at about 9 p.m when they reached a rice mill, the accused waylaid, that Accused No.1 questioned the deceased that the latter had purchased the house site by cheating his father, that Accused Nos.1 and 3 beat the deceased with Kadiyams (metal bracelets) on the head and Accused No.2 beat the deceased with a belt and that there upon, the deceased fell down.

8. PW 1 spoke about the motive for Accused No.1. In support of his plea, he has also got Ex.P1-unregistered sale deed, purportedly signed by the father of Accused No.1, marked. He, however, admitted in his cross examination that he did not give any police complaint when Accused No.1 has threatened him six months prior to the incident. Assuming that Accused No.1 had developed grudge against PW 1, we do not find any reason for him to go to the extreme extent of doing away with the life of the deceased.

9. As regards Accused Nos.2 and 3, the prosecution has not raised any whisper as to the reason for them to develop motive to kill the deceased. In his cross examination, PW 1 has categorically admitted that Accused Nos.2 and 3 have nothing to do with the house property sold by the father of Accused No.1. The prosecution has also not alleged relationship or friendship between Accused No.1 on the one side and Accused Nos.2 and 3 on the other side for committing the offence jointly. Therefore, there could be no reason for Accused Nos.2 and 3 to join hands with Accused No.1 to kill the

deceased. Thus, in our opinion, the prosecution completely failed to establish motive for the accused to kill the deceased.

10. Coming to the evidence regarding the commission of offence, the prosecution has projected PWs 4, 7 and 8 as eyewitnesses. In Ex.P2 report, given by PW 1 to the police, he has stated that he was informed by PW 4 that the accused have attacked the deceased, as a result of which, the latter fell down. He has also reiterated the same stand in his evidence given as PW 1. PW 4 has turned hostile. While he has not supported the case of the prosecution, in his cross examination by the Addl.Public Prosecutor, he has stated that the deceased used to take alcohol daily after returning from coolie work, that he has learnt that the deceased died by falling down while he was drunk, that it was not true to suggest that on 25.12.2009 at about 9 p.m he found all the accused beating the deceased near the rice mill of Damodaram, and that he had informed the same to PWs 1 to 3. He has also denied the police examining him and stating as in Exs.P3 and P4. The prosecution has failed to elicit anything from the evidence of PW 4 for establishing the guilt of the accused.

11. As regards PWs 6 and 7, as noted hereinbefore, PW 1 did not refer to their presence either in Ex.P2 or in his evidence. More over, while the incident has taken place on 25.12.2009, PW 7 was examined by the police only on 28.12.2009. PW 8 was examined on 03.01.2010 after the deceased died. If PWs 7 and 8 accompanied the deceased and they were the eyewitnesses, PW 1 would not have omitted to refer to their presence in the earliest report given by him to police and also in his evidence. In his cross examination made on behalf of Accused Nos.2 and 3, PW 1 has categorically stated that at the time of admission of the deceased at C.M.C Hospital, Vellore, the Doctors enquired him as to how the deceased sustained injuries,

and that he has stated that the deceased sustained bleeding injuries due to assault by “unknown persons”. If PWs 4, 7 and 8 were the eyewitnesses and PW 4 has informed PW 1 about the attack by the accused as spoken by him, there was no reason for him to inform the Doctors at Vellore Hospital that his son was assaulted by unknown persons.

12. Interestingly, PW 17, the Doctor, Nimhans Hospital, deposed that the deceased was admitted in Nimhans Hospital on 27.12.2009 with a history of fall on the side of the road at 10 p.m on 25.12.2009. He further deposed that on investigation, they found that the patient had significant renal dis-function, and acute renal failure, that his liver enzymes were elevated, and that repeat CT Scan showed no increase in size of subdural haematoma. He further deposed that on examination, he found no external injuries all over the body of the deceased. In his cross examination, the witness deposed that through the kith and kin of the deceased, who brought him to the hospital, he came to know that the patient was chronic alcoholic and he also found that the patient was under influence of alcohol. He also admitted that renal failure may be the cause of death of a person in case he is not properly attended.

13. PW 12, the Doctor, who conducted autopsy, also deposed that he did not find any external wounds, but he found internal subdural haematoma over both frontal and parietal lobes of the brain of 1 cm thickness. He opined that the cause of death was as a consequence of subdural hemorrhage. In his cross examination, the Doctor was confronted with M.Os.2 and 3, allegedly seized from Accused Nos.1 and 3. He admitted that if anybody is beaten with objects, like M.Os.2 and 3, bleeding injuries or some times contusions are possible on the scalp, and that he did not find any such injuries on the deceased.

14. The evidence of PW 17 would show that the kith and kin of the deceased did not inform him that the injuries sustained by the deceased were caused by anybody and that on the contrary, he was informed that the deceased sustained injuries by fall on the road side at 10 p.m on 25.12.2009. The evidence of PW 12, the Doctor, who held autopsy, also proves that the theory of the prosecution that the injuries were caused by the accused is incorrect, as neither bleeding injuries nor contusions, which are possible if M.Os.2 and 3 were used, were found on the deceased. It is further interesting to find that when M.Os.2 and 3 were put to PW 7, he candidly stated that they were not the weapons used by Accused Nos.1 to 3 to beat her deceased brother.

15. From the above discussed evidence, it is clear without any cavil of doubt that the prosecution failed to prove that PWs 4, 7 and 8 were the eyewitnesses. It has also failed in convincing the court that either the deceased has sustained injuries on the hands of the appellants or the cause of death was due to such injuries. Further, the prosecution has also failed to prove that deceased was attacked with M.Os.2 and 3, recovered from the possession of Accused Nos.1 and 3. Thus, the prosecution failed to prove any of the incriminating aspects, which are needed for holding the accused guilty of murder, viz., motive, the cause of injuries and the persons, who allegedly caused such injuries. In our opinion, the Court below has failed to appreciate the evidence on record from proper perspective while holding the accused guilty of the offence of murder.

16. On a proper appreciation of the evidence on record, we are of the opinion that the prosecution failed to prove the guilt of the Accused beyond all reasonable doubt.

17. In the result the Criminal Appeal is allowed. The judgment under appeal is set aside. The conviction and sentences imposed on the appellants are set aside. The fine amount, if any, paid by the appellants/Accused Nos.1 to 3 shall be refunded to them.

18. As the appellants/Accused Nos.2 & 3 are on bail, they are directed to surrender themselves before the Superintendent, Central Jail, Kadapa, for completing the formalities for their release, if they are not required in any other case or crime.

(C.V.NAGARJUNA REDDY, J)

(GUDI SEVA SHYAM PRASAD, J)

Date: 25.09.2018
Dsr

