

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

Crl.A.No.623 of 2012

Date:29.10.2018

Between.

Prathipati Babu Rao,
S/o Late Venkata Rao

.....Appellant

And.

The State of A.P, repled.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mr. S.Appadhara Reddy

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

The Court made the following:

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

Accused No.1 in Sessions Case No.202 of 2005 on the file of the II Additional District and Sessions Judge, West Godavari at Eluru, filed this Criminal Appeal assailing his conviction for the offences punishable under Sections-302 and 393 IPC read with Section-397 I.P.C. and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- and in default of payment of fine, to suffer simple imprisonment for one month for the former offence and also sentenced to suffer rigorous imprisonment for eight years and to pay a fine of Rs.500/- and in default of payment of fine, to suffer simple imprisonment for one month for the latter offence. Both the sentences were directed to run concurrently.

The charges on which the appellant, along with Accused Nos.3 and 4 (Accused No.2 absconding), was subjected to trial read as under:

"Firstly, that A-1, A-3 and A-4 of you along with Katumala Rambabu (A-2) on the intervening night of 12/13th day of June, 2002, at about 1 am., i.e., between sunset and sunrise on New By-pass road near Duggirala Village in Pedavegi committed robbery of Rs.500/- from the pocket of Abdul Salem (deceased), driver of the lorry bearing No.AP 21 T-4369, and one bag containing one pair of clothes from Leela Kishore Babu (L.W-1), Cleaner of the said lorry, and in that course, A-1, A-3 and A-4 of you also voluntarily caused death of Abdul Salem and injuries to Leela Kishore Babu and that you A-1, A-3

and A-4 of you thereby committed an offence punishable under Section-392 IPC and within my cognizance.

Secondly, that A-1, A-3 and A-4 of you along with Katumala Rambabu (A-2) in furtherance of your common intention on the intervening night of 12/13th day of June, 2002 a about 1 am in New By-pass road near Duggirala Village in Pedavegi, committed murder by intentionally or knowingly causing the death of Abdul Salem (deceased) and that A-1, A-3 and A-4 of you thereby committed an offence punishable under Section-302 read with Section-34 I.P.C. and within my cognizance.

Thirdly, A-1, A-3 and A-4 of you along with Katumala Rambabu (A-2) on the intervening night of 12/13th day of June, 2002 a about 1 am in New By-pass road near Duggirala Village in Pedavegi, while committing robbery voluntarily caused hurt to Leela Kishore Babu (L.W-1) by using deadly weapons i.e., iron rods and iron chains and that A-1, A-3 and A-4 of you thereby committed an offence punishable under Section-394 read with Section-397 IPC and within my cognizance.

Lastly, A-1, A-3 and A-4 of you along with Katumala Rambabu (A-2) in furtherance of your common intention on the intervening night of 12/13th day of June, 2002 a about 1 am., i.e., in New By-pass road near Duggirala Village in Pedavegi, voluntarily caused hurt to Leela Kishore Babu (LW-1) by means of iron rods and iron chain, which are the instruments which may likely to cause death and that A-1, A-3 and A-4 of you thereby committed an offence punishable under Section-324 read with Section-34 I.P.C. and within my cognizance."

As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined

P.Ws.1 to 13, got Exs.P-1 to P-12 marked and produced M.Os.1 to 5. On behalf of the appellants, no evidence was let in.

On appreciation of the oral and documentary evidence, the Court below has acquitted accused Nos.2 and 4 and convicted the appellant/accused No.1 and sentenced him in the manner as noted above.

Mr. S.Appadhara Reddy, learned counsel for the appellant, made the following submissions:

- (1) The lower Court has committed an error in basing the conviction of the appellant on the sole testimony of P.W-1.
- (2) The fact of P.W-1 not informing P.W-5-the owner of the lorry about the incident and the admission of P.W-9 that accused No.2 informed him during the identification parade that all the accused were shown to P.W-1, shows that P.W-1 was not an eye-witness and he was a planted witness and hence, the lower Court ought not to have relied upon his evidence and convicted the appellant.
- (3) The lower Court having acquitted accused Nos.3 and 4 on benefit of doubt, ought to have extended a similar benefit of doubt in favour of the appellant.
- (4) The lower Court has committed a fundamental error in convicting the appellant for the offence under Section-

397 IPC as, the main ingredient of the offence of dacoity, viz., participation of five or more persons is admittedly was absent in this case.”

Opposing the above submissions, learned counsel representing the learned Public Prosecutor for the State of Andhra Pradesh sought to support the judgment of the lower Court.

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

As regards the presence of P.W-1 at the scene of offence, his lengthy deposition does not create any reasonable doubt about the same. Nothing material could be elicited from the cross-examination of this witness to entertain any such doubt. P.W-1 is an injured witness. An injured witness is termed as a stamped witness. The presence of P.W-1 at the scene of offence is further bolstered by the evidence of P.W-2, who categorically deposed that on being informed by his brother, who was actually running a restaurant, about the incident, he went to the hotel where he saw P.W-1 with bleeding injuries on his head and that he was informed by P.W-1 that one person boarded the lorry as a passenger on the way and that person beat him and the driver and took away the money. The cross-examination of

P.W-2 on behalf of accused Nos.1, 3 and 4, could not elicit any serious lacunae in the chief-examination of this witness.

The submission of the learned counsel for the appellant that the conduct of P.W-1 is artificial, in that, he did not use the telephone available at the restaurant of P.W-2 to speak to P.W-5-the owner of the lorry is without any merit. It is not the case of the defence that P.W-1 was carrying any mobile with him. From the evidence of P.W-2, it appears that he gave the information to the Police over the phone available at the restaurant. As per the evidence of P.W-5, on 13.6.2002, between 7 and 8 am., on receiving a phone call from a Constable about the incident, he reached the scene of offence. After registering the F.I.R., the Police have recorded the statement of P.W-1 on 13.6.2002 itself. Even if some reasonable doubt arises as to whether P.W-1 was present at the scene of offence on account of his failure to inform the owner, the same is put at rest by the evidence of P.W-2, which confirms the presence of P.W-1 in the restaurant with bleeding injury. This evidence would rule out the possibility of the prosecution planting P.W-1 as an eye-witness. Mere failure of P.W-1 to inform P.W-5-the owner of the lorry about the incident would not by itself warrant any inference that he was not an eye-witness. Further, his identifying the appellant during the Test Identification Parade conducted on 31.12.2003, supports the

case of the prosecution that P.W-1 was an eye-witness and belied the plea of the defence that P.W-1 was a planted witness.

As regards the submission of the learned counsel for the appellant that P.W-9 has admitted that there was some variance in the dress code between the accused and other suspects, the defence failed to elicit the details of such variance. The admission of P.W-9 that accused No.2 has informed him that the Police have shown all the accused to P.W-1 also would not form the basis to term the identification parade as not fair. P.W-9 categorically deposed that he has taken all the precautions and followed the relevant rules for conducting the test identification parade and that P.W-1 could identify the appellant/accused No.1 at the second instance. All these factors cumulatively lead us to hold that P.W-1 was an eye-witness and he could properly identify the appellant as the one who committed the offence of robbery as well as murder.

As the prosecution succeeded in proving the participation of the appellant in the commission of offence of robbery and murder, the lower Court is justified in convicting the appellant for the offences punishable under Sections-393 and 302 I.P.C.

As regards Section-397 I.P.C., as rightly submitted by the learned counsel for the appellant, the very charge itself is to the effect that only four persons have participated in commission of

offence of dacoity. To constitute the offence of dacoity, five or more persons shall conjointly commit or attempt to commit robbery under Section-397 I.P.C. Therefore, the lower Court ought not to have applied Section-397 I.P.C. while convicting and sentencing the appellant. Even if we delete Section-397 I.P.C., the offence under Section-393 I.P.C. is attracted for which the maximum sentence is 14 years.

Learned counsel for the appellant has alternatively submitted that the prosecution failed to prove that the appellant had the intention to kill the deceased. We are afraid, we cannot accept this submission. From the evidence on record, it is clear that the appellant used a chain to squeeze the neck of the deceased, as a result of which, the deceased died instantaneously. No evidence could be let in by the defence to show that the appellant committed the act under grave and sudden provocation or that, he acted in a sudden fight or heat of passion. Even if the appellant had no pre-meditated intention to commit the murder, he, nevertheless killed the deceased in the process of robbery.

For the afore-mentioned reasons, the Criminal Appeal is dismissed and the judgment under appeal is modified only to the extent of deleting Section-397 I.P.C., but, however, sustaining

the conviction and sentences imposed on the appellant by the lower Court for the other offences.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

29th October, 2018

DR

