

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

CRIMINAL APPEAL No.1012 of 2011

Date: 27.08.2018

Between:

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

... Appellant

And

Bichapu Chandraiah

... Respondent

Counsel for the Appellant: PUBLIC PROSECUTOR (TG)

Counsel for respondent : V.SRI VANI
For Sri V.HANUMANTH RAO

The Court made the following:



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

CRIMINAL APPEAL No.1012 of 2011

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

This Criminal Appeal is filed by the State against the judgment, dated 08.03.2010, in S.C.No.345 of 2009, on the file of the Sessions Judge, Mahabubnagar, whereby, the respondent has been acquitted of the charge for the offence punishable under Section 302 IPC.

2. The case of the prosecution as reflected from the charge sheet, filed by the police, is briefly stated hereunder:

On 12.01.2009 at 5.30 a.m, the bull of one Lingala Narsimulu Goud (hereinafter referred to as "the deceased") was grazing on the red-gram fodder of the respondent, situated at threshing floor in Sy.No.281 of Pulusumamidi village, that the deceased went to that place for taking his ox back, that when the respondent has questioned the deceased, the latter has abused the former in filthy language, that having got annoyed, the respondent beat the deceased on his head with a stick, as a result of which, the deceased fell down on the rock-sheet, and that later the respondent hit the deceased on his chest with a boulder with an intention to kill him. That on the deceased raising hue and cry, PWs 1 and 2 rushed to the scene and rescued him, that meanwhile, PW 3 also went to the scene of offence and intervened, and that on seeing PWs 1 to 3, the respondent fled away from the scene. PWs 1 and 3 shifted the deceased to the Police Station, Kondurg. PW 1 filed a report before PW 11, who registered the case for the offence punishable under Section 324 IPC, and referred the deceased to the Government Hospital, Shadnagar. On reference by the Medical Officer of the said Government Hospital, while

the deceased was being shifted to Osmania General Hospital, Hyderabad for better treatment, he succumbed to injuries on the way near Hyderabad. On receiving death intimation, the FIR was altered to the offence punishable under Section 302 IPC.

3. Basing on the charge sheet filed and the material collected during the investigation, the court below has framed the following charge:

“That you on 12.1.2009 at about 05.30 hrs, at your field in Sy.No.281 of Pulusumamidi, H/o.Mahadevpur village, Kondurg Mandal, committed murder intentionally by hitting with a stick on the head of the deceased by name Lingala Narsimhulu Goud and by beating the deceased with a boulder on the chest of the deceased and the deceased died on the same day on way to Hyderabad, and that you thereby committed an offence punishable U/Sec.302 of the Indian Penal Code and within my cognizance.”

The above charge was read over and explained to the respondent in Telugu, for which the respondent pleaded not guilty.

4. As the plea of the respondent is one of denial, he stood trial, during which, the prosecution has examined PWs 1 to 12, got Exs.P1 to P14 marked and produced M.Os.1 and 2. On behalf of defence, no evidence was let in.

5. On appreciation of oral and documentary evidence, the court below has disposed of the case in a manner, as stated hereinbefore.

6. We have heard the learned Addl.Public Prosecutor for the State of Telangana and perused the record.

7. The prosecution, in order to prove the charge, has mainly relied upon the evidence of PWs 1 to 3. PW 1 is the brother and PW 2 is the nephew of the deceased. PW 3 is the only independent witness.

8. In Ex.P1 report, PW 1 stated that at about 5.30 a.m on 12.01.2009, the respondent has hit the deceased with a stick on his head

causing serious bleeding injury and that the respondent also beat the deceased with stones and stick on the back and legs causing injuries; that when the deceased raised cries, himself, PW 2 and PW 3 separated the deceased from the respondent, consequent on which, the respondent left.

9. In his evidence, PW 1 deposed that himself and his deceased brother went to their family cattle shed to get milk from the cattle; that at that time, the bull belonging to the deceased escaped from the cattle shed to graze on the red-gram fodder situated in the agricultural field belonging to the respondent; that the deceased ran away after it; that after some time, the deceased raised an alarm by saying that he was dying; that on hearing the said alarm, himself and PW 2 ran towards that side; that by the time they reached the scene of offence, the deceased was lying on the ground and the respondent took a stone and threw it on the chest of the deceased and ran away.

10. In his cross-examination, PW 1 stated that their houses are situated about half kilometer from the cattle shed; that the cattle sheds of himself and his deceased brother are different and situated 10 yards away from each other, and not 300 yards, as suggested by the defence. He further stated that by the time he and others went to the scene of offence, the respondent was running away from there.

11. If we carefully analyze the contents of Ex.P1 and the evidence of PW 1, we find material discrepancies in the version of PW 1. In Ex.P1, PW 1 stated that himself, PWs 2 and 3 separated the deceased from the respondent and saved him from being attacked further. In his chief-examination, PW 1 did not claim that they saved the deceased from the respondent from further attacking. On the contrary, they stated that by the time they reached the spot, they found the deceased lying on the

ground and the respondent taking a stone and throwing it on the chest of the deceased and running away. In the cross-examination, however, PW 1 further varied his version by stating that by the time they reached the scene of offence, the respondent was running away from there. Thus, the version of PW 1 suffers from serious contradictions, rendering him an untrustworthy witness.

12. We shall now see whether it was possible for PWs 1 to 3 to identify the respondent, who was allegedly running from the scene of offence when they reached the place. In his cross-examination, PW 1 has candidly admitted that in the month of January, the Sun rises by 6.30 a.m and that snow (fog) will also be present during that period. He also admitted that there was no electrical bulb at the land where red-gram fodder was kept. From these admissions, it could safely be concluded that the incident has taken place in darkness and there was not even an electrical bulb existing at that time. It is, therefore, not possible to accept the version of PW 1 that he along with PWs 2 and 3 have identified the person running away as the respondent.

13. As regards the evidence of PW 2, though in his chief-examination, he stated that on hearing the cries, he and PW 1 went to the scene of offence, where they saw the deceased lying on the ground and the respondent throwing a stone on the chest of the deceased and running away, however, in his cross-examination, like PW 1, he also admitted that by the time they went to the scene of offence, the respondent was running away and that he saw a stick with blood on it, and also a stone, which did not contain blood. Therefore, it would not have been possible for PW 2 also to identify the respondent, who was allegedly running away in the darkness.

14. Coming to the evidence of PW 3, though his name was referred in Ex.P1, PW 1 has not spoken to his presence in his evidence. Even PW 2 also did not refer to the presence of PW 3 in his evidence. According to PW 3, when he was going to his field, at about 5.45 a.m, he heard some shouts at the hayrick of the respondent and when he went there, he found the deceased lying on the ground with injuries on his head and waist, that when he enquired, the deceased informed him that when his bull was eating the fodder of the respondent, the latter has beaten him.

15. In the cross-examination, PW 3 stated that the distance between the land of the respondent and his agricultural well is about 1½ kilometers, the distance between his well and the village will be less than one kilometer, and the distance between the passage through which he was going at the time of occurrence was half kilometer from the land of the respondent.

16. In our opinion, as there is a considerable distance between the path through which the witness was passing and the scene of offence, it would not have been possible for the witness to have heard the cries. At any rate, PW 3 did not claim to have witnessed the respondent attacking the deceased or at least seen the respondent at the spot when he arrived there. Therefore, the testimony of PW 3 is not very significant, and utmost, he is a circumstantial witness, basing on whose testimony alone, the respondent cannot be convicted.

17. In the present case, we are surprised to note that PW 11 has not recorded the statement of the injured/deceased. As per the evidence of PW 11, while the attack has taken place at around 5.30 a.m, PW 1 came to the police station at 8 a.m. along with the injured/deceased, and that on the statement given by PW 1, PW 11 has registered Ex.P11 FIR

for the offence punishable under Section 324 IPC. No explanation is forthcoming from PW 11 as to why he has not recorded the statement of the deceased himself, more so, when the injuries were not considered so serious, as to register the FIR at least for the offence punishable under Section 326 IPC. The fact that the FIR was registered for the offence punishable under Section 324 IPC shows that the injuries found on the injured were simple in nature, which necessarily implies that he must have been very much conscious and fit to give a statement. It remains an enigma that PW 11 has not found it necessary to record the statement of the deceased himself and register FIR on such statement. Further, no effort was made by the police to give requisition to the Magistrate concerned for recording statement of the deceased in Shadnagar Government Hospital, to which, he was first shifted. This lapse on the part of PWs 11 and 12 has proved fatal to the case of the prosecution.

18. Be that as it may, the evidence of PWs 1 to 3 was found laced with exaggerations and embellishments, rendering the same unworthy of acceptance, the court below has rightly disbelieved their evidence. If their evidence is discarded, the other evidence which remains to be considered was the alleged recovery of M.O.1 stick. As per the evidence of PWs 1 to 3 and also that of PW 9-Panch witness to Ex.P8, the confessional statement and Ex.P9 recovery panchanama, the stick contained bloodstains. However, the alleged blood on M.O.1 was not sent to the Forensic Science Laboratory for opinion. On the contrary, the cotton swabs containing the blood of the deceased and the blood that was found on the controlled earth were sent for report of the Forensic Science Laboratory. PW 9 has admitted that M.O.1-stick is commonly available everywhere in the village. Thus, the prosecution failed to collect any

evidence linking M.O.1-stick, allegedly seized from the possession of the respondent with the alleged offence.

19. For all the aforementioned reasons, we are of the opinion that the court below has rightly disbelieved the version of the prosecution and acquitted the respondent. Hence, we do not find any reason to interfere with the impugned judgment.

20. Accordingly, the Criminal Appeal is dismissed.

(C.V.NAGARJUNA REDDY, J)

Date: 27.08.2018
Dsr

(T.AMARNATH GOUD, J)

