

IN THE HIGH COURT FOR THE STATE OF TELANGANA

CRIMINAL APPEAL NO.1032 OF 2013

Kadamanchi Laxmi

.. Appellant

Vs.

State of Andhra Pradesh,
Through Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad.

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 11.02.2019

SUBMITTED FOR APPROVAL:

*** HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
* HONOURABLE SRI JUSTICE T. AMARNATH GOUD**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
-
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

RAGHVENDRA SINGH CHAUHAN, J

*** HONOURABLE SRI JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
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.. Respondent

! Counsel for the Appellant: Sri D. Bhaskar Reddy

^ Counsel for the respondents: Sri C. Pratap Reddy,
Public Prosecutor for the State of Telangana

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> Head Note:

? CITATIONS:

- 1) (2003) 2 SCC 518
- 2) (2010) 2 SCC 583
- 3) (2014) 5 SCC 108

The Hon'ble Sri Justice Raghvendra Singh Chauhan
and
The Hon'ble Sri Justice T. Amarnath Goud
Crl.A.No.1032 of 2013

Judgment: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Kadamanchi Laxmi, sole accused, has challenged the legality of Judgment, dated 19-11-2013, in S.C.No.568 of 2012, on the file of the II Additional Sessions Judge at Warangal, whereby she was convicted for the offence punishable under Section 302 IPC, and sentenced to undergo life imprisonment, to pay a fine of Rs.100/-, and in default of payment of fine, to undergo simple imprisonment for a period of one month.

Briefly, the facts of the case are that the deceased (Kadamanchi Yellaiah) was eking out his livelihood by grazing his pigs in Jangaon. About twenty years back, his first wife died leaving one son, namely Kadamanchi Kanakaiah (P. W. 3). Later, Kadamanchi Yellaiah entered second marriage with the accused-appellant. They were blessed with a son and a daughter. About four days prior to the date of incident, since Kadamanchi Yellaiah sold pigs for the purpose of consuming liquor, a quarrel ensued between the accused and him. On 01.06.2012 at 5:00 pm, the accused raised a quarrel with him, while he was sitting in the backyard of the house. The accused with an intention to do away with him, poured kerosene on him, saying "*Lanja Koduka Nuvvu Chavu, Nuvvu Chachipothe Peeda Vaduluthundi (son of bitch, you die, if you die, nuisance will come to an end)*" and set him ablaze. Consequently, Kadamanchi Yellaiah sustained burn injuries all over the body. Upon hearing his hue and cry, Mr. Kadamanchi

Kanakaiah (P. W. 3), Smt. Sirupati Mysamma (P. W. 4) and Mr. Pastham Komuraiah (P. W. 6) rushed to his rescue. They shifted him to the Area Hospital, Jangaon for treatment.

On 01.06.2012 at 5:30 pm, on receipt of information from the Government Hospital, Jangaon, Mr. R. Narender (P.W.15), the Inspector of Police rushed to the hospital, and recorded the statement of the deceased (Ex. P. 20) in the presence of the duty doctor. R.Narender (P. W. 15) read over the statement to the injured. The injured admitted the said statement to be correct. Thereafter, R.Narender (P. W. 15) obtained the signature of the duty medical officer who certified that the patient is conscious, and coherent at the time of giving statement. The doctor signed the statement (Ex. P. 20). Based on the statement of the deceased (Ex. P. 20), R.Narender (P. W. 15) registered a case, namely Crime No. 167 of 2012 for offence under Section 307 IPC. Mr. Jala Ramesh (P. W. 13) videographed the statement of the deceased (Exs. P. 11 & P. 19). R.Narender (P. W. 15) sent a requisition (Ex. P. 9) to Mr. V.Ram Murthy (P.W.9), Tahsildar, Jangaon, for recording the dying declaration as the Judicial Magistrate at Jangaon was not available. Consequently, V.Ram Murthy (P. W. 9) recorded the dying declaration of the deceased (Ex. P. 10).

On 02.06.2012 at 11:00 am, Kadamanchi Yellaiah expired while undergoing treatment at M.G.M. Hospital. On receipt of death intimation from Mr. T. Saibaba P.C. 1826 (P. W. 9) over telephone, the section of law was altered from 307 IPC to 302 IPC and the intimation was sent to all the concerned authorities.

During investigation, on 05.06.2012, the accused was arrested and sent to judicial custody. After completion of the

investigation, the charge-sheet was filed for offence under Section 302 IPC against the accused.

In order to support its case, the Prosecution examined fifteen witnesses, submitted twenty documents, and produced three material objects. However, the defence has not examined any witness, but marked one document. With the completion of the trial, the appellant was convicted and sentenced as mentioned hereinabove. Hence, this appeal before this Court.

Mr. D. Bhaskar Reddy, the learned Counsel for the appellant, has raised the following contentions before this Court:-

Firstly, the investigation done by police is highly inefficient, as there are glaring holes left in the investigation. According to R. Narender (P. W. 15), on 01.06.2012 he had received information from the Government Hospital, Jangaon with regard to the admission of a person who was brought in burned condition. However, the investigating officer did not register any FIR on the basis of the said information. Instead, he went to the Government Hospital, recorded the statement of the injured (Ex. P. 20) and registered the FIR (Ex. P. 15) on the basis of the said statement.

Moreover, the Crime Details Form ('CDF' for short) was registered on 01.06.2012, the deceased did not die till 02.06.2012, yet the type of crime noted in the CDF is "murder". Since the FIR was registered for an offence under Section 307 IPC, surprisingly, even prior to the death of the deceased, the CDF shows the type of crime as "murder". Therefore, the CDF seems to be back-dated. Further although, the FIR was recorded on 01.06.2012 at 6:00 p.m., although, allegedly the FIR was sent to the Magistrate at 6:30

p.m., it was not received by the Magistrate till 02.06.2012 at 5:00 p.m. Therefore, the FIR is shrouded in mystery.

Furthermore, according to the CDF, the police had recovered a jug, matchbox, burnt shirt piece from the last room. Yet, none of these three material objects were sent to the FSL for its report. Therefore, such lackadaisical investigation creates grave doubt about the veracity of the prosecution case. Hence the learned trial court has erred in convicting the appellant on the basis of doubtful evidence. Instead, the learned trial Court should have given the benefit of doubt to the appellant.

On the other hand, the learned Public Prosecutor has vehemently contended that even if there were a faulty investigation, the benefit of the same cannot be given to the accused. Relying on the case of **Amar Singh v. Balwinder Singh**¹, the learned Public Prosecutor has pleaded that when reliable evidence to prove the guilt of an accused is available, lapses in investigation would not result in grant of the benefit of doubt to an accused.

Secondly, the prosecution has examined R. Narender (P. W. 15) the investigating officer, who had recorded the statement of the deceased under Section 161 Cr.P.C. (Ex. P. 20) and V.Ram Murthy (P. W. 9), the Tahsildar, who had recorded the dying declaration (Ex. P. 20) in order to establish its case beyond a reasonable doubt.

Thirdly, both in his statements under Section 161 (Ex.P. 10) and in the dying declaration (Ex. P. 20), the deceased has given a consistent statement with regard to the cause of burns suffered by

¹ (2003) 2 SCC 518

him. Thus, there is no contradiction in the two dying declarations recorded by two different witnesses. According to the learned Public Prosecutor, a conviction can be based on the foundation of the dying declaration.

Fourthly, the two dying declarations are further corroborated by the testimony of Dr. D.Chandra Hasini (P. W. 12). This witness has clearly stated that the burn injuries are “ante-mortem” in nature. Burns were present on head, neck, face, chest, back and front side completely. The total body surface area of ante-mortem burns is 94%; the cause of death was due to the burns. He had proved the Post-Mortem Report (Ex. P. 14). Therefore, the prosecution has succeeded in establishing its case beyond a reasonable doubt.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

Although the learned counsel for the appellant is justified in pointing out the lacunae in the investigation, but the benefit of a faulty investigation cannot be given to the accused, especially, when the prosecution has produced cogent and convincing evidence against the accused persons. Both in the case of **Amar Singh** (supra) and in the case of **Bishnu Prasad Sinha vs. State of Assam**², the Apex Court has opined that the plea that the investigation was done in an improper manner, would not necessarily be fatal to the prosecution case.

In the present case, R. Narender (P. W. 15) informs the Court that upon receiving the information from the Government Hospital,

² (2010) 2 SCC 583

Jangaon, he had proceeded to the Hospital in order to record the statement of the victim. *“The duty doctor certified that the injured person is coherent and conscious and in fit state of mind to give a statement.based on the statement given by the injured person, I registered a case in crime No.167 of 2012 under Section 307 of IPC and issued FIR to all the concerned.”* The statement recorded by this witness is Ex. P. 20. In Ex. P.20, the injured has clearly stated that *“I am living by keeping pigs in Sanjaynagar of Jangaon town. My wife died about 20 years back. I am having one son through her. His name is Kanakaiah. I have remarried one Laxmi and having one son Yadagiri 17 years, and one daughter Marthi 15 years through my 2nd wife. Since four days, my 2nd wife Laxmi is quarrelling with me stating that I am taking liquor by selling pigs. Today i.e., on 1.06.2012 evening about 5-00 p.m. when I was sitting back side of my house, my 2nd wife Laxmi abusing me as “Lanja Kodaka, Chavu, Nuvvu Chachipote peeda vadulutundi (son of bitch, you die, if you die, nuisance will come to an end)” so saying with an intention to kill me, poured kerosene with jug on me and lit me to fire. Due to flames, I received burn injuries from head to legs and all over my body. While, I was burning and crying, neighbours came and tried to stop fire, and for giving treatment shifted me to Area Hospital, Jangaon. My 2nd wife Laxmi, due to differences with an intention to kill me poured kerosene on me and lit to fire.”*

Furthermore, Mr. V.Rammurthy (P. W. 9), the Tahsildar informs the Court that he was requisitioned by the SHO Jangaon for recording the dying declaration of the injured. *“I recorded the dying declaration of the deceased on 1.6.2012 at 6:10 p.m. in the presence of the doctor. The doctor certified that the patient is*

conscious and coherent and stable to give valid consent. The deceased answered to my questions as in Ex.P.10. After recording the dying declaration, the doctor certified that the deceased was conscious and coherent all through recording of the dying declaration and the recording concluded at 6:30 p.m. The signature in (Ex. P. 10) is my signature.” Therefore, this witness not only talks about the recording of the dying declaration, but also proves the contents of the dying declaration (Ex. P.10).

Ex.P.10 is as under:

“DYING DECLARATION

At the request of S.H.O. Jangaon, Tahsildar, Jangaon recorded this dying declaration.

Place: Area Hospital, Emergency Operation Theatre, Jangaon.

Time: 6-10 p.m. on 01.06.2012.

Declarant name: Kadamanchi Yellaiah S/o. Mysaiah 46 years, Sanjaynagar of Jangaon.

Patient is conscious, coherent and stable to give valid consent.

First, I myself introduced as Tahsildar, informed that I came for inquiring you and put the following questions and recorded.

1. What is your name:

Ans: Kadavanchi Yellaiah.

2. Where is your village:

Ans: Jangaon Sanjaynagar.

3. Why you received injuries on your body?

Ans: When I sat back side of my house, she poured kerosene with jug and lit to fire.

4. When?

Ans: Today evening at 5-00 p.m.

5. Who poured kerosene?

Ans: My wife Laxmi poured.

6. Why poured kerosene on you?

Ans: Due to differences between us poured kerosene.

7. Any doubt on anybody?

Ans: No My wife herself did it.

8. Do you wish to state anything more?

No sir.

(Thumb impression of K.Yellaiah)

Patient is conscious, coherent during the dying declaration recorded by the Tahsildar on 1-06-2012 at 6-30 p.m.

Concluding time: 6-30 p.m. on 1-6-2012. Sd/-Dr.G.Shanti Kumar.

Dying declaration is recorded by me.

Sd/- Vasam Ram Murthy, Tahsildar, Jangaon."

A bare perusal of Exs. P. 10 and P. 20 clearly reveals that consistent statements have been made by the deceased: it is his wife who had poured kerosene and burned him. Moreover, there is no contradiction between the two dying declarations. The importance of a dying declaration is well known in criminal jurisprudence. A strong presumption arises in favour of its veracity. For, it is presumed that the person who is about to meet his/her creator would not lie at such a critical moment in his/her life. Thus, unless there is evidence to the contrary, which can undermine the truthfulness of the statement, a dying declaration is generally accepted as a gospel truth. Hence, there is no reason for disbelieving the two dying declarations (Exs. P. 10 and P. 20).

Dr. B.Chandra Hasini (P. W. 12) has also revealed that the deceased had died a homicidal death. According to this witness, the deceased had suffered "*Ante-Mortem Dermo-epidermal burns present on head, neck, face, chest, back and front side completely. Both the legs left and right sides and peeling of the skin present here and there. The total body surface area of Ante-*

Mortem burns are 94%. The cause of death to the best of my knowledge and belief was due to burns. Ex. P. 14 is the P M E report issued by me and it bears my signature.” Therefore, this witness has clearly proved the contents of the Post-Mortem Report (Ex. P.14). This witness has also testified that the victim had suffered 94% burns and that the death was caused only due to the burns.

The testimony of this witness juxtaposed with the two dying declarations firmly establish the case of the prosecution against the appellant. Therefore, the learned trial court was legally justified in convicting the appellant for the offence under Section 302 IPC.

Before parting with this judgment, this court would like to make certain critical observations with regard to the investigation carried out by the police.

Repeatedly, it has come to the notice of this Court that the investigating agencies leave gaping holes in their investigation. Despite the availability of ample clues, the investigation is not taken to its logical conclusion. At times, the statement of the eyewitness is not recorded by the police; at times, the statements recorded under Section 161 Cr.P.C. are not submitted along with the charge-sheet. Many a times, the weapon of crime, although recovered at the instance of the alleged accused, is not sent to the FSL for its opinion. Most of the time, the blood of the deceased is never collected and sent to the FSL for its grouping. Some of the times, even if the clothes worn by the accused are bloodstained, they are seldom recovered by the police. Even if they are

recovered, they are hardly sent to the FSL for serological report. A few times, objects recovered, or persons arrested are not subjected to Test Identification Parade. These lacunae give easy exist to the accused to escape from the clutches of the law.

Instead of collecting the tell-tale signs of a crime, invariably, both the investigating agency, and the prosecution rely on the alleged “confessional statement” made by the accused while he is in the police custody. Despite the bar contained in Section 25 of the Evidence Act, against the use of such a “confessional statement”, the trial Courts rely on such “statements” in order to convict the accused. Needless to say, the lacunae left by the investigating agencies prevent the Court from convicting the accused persons. Invariably, this leads to a high rate of acquittal, and to a low rate of conviction. Therefore, the police department needs to train its officers well with regard to importance of fair and impartial investigation, and with regard to the depth of investigation. It further needs to issue circulars with regard to the extent of investigation. It also needs to supervise the investigation, in grave offences, by its senior and experienced officers, rather than leaving the investigation at the mercy of over-burdened investigating officers. It is trite to state that poor investigation lessens the rate of conviction, which, in turn, shakes the faith of the people in the functioning of the judiciary and in the administration of criminal justice system. Therefore, a faulty investigation undermines the rule of law. Hence, faulty investigations have to be taken seriously by the investigating agencies.

In the case of **State of Gujarat v. Kishanbhai and others**³, the Hon'ble Supreme Court had given certain directions for ensuring proper investigation by the police. It would be fruitful to reproduce the same here:

“(i) It is thus directed that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcoming to be rectified, if necessary by requiring further investigation. It should also be ensured that the evidence gathered during investigation is truly and faithfully utilised, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigours of criminal prosecution. By following the above procedure, in most criminal prosecutions, the agencies concerned will be able to successfully establish the guilt of the accused.

(ii) The Home Department of every State is directed to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above Committee annually, on the basis of fresh inputs, including

³ (2014) 5 SCC 108

emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gains by the Standing Committee while examining failures, in unsuccessful prosecution of the case.

(iii) It is directed that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

(iv) On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequence of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. Hence, the Home Department of every State Government is directed to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months. The Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law.”

The Registrar General is directed to send a copy of this judgment to the Director General of Police for the State of Telangana for taking the necessary steps in light of the

directions issued by the Hon'ble Supreme Court in the case of **Kishanbhai and others** (supra).

For the reasons stated above, this Court does not find any merit in the present appeal. Accordingly, it is dismissed. The conviction and sentence of the appellant by judgment dated 19.11.2013 in S.C. No. 568 of 2012 by the II Additional Sessions Judge, Warangal is hereby confirmed.

(Raghvendra Singh Chauhan, J)

(T. Amarnath Goud, J)

Dt:11th February, 2019

Note: L. R. copy to be marked.

(B/o)

Tsr

