

High Court for the State of Telangana

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.295 of 2013

Date: 19-02-2019

Between:

Kasthuri Bhumanna

...Appellant

and

The State of A.P.,
Rep. by its Public Prosecutor
High Court of A.P., Hyderabad

...Respondent

Counsel for the appellant:

Mr.B.Jithender

Counsel for the respondent:

Public Prosecutor

The Court made the following:

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

Kasthuri Bhumanna, the appellant, has challenged the legality of the judgment dated 18-02-2013, passed by the I Additional Sessions Judge, Adilabad, whereby the learned trial court has convicted the appellant for offence under Section 302 IPC, sentenced him to undergo life imprisonment, imposed a fine of Rs.1,000/- and further directed to suffer simple imprisonment for a period of six months in default thereof.

Briefly the facts of the case are that Bontha Ravi (PW.1) submitted a report (Ex.P.1) before the Police Station Neradigonda, wherein he claimed that in the night of 26-01-2012, while he and his mother were sleeping inside their house, his father was sleeping in the courtyard. Around 11:00 p.m., they heard hue and cries of his father, Bontha Narayana. They rushed to his rescue. They found him in a pool of blood. His father informed him that the appellant had hacked him with a sickle. They shifted his father to the Nirmal Hospital. Upon the advice of the doctors, they were shifting him to Hyderabad for better

treatment. But, on the way to Armoor, his father succumbed to the injuries. On the basis of this report, FIR. No. 2 of 2012 (Ex.P.9) was chalked out by the Police for offence under Section 302 IPC. During the course of the investigation, the appellant was arrested. He was put up for trial.

In order to substantiate its case, the prosecution examined fourteen witnesses, submitted twelve documents, and produced ten material objects. The defence did not choose to adduce any oral or documentary evidence. After appreciating the evidence, the learned trial court convicted and sentenced the appellant as aforementioned. Hence, this Appeal before this Court.

Mr. B. Jithender, the learned Counsel for the appellant, has raised the following contentions before this Court:-

Firstly, the entire case is based on circumstantial evidence, but the evidence is incomplete. Therefore, the learned trial Court is unjustified in convicting the appellant for offence under Section 302 IPC.

Secondly, although the incident had, allegedly, taken place on the intervening night of 26/27-01-2012, at 11:00 p.m., the FIR (Ex.P.9) was not lodged till 10:00 a.m., on 27-01-2012. Hence, there is a delay in lodging of the FIR. The interregnum for lodging the FIR has been used by the witnesses for falsely implicating the appellant in the alleged offence.

Thirdly, since there is a dispute with regard to giving access to the appellant to his farm through the land belonging to the complainant, the appellant has been falsely implicated in the case. The prosecution has produced merely interested witnesses. For, Bontha Ravi (P.W.1) happens to be the son of the deceased, Bontha Laxmi (P.W.2) is the wife of the deceased, Bontha Lasmanna (P.W.3) is the brother of the deceased, and Bontha Bheemudu (P.W.4) is the nephew of the deceased. Even Erra Lasmanna (P.W.6) happens to be a distant relative of the deceased. Since all these witnesses are inimical to the appellant, their testimonies ought not to have been believed by the learned trial court.

Fourthly, there are discrepancies in the testimonies of these witnesses. Therefore, they are not trustworthy witnesses.

Fifthly, although these witnesses claim that the appellant was caught at night, and was handed over to the Police in the morning, according to A.Kiran Kumar (PW.13), the Investigation Officer, the appellant was, in fact, arrested from his house.

Sixthly, the deceased had certain political enmity with other residents of the village. Thus, a grave possibility does exist that the deceased might have been killed by his political rivals, and not by the appellant. Though this defence was suggested to the witnesses, the learned trial court has not given the benefit of the said defence to the appellant. Therefore, according to the learned Counsel, the impugned judgment deserves to be set aside by this Court.

On the other hand, Mr. K. Venkateshwar Rao, the learned Public Prosecutor, has raised the following counter-contentions before this Court:-

Firstly, the case is not based on circumstantial evidence. For, immediately after the occurrence, Bontha Ravi (P.W.1) and Bontha Laxmi (P.W.2) had rushed to the rescue of the injured. Immediately, the injured had informed Bontha Ravi (P.W.1) that he was attacked by the appellant. Therefore, the statement of the injured is part of *res gestae*. It is a oral dying declaration made by the injured to PW.1.

Secondly, the presence of Bontha Ravi (P.W.1) and Bontha Laxmi (P.W.2), the inmates of the house, is but natural. For, the occurrence had taken place at the dead of the night. Therefore, their presence cannot be doubted.

Thirdly, even if PWs.1 to 4 were related to the deceased, they would not have let go of the real culprit, only in order to falsely implicate the appellant. Moreover, their testimonies cannot be ignored merely because they are related witnesses. For, while appreciating the testimonies of related witness, the court is merely required to see if there is corroboration from other evidence or not. If such a corroboration were found, the related witness should be taken to be a trustworthy witness. Hence,

conviction can be based on the testimony of trustworthy witness.

Fourthly, the testimonies of PWs.1 to 4 are duly corroborated by the testimony of Dr. A. Ramesh Kumar (P.W.9), the treating doctor of the injured, and Dr. K. V. Swamy (P.W.10), the doctor, who performed the Post-Mortem Examination. Both these doctors have clearly stated that the injury found on the cheek of the deceased could be caused by a sickle, a sharp edged weapon. Moreover, according to Anpa Bheemanna (P.W.11), the Police had recovered a sickle from the appellant's house. According to the FSL report (Ex.P.12), the sickle (M.O.8) was received by the FSL, which was subjected to clinical examination; human blood was found on it. Therefore, there is sufficient corroborative evidence to link the appellant to the alleged offence. Hence, the learned trial Court was justified in convicting the appellant for offence under Section 302 IPC. Therefore, the learned Public Prosecutor has supported the impugned judgment.

The learned Counsel for the appellant is not justified in claiming that the case is based on circumstantial evidence. For, according to Bontha Ravi (P.W.1), immediately after hearing the hues and cries of his father, he and his mother rushed to his father's rescue. In his examination-in-chief, the witness clearly states that, "*On the day of his death, myself and my mother slept inside the house whereas my father slept in the courtyard of the house watching the cattle. At about 11:30 p.m., we heard a commotion. On hearing the same, we came out of the house and found the deceased in pool of blood. He stated to us that K.Bhoomanna (accused) hacked him with the sickle on right side of his cheek near the neck. Accordingly, we have chased the accused along with the villagers but the accused escaped from us.*" Therefore, this statement made by the deceased, immediately after the incident, would fall within Section 6 of the Indian Evidence Act, 1872, which pertains to relevancy of fact forming part of same transaction. It would also be considered as oral dying declaration. The said testimony of Bontha Ravi (P.W.1) is further corroborated by Bontha Laxmi (P.W.2). For, in her examination-in-chief, she narrates the same set of facts.

It is, indeed, trite to state that the testimonies of related witnesses cannot be jettisoned out of the court merely on the ground that they are related witnesses. The court would have to consider whether they are natural witnesses to the occurrence or not ? The court will also have to consider whether the testimony is supported by other evidence produced by the prosecution or not ? In case their presence is natural, and in case there is other corroborative evidence, in such a scenario, the testimony of the related witness has to be accepted by the Court.

In the present case, the presence of Bontha Ravi (P.W.1) and Bontha Laxmi (P.W.2) is but natural. As they are close relatives of the deceased, who were sleeping in the same house when the alleged occurrence took place between 11:00 and 11:30 p.m. Therefore, their presence at the house cannot be doubted.

Dr. A. Ramesh Kumar (P.W.9) is the treating doctor, to whose nursing home the injured was rushed in the morning. According to his testimony, he has been running

Tirumala Nursing Home at Nirmal for the last thirteen years. He states that, *“on 27-01-2012 the deceased B.Narayana was brought to my nursing home by his relatives and I found a deep lacerated/cut injury on right side of cheek from lower ear lobule an extent of 15 cms. The deceased was brought to my hospital at about 6:15 a.m, on that day. After examination of the deceased B.Narayana I gave the prescription. It is Ex.P.6. Till 5:30 p.m., on that day the patient was in my hospital and at about 5:30 p.m., I have referred him to a higher institute for better treatment. Such injury found on the cheek of the deceased is possible with sickle shown to me. It is MO-8.”*

Similarly, Dr. K.V. Swamy (P.W.10), is the doctor who performed the Post-Mortem Examination on the deceased. According to him, he had discovered the following injuries on the deceased:-

- “1. T shaped sutured wound on the middle part of the right ear to maxilla and down to the lower supra clavicular region. After removal of the sutures wound of 6 x 1 x 1 inches on the right neck in which jugular veins, arteries, muscles were found damaged, caused severe hemorrhage.*
- 2. The wound of transversely of 3 x 1 x 1 inch on the middle ear to maxillary process in which the parotid gland and maxillary muscles were found damaged and the zygomatic*

bone and maxillary bones were found fractured. severely bled.”

Furthermore, according to him, both the above-mentioned injuries were caused by sharp objects. Such injuries mentioned above are possible with M.O.8, the sickle. To the best of his knowledge, the cause of death was “*hemorrhage shock due to injuries caused cardio respiratory failure and death*”. Thus, both the medical witnesses claim that the injuries suffered by the deceased could be caused by a sickle. This testimony supports the testimony of Bontha Ravi (P.W.1), who had informed the Court, that the deceased had told him that the appellant had attacked him with a sickle.

According to A. Bheemanna (P.W.11), the Police had recovered a sickle from the house of the appellant. Furthermore, according to the prosecution, the sickle was sent along with other recovered material objects to the FSL for its report. According to the FSL report (Ex.P.12), the sickle did have human blood on it, although the blood grouping could not be done.

Since the blood grouping could not be done by the FSL, the recovery of the sickle does not connect the appellant to the alleged offence. However, even if this part of the prosecution case is weak, it does not strengthen the case of the defence. For, the prosecution has examined four witnesses, two of whom, namely Bontha Ravi (P.W.1) and Bontha Laxmi (P.W.2), have given a consistent testimony. Their testimonies are further corroborated by the testimonies of Dr. A.Ramesh Kumar (P.W.9) and Dr. K.V. Swamy (P.W.10). Thus, the prosecution has succeeded in establishing its case beyond a shadow of doubt.

Of course, the learned Counsel for the appellant has pleaded that there is delay in lodging of the FIR. According to the prosecution, this incident had taken place in the intervening night of 26/27-01-2012, around 11:00 to 11:30 p.m. The FIR was not lodged till 27-01-2012 at 10:00 a.m. However, according to the FIR (Ex.P.9), the distance between the place of occurrence, and the Police Station is fourteen kilometers. Since the alleged incident

had taken place in the dead of the night, obviously, the first instinct of the family members would be to save the life of the injured rather than rushing to the police station. Thus, it was but natural for Bontha Ravi (P.W.1) to call the 108 ambulance, and to rush his father to the nearest hospital. Considering the distance between the place of occurrence and the Police Station, fourteen kilometers, it cannot be said that there is a delay in lodging of the FIR. Therefore, the learned Counsel for the appellant is equally unjustified in claiming that the interim period between the occurrence and the lodging of the FIR was utilized for fabricating a false case against the appellant. Therefore, the said contention is unacceptable.

Although the defence had suggested to the witnesses that the deceased did have political rivalry with others in the village, but the said suggestion has been negated by the witnesses. Therefore, the learned Counsel for the appellant is unjustified in claiming that there is a grave possibility that the deceased might have been attacked by a political rival. Considering the fact that Bontha Ravi (P.W.1) and

Bontha Laxmi (P.W.2) have given a consistent deposition against the appellant, considering the fact that their testimony is supported by the testimony of the medical doctors, and by the Post-Mortem Report (Ex.P.7), this Court is of the firm opinion that the prosecution has established its case beyond all doubts.

For the reasons stated above, this Court does not find any merit in the present Criminal Appeal. It is, hereby, dismissed. The conviction and sentence recorded against the appellant/accused for the offence punishable under Section 302 IPC by the Judgment, dated 18.02.2013, in Sessions Case No.149 of 2012, on the file of the I Additional Sessions Judge, Adilabad, are hereby confirmed.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 19th February, 2019
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