

BAIL SLIP : The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated. 06.08.2012, in CrI.A.M.P.No. 1631 of 2012, in CrI.A. No. 747 of 2012.

[3258]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY THE FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVARAO NAIDU

CRIMINAL APPEAL NO: 747 OF 2012

Criminal Appeal Under Section 374(2) of Cr.P.C against the Judgment Dated 09.07.2012 in S.C.No. 24 of 2011 on the file of the Court of the Assistant Sessions Judge at Gadwal, Mahaboobnagar District.

Between:

Aryapogu Raghavendra @ Raghu, S/o. Ravi Kumar, Occ: Security Guard at HDFC Bank, Gadwal, R/o. 2nd Railway gate, Gadwal.

...APPELLANT/ACCUSED No.1

AND

The State of A.P. Rep. by the Public Prosecutor, High Court of Andhra Pradesh, at Hyderabad.

...RESPONENT

Counsel for the Appellant : M/s. Venkat Reddy Kodumury

Counsel for the Respondents : Public Prosecutor

The Court delivered the following :

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRL.APP.NO.747 of 2012

JUDGMENT:

This Criminal Appeal has been filed by the first accused in Sessions Case No.24 of 2011 on the file of Asst. Sessions Judge, Gadwal against his conviction recorded by the trial Court for the offence under Section 307 of Indian Penal Code (for short I.P.C.).

2. As could be seen from the appeal grounds and other records available before this Court, the trial Court after conducting trial in SC.No.24 of 2011 against three accused persons for the offence under Section 307 r/w 34 of IPC, having found A2 and A3 not guilty for the offence and found the present appellant, who was shown as A1 guilty for the said offence, convicted him under Section 235(2) of Criminal Procedure Code (for short Cr.P.C.) and sentenced him to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.1,000/- with default sentence.

3. Being aggrieved by the said judgment, the appellant/A1 has filed this Criminal Appeal and challenged his conviction on the following grounds:

The trial Court failed to appreciate the evidence in a proper way and on the basis of presumptions and assumptions, found him guilty for the offence under Section 307 of IPC. The trial Court was wrong in accepting the evidence of PW.1 in spite of the unexplained delay in lodging the complaint before police. There was no explanation from the prosecution as well as PW.1. The appellant has claimed that in the cross-examination, PW.1 has categorically admitted that he was completely recovered from the injuries on 21-11-2010 but still there was 2 days delay in lodging the complaint. The wife of the de-facto complainant, who was examined as PW.2 deposed before the Court that she came to know about the incident through her husband on 19-11-2010, but there was delay in lodging the complaint. According to the evidence of PW.6, the Medical Officer, who treated the de-facto complainant deposed before the Court that by the time PW.1 was admitted to hospital, he was informed that PW.1 suffered injuries due to fall from a motor-cycle i.e., on

account of a road traffic accident. The mediators before whom PW.7 said to have recovered the weapon used by A1 in pursuance of the alleged confession turned hostile to the prosecution. But the Court below on the basis of the evidence of PW.1 found the appellant guilty for the offence under Section 307 of IPC, thereby, he is entitled to acquittal.

4. While submitting arguments in this case, the learned counsel for the appellant/accused No.1 has argued that the entire material placed before the Court indicates that though the offence said to have been committed on 23-09-2010 and in spite of oral evidence of PW.1 that he recovered from the injuries in the month of October and in spite of his evidence that he was completely cured by 19-11-2010, the report was presented to police on 23-11-2010. But in this case, the Medical Officer who treated PW.6 deposed before the Court that he was informed by the family members of PW.1 that he received injuries in a traffic accident. Therefore, these circumstances create any amount of doubt. However, the trial Court without considering all these lacunae's in the case of prosecution, recorded conviction

against the appellant, thereby, prayed for setting aside the conviction.

5. The learned Public Prosecutor has supported the judgment of the trial Court by saying that soon after the accident, PW.1 fell unconscious which he regained only in the month of November, till then, the wife or other persons interested in PW.1 were not aware of the offence. PW.1 could have explained the delay in presenting the report in his report itself. Therefore, the trial Court rightly found the appellant herein guilty for the offence under Section 307 of IPC, thereby, sought for dismissal of the appeal.

6. As per the material allegations made in the charge sheet that was filed against the appellant and two others, it seems on 23-11-2010, PW.1, the defacto complainant said to have visited police station and lodged a complaint alleging that while he was returning from the Bank where he was working, the appellant herein and two others attacked him, caused him grievous head injury and removed valuable papers and keys of ATM and as he was unconscious since the date of offence, he was unable to present any report. Based on the said report, police have registered a case and after

completing investigation, filed sheet against the appellant and two others for the offence under Section 307 r/w 34 of IPC. As per the allegations made in the charge sheet soon after registering the case, the Investigating Officer said to have examined the scene of offence about nearly 2 months after the alleged offence and said to have recovered the sticks used by A1 in pursuance of the alleged confession before PWs.4 and 5. However, PWs.4 and 5 did not support the prosecution. The wife of the de-facto complainant has been examined as PW.2 and she tried to explain the delay by saying that she had no information about actual culprits.

7. The charge sheet that was filed against the appellant and two others was registered as PRC.No.103/2010 and having received the case bundle after its registration at District Court, the learned trial Judge examined the appellant and two others under Section 227 and framed charge under Section 307 r/w 34 of IPC.

8. During the trial, the prosecution has examined PWs.1 to 7 and marked Exs.P1 to P13. The de-facto complainant and his wife were examined as PWs.1 and 2. PW.3 is a witness to the scene of offence panchanama.

PWs.4 and 5 are supposed to be the witnesses to the seizure panchanama under which the Investigating Officer said to have seized a stick in pursuance of the alleged confession of A1, PW.6 is the Medical Officer, who treated PW.1 and PW.7 is the Investigating Officer.

9. The trial Court after conclusion of the trial having examined the accused under Section 313 Cr.P.C. and hearing both defence counsel and Public Prosecutor, came to the conclusion that prosecution was not able to prove the guilt of A2, A3 for the offence under Section 307 r/w 34 of IPC and accordingly, acquitted them under Section 235(1) Cr.P.C. However, the learned trial Judge found the appellant herein (A1) guilty for the offence under Section 307 of IPC and convicted him under Section 235(2) as indicated above.

10. Now the point for consideration is:

Whether the trial Court committed any irregularity in finding the appellant herein guilty for the offence under Section 307 of IPC ? And whether there was a failure by the prosecution to bring home the guilt of appellant herein for the offence under Section 307 of IPC?

11. This is a peculiar case where a complaint was lodged with the police, Gadwal by the de-facto complainant on 21-11-2020 with a specific allegation that on 23-09-2010, at

about 8.00 p.m., while the de-facto complainant was proceeding towards his house and when he reached a Railway gate, A.1 who was working as security guard in the same Bank in which the de-facto complainant was working with two others beat him with sticks and after he lost consciousness, removed the keys of ATM machine and some important documents from his custody and left him under impression that he died. PW.1 further alleged in the report that on receiving a phone call from his mobile which was made by passers to his wife, PW.2 rushed to the scene of offence, shifted him to hospital at Kurnool and then he was taken to Yashoda Hospital, Hyderabad. The de-facto complainant tried to explain the delay by saying that in view of his unconsciousness for all the two months, there was no police complaint about the attack on his life.

12. The learned trial Judge accepted the evidence of PWs.1 and 2 and came to a conclusion that the prosecution is able to prove the guilt of A1 for the offence under Section 307 of IPC. However, he missed the material aspects including the inordinate delay in lodging the complaint with the police. As rightly argued by the learned counsel for the appellant, the

evidence of Medical Officer clearly shows that at the time of admission of PW.1 to the Hospital, they have informed that PW.1 received injuries due to fall from a running motor-bike in a road traffic accident.

13. According to the evidence of PW.1, he has got prior acquaintance with the appellant herein since he was working as a security guard in the same Bank. The allegation as per Ex.P1 was the appellant herein and his alleged associates committed theft of the keys of ATM machine and some important documents. The Investigating Officer did not conduct any investigation to verify whether there was any attempt to open the ATM machine on 23-09-2010. It is true, the report was presented to police on 21-11-2010 but it may not be difficult for the Investigating Officer to examine the records, CCTV footage which will be available at the ATM machine to identify whether there was any such attempt.

14. The de-facto complainant tried to explain the delay by saying that he was unconscious for two months. The evidence of PW.1 if tested with cross-examination clearly indicates that he was discharged from the Hospital on 18-10-2010. PW.1 tried to claim that he was in a semi-conscious

state at the time he got discharged from the Hospital which cannot be believed. If really, he was not conscious or he was in semi-conscious state, he could not have been discharged from the Hospital. In view of the particular evidence of PW.1 that he has got acquaintance with the appellant herein, if really, there was an attack on his life which could cause him hospitalization under critical condition, it is quite natural for such a human being to inform the details of the culprit the moment he gained conscious and no prudent person will keep quite for more than one month even after his discharge from the Hospital. PW.1 cannot claim that he was not able to disclose all these details up to 21-11-2010.

15. According to his own evidence, after his discharge from Yashoda Hospital, he went to his parent's house at Vijayawada. The evidence of PWs.1 and 2 that the de-facto complainant was discharged from the Yashoda Hospital on 18-10-2010 and he has proceeded to his parents house at Vijayawada and he presented a police report on 21-11-2010. Therefore, it creates any amount of doubt whether the witness is really giving a true picture or want to implicate another person into the case.

16. It is true, there is no serious cross-examination of PW.1 on the material allegations but the fact remains that the unnatural conduct of PWs.1 and 2 in keeping quiet for two months and presenting a report leisurely by naming the appellant herein and two others, as if, there was an attack cannot be accepted without there being any corroboration. PW.2, who was no other than the wife of de-facto complainant also supported the case of PW.1, as if, she did not try to verify from the Hospital about the actual offence. If he was attacked by unknown offenders, the de-facto complainant may not be able to disclose the details but when it is a case that he got acquaintance with the appellant herein and he was very particular about the alleged attempt on his life, if it were true, he could have informed the same to his wife and PW.2 might have enquired as to the offence the moment her husband was discharged from the Hospital.

17. Therefore, it is quite clear that PWs.1 and 2 have presented a false complaint for the reasons best known to them and the Investigating Officer without verifying these details simply registered a case under Section 307 of IPC. The trial Court without considering these important aspects,

simply accepted the evidence of PWs.1 and 2 and came to a wrong conclusion. Therefore, the findings recorded by the trial Court are incorrect and the appellant herein could have been acquitted for the alleged offence.

18. In the result, the appeal is allowed. The judgment of the trial Court is set aside. The sentence against the accused/appellant for the offence under Section 307 of IPC is set aside. The fine amount, if paid, shall be returned to the appellant after appeal time is over.

Consequently, Miscellaneous Petitions if any, are closed.

Sd/- C.V.MALLIKARJUNA VARMA
JOINT REGISTRAR
SECTION OFFICER

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To,

1. The Assistant Sessions Judge, Gadwal, Mahaboobnagar District.(with records, if any)
2. The Judicial Magistrate of First Class, Gadwal, Mahaboobnagar District.
3. The Superintendent, Central Prison, Cherlapally Jail, Ranga Reddy District.
4. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
5. One CC to M/s. Venkat Reddy Kodumury Advocate [OPUC]
6. Two CD Copies

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HIGH COURT

DATED:01/03/2024

ORDER

CRLA.No.747 of 2012



ALLOWING THE CRIMINAL APPEAL

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22/9/24
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