
(2016) 02 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 803 of 2010

Palapatla Srinivasa Reddy

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 8

Penal Code, 1860 (IPC) — Section 302

Citation : (2017) 1 ALTcr1 203 : (2016) 2 AndhLDCriminal 433 : (2016) 2 Crimes 87 : (2017) 1 HLT(Cr1) 219

Hon'ble Judges : C.V. Nagarjuna Reddy and M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : B. Sarvotham Reddy, for the Appellant; Posani Venkateswarlu, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—1. This Criminal Appeal is filed against judgment, dated 07.4.2010, in Sessions Case No. 128 of 2008 on the file of the learned VII Additional District and Sessions Judge, (Fast Track Court), Vijayawada, whereby the appellant was found guilty for the offence under Section-302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs. 500/-, in default, to suffer simple imprisonment for one month.

2. The case of the prosecution in brief is that the deceased had got illicit intimacy with the wife of the appellant-accused; that bearing grudge against the deceased, the appellant decided to put an end to the former's life and for this purpose, he made friendship with the deceased and waited for an opportunity; that on 06.4.2007, the appellant approached P.W-1, took money from him and went to Vinukonda, where he purchased three quarter bottles of liquor; that two bottles of liquor was consumed by the deceased and the appellant there itself; that the third bottle was kept with the appellant; that both of them returned to

Vinukonda Railway Station at about 9.15 pm; that on reaching the railway station, the appellant and the deceased went to railway yard to bring dried fuel; and that both of them went to an open place and consumed the remaining liquor. Later, the appellant picked up quarrel with the deceased by exposing his suspicion and picked up two stones and beat him on his head, face and chest. He also picked up sharp edged stick and pierced it on the left side of the thigh of the deceased and in the said scuffle, the appellant also received injuries on his head and other parts of the body at the hands of the deceased. Then, the deceased died on the spot due to severe injuries.

3. On receiving the information on phone about the quarrel near the Railway Station, Vinukonda, P.W-9-Sub-Inspector of Police, General Reserve Police, Vijayawada proceeded to Vinukonda Railway Station, where he found a person lying dead on wooden stock and some other person lying with injuries. He has sent the injured to the hospital.

4. Based on the statement of P.W-1, P.W-9 registered a case in Crime No. 19 of 2007 for the offence under Section-302 I.P.C. and issued Ex. P-3-First Information Report to all the concerned. P.W-12-Inspector, Railway Police, Guntur received the First Information Report at about 5 pm on 27.04.2007 and took up the investigation. He visited the scene of offence in the presence of P.W-10 and one Yesu Ratnam, prepared Ex. P-4-observation report on the dead body of the deceased and seized the photo pocket dairy belonging to the appellant, blood stained and control earth from the scene of offence. P.W-12 also prepared rough sketch-Ex. P-10, conducted inquest over the dead body of the deceased in the presence of his relatives and sent the dead body of the deceased to the Government hospital for post-mortem. P.W-11-Doctor conducted autopsy over the dead body of the deceased and opined that the death was due to injury by a sharp object, haemorrhage and damage and fracture of skull bones and that the injury to the left thigh was 18 hours prior to postmortem. After completing the investigation and receiving Ex. P-12-Forensic Laboratory report, P.W-12 filed the charge sheet.

5. In support of its case, the prosecution has examined P.Ws.1 to 12 and marked Exs.P-1 to P-12 besides M.Os.1 to 8. On behalf of the defence, no witnesses were examined, but Exs.D-1 to D-5 were marked.

6. Upon appreciating the oral and documentary evidence, the learned Sessions Judge convicted the appellant and sentenced him as noted hereinbefore.

7. Mr. P. Sarvotham Reddy, learned counsel for the appellant, submitted that the entire case of the prosecution is based on circumstantial evidence and the last seen theory, which was found acceptance by the trial Court; that the prosecution failed to establish the motive by adducing any evidence; and that the appellant himself has received injuries, which the prosecution miserably failed to explain. Learned counsel further submitted that the very fact that the appellant himself has sustained serious injuries and the further fact that in the postmortem, the

stomach of the deceased was found empty clearly falsify the theory of the prosecution that after consuming the liquor, there was a fight between the appellant and the deceased, during which, the appellant has caused the death of the deceased.

8. Mr. Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh, strongly supported the case of the prosecution and sought to sustain the judgment of the trial Court. He has mainly laid emphasis on the fact that the deceased and the appellant were last seen together at 8.30 pm, that the deceased was found dead at around 11.30 pm and that, therefore, the burden heavily lies on the appellant to explain as to who caused the injuries to the deceased leading to his death. He has further submitted that if the appellant and the deceased were attacked by third parties, there was no reason for the appellant for not lodging a complaint against the offenders and that in view of his conduct in not lodging a complaint against the alleged offenders, a presumption under Section-8 of the Indian Evidence Act, 1872 has to be drawn against him.

9. We have carefully considered the respective submissions of the learned counsel for both parties and perused the record.

10. This is a case which is purely based on circumstantial evidence as, there is no direct witness to the alleged occurrence. In a case of circumstantial evidence, motive plays a crucial and important role. As per the prosecution theory, the deceased had illicit intimacy with the wife of the appellant and this has made the latter to decide to do away with the deceased. No prosecution witness has supported this theory. On the contrary, P.W-1 in categorical terms admitted that to his knowledge, there were no disputes between the appellant and the deceased. Similarly, P.W-2, who was also a coolie attending the works along with the appellant and the deceased, deposed that there were no disputes between the appellant and the deceased.

11. P.W-5, who is no other than the wife of the deceased, also testified that her husband and the appellant used to move together and they were in friendly terms. If there was illicit intimacy between the appellant and the wife of the deceased, and as a result of this if there was enmity between the accused and the deceased, P.Ws.1 and 2 being co-coolies, staying together in connection with coolie work outside their native place, would have certainly known this fact. The fact that neither of these witnesses has spoken about the alleged intimacy coupled with the fact that both have testified that the deceased and the appellant were in cordial terms would completely belie the theory of the prosecution that the appellant and the wife of the deceased had illicit relationship and this was the root cause for the appellant to kill the deceased.

12. As regards the evidence on record adduced by the prosecution in support of its charge against the appellant that he caused death of the deceased, it has examined PWs 1 to 4 who are co-coolies of the appellant and the deceased, staying together at a place at Vinukonda in connection with railway station work.

The evidence of these witnesses will throw light only on one aspect, viz., that the appellant and the deceased were together before they left the company of these witnesses at around 8.30 p.m. Based on this evidence, the prosecution has woven its case. It is significant to note that even as per the prosecution case, after the appellant and the deceased left from the place of their stay, they have gone to a liquor shop, purchased three bottles of liquor and returned to the railway station where they have allegedly consumed one of the bottles of liquor before they have quarreled with each other.

13. In his cross-examination, PW 1 has admitted that he has learnt from the public that there was some altercation at the wine shop between the appellant and the deceased on one side and the liquor shop people on the other side and that the liquor shop management has sent the appellant and the deceased away. On a suggestion put by the defence, the witness feigned ignorance that when the appellant and the deceased were taking liquor near railway station, people who had altercation with them at the liquor shop attacked them and caused injuries and that in the said attack, the deceased died and the accused sustained injuries. In our opinion, the admission by PW 1 of his hearing the news of the said altercation will disentitle the prosecution to put forth the last scene theory, because there was a possibility of the people who had altercation with the appellant and the deceased attacking the latter near the railway station.

14. From the charge sheet, it could be seen that the appellant has also sustained injuries and he was shifted to Vinukonda hospital where he was not in a position to talk and give a statement. Interestingly, the prosecution failed to record the statement of the appellant in the hospital and no explanation is forthcoming in this regard. A perusal of Ex. P8-wound certificate reveals that the appellant received as many as 10 injuries, many of them are either lacerated or abrasion, and some of them are bleeding injuries. The Doctor-PW 11, who examined the appellant, opined that bleeding may be caused due to stone injury. Though she described some of the injuries as simple in nature, but the very fact that the appellant was found lying at the scene of offence and shifted to hospital, itself would prove that he has received very serious injuries which disabled him from moving from the scene of offence.

15. Dealing with the failure of the prosecution to explain the injuries on the accused, the Supreme Court in *Takhaji Hiraji v. Thakore Kubersing Chamansing and Ors.*, (2001) 6 SCC 145 held that a 3-Judges Bench in *Rajendra Singh & Ors. v. State of Bihar* { (2000) CriLJ 2199 } had taken the view that it cannot be held as a matter of law or invariably a rule that whenever accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and that on the failure of the prosecution to do so, its case should be disbelieved. It was further held that before non-explanation of the injuries on the person of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such

injuries must have been caused at the time of the occurrence in question and non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution.

16. In this connection, it is appropriate to refer to the defence of the accused taken in his examination made under section 313 Cr.P.C wherein he has stated that when himself and the deceased were taking liquor at the liquor shop, a quarrel took place, that when they have gone to the railway station and were taking liquor, four persons who quarreled with them came and attacked the appellant and the deceased with sticks and stones. As referred to above, PW 1 in his cross-examination has admitted that he has also heard about such incident taking place at the railway station and this statement lends corroboration to the defence taken by the appellant/accused in under Section 313 Cr.P.C examination. Applying legal position relating to non-explanation of injuries, as observed, the prosecution has made no effort to know the cause for the appellant to receive injuries despite the fact that he was admitted to hospital.

17. It is further relevant to note that in the charge sheet the prosecution alleged that in the scuffle between the appellant and the deceased, the appellant has received injuries on his head and other parts of the body from the hands of the deceased. No specific allegation of the deceased attacking the appellant with stone or stick has been made. In Ex. P4-observation report, it is stated that there is a 9 feet 9 inches distance from the legs of the dead body in the scene of offence to the southern side of the wall and there are dragging marks of the dead body at a distance of 10 yards from the northern side of the scene of offence. This would clearly show that someone has dragged the dead body to a considerable distance. Given the condition of the appellant, who was not in a position to move and was lying still, it is not possible for him to drag the dead body. This itself would probablize that a third person was involved in the entire episode and the police miserably failed to investigate from this angle.

18. In a case based on circumstantial evidence, the Courts must be circumspect in appreciating and evaluating the evidence. In *Bodhraj v. State of J&K* the Supreme Court , (2002) 8 SCC 45 held as under:

"It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* : , (1977) 2 SCC 99, *Eradu v. State of Hyderabad*: , AIR 1956 SC 316, *Earabhadrapa v. State of Karnataka* : , (1983) 2 SCC 330, *State of U.P. v. Sukhbasi* : , (1985) Suppl. SCC 79, *Balwinder Singh v. State of Punjab*: , (1987) 1 SCC 1 and *Ashok Kumar Chatterjee v. State of M.P.*: , 1989 Suppl. (1) SCC 560) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from

those circumstances. In *Bhagat Ram v. State of Punjab* : , AIR 1954 SC 621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

We may also make a reference to a decision of this Court in *C. Chenga Reddy v. State of A.P.* : , (1996) 10 SCC 193, wherein it has been observed thus: (SCC pp. 206-07, para 21)

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

19. In *Trimukh Maroti Kirkan v. State of Maharashtra* the Supreme Court , (2006) 10 SCC 681 held as follows:

"In the case in hand there is no eyewitness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence. This legal position is reiterated by the Supreme Court in a recent judgment in *Nizam v. State of Rajasthan* , (2016) 1 SCC 550 "

20. As held supra, the prosecution failed to establish the motive for the appellant to kill the deceased. The circumstantial evidence adduced by the prosecution does not establish that all the incriminating facts and circumstances are found incompatible with innocence of the appellant.

21. For the reasons already recorded by us, even the last seen theory also could not be established by the prosecution. Therefore, we are of the opinion that the lower court has committed an error in convicting the appellant.

22. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused are set aside. Consequently, the appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime and the fine amount, if any, paid by him shall be refunded to him.