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(2006) 03 SC CK 0036

In the Supreme Court Of India

Case No : Criminal Appeal No. 997 of 2005 and Criminal Appeal No. 291 of 2006 (Arising out of S.L.P. (Criminal) No. 165 of 2005)

Ramreddy Rajeshkhanna Reddy and Another — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 2 ACR 1443 : AIR 2006 SC 1656 : (2006) AIRSCW 1602 : (2006) 2 ALT(Cri) 251 : (2006) 26 GLH 271 : (2006) 4 JT 16 : (2006) 3 SCALE 452 : (2006) 10 SCC 172 : (2006) 3 Supreme 175

Hon'ble Judges : S. B. Sinha, J;P. P. Naolekar, J

Bench : Division Bench

Advocate : R.P. Gupta, Jamshed Bey and Parmanand Gaur, for the Appellant; Vinay Kumar, D. Bharathi Reddy and Sneha Bhaskaran, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—The Appellant No. 1 herein along with one Shaik Abdul Rahman, accused No. 3 were convicted for commission of an offence u/s 302 read with Section 34 of the Indian Penal Code (IPC) and Appellant No. 2 herein was convicted u/s 302 IPC. They were prosecuted for committing murder of one Mohammad Rafiq Khan on 14.6.1998. The said offence was said to have been committed during the period between 10.30 p.m. of 14.6.1998 to 5.00 a.m. on 15.6.1998. The deceased was a motor mechanic. He and the Appellant No. 1 herein were friends. The Appellant No. 2 and two other accused were said to be his followers. A quarrel allegedly took place between the deceased on the one side and the Appellants on the other at about 9 p.m. on the said date near a theatre known as Durga Talkies in the town of Kothagudem. The quarrel, according to P.W.8-Routu Narender, who was himself a jeep driver and parked his vehicle near the afore-mentioned theatre, was on two counts: (1) the jeep of the Appellant No. 1 had not been satisfactorily repaired by the deceased, although he had taken repair charges in respect thereof; and (2) the deceased was visiting

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a woman called Gugloth Dasli, who was said to be his concubine, upon being questioned in that behalf by the first appellant, the deceased, allegedly, retorted that he had been paying money to the said Dasli and, therefore, no one could stop him from visiting her, whereupon he was allegedly threatened. The parties exchanged hot words but P.W.8-Routu Narender and others are said to have intervened. The deceased thereafter left for his residence in an auto. According to the prosecution, at about 10.30 p.m. on the same night, the Appellant No. 1 went to the house of the deceased and called him on the ground that his jeep required some repairs. P.W.1-Md. Anwar Khan, the elder brother of the deceased was said to be present. He came out with him from the residence and allegedly saw the Appellant No. 1 on the road. He stated that on the body of auto the word 'Swathi' was inscribed. He furthermore, is said to have noticed the other two Appellants, i.e., Appellant Nos. 2 and 3 standing by its side. The deceased and the Appellants herein are said to have walked away. At about 5.00 a.m. in the next morning, P.W.2-Mohd. Mohamood Khan, another brother of the deceased returned home from his workshop. Upon an inquiry having been made as to whether the deceased had visited the workshop on the previous night along with the Appellant, he answered in the negative. The dead body was noticed by P.W.4-A. Venkateswarlu in the morning in front of his house. As the deceased was known to P.W.4, he went to P.W.1 and informed thereabout. They came to the spot whereafter P.W.1 rushed to the town police station of Kothagudem Town. He, however, did not enter the police station. He was standing on the road before the police station. P.W.5-J. Srinivas, at about 6.00 a.m., was passing by the said police station for shopping, P.W.1 requested him to scribe a report on his behalf describing the incident. P.W.5 accordingly scribed a report, which reads as under:

Yesterday i.e. on 14.6.1998 at about 10.30 Night time while I was at my residence along with my brother by name Rafeek Khan. On Ramreddi Rajesh Khanna came to my residence and called my brother then my brother came outside I had also followed him and questioned my brother as to where you are going for which my brother told me that Rajesh Khanna wanted to get his Jeep urgently repair by that time one Auto was standing at a distance to my house. On the top of the auto there was a name "Swathi" written in Telugu, by the side of auto one Bankur Ravi, Machaboina Ramesh, S.K. Abdul Rahman @ Nathi Babu were standing; after some time the above said four persons and my brother left the place in auto towards coolie line main road. My brother did'nt return back on that night. Today i.e. on 15.06.1998 early in the morning at about 5.00 a.m. I asked my third brother by name Mohd. Khan about Rafeek Khan whether he was at the shed on the night for which he replied that he did'nt came to shed on the night. At about 5.30 am one coolie line native by name Agulla Venkateswarlu came to me and said that my brother was found dead in front of his house and said that there was a bleeding injury on the neck. Then I along with Venkateswarlu went and found the dead body of my brother in front of Venkateswarlu's house. Neck of my brother was cutted half. Causing death of my brother is that there was some gelato taken place in between my brother ;and

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with Ramreddy Rajesh Khana; Bankur Ravi; Manchaboina Ramesh; SK Abdul Rahman @ Nathi Babu which taken place to Durga Talkies center of previous night and the said incident took place regarding repair of jeep, bearing the same in mind on the point of jeep repair taking my brother out side the house and killed him.

2. The said Abdul Rahman was said to have been arrested from the house of Appellant No. 2 on 1.7.1998. P.W.5-J. Srinivas, however, states that when he was scribing the First Information Report (FIR), the Appellants were already in the lockup. The FIR was said to have been despatched immediately. Post-mortem examination on the dead body of the deceased started from 11.00 a.m. and was completed at about 1.30 p.m. In the post- mortem report it was opined that rigor mortis was confined to upper and lower limbs and presumably on the basis thereof the death was found to have taken place between 1200 to 1500 hours.

3. Before the learned Sessions Judge several witnesses were examined to prove the prosecution case. P.W.9-Dronapalli Chiranjeevi was said to be an eye witness. His statement before the police was recorded three days after the incident. The trial court in its judgment held him to be a reliable witness and passed a judgment of conviction, inter alia, relying on his evidence holding:

PW9 is also found to be a natural witness and he is returning to his house after attending Annadanam Karyakram on 14.6.1998 which had taken place at Seven Hills Hotal Area, Kothagudem. This is deposed that himself and one M.A. Isas Assha (DW18) were returning with a torch light as there was no electricity. It is also deposed that it was a rainy night and there was drizziling. The natural sequence of the events deposed by PW9 cannot be over looked for the reason that he is a planted witness. When he is returning from Annadana Karyakram in Coolie Line, hearing cries in the street is a natural event. On hearing cry there is every possibility of focusing the light towards that side, which is in the natural fashion. PW9 focused a torch light and identified the deceased Mohd. Rafiq Khan and three others. In all together he deposed four persons were present. He also specifically deposed that A-2 used a knife and cut the throat of the deceased and the overt acts of A1, A2 and A4 were stated before the court.

4. The High Court, however, did not agree with the said views of the learned Sessions Judge opining:

At the outset, we must make it clear that we are not inclined to believe the evidence of PW9, the alleged eye- witnesses to the occurrence who was examined by the police two days after the registration of the crime though he was present at the scene of the offence at the time of the inquest, he never choose to inform the police about the fact that he had witnessed the murder.

5. Having gone through the testimony of the said P.W.9, we are also of the opinion that the High Court was right in discarding his statement. The High Court, however, upheld the judgment of conviction and sentence passed by the learned Sessions Judge holding that the Appellants quarrelled with the deceased

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and thus, motive is proved which was witnessed by P.W.8.

6. According to P.W.8, the Appellants came to the house of the deceased in an auto driven by P.W.6-Boosa Samba. They were allegedly seen together by the first informant P.W.1-Md. Anwar Khan, the brother of the deceased, as also P.W.3-Rehmana Begum, wife of the deceased. In view of the opinion of P.W.13-Dr. P. Venkateshwarlu, the death took place 12 to 15 hours prior to the conduct of the post-mortem examination. The time of the death of the deceased, thus relates back from 10.30 p.m. to 1.30 p.m. on 14.6.1998.

7. Mr. R.P. Gupta, the learned Senior Counsel appearing on behalf of the Appellants took us through the depositions of the prosecution witnesses and submitted that having regard to the discrepancies in the statements of the witnesses, it cannot be said that guilt of the accused has been proved beyond all reasonable doubts. The learned Counsel has drawn our attention to Modi's Medical Jurisprudence and Toxicology, 22nd Edition page 235 for the proposition that it is difficult to determine exact time of the death and as no reason has been assigned by the autopsy surgeon as to on what basis he had formed his opinion as regards the time of death, the same was not reliable. The learned Counsel urged that although as stated in the First Information Report the auto in which the Appellants are said to have come to the residence of the deceased, bore the inscription "Swathi", it was found that the same contained the inscription "Suverna".

8. It was submitted that the judgments of conviction and sentence passed by the learned Sessions Judge and the High Court cannot be sustained as:

(i) P.W.1 having not met P.W.8 before lodging the FIR, there was no way he could learn about the purported quarrel between the Appellants and the deceased near the said Durga Talkies;

(ii) Recovery of the knife purported to be on the basis of the confession made by the Appellant No. 2 could not have led to conviction of the other Appellants; and

(iii) A part of the motive, i.e., dispute as regard a woman having been disbelieved even by the trial court, as she, despite having been cited as a witness in the charge sheet, was not examined, the link in the chain to point to the guilt of the Appellants cannot be said to have been established.

9. The learned Counsel appearing on behalf of the State, on the other hand, supported the impugned judgements stating that in the instant case, the prosecution evidence must be held to have been proved as:

(i) The quarrel was witnessed by P.W.8;

(ii) Thereafter the Appellants went to the house of the deceased, as stated by P.W.6;

(iii) The deceased was last seen in the company of the Appellants as was testified by P.W.1 and P.W.3;

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(iv) Recovery of knife from the accused No. 2; and

(v) The approximate time during which, in view of the post- mortem report, the offence was committed.

10. Indisputably, there is no eyewitness to the occurrence. Although the deceased is said to be known to the Appellant No. 1 and they were on good terms, but on what basis the Appellant Nos. 2 and 3 were said to be his associates is not known. In the FIR another accused, Appellant No. 4 was also named. He, however, has been acquitted as none of the witnesses named in their deposition or identified in the court. 14.6.1998 was a dark rainy night. The quarrel was alleged to have taken place in a hotel. It was, however, stated that the same took place on a road near Lakshmi theatre.

11. P.W.2, the brother of the deceased states that the deceased had come to the mechanic shed at 8 p.m. and left after one hour, i.e., at about 9 p.m. He allegedly told him about the quarrel with the Appellants near Durga Talkies. P.W.8 in his deposition, however, stated that the incident took place at 9.30 p.m. He, along with Bandaru Satvam Pendya Venkateshwarlu, intervened in the matter. He came to know about the death of deceased Rafiq Khan at about 8 a.m. on the next day. He knew even the names of the Appellants. He could also come to know how the deceased was done to death. Although he claimed that he could identify the Appellants, no test identification parade was held. He, however, did not volunteer to get his statement recorded on 14th. He was examined by the police on 16.6.1998. P.W.6, in whose auto the Appellants were stated to have gone to the house of the deceased, in his evidence said that the Appellants boarded his auto at 9 p.m. They went to a wine shop and took drinks. The auto stopped there for about 20 minutes. He knew the Appellant No. 2. Apparently, he did not know the names of other Appellants. He stated that only one of the persons got down from his auto and went into a lane, whereas others remained in the auto. After the deceased came, the other two persons also got down from the auto and thereafter all of them walked towards Coolie line. According to him, Appellant No. 1 refused to pay the fare. No test identification parade was also held for him. He identified the Appellant No. 1 as the person who got down from the auto only in the court. He was examined on 27.9.2001, i.e., after a period of three years three months. He did not disclose as to how he remembered accused Nos.1 and 4. According to him, the words written in his auto was "Suverna" and not "Swathi", as disclosed in the First Information Report. The identity of the auto by the first informant, thus, became doubtful. He allegedly informed the fact of non-payment of fare by the Appellant No. 2 to one Bala Krishana at about 10.30 in the night, i.e., after the Appellants left the house of the deceased. The said Bala Krishana had not been examined. In his cross-examination, he stated that he had no acquaintance with Appellant No. 2. Identification of Appellant No. 2 is, thus, rendered doubtful. He admitted that P.W.1 accompanied with him to the Court. He allegedly came to know about the death of the deceased at 7.30 a.m. next day.

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12. According to P.W.1, the Appellant No. 1 called the deceased at 10.30 p.m. He did not say that he had talks with P.W.6. When he went to the police station, the Sub-Inspector of Police was present. He did not make any complaint to him. According to the P.W.14-S.M. Surender Nath, the Investigating Officer, P.W.1 came to the police station at about 5.50 a.m. P.W.1 accepted that he used to repair all the jeeps of deferent departments, including the police department. One S.I. of Kothagudem II town was also related to him. Why, therefore, he did not go into the premises of the police station to lodge the First Information Report and waited for someone to scribe the same on the road makes his story doubtful.

13. It remains a mystery as to how P.W.1 could name all the accused persons in the FIR. It is also surprising that although he reached the police station at 5.50 a.m. and P.W.8 came to know about the death of the deceased at about 8.00 a.m., how he could disclose in the FIR as regard the manner in which the alleged quarrel between the Appellants and the deceased took place near Durga Talkies. Shaik Abdul Rahman, who has since been acquitted, was not only named, but his alias name was also disclosed in the FIR. P.W.1 did not state either in the FIR or in his deposition in the court that he had been knowing Appellant No. 1 and the other Appellants.

14. P.W.3 is the wife of the deceased. She is a pardanasheen lady. She had not seen the accused persons. She was merely informed by P.W.1 that the Appellants had taken her husband. P.W.1 did not say so. Accused No. 3 was, however, not named, although, as noticed hereinbefore, he was named in the FIR. The accused Shaik Abdul Rahman, now acquitted, has not been named as one of them, although, in the FIR his name has been disclosed.

15. P.W.4 does not throw much light on the prosecution case. According to P.W.5, he was going to shop at 6.00 a.m. in the morning. P.W.1, according to him, was standing outside the police station. There was no reason for him to do so. As noticed hereinbefore, according to him, even the Appellants were in lock up of the said police station. P.W.1 is supposed to know the officer of the police station but despite the same he did not go inside to lodge the FIR particularly when he was expected to rush there and inform the officer in-charge about the dead body lying on the road.

16. The evidence of P.W.7 does not throw much light in this regard. P.W.1 does not state that he had met P.W.8. His name has not been taken by him. P.W.14, the Investigating Officer states that during his investigation he examined one Kusapati Sreenivas. According to him, the Appellants were in his hotel at 9.00 P.M. on 14.6.1998. It is also accepted that on that day there were rains and there was no electricity. He accepted that patrolling used to be done in the area and the traffic constables remained posted from 8.30 p.m. to 10.00 p.m. but no investigation appears to have been made as to why it did not attract their attention.

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17. The Appellant No. 2 is said to be a history-sheeter. His whereabouts would be known to the police. Some of the prosecution witnesses are also history-sheeters. Why the Appellants have been arrested after a fortnight has not been explained. Although three police officers have been examined, none of them stated as to why the Appellants could not be arrested prior to the said date. Why for writing the First Information Report, the assistance of P.W.5 was required to be taken by P.W.1, particularly, when one of their relatives was a sub-inspector of Police in the said police station is left to imagination. Although First Information Report is said to have been dispatched to the court at 0645 hours, nothing has been brought on record to show as to when it reached the court. The court being situated in the same town, it is difficult to understand why it was sent at 0645 hours in the morning.

18. In this case, the time of actual offence having regard to the different statements made by different witnesses may assume some importance as one of the grounds whereupon the High Court has based its judgment of conviction is the time of death of the deceased on the basis of the opinion rendered by Dr. P. Venkateshvarlu (P.W.13). In Modi's Medical Jurisprudence, 22nd edition, as regard duration of rigor mortis, it is stated:

It was, therefore, extremely difficult to purport the exact time of death of the deceased, more so when no sufficient reason was assigned in the post- mortem report.

19. In Pattipati Venkaiah Vs. State of Andhra Pradesh, , this Court held:

10. Another circumstance stressed by Mr Garg was that according to the medical evidence the deceased must have died by about 5.30 a.m. on July 2, 1975 and no reasonable explanation has been given by the prosecution as to why the dead body was taken to the hospital at about 10.55 a.m. after about five hours when the hospital was quite near. Here, the learned Counsel as also the trial court have committed a serious error in the appreciation of evidence. A perusal of the evidence of the doctor does not conclusively show that the deceased must have died at about 5-6 a.m. Medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second.

(Emphasis supplied)

19.1. In Ram Udgar Singh Vs. State of Bihar, , this Court held:

10. Evidence of PWs 1, 2, 3 and 5 clearly establishes the definite role played by the accused- appellant. So far as the plea relating to the time of death on the basis of medical evidence is concerned, emphasis is laid on the fact that rigor mortis could not have set in, in the dead body within two hours. The High Court has referred to several treatises on medical jurisprudence to conclude that the time which is usually three to four hours may vary according to climatic conditions. We find no infirmity in the conclusion. The courts were justified in

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holding that the appellant was the assailant, and accordingly convicted him. No exception could be taken to the well-merited reasoning squarely found supported by overwhelming, relevant, convincing and concrete evidence placed on record by the prosecution in this case.

[See also State of Punjab v. Daljit Singh and Anr. (2004) 10 SCC 141.]

In the Post-Mortem Report, apart from stating that rigor mortis were confined to both upper and lower limbs, no other reason has been disclosed. Even the recovery of knife was said to have been made only from the Appellant No. 2.

20. It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence. [See Anil Kumar Singh v. State of Bihar : (2003)9SCC67 and Reddy Sampath Kumar Vs. State of Andhra Pradesh,]

21. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration.

In State of U.P. Vs. Satish, this Court observed:

22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2.

[See also Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir, .

22. It is, furthermore, well-known that motive by itself is not sufficient to prove the guilt. [See State of Madhya Pradesh and Others Vs. Paltan Mallah and Others etc., .] Furthermore, the solitary witness, to prove the alleged motive, namely, P.W.8 was examined by the police after two days. No reliance, thus, can be placed on his evidence. It may be true that the Appellant No. 2 was a history-

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sheeter. It may further be true that P.W.1 instituted a case against the Appellant No. 1 for threatening him when he was on bail. It may also be, that P.W.7 did not identify the Appellants as he was found shaking. If the Appellants are guilty of other offences, they can be proceeded against appropriately and in accordance with law. We hope the authorities would do so.

23. But, keeping in view of the peculiar facts and circumstances of this case, we are of the opinion that the prosecution cannot be said to have established the guilt of the Appellants herein beyond all shadow of doubt. The prosecution story has a large number of loopholes and, thus, we have no other option but to hold that the Appellants are entitled to the benefit of doubt. The impugned judgment is, therefore, set aside and the appeals are allowed. The Appellants are directed to be set at liberty unless wanted in connection with other case.

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