

Ganji Chandr Vs. State of A.P., Rep. by Its P.P.,high Cou

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Court : Andhra Pradesh

Decided On : Apr-22-2014

Judge : The Hon'Ble Sri Justice L. Narasimha Reddy and the Hon'Ble S

Appellant : Ganji Chandr

Respondent : State of A.P., Rep. by Its P.P.,high Cou

Judgement :

THE HONBLE SRI JUSTICE L. NARASIMHA REDDY and THE HONBLE SRI JUSTICE M.S.K.JAISWAL Crl.Appeal No.390 of 2010 22-04-2014 Ganji Chandraiah Appellant-Accused State of A.P., rep. by its P.P.,High Court of A.P., Hyderabad ...Respondent Counsel for the Appellant: Smt.D.S.Laxmi Counsel for respondent:Public Prosecutor HEAD NOTE: ?.CASES REFERRED :. HON'BLE SRI JUSTICE L. NARASIMHA REDDY AND HON'BLE SRI JUSTICE M.S.K.JAISWAL Criminal Appeal No.390 of 2010

JUDGMENT

: (Per Honble Sri Justice L. Narasimha Reddy) The Village Revenue Officer of Kamavarapukota village PW.1 submitted a complaint - Ex.P.1 before Tadikalapudi Police Station at 08.00 a.m., on 24-03-2007 stating that one Mr.Gudelli Joji - PW.5, a resident of the same village, informed him that one Ganji Chandraiah accused killed his son Ganji Venkateswara Rao, in the intervening night of 23/24-03-2007 in a brutal manner, so much so, the intestines of the deceased were coming out, and caused injuries to his wife PW.2, that he proceeded to the scene of offence at

about 06.00 a.m., noted the details and requested the police to take necessary action.

2. Crime No.18 of 2007 was registered by the police against the accused under Sections 302 and 324 I.P.C. The police visited the scene of occurrence, prepared scene of offence panchanama, conducted inquest and caused post-mortem. Alleging that the accused caused the death of his son and injuries to his wife, a charge-sheet was filed.

3. The case was committed to the Court of Principal Sessions Judge, West Godavari District, and numbered as S.C.No.451 of 2008. The trial Court framed necessary charge against the accused. The accused pleaded not guilty. The trial was conducted, wherein P.Ws.1 to 9 were examined, Exs.P.1 to P.15 were filed and M.Os.1 to 7 were taken on record. Through its Judgment, dated 29-01-2010, the trial Court convicted the accused and sentenced him to undergo imprisonment for life and to pay fine of Rs.500/-, in default to undergo simple imprisonment for one month. Hence, this appeal by the accused through legal- aid.

4. Smt.D.S.Laxmi, learned Counsel for the appellant submits that there was no eye-witness to the incident and no circumstance that can establish the guilt of the accused is made out by the prosecution. She contends that the wife of the accused, who was said to be an injured eye-witness, and examined as PW.2, did not support the case of the prosecution, and on the other hand, stated that there was cordiality among the members of their family i.e., herself, the accused, the deceased and PW.4. She contends that PW.4, the wife of the deceased, also stated that there was no enmity between the accused and the deceased, and still the trial Court convicted the accused. Learned Counsel further submits that since the accused is an old man, aged about 75 years, the question of such a person attacking a youngman, that too his own son, and killing him does not arise.

5. Learned Additional Public Prosecutor, on the other hand, submits that the incident occurred in the night of 23/24-03-2007, wherein the accused in a charged condition stabbed his son indiscriminately as well as caused injuries to his wife. She contends that though PW.2 turned hostile, PW.3 stated that PW.2 came to their house in the mid-night with serious injuries and by crying told them that the

accused killed their son and caused injuries to her. She further submits that PW.5, who proceeded to the scene of offence, immediately gave a true and correct account of the incident, and on the basis of information furnished by him, PW.1 submitted Ex.P.1 complaint. She submits that there is no reason why the evidence of independent witnesses is to be disbelieved.

6. The accused faced a most unfortunate allegation, namely, killing his son, a grownup person, not only married, but also blessed with children. If the allegation against the accused can be said to have been proved, there cannot be a worse form of conduct on the part of a man.

7. The record discloses that the accused and the deceased were living in the same house, though their mess was separate. The deceased was married to PW.4 and blessed with children. The information about the death of the deceased reached the police with the filing of Ex.P.1 by PW.1. No member of the family or their kith and kin submitted any complaint. PW.1 is not an eye-witness to the incident. He is said to have got the information from PW.5. Things would have been different had it been the case that PW.5 himself is an eye-witness. He did not claim to be an eye-witness. According to him, he came to know about the incident between 10.00 p.m., to 10.30 p.m., and passed on the information to PW.1. It is important to note that PW.5 did not state as to how he received the information about the death of the deceased. Ex.P.1 as well as the evidence of PW.5 is silent as to whether the witness has gone to the place of occurrence before he furnished the information to PW.1.

8. PW.3 is another independent witness. According to him, he is a neighbour of the accused and on 23-03-2007 he slept after taking food, whereas his wife was watching T.V., and at about 10.00 p.m., he has been woken up by his wife, he has seen PW.2 with a cut injury on her left forearm and that she was crying. This witness and his wife are said to have tied a cloth around the hand of PW.2 and PW.2 is said to have informed them that the accused murdered the deceased. Thereafter, PW.3 is said to have informed his younger brother PW.5 about the incident, and proceeded to the house of the accused. It is relevant to mention that PW.5 did not make any mention about his receiving information from PW.3.

9. The discrepancies pointed out by us in the preceding paragraphs may not be treated as crucial, if an otherwise perfect case is made out by the prosecution. There are two important aspects about the evidence on record. The first is that PW.2, the wife of the accused, did not support the case of the prosecution and was declared hostile. The non-existence of any complaint from PW.2 is an important aspect, to be taken into account. If, in fact, PW.1 came to know about the incident, the natural course of conduct would have been to obtain a complaint from a member of the family and then pass it on to the police. Further, though he made a visit to the scene of occurrence before he submitted the complaint, he did not mention as to what the members of family of the accused and the deceased have informed him. He simply depended upon the information given to him by PW.5.

10. PW.2, though suffered a serious shock on account of death of her son, might have chosen a lesser hardship of saving her husband so that she may not remain without any assistance for the rest of her life than to become a witness to put him in prison. This approach or tendency, however, cannot be expected from the wife of the deceased-PW.4. If, in fact, her husband was killed by her father-in-law, hardly there would exist any factor that may convince her, to turn hostile, or to tell falsehood as to the cause of the death of her husband. She may not have that much of affinity towards the accused, as PW.2, his wife had. The record, however, discloses that PW.4 categorically stated that there was never any difference of opinion between the deceased and the accused. The prosecution was not able to elicit any information from her that she has seen the accused killing the deceased.

11. The age of the accused is another factor, which cannot be ignored. In the year 2007, he was aged about 63 years and by now, he might have crossed 70 years. Another aspect is that there must be very strong motive for a person to kill his son. It should be extremely grave in its content, when compared to the one, which would prompt an individual to commit the murder of a stranger. The blood relationship, affinity, the composition of the family after the death of the individual and so on, would come into the thought process. The motive that is said to have prompted the accused to kill his grown up son with children is that the deceased has taken the bicycle of the accused to watch a movie, without his permission.

Even if, what is stated by the prosecution is verbatim true, one does not expect the reaction, to the level of causing the death of a son, who was so dear to him, and was living under the same roof. We, therefore, allow the appeal.

12. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C.No.451 of 2008 on the file of the Principal Sessions Judge, West Godavari, Eluru, dated 29-01-2010, against the appellant accused are set aside. The appellant - accused shall be set at liberty forthwith, unless his detention is needed in any other case. The fine amount, if any, paid by the appellant - accused shall be refunded to him. _____ L.Narasimha Reddy, J.

_____ M.S.K. Jaiswal, J.

Date:

22. 04.2014

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