

Shaik Riyaz Vs. State of Andhra Prade

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Court : Andhra Pradesh

Decided On : Mar-05-2014

Judge : L.Narasimha Reddy and the Hon'Ble Sr

Appellant : Shaik Riyaz

Respondent : State of Andhra Prade

Judgement :

THE HON'BLE Sr.JUSTICE L.NARASIMHA REDDY and THE HON'BLE Sr.JUSTICE S.RAVI KUMAR CRIMIAL APPEAL No.1575 of 2009 05-03-2014 Shaik Riyaz....APPELLANT State of Andhra Pradesh....RESPONDENT COUNSEL FOR THE APPELLANT:- Smt.K.Lalitha COUNSEL FOR RESPONDENT:- Public Prosecutor : ?.Cases Referred: HON'BLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HON'BLE Sr.JUSTICE S.RAVI KUMAR CRIMINAL APPEAL No.1575 of 2009

JUDGMENT

: (per the Hon'ble Sr.Justice L.Narasimha Reddy) The sole accused in S.C.No.91 of 2007 on the file of the Additional Sessions Judge, Hindupur was tried for the offence of committing murder of one Sr.Harijana Narasaiah at Hindupur on 01.09.2006.

Through its judgment, dated 21.04.2008, the trial Court convicted the accused for the said offence and sentenced him to undergo imprisonment for life and imposed

fine of Rs.500/-, in default, to undergo simple imprisonment for one month.

The Station House Officer, Hindupur received Ex.P1, complaint, submitted by P.W.1, the wife of the deceased, alleging that herself, her mother-in-law, P.W.2, and the deceased were in the house at about 12.00 noon on 01.09.2006, the accused came and took the deceased along with him stating that he has some matter to discuss.

P.W.1 is said to have accompanied both of them in the context of purchasing vegetables in the market.

After reaching the market near an electric pole, the deceased and the accused are said to have discussed the matter about repayment of the amount and that at once, the accused grew wild, took a knife from the pocket and indiscriminately stabbed the deceased.

P.W.3, younger brother of the deceased, was said to be at Parigi Bus Stand at that point of time.

She further stated that when herself and P.W.3 sought to intervene, the accused threatened them and ran away.

Both of them are said to have shifted the dead body of the deceased to the Government Hospital.

She prayed for necessary action against the accused.

Crime No.81 of 2006 was registered at 2.10 p.m.The police visited the scene of offence, prepared a panchanama, caused inquest and post-mortem of the deceased.

The statements of P.Ws.1 to 4 were recorded.

The accused is said to have been nabbed thereafter and a knife and clothes from him were recovered.

After completion of the investigation, P.W.11 filed a charge sheet.

Taking the same into account, the trial Court framed the charges and trial was conducted.

To prove its case, the prosecution examined P.Ws.1 to 11 and marked Exs.P1 to P11.

M.Os.1 to 8 were also taken on record.

The accused was convicted and sentenced.

Smt.K.Lalitha, learned counsel for the accused, submits that though P.Ws.1, 3, 4 and 5 were cited as eye-witnesses, there is nothing consistent or natural about their evidence.

She contends that P.Ws.1 and 3 did not speak about the presence of P.Ws.4 and 5, whereas the latter i.e.P.Ws.4 and 5 stated that they joined P.Ws.1 and 3 in attending to the deceased in seriously injured condition.

She submits that while according to P.W.1, P.W.3 was coming from Parigi bus stand, the latter stated that he was taking tea even while noticing the quarrel between the accused and the deceased.

Learned counsel further submits that the injuries that are noticed on the dead body are not at all accounted for and even the post-mortem report, Ex.P4, is full of contradictions.

She submits that P.W.8, who conducted the post-mortem, stated that as many as three ribs of the deceased were cut into pieces and one rib was partially broken, whereas only one injury that too with a knife was noticed at the relevant part of the body.

According to the learned counsel, one stab injury cannot lead to the breaking of so many ribs into pieces.

Learned Public Prosecutor, on the other hand, submits that this is a rare case in which, as many as four eye-witnesses have deposed consistently about the incident; and the trial Court has arrived at the correct conclusion.

She contends that the discrepancy pointed out by the learned counsel for the appellant, be it the one, between the evidence of P.Ws.1 and 3 or the evidence of P.Ws.4 and 5 is totally inconsequential.

She contends that when the deceased dealt repeated blows with a sharp knife, it is bound to result in serious injuries and even the ribs are cut into pieces and that no exception can be taken to the judgment under appeal.

The information about the death of the deceased was received by the Police at about 1.15 p.m.on 01.09.2006 from the Government Hospital.

It is shortly thereafter that Ex.P1 was submitted by P.W.1.

She stated, both in her evidence and Ex.P1 that when herself, her mother-in-law, and the deceased were in their house in the noon, the accused came and took the deceased away for discussion.

P.W.1 is said to have accompanied both of them up to the market.

She further stated that when the deceased stated that he is not under obligation to pay any amount to the accused, the latter grew wild, took a knife and stabbed him in stomach, chest and back.

Thereupon, the deceased is said to have fallen on the ground.

She did not refer to any quarrel or heated discussion between them.

To be precise, this is what P.W.1 stated in her evidence: ".While I was going behind them the accused and my husband were talking near electric pole and the accused demanded for repayment of amount to my husband.

My husband replied that he would replay the amount.

Thereupon, the accused stabbed my husband with a knife on his abdomen, chest and back.

The accused stabbed my husband 4 or 5 times.

My husband fell down on the ground.

My younger brother-in-law, Venkatesh, and some others were present there.

The accused ran away from the spot."

P.W.3, however, stated that he noticed the deceased and the accused quarrelling at the electric pole at Parigi bus stand and thinking that it is a routine matter, he was taking tea in the nearby stall.

He was so proximate to the deceased and the accused that he reproduced every word said to have been uttered by both of them.

He stated that the accused stabbed the deceased on the stomach, chest and back and on account of these injuries, the deceased struggled for life.

The accused is said to have threatened himself and P.W.1 when they went there.

It is important to note that both these witnesses did not refer to the presence of any other persons.

It is also necessary to take note of the fact that the deceased, his brother, P.W.3, and P.W.4 are Hamalies in the area.

P.W.4, a Hamali, stated that he too was present at that place of occurrence and noticed the quarrel between the accused and the deceased.

This, however, is the only witness, who stated that the deceased raised cries loudly and the accused was saying that the deceased was disputing his obligation to pay the amount.

It is after these cries and quarrel, that the accused is said to have stabbed the deceased about 5 or 6 times in stomach, chest and back.

He stated that himself and P.W.3 went to help the deceased, but the accused threatened them to kill them.

He did not speak about the presence of P.W.1 during the struggle or incident, though he stated that P.Ws.1 and 3 shifted the deceased to the hospital in an auto.

He too is said to have gone to the hospital.

When we come to the evidence of P.W.5, he stated that the deceased used to supply bananas to him and his pushcart is right to the electric pole where the quarrel took place.

He revealed the gist of the discussion that is said to have taken place between the accused and the deceased.

The accused is said to have abused and thereafter stabbed the deceased in stomach, chest and back.

He too is said to have gone to rescue the deceased.

However, his presence was not spoken to by P.Ws.1, 3 and 4.

We have referred only to the versions presented in the chief-examination of the above witnesses and did not make any reference to their cross- examination.

Even from what is noticed in the chief-examination of those witnesses, it is evident that there are several discrepancies and inconsistencies.

How-so-ever advisable it may be to accept the eye-witness account, the number cannot add to the strength, once inconsistencies are noticed even from the chief-examination.

In a given case, the eye-witness account of a solitary witness may gain more acceptability than that of many eyewitnesses, if fraught with inconsistencies.

Here, the adage 'quality and not mere quantity' gets attracted.

Assuming that there is consistency in the oral evidence adduced by the prosecution, its complete acceptability can arise if only it is separated by medical evidence.

Ex.P4 is the post-mortem report and P.W.8 was examined in relation thereto.

A perusal of the same discloses that as many as five external and three internal injuries were noticed.

The three internal injuries are as under: ".Internal Examination: Chest-2nd, 3rd, 4th ribs are cut.

5th rib partially cut.

Corresponding to Wound No.(2) and Lung is injured.

Haematoma present over the left pectoral region, corresponding to Wound No.(3) and left Lung also injured between 3rd and 4th rib."

It reveals that second, third and fourth ribs were totally cut and one rib was partially cut.

That would be possible if only a serious blow with a sharp weapon like an axe with severe force that too when the deceased fell on the ground, is dealt with.

How-so-ever sharp a knife may be, when it is driven into the chest, it would pass through two ribs and may cause injuries to the parts like lungs, liver and heart, but would not be able to cut the ribs into pieces.

Assuming that the knife is sharp enough, it may cut the ribs by either side of it.

P.W.8 opined that all the internal injuries are referable only to external injury No.2.

The description whereof is; Stab wound, 2 1/2 inches X1inch X21/2 inches present over the Right Chest.

5 inches below the wound No.1, wound is longitudinal.

Wedge shaped.

Lower extremity is sharp angled.

Upper extremity is blunt and is 1 1/2 inch medial to right nipple.

Edges of wound are clean cut and parallel.

No prevailing.

Small portion of wing came out of wound.

Mild bruising present over the upper extremity."

It is too difficult to account the injury referred to above, for cutting into pieces of three ribs and partially cutting of one rib.

The motive on account of which the accused is said to have caused the murder is that the amount borrowed by the deceased was not repaid.

The place of occurrence is a busy bus stand apart from being a market place.

The deceased himself was a Hamali, a strong-bodied person and he was in the company of his brother and other Hamalies.

One naturally expects the resistance if not overpowering of the solitary accused.

Another circumstance is that though P.Ws.1 and 3 are said to have shifted the deceased in an auto, no blood-stained clothes from them were preserved or sent for examination.

M.O.1 said to have been recovered from the deceased is of the length of 30 c.Ms. One just cannot imagine that a weapon of such a length can be put in a pocket.

If, in fact, the accused wanted to commit the murder of the deceased, he would not have chosen a place like busy bus stand that too in the midday.

If one takes into account all the facts referred to above, it becomes difficult to sustain the conviction and sentence ordered by the trial Court.

Hence, the Criminal Appeal is allowed.

The conviction and sentence ordered in S.C.No.91 of 2007 on the file of the Additional Sessions Judge, Hindupur, dated 21.04.2008, 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.

The miscellaneous petitions filed in this appeal shall also stand disposed of.

_____ L.NARASIMHA REDDY, J _____
S.RAVI KUMAR,J Dt: 05.03.2014

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