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Pendyala Raju and anr. Vs. State of A.P., Rep. by the Public Prosecutor

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Court : Andhra Pradesh

Decided On : Aug-28-2003

Reported in : 2003(2)ALD(Cri)600

Judge : Bilal Nazki and ;K.C. Bhanu, JJ.

Acts : Indian Penal Code (IPC) - Sections 34 and 302

Appeal No. : Criminal Appeal Nos. 1095/2001, 119/2002 and 756/2003

Appellant : Pendyala Raju and anr.

Respondent : State of A.P., Rep. by the Public Prosecutor

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C. Praveen Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

K.C. Bhanu, J.

1. A2 & A3, A4 and A1 in S.C. No. 316/1998 on the file of Additional Sessions Judge, Adilabad, filed criminal appeals Nos. 1095/2001, 119/2002 and 756/2003 respectively, aggrieved by the judgment, dated 18.7.2001, whereby they were convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs.

200/-, and in default to suffer simple imprisonment for one month on each count under Section 302 read with Section 34 IPC for causing the deaths of Ramakrishna, Laxman, Raju and Rajyalaxmi (hereinafter referred to as D1, D2, D3 and D4 respectively), and to suffer rigorous imprisonment for seven years and to pay a fine of Rs. 100/- and in default to suffer simple imprisonment for 15 days each under Section 307 IPC for attempting to cause the death of P.W. 4, with a direction to run the substantive sentences concurrently.

2. The facts that led to the filing of the present appeals in brief are as follows. P.W. 1 and A4 are siblings. A1 is the son of A4 and A2 and A3 are friends of A1. D1 and D2 are sons of P.W. 4, younger sister of P.W. 1. D3 is the son of younger sister of the wife of P.W. 1. D4 is the daughter of P.W. 1. A1 and A4 are neighbours of P.W. 1. A4 proposed to marry A1 with D4. D4 did not accept the proposal on the ground that she passed S.S.C., but A1 was uneducated. Subsequently when P.W. 1 looked for alliances for D4, A4 queered his efforts. However, at last P.W. 1 could settle the marriage of D4 with a boy of Gunjapadugu village of Karimnagar District to be performed on 17.5.1997. In the intervening night of 12/13.5.1997, D4 and D1 were sleeping on a cot and D2 and D3 were sleeping on another cot in front of the house of P.W. 1 who along with his wife-P.W. 2 and sister-P.W. 3 was also sleeping on the floor beside the cots. In the midnight, on hearing the cries of D4, P.Ws. 1 to 3 woke up and saw the accused near the gate of their house. They poured petrol and kerosene on the deceased persons and threw a burning torch as a result of which all the four deceased persons sustained severe burns. P.W. 4 also sustained burn injuries. On hearing their cries, neighbours came there and extinguished the flames by pouring water. The deceased were shifted to hospital on the way to which D1 died. After admitting the deceased persons and P.W. 4 in the hospital, P.W. 1 went to the police station and lodged Ex.P1-F.I.R on the basis of which P.W. 16 registered a case and dispatched the copies of the F.I.R. to all concerned. P.W. 17, Inspector of Police, took up further investigation. He observed the scene of occurrence and seized certain incriminating articles. After conducting inquest, he sent the dead bodies for conducting post-mortem examination. In pursuance of the confessional statement of A1 on his arrest, M.O.1-5 ltrs. Tin-was seized. After receipt of post-mortem certificates and on completion of investigation, P.W. 17 laid a charge sheet. Two charges - one under

Section 302 read with Section 34 IPC and the other under Section 307 read with Section 34 IPC - were framed against the accused. They denied their guilt and claimed to be tried. On behalf of its case, Prosecution examined 17 witnesses and marked 19 documents besides M.Os. 1 to 5. On assessment of the evidence on record the trial Court came to the conclusion that the Prosecution has established its case beyond all reasonable doubt and convicted and sentenced the accused as aforesaid, challenging the correctness and legality whereof the accused filed the present appeals as above said.

3. Learned senior counsel appearing for A2 and A3 contended that it was not possible for the deceased persons or P.Ws. 1 to 4 to identify the assailants of the deceased persons as the incident took place during midnight, that P.Ws. 1 to 3 did not speak about the presence of A2 and A3 at the time and place of incident at or after the inquest but they deposed in the Court that A2 and A3 were also present and so the truth and falsehood have inextricably been mixed up and cannot be separated and therefore it is not desirable to rely on their evidence, that there was no motive for the accused to commit the crime, that the parentage, age, and addresses of A2 and A3 were not specifically mentioned in the dying declaration made by D4, that no endorsement was made in the dying declaration that D4 was in a mentally fit condition to make the declaration, and that the Prosecution did not attempt to get the dying declaration recorded by a Judicial Magistrate, and so the impugned judgment should be set aside. Learned counsels appearing on behalf of the other accused advanced the same arguments. On the other hand, learned Public Prosecutor contended that on hearing the cries of D4, P.Ws. 1 to 3 woke up and witnessed the incident, that there was no reason for P.Ws. 1 to 4 to implicate the accused falsely, that even if P.Ws. 1 to 4 made some improvements in their evidence, only the improved part of the evidence should be eschewed from consideration, that the dying declaration recorded by the Doctor can be relied upon wherein the presence of A2 and A3 was also mentioned, that since D4 had prior acquaintance with A2 and A3 as they used to come to the house of P.W. 1 along with A1, she did not mention their parentage etc., in her dying declaration, that as Judicial Magistrate was not available, the Doctor recorded the dying declaration who had no reason to falsely implicate the accused, and that the trial Court after considering all the aspects rightly convicted and sentenced the

accused and so there are no grounds to interfere with the impugned judgment.

4. P.Ws. 9 to 11 acted as inquest mediators when P.W. 17 conducted inquest over the deceased persons. Exs.P7 to P10 are inquest reports. The inquest mediators opined that the deceased persons died because of the extensive burns sustained by them. P.W. 14 conducted autopsy over the dead bodies of D2, D3 and D1 and found 95% burns. Exs.P14 to 16 are post-mortem certificates. P.W. 15 conducted autopsy over D4 and found 95 to 97% burns. Ex.P17 is the post-mortem certificate. Nothing has been elicited to discredit the testimony of all these witnesses. Therefore, we hold that the deceased persons died of burns.

5. The case mainly rests upon the evidence of P.Ws. 1 to 4 and the dying declaration of D4 recorded by P.W. 7 which was marked as Ex.P3. Though P.W. 7 recorded the dying declarations of D2 and D3 also under Exs.P5 and P4, D2 and D3 stated that they did not identify their assailants, and therefore Exs.P4 and P5 cannot incriminate the accused.

6. As regards the contention that the accused had no motive, A1 wanted to marry D4 but D4 did not accept the proposal. Subsequently the marriage of D4 was fixed to be performed on 17.5.1997 with some other boy. A4 even queered two or three marriage alliances which P.W. 1 tried for D4. P.W. 2 stated that when P.W. 1 was looking for marriage alliances, A4 had threatened them. P.W. 2 also stated that on the date of incident when she and D4 were in their house, A4 abused them and warned them that she would see how they would perform the marriage of D4. Ex.P3-the dying declaration of D4-the reliability of which we would discuss later-would also go to show that since she refused to marry A1, the accused bore grudge against her. All this evidence clearly establishes that there was motive for the accused to take the extreme step. Even otherwise, generally motive lends corroboration to the Prosecution case and the absence of motive or non-proof of motive does not otherwise create a doubt on the prosecution case if the evidence produced is otherwise trustworthy and reliable.

7. The fact that the marriage of D4 was to be performed on 17.5.1997 and that the deceased persons and P.Ws. 1 to 3 slept in front of the house of P.W. 1 is not in dispute. As the grisly incident took place where four persons seared to death while

they were slumbering on cots, the identification of the assailants becomes crucial.

8. In assessing and evaluating the evidence of an eyewitness, two important considerations are (a) whether in the circumstances of the case it was possible for the eyewitnesses to be present at the scene or their explanation for their presence at the scene of occurrence can be accepted, and (b) whether there is anything inherently improbable or unreliable in their evidence.

9. With regard to the first consideration, there is sufficient evidence on record that P.Ws. 1, 2 and 4 were sleeping on the date of incident by the side of the cots which the deceased persons sleeping on in front of the house of P.W. 1. P.W. 4 is younger sister of P.W. 1 who came to the house of P.W. 1 on being invited by him for the marriage of D4. P.W. 3 is a neighbour of P.W. 1 whose house is situated beside the house of P.W. 1. Nothing, which could weaken their testimony in this respect, has been elicited in their cross-examination. Therefore, it can be safely said that their presence at the time and place of incident was quite natural.

10. Now the question is whether they could identify the assailants of the deceased persons. A1 and A4 are not strangers to P.Ws. 1 to 4. The house of A1 and A4 is situated beside the house of P.Ws. 1 to 3. A4 is no other than the eldest sister of P.W. 4. It is elicited in the cross-examination of P.Ws. 1 and 2 that they had acquaintance with A2 and A3, they being the friends of A1, prior to the incident in question. This evidence on record shows that P.Ws. 1 to 4 knew A1 and A4 very well and P.Ws. 1 and 2 knew A2 and A3 as well. Therefore, even if there was a slight illumination of light there was a possibility of their identifying the accused though the incident took place in the midnight. Ex.P19-rough sketch of the scene of occurrence shows that there were two kerosene lamps burning in the room just opposite to the place where the deceased persons were sleeping on cots. Therefore, in the illumination of the incandescent lights, the assailants could be identified. It is pertinent to note that it was never the case of the accused that there was no light sufficient to identify the assailants of the deceased persons.

11. P.W. 1 stated that all the accused poured kerosene on D4. D4 raised cries. On hearing the cries, P.Ws. 1, 2 and 4 woke up and saw the accused throwing a burning torch on the cot of D4, as a result of which D1 to D4 caught fire and P.W.

4 also caught fire. But, P.W. 2 stated that she saw the accused persons at the gate of their house at the time of the incident but did not state before the police about the presence of A2 and A3. P.W. 3 stated that he identified only A1 and A4 whereas P.W. 4 stated that she identified all the accused. But P.W. 4 did not speak about the presence of A2 and A3 when she was examined by the police. In Ex.P1 P.W. 1 did not name A2 and A3 as assailants of the deceased persons. P.W. 17-Inspector of Police also stated that the names of A2 and A3 were not mentioned in Ex.P1. Learned counsel for the accused contends that this evidence clearly shows that A2 and A3 were subsequently implicated by the witnesses.

12. P.W. 17 admitted that P.Ws. 1, 2 and 4 did not specifically state before him that all the accused threw the burning scorch. P.W. 1 only stated that he saw A1 and A4 throwing the burning scorch and P.W. 4 could identify only A1 and A4. P.W. 17 also stated that A2 and A3 were not suspects by the time inquest was conducted. Had really P.Ws. 1 to 4 seen A2 and A3 also at the time and place of the incident, they would have certainly stated before the police when they were examined. Perhaps that is the reason why P.W. 1 did not mention in Ex.P1 that A2 and A3 were also present at the time of the incident. Therefore, it appears that A2 and A3 appear to have been involved subsequently and the evidence of these witnesses to this extent is an improvement. Such material improvement cannot be taken into consideration.

13. In a situation like this, it is the duty of the Court to closely scrutinize the statement and if possible separate falsehood from truth. But, if falsehood is so inextricably mixed up with truth that it is not possible to disassociate the two from each other, only then the entire statement needs to be rejected. In case, however, it is possible to disengage the grain from the chaff, then the court must undertake that exercise for doing justice. With this legal position in mind, we would now see whether it is possible to separate the falsehood from truth in the evidence of P.Ws. 1 to 4.

14. A4 is the sister of P.Ws. 1 and 4 and A1 is the son of A4. P.W. 2 is the wife of P.W. 1. They are thus very closely related. If really some other persons had set fire to the deceased persons, P.Ws. 1 and 4 would not falsely implicate their own

sister and nephew, leaving the real assailants go scot-free, just because they queered the marriage alliances of D4. Insofar as A1 and A4 are concerned, the evidence of P.W. 1 is completely in corroboration with Ex.P1 which was lodged with the police within two hours of the incident. His evidence is further corroborated by the evidence of P.Ws. 2 to 4 to that extent. P.W. 3 is a neighbour of the accused and P.W. 1. He is an independent witness. He stated that he saw A1 and A4 running away along with two others from the house of P.W. 1 immediately after the incident. The evidence of these witnesses establishes beyond all reasonable doubt that they identified A1 and A4 as the persons responsible for causing the death of deceased persons. Though P.Ws. 1, 2 and 4 speak about A2 and A3 also, as already held supra their evidence to that extent is an improvement and has to be rejected. Thus it is clear that falsehood has not been inextricably mixed up in the evidence of P.Ws. 1, 2 and 4 and it is separable and has accordingly been separated. So we hold that P.Ws. 1 to 4 identified A1 and A4 responsible for the death of the deceased persons.

15. The next important piece of evidence is Ex.P3 dying declaration made by D4 before P.W. 7. P.W. 7 stated that the S.I. of Police had told him that Judicial Magistrate was not available and requested him to record the statement and accordingly he recorded Ex.P3 in the presence of two more Doctors. Ex.P3, which is in question-and-answer form, reads as under:

Q. What is your name?

A. Rajyalaxmi.

Q. What is your father's name?

A. Kusuma Komaraiah.

Q. What is your age?

A. Sixteen.

Q. Where were you sleeping?

A. I slept on the cot outside. Beside me, Laxman who is the son of my aunt slept.

Q. What happened to you?

A. Fire. Being burnt.

Q. How it happened?

A. My brother-in-law Sadanandam, Raju, and Posham set fire and ran away.

Q. Who are Raju and Posham?

A. Friends of my brother-in-law.

Q. Did you identify properly?

A. Identified.

Q. Why did they do like that?

A. Due to grudge on me, since I refused to marry my brother-in-law.

Q. At what time this happened?

A. I do not know.

16. Though it was suggested to P.W. 7 that he had recorded Ex.P3 at the instance of police, he denied the suggestion. Since P.W. 7 observed in Ex.P3 that the pulse rate and B.P., of D4 were not recordable and since D4 sustained 95 to 97% burns, her condition was severe and therefore it is not safe to place reliance upon Ex.P3. P.W. 7 was the best person to speak about the condition of the patient. He categorically stated that D4 was conscious, irritable and coherent. Nothing has been elicited in his cross-examination to discredit his testimony and the recitals in Ex.P3.

17. Learned counsel for the accused contended that D4 did not give the parentage, age and other particulars of A2 and A3 in Ex.P3 and therefore it is not safe to place reliance upon it to convict A2 and A3. In support of his contention, he relied upon a decision in Gopal Singh v. State of U.P., : 1972 CriLJ1045 wherein the Apex Court has held that conviction cannot be based on a dying declaration

which does not contain the names and addresses of the accused.

18. In State of Karnataka v. Shariff, 2003 AIR SCW 600 in which a reference has been made to the case of Gopalsingh (1 supra), it is held by the Apex Court in paragraph 19 as follows:

'It is well settled that, as a matter of law, a dying declaration can be acted upon without corroboration. See Khushal Rao v. State of Bombay, 1958 SCR 552: Harbans Singh v. State of Punjab 1962 Supp. (1) SCR 104: Gopalsingh v. State of M.P. : 1972 CriLJ1045 . There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the court has to be to find out whether the dying declaration is true. If it is so, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear of convincing that the court may, for its assurance, look for corroboration to the dying declaration.'

19. In another decision in Kanaksingh Raisingh Rav v. State of Gujarat, : 2003 CriLJ855 it is held by the Supreme Court that the law is well settled that if a dying declaration is made voluntarily and truthfully by a person who is physically in a condition to make such statement, then there is no impediment in relying on such a declaration.

20. Though Ex.P3 does not contain the parentage and surnames of A2 and A3 and their age, they were sufficiently described so as to be identified. P.W. 7 specifically questioned D4 as to who were 'Raju and Posham' for which she replied that they were friends of her brother-in-law (A1). It is not the case of A1 that he had no friends by name Raju and Posham or that he had more friends than one by those names. And either it is not the case of A2 and A3. There is evidence on record that A2 and A3 used to visit the house of P.W. 1 being friends of A1. P.Ws. 1, 2 and 4 stated that A2 and A3 used to come to the house of P.W. 1 and they were friends of A1. Therefore, with respect to the identification of A2 and A3 by their names alone, the evidence of these witnesses lends corroboration to Ex.P3. Hence, we hold that the identity of 'Raju' and 'Posham' has been established as A2 and A3.

21. P.W. 8 deposed that on 12.5.1997 A2 purchased 2 ltrs. of petrol from him in M.O.1 which is another circumstance against A2.

22. Learned counsel for the accused points out a discrepancy. P.W. 7 stated that he kept the dying declaration in a sealed cover and handed it over to the S.I. of Police who in turn submitted it to the learned Magistrate Luxettipet, whereas P.W. 16 too stated so but P.W. 17 stated that P.W. 7 himself sent it to the Court. This discrepancy would not create any doubt against the Prosecution, because nearly four years after the incident P.W. 7 deposed before the Court as to what he had done four years before. Therefore, such discrepancies are bound to occur which cannot be given undue importance to when they do not affect the substratum of the prosecution case.

23. Though M.O.1 was seized at the instance of A1, P.W. 13 admitted that the place where it was seized from was open to public. Therefore, the seizure cannot be an incriminating circumstance against the accused.

24. In view of the above discussion, we hold that there are no grounds to interfere with the impugned judgment. The trial Court after assessment of the evidence on record came to the right conclusion.

25. In the result the appeal is dismissed, confirming the conviction and sentence recorded by the trial Court.

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