

B.Ramachander Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Dec-27-2011

Judge : Samudrala Govindarajulu, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201, 202, 217, 148, 149, 302;
[Code Of Criminal Procedure \(Cr.P.C\), 1973](#) - 197, 197(1)(b),

Appeal No. : No.2136 of 2004

Appellant : B.Ramachander

Respondent : State of A.P. Rep. by P.P.

Advocate for Pet/Ap. : C.Padmanabha Reddy; C.Praveen Kumar, Advs.

Judgement :

SAMUDRALA GOVINDARAJULU, J.

1) The appellant/A-7 was working as Sub-Inspector of Police, Bela Police Station of Adilabad District. He was convicted by the II Additional Sessions Judge (Fast Track Court), Adilabad under Sections 201, 202, 217 I.P.C and was sentenced to rigorous imprisonments of two years, six months and one year and pay fines of Rs.3,000/-, Rs.1,000/- and Rs.1,000/- respectively. Questioning the same, A-7 filed this appeal.

2) It is prosecution case that on 20.02.2000 A-1 to A-6 armed with sticks, axes and poison tins attacked the deceased Bakre Ramji and his wife P.W-1 and beat them alleging that their son Bakre Kaud molested A-1's daughter and that on 01.03.2000 when the deceased went to fields for night watch, the accused administered poison to him by force and killed him and that on the next day, another son of the deceased by name Prakash (P.W-11) gave report to A-7 who came to the village and made enquiry with family members of the deceased and informed them that it was a natural death as there were no injuries found on the dead body, and that in spite of family members of the deceased testifying the death as suspicious one, A-7 forced them to execute a document and thereafter family members of the deceased buried the dead body as per family custom and that subsequently Inspector of Police, Adilabad Rural Circle on instructions of superior officers took up further investigation into the case and exhumed dead body of the deceased for the purpose of post mortem examination and that viscera collected from the dead body was sent to Forensic Science Laboratory where it was confirmed that the deceased died due to consumption of poison. The lower Court framed charges under Sections 148, 302/149 I.P.C against A-1 to A-6 and under Sections 201, 202, 217 and 218 I.P.C against A-7. All the accused pleaded not guilty of the charges. After trial, in which the prosecution examined P.Ws 1 to 24 and marked Exs.P-1 to P-48 and M.O-1 and the accused marked Exs.D-1 to D-5, the lower Court found A-1 to A-6 not guilty and acquitted them of all the charges, but found A-7 guilty of the above charges in respect of which convictions and sentences were passed.

3) In this appeal, it is contended by senior counsel for the appellant/A-7 that trial of the case for the offence under Section 217 I.P.C is vitiated for want of sanction for prosecution of A-7 under Section 197 Cr.P.C and that even as per the prosecution allegations, Section 202 I.P.C has no application to this case at all and that there is no causing disappearance of evidence of any offence in this case with an intention to screen any offender from legal punishment. It is further contended that the lower Court having found A-1 to A-6 not guilty of the charges against them, should have found A-7 also not guilty of the charges framed against him. In order to appreciate these contentions of A-7, it is necessary to go into certain factual aspects relating to these offences.

4) First and foremost grave irregularity alleged against A-7 in this case is that in spite of receiving report from P.W-11, A-7 failed to register case and to issue F.I.R on its basis either for suspicious death or for the offence of murder of the deceased. Secondly, grievance against A-7 is that he allowed dead body of the deceased to be buried by his family members without conducting inquest and getting post mortem examination conducted on the dead body, after forcibly obtaining a letter from family members of the deceased including P.W-11 to the effect that the deceased died natural death. It is evidence of P.W-11 that on the night, the deceased went to field to guard the same and on the next day morning P.W-3 went to the field and found the deceased dead and that they all went and saw the dead body and that he along with P.Ws 3 and 4 went to Bela Police Station to complain about death of the deceased as neck of the dead body was swelling indicating that there was suspicious behind death of the deceased. P.W-11 gave Ex.P-20 report with his signature to A-7. In Ex.P-20 report, it was alleged by P.W-11 that taking advantage of loneliness of the deceased, he was killed and that A-1 and his relations, family members and followers were responsible for the same and that before death, the deceased told him and his aunt that A-1 and his men may kill him. A-2 to A-6 are family members and relations of A-1. It is further evidence of P.W-11 that he gave Ex.P-20 report expressing suspicion against A-1 to A-6 since they had disputes with his father. He further says that A-7 along with police personnel came to the village and that A-7 told them that their property would not be sufficient to meet expenditure of the litigation if he proceeded with investigation, and that A-7 ordered them to bury the dead body and that accordingly they buried the dead body. P.W-11 continued to say that in spite of it, they requested A-7 to proceed with investigation against A-1 to A-6. In cross-examination he deposed that they did not complain against A-7 to his superiors when he stated that their entire property would not be sufficient to meet expenses of litigation. He admits that Ex.D-1 bears his signature.

5) Ex.D-1 is another letter given by P.W-11 to A-7. It also contains signatures of all family members of the deceased. Ex.D-1 reads that on 01.03.2000 as usual the deceased went to sleep and died and that his father's death was natural death and that they gave the said letter in the presence of villagers and that the petition given by them in writing previously was given out of mental agony and that they accept

that it was false, and that they were giving the present letter in writing with their own decision to the effect that their father's death was natural one and they were ready to undertake cremation of his father's dead body. It is further requested therein, not to take any action on the previous petition given by them. P.W-24 who is the then Inspector of Police, Adilabad Rural Circle is stated to have obtained Exs.A-20 and D-1 from A-7 during the course of investigation on 15.03.2000.

6) P.W-24 took steps for exhuming dead body of the deceased, conducting inquest on the dead body and subjecting the dead body for post mortem examination. P.W-19 is the then Deputy Civil Surgeon in Government Headquarters Hospital, Adilabad who conducted post mortem examination on dead body of the deceased on 17.03.2000. P.W-19 says that the dead body was putrefied and skin was oily. He found no external injuries on dead body. Even as per Ex.P-1 statement recorded by P.W-24 from wife of the deceased/P.W-1 which statement was registered as F.I.R in this case, reads that there were no external injuries on the dead body. P.W-19 collected viscera from dead body and it was sent to Forensic Science Laboratory for examination. Ex.P-27 is post mortem certificate issued by him reserving his opinion as to cause of death pending report from Forensic Science Laboratory as well as report on Hyoid bone sent to Kakatiya Medical College, Warangal for opinion. Ex.P-28 is opinion given by Forensic medical expert from Kakatiya Medical College to the effect that Hyoid bone was intact without any fracture. Ex.P-29 is Forensic Science Laboratory report to the effect that viscera contained Endosulphan an insecticide poison. Thereupon, P.W-19 gave Ex.P-30 final opinion as to cause of death to the effect that the deceased died due to Endosulphan, the insecticide poison.

7) The investigating officer P.W-24 filed general diary of Bela Police Station during trial in the lower Court. Ex.P-35 is entry No.7 in general diary dated 02.03.2000 and it reads that A-7 left the police station to Takli village to enquire into death of the deceased on receipt of Ex.P-20 report from P.W-11. Ex.P-36 is another entry No.13 in the same diary and it reads that A-7 returned from Takli village after completing the enquiry. Ex.P-37 is the general diary of the police station. It is elicited in cross-examination of P.W-24 that as per Ex.P-35 entry, A-7 took printed F.I.R to the spot and that as per Ex.-36, A-7 returned to the police station and

made an endorsement in general diary to the effect that in Takli village, sons of the deceased stated that the deceased died of natural death, and that on examination of the dead body A-7 did not find any suspicion of poisoning the deceased.

8) The above oral and documentary evidence on record reveals that A-7 did not cause disappearance of evidence in this case. He did not cause disappearance of Ex.P-20 first report given by P.W-11 after death of the deceased. A-7 scrupulously noted giving of the said report Ex.P-20 in general diary of the police station. After receipt of Ex.P-20 report, A-7 went to Takli village along with printed F.I.R book to get confirmation of death of the deceased. After going to village and seeing the dead body, A-7 as well as family members of the deceased noticed that there were no external injuries on the dead body. All these enquiries made by A-7 in the village were again scrupulously mentioned by A-7 in general diary of the police station. At the village, P.W-1 as well as all family members of the deceased gave Ex.D-1 letter to A-7 confirming death of the deceased as natural death and seeking permission to them for performing last rites to the dead body. A-7 mentioned receipt of Ex.D-1 also in the general diary. Another important fact to be noted in this case is that neither A-7 asked family members of the deceased to set fire to the dead body by way of cremation nor the family members did the same. Family members of the deceased buried the dead body as per their family custom; and the dead body was available for exhumation after 15 days during further investigation of the case by P.W-24. If it was intention of A-7 to cause disappearance of evidence of the offence, he would not have entered receipt of first report given by P.W-11 as per Ex.P-20 in general diary of the police station and he would not have allowed the dead body to be buried instead of cremating the dead body. For attracting an offence under Section 201 I.P.C., it is for the prosecution to prove apart from causing disappearance of evidence of commission of the offence, intention on the part of the accused of screening the offender from legal punishment. From the above discussion of evidence on record, it is evident that A-7 had no intention and did not entertain any intention to screen any offender, whether known or unknown, from legal punishment.

9) Till receipt of Forensic Science Laboratory report, there was no allegation muchless suspicion that the deceased died of any poisonous substance. Neither in

Ex.P-20 first report given by P.W-11 nor in Ex.P-1 statement recorded by P.W-24 from P.W-1 after 15 days of the offence, there was any iota of suspicion expressed by them or by any other family members that the deceased might have died of poisonous substance. There is no evidence on record to show that when A-7 went to Takli village for enquiry after receiving Ex.P-20 report, any of the villagers expressed any doubt or suspicion of death of the deceased due to poisonous substance. Evidence of P.W-11 that neck of the deceased was swelling indicating suspicion behind death of the deceased, is a subsequent development during trial. In Ex.P-20, P.W-11 did not state about swelling of neck of the deceased or entertaining suspicion on his death because of such swelling of neck. For the first time, P.W-11 gave evidence during trial in the lower Court to the above effect. The said evidence of P.W-11 is not entitled to any weight as it is baseless. Neither post mortem examination revealed any swelling of neck of the deceased or any injuries on neck of the deceased muchless P.W-19 opined that the deceased died of any neck injury. It is only out of abundant caution and in order to rule out the possibilities, P.W-19 collected hyoid bone as well as viscera and sent them for detailed examination by forensic experts. When there were no external injuries and suspicious features on the dead body and when family members and villagers did not express any cause for death of the deceased than natural death, A-7 thought that there was no reason for him to register the case and to proceed with further investigation on the basis of Ex.P-20 report. After A-7 went to the village and saw dead body after removing its clothes and found no external injuries or suspicious circumstances, P.W-11 gave another letter Ex.D-1 to A-7 along with signatures of all family members to the effect that previous petition given by him was given out of mental agony and now they were satisfied about natural death of the deceased. They also requested for permission to conduct last rites of the dead body. If really A-7 has any bad intention, he would not have entered all these facts in detail in general diary of the police station. Therefore, it cannot be said that A-7 had any knowledge or had any reason to believe that an offence had been committed against the deceased. A-7 did not cause disappearance of any evidence of commission of that offence. On the other hand, A-7 had preserved the entire material and documents and made necessary entries in the statutory register like general diary of the police station without suppressing any

circumstance or any document. A-7 had also no intention to screen any offender, whether known or unknown, from legal punishment. A-7 also did not give any information muchless with intention, which he knows or believes to be false. A-7's activity in the entire transaction was bonafide. Therefore, I have no hesitation to find that the lower Court erred in finding A-7 guilty under Section 201 I.P.C.

10) As a consequence of finding A-7 not guilty of the offence under Section 201 I.P.C, it should follow that A-7 is equally not liable under Section 217 I.P.C. A-7 did not register Ex.P-20 report of P.W-11 as a crime and did not issue F.I.R because when A-7 went for enquiry on Ex.P-20 report, he found no external injuries and no suspicious features on the dead body. Further, not only P.W-11 but also all family members of the deceased gave Ex.D-1 letter to him expressing that report given previously was out of mental agony and now all of them voluntarily gave that letter Ex.D-1 to him to the effect that the deceased died natural death. Evidence of P.W-11 that A-7 informed them that their properties may not be sufficient if he proceeds with investigation on Ex.P-20 report, becomes an after thought, since neither P.W-11 nor any family members of the deceased reported about the said utterances of A-7 to any superior officers expressing suspicion on the intentions of A-7. Finding of the lower Court that Ex.D-1 letter is not voluntary, is unwarranted from the evidence on record.

11) In any event, the offence under Section 217 I.P.C is one which is capable of being committed by a public servant alone and not by any other individual. Therefore, for prosecuting A-7 as public servant for the offence under Section 217 I.P.C, previous sanction of the State Government is a condition precedent under Section 197(1)(b) Cr.P.C. Without previous sanction obtained from the State Government, A-7 could not and should not have been prosecuted and the committal Court should not have taken cognizance of the said offence under Section 217 I.P.C. against A-7. In *S.B.Hossain V. Emperor*¹ the Calcutta High Court also held that the very nature of the offence under Section 217 I.P.C makes it clear that sanction for prosecution for this offence is clearly required. The lower Court did not address itself to this legal lacunae on the part of the prosecution. Therefore, prosecution of A-7 and trial as well as conviction recorded against A-7 for the offence under Section 217 I.P.C are vitiated for want of previous sanction of

the State Government under Section 197(1)(b) Cr.P.C.

12) Section 202 I.P.C has absolutely no application to facts of this case against A-7 since A-7 neither knew or had any reason to believe that an offence had been committed. There is no allegation against A-7 that he intentionally omitted to give any information respecting that offence. A-7 is not bound by any law to give any information to any one, since he believed that there was no offence committed against the deceased. Ultimately it transpired that the deceased died of poisonous substance. There is absolutely no evidence on behalf of the prosecution to show whether death of the deceased was homicidal or suicidal or accidental. The lower Court recorded the convictions due to excitement of omission of A-7 in not issuing F.I.R on the basis of Ex.P-20 and in not taking steps for conducting post mortem examination on the dead body. In view of the above discussion of the entire evidence and circumstances of this case, A-7 performed his legal duties meticulously by noting each and every fact and document relating to this case in general diary of the police station and coming to the conclusion bonafide that no offence was committed against the deceased. The convictions and sentences recorded by the lower Court against A-7 for all the offences are unsustainable on facts and in law.

13) In the result, the appeal is allowed setting aside the convictions and the sentences passed by the lower Court against the appellant/A-7 and acquitting him.

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