

Khambam Raja Reddy & Anr vs Public Prosecutor, High Court Of Andhra ... on 21 September, 2006

Equivalent citations: AIR 2006 SUPREME COURT 3236, 2006 AIR SCW 5021, 2007 (1) AIR JHAR R 324, (2006) 47 ALLINDCAS 496 (SC), 2006 (47) ALLINDCAS 496, 2006 CRILR(SC MAH GUJ) 826, 2006 (10) SRJ 279, 2007 (2) MADLJ(CRI) 1045, 2007 (57) ALLCRIC 578, 2007 (1) SCC(CRI) 431, 2006 CRILR(SC&MP) 826, 2007 ALL MR(CRI) 542, 2006 (9) SCALE 438, 2006 (11) SCC 239, (2006) 3 ALLCRIR 3006, (2006) 9 SCALE 438, (2007) 2 MADLW(CRI) 906, (2006) 3 RAJ CRI C 832, (2006) 4 RECCRIR 459, (2006) 4 CURCRIR 130, (2006) 7 SUPREME 333, (2006) 4 CRIMES 71, (2006) 35 OCR 482, (2007) 1 CHANDCRIC 77, 2007 (1) ANDHLT(CRI) 255 SC

Author: Altamas Kabir

Bench: A.K. Mathur, Altamas Kabir

CASE NO.:

Appeal (crl.) 329 of 2000

PETITIONER:

KHAMBAM RAJA REDDY & ANR.

RESPONDENT:

PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH

DATE OF JUDGMENT: 21/09/2006

BENCH:

A.K. Mathur & Altamas Kabir

JUDGMENT:

J U D G M E N T ALTAMAS KABIR, J.

The appellants herein along with one Khambham Pai Reddy were prosecuted for causing the death of Khambam Venkatramana Reddy. While the appellant No.1 was prosecuted for the offence punishable under Section 302 IPC, the two other accused were prosecuted under Section 302 IPC read with Section 34 IPC, in the alternative under Section 302 IPC read with Section 114 IPC and under Section 342 IPC.

In order to prove that the death of Khambam Vankatramana Reddy was homicidal, the prosecution relied upon the evidence of PWs1, 2, 3, 8 and 11. PW-1 is the widow of the deceased. PW-2 is the father of the deceased and PW-3 is the doctor who conducted autopsy on the body of Khambam

Venkatramana Reddy. PW-8 is one of the inquest witnesses and PW-11 is a Sub Inspector of police who conducted the inquest and deposed that he had found an injury near the left eye of the deceased as also on the left thumb. The case of the prosecution is that the victim and the accused persons were related to each other. The 1st accused is the son of accused Nos. 2 and 3 and the 3rd accused is the husband of the second accused. The 3rd accused and PW-2, Khambam Gangi Reddy, the father of the deceased, were brothers. It was the case of the prosecution that the relations between the accused and the family of the deceased were strained and there was subsisting hostility between the two groups.

According to the prosecution, on 9th May, 1994, the deceased harvested his paddy crop and placed it in a heap on Thellabanda near Koraparthivaripalle bus stop and on that night the deceased and his wife, PW-1 slept near the heap of paddy to keep a watch over the same. In the early hours of 10th May, 1994, the accused were said to be proceeding towards Thellabanda and one R. Venkataramana who was watering his fields is alleged to have focused his torch light on them. PW-1 is said to have woken up on hearing the noise of the accused persons proceeding towards Thellabanda and in the beam of her torch light she claims to have seen and recognized the accused persons. According to her, the accused Nos. 2 and 3 caught hold of her hands and gagged her by stuffing a cloth in her mouth to prevent her from crying out. At the same time, the 3rd accused exhorted the 1st accused to kill the deceased who was still in a sound sleep. On such exhortation, the 1st accused is said to have picked up a big stone and had thrown the same on the head of the deceased, as a result whereof, the deceased sustained fatal injuries on his head and died instantaneously.

Having committed the crime, the accused Nos. 1 to 3 ran away and PW-1 raised an alarm. On hearing the alarm, one Srivargani Guravaiah, PW-7, who was also said to be watching his paddy near the scene of the offence, focused his torch light and saw the accused Nos. 1 to 3 running away. PW-7 then rushed to the spot and found the deceased with head injury. PW-1 is said to have narrated the incident to him and then she went to the village and informed her family members about the said incident.

On 10th May, 1994, at about 10.00 A.M., PW-1 lodged a complaint which was registered as Crime No. 9/1994 under Section 302 read with Section 34 IPC. On the same day, PW- 11, a Sub Inspector of police, conducted inquest in respect of the dead body in the presence of PW-8 and thereafter the body was sent to the Government Hospital, Piler, for conducting post mortem. The doctor who examined the dead body was of the opinion that the deceased had died on account of the head injuries.

After completion of the investigation, the Investigating Officer filed chargesheet against the three accused persons, who denied their involvement in the incident and claimed that they had been falsely implicated on account of the subsisting rivalry between the two groups. It was also the defence of the accused that the story as narrated by PW-1 should not be accepted for the reason that the accused No.1 had suffered from polio and having been crippled by the said disease, he was unable to walk about for long without the assistance of an escort. In fact, a certificate issued by one Dr. M. Venkatadri, Civil Assistant Surgeon, Gandhi Hospital, Secunderabad, on 5th January, 1994, which was exhibited on behalf of the defence, disclosed that the accused appellant No.1 herein is

permanently disabled. It was contended that on account of his physical disability, it was impossible for the appellant No.1 to lift a stone weighing about 25 to 30 Kgs. and to throw it down on the head of the deceased. From the evidence adduced on behalf of the defence, the learned Sessions Judge found that the appellant No.2 was 59 years old and the 3rd accused was 68 years at the relevant time. The learned Sessions Judge upon appraisal of the evidence found the story of the prosecution to be improbable, basing his decision on the evidence that the appellant No.1 herein had been crippled by polio and it was physically impossible for him to lift a heavy stone weighing about 25 to 30 Kgs. in the manner suggested by the prosecution. The learned Sessions Judge also observed that it was improbable for two old people to overpower a young woman, namely, PW-1, and immobilize her so that the appellant No.1 could pick up and throw the heavy stone at the head of the deceased.

On the basis of the above, the learned Sessions Judge acquitted all the three accused persons of the charges framed against them.

In the appeal preferred by the State of Andhra Pradesh, the High Court disagreed with the findings of the learned Sessions Judge and observed that there was no positive evidence on record to show that the appellant No.1 is a crippled man. The High Court went on further to observe that even if the defence story that the appellant No.1 had suffered a polio attack was accepted, such attack was always to the legs and not to the hands and on such supposition, the High Court came to a finding that the appellant No.1 was strong enough to lift the stone weighing about 25 to 30 Kgs. and throw it at the head of the deceased. The High Court also held that the evidence of PW-1 inspired confidence and there was no reason to disbelieve the same. On such finding, the High Court held the accused Nos. 1 to 3 to be responsible for causing the death of the deceased.

However, the High Court was of the view that the offence committed by the accused persons, though homicide, did not amount to murder and had possibly been committed with the intention of causing grievous hurt to the deceased. The High Court accordingly held the accused persons to be guilty of an offence punishable under Section 326 IPC read with Section 34 IPC and convicted the accused Nos. 1 & 2 and sentenced each of them to suffer R.I. for seven years and to pay a fine of Rs. 1,000/-. In default, to suffer R.I. for one month more. As the accused No. 3 had died during the pendency of the trial, the case against him stood abated. This appeal is directed against the aforesaid judgment of conviction and sentence passed by the High Court of Andhra Pradesh.

While the case as made out by the prosecution that the accused No.1 had become crippled on account of an attack of polio and was physically unable to lift a stone weighing 25 to 30 Kg. for the purpose of commission of the crime was noticed by both the courts below, both the said courts appear to have overlooked the nature of the injuries which were found on the body of the deceased by the doctor who had conducted the post mortem examination on the body of the deceased. Since, we will have occasion to refer to the injuries later, the same are reproduced hereinbelow:-

"1) Contusion over the left cheek 5 x 6 cm.

size

2) Laceration over the left little finger 2 x 3 cm. size On dissection of head and neck:-

- i) Fracture of the maxillary bone 2 ± cm. size on left side which corresponds to external injury No.1
- ii) Fracture of the left parietal bone present 3 4 cm. size
- iii) Contusion present over the left parietal region of the brain about 3 x 4 cm. size
- iv) Haemorrhagic fluid present in the cranium about 500 ml.

Muscles of the neck are normal. Hyoid bone intact.

Chest: Ribs are norml.

Heart and lungs normal. Abdomen: Stomach contains undigested food particles mixed with vegetables. Instetines distended with gas Liver, Spleen, and both kidneys are normal. Bladder empty. Scrotum and testicles are normal."

The main thrust of the submissions made on behalf of the appellants was directed to the attack of polio suffered by the appellant No.1 which had left him crippled and made it impossible for him to lift a heavy object such as a stone weighing 25 to 30 Kgs. with which the offence is said to have been committed. The further contention of the appellants was that the High Court had failed to appreciate that in her evidence PW-1 had admitted that she had not seen any blood oozing from the ear, nose or mouth of the deceased after the commission of the offence. Certain material inconsistencies in the statements of PW-7 as to whether he had actually noticed the accused in the focus of his torch light were also pointed out. It was pointed that while he had stated in his deposition that he had woken up upon hearing the shouting and thereafter he switched on his torch light with the aid of which he noticed the accused persons running away from the scene, in his statement made under Section 161 Cr.P.C., he had mentioned that he was engaged in agricultural operations at the time of the incident.

The submissions made on behalf of the State supported the reasoning of the High Court and it was submitted that although there was only one eye-witness, who was the wife of the deceased, her evidence remained unshaken and there was no reason to disbelieve her evidence as to the manner in which the incident had occurred. It was also pointed out that the injuries suffered by the deceased were quite capable of being inflicted by a heavy object, such as a stone, being thrown at the head of the victim. In fact, the stand of the State was that since the injuries were corroborated by the evidence of PW-1, the High Court had rightly found the accused to be guilty of having caused the death of Khambam Venkatramana Reddy though without having the intention of killing him. There was, therefore, no ground for interference with the judgment of the High Court under appeal.

As indicated hereinbefore, both the courts below appear to have overlooked the nature of the injuries suffered by the deceased and to co-relate the same with the prosecution story. On an

examination of the injuries suffered by the deceased and the evidence of PW-1, it will be seen that the injuries do not match the ocular evidence. The injuries suffered by the deceased, which are extracted hereinbefore, do not indicate any depressed injury which would have to be present if a heavy object such as a stone weighing about 25 to 30 Kgs. were to be dropped on a person's head. In his deposition, PW-3, who had conducted the post mortem examination, stated that in the instant case, there was profuse bleeding internally but that he did not find any profuse bleeding in the external injury and that in the instant case, there was possibility of blood oozing from the nose and the mouth if attacked with an object such as Material Object No.1. However, while examining the deceased, he did not observe oozing of blood either from the mouth or nose. In Cross-examination, PW-3 has also observed that in case a heavy object touches a particular part of the body, there will be depressed wound or injury. The injuries as noticed by him, however, does not disclose any injury of such nature, which is inconsistent with the theory of the offence having been committed in the manner projected by the prosecution. Cox in his "Medical Jurisprudence and Toxicology", while dealing with head injuries, has described various types of fractures. He has described "depressed fracture" in the following words:-

"Depressed Fracture: This is also known as signature fracture or fractures a la signature as their pattern at times resembles the weapon which caused it. Heavy weapons with a small striking surface, eg, axe, hammer, stone etc, cause localized depressed fracture."

The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in the case of State of M.P. vs. Dharkole alias Govind Singh and Ors., reported in (2004) 13 SCC 308, where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence. The principle enunciated in Dharkole's case (supra) may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts. In the instant case, in the absence of any depressed injury and in the absence of any bleeding from the nose and ears of the deceased, we are unable to give credence to the evidence of PW-1 as to the manner in which the incident is said to have occurred.

Apart from the above, the High Court has also gone wrong in observing that there is no positive evidence on record to show that the accused No.1 is crippled. The High Court has proceeded on the supposition that since a polio attack is always to the legs and not to the hands, a person who had suffered from a polio attack, was capable of lifting a stone weighing about 25 to 30 Kgs. with his hands. The learned Sessions Judge has, in fact, referred to a certificate issued by Dr. M. Venkatadri, Civil Assistant Surgeon, Gandhi Hospital, Secunderabad, dated 5th January, 1994, to the effect that

the right leg of the appellant No.1 had been affected with polio and he was unable to travel without the assistance of an escort. Negatives in respect of the disability of the appellant No.1 showing him to have been attacked by polio had also been filed. For the appellant No. 1 to have lifted a stone weighing 25 to 30 kgs in his physical condition was highly improbable. The two circumstances taken up together creates sufficient doubt regarding the prosecution case and as to the manner in which the victim is said to have been killed. In the result, the appeal succeeds and is allowed. The conviction and sentence of the appellants herein are set aside. The appellants are on bail. Let them be discharged from their bail bonds and be set at liberty forthwith.