

CASE DETAILS

NAGARAJ REDDY

v.

STATE OF TAMIL NADU

(Criminal Appeal No. 886 of 2023)

MARCH 21, 2023

[B. R. GAVAI AND VIKRAM NATH, JJ.]

HEADNOTES

Issue for consideration: Concurrent conviction of the appellant-accused No.1 for offences punishable u/ss.302, 341 IPC primarily on the basis of evidence of PW-1, an interested witness, if justified.

Evidence – Interested witness – Previous enmity – Conviction based solely on the testimony of interested witness, without corroboration of such testimony – Legality:

Held: PW-1 is an interested witness, being the brother of the deceased – He admitted that there existed previous enmity between the parties wherein the deceased and his wife-PW-3 were injured after a scuffle between the parties and the trial with regard to that incident was ongoing – Previous enmity is a double-edged sword – On the one hand, it provides for the motive and on the other hand, the possibility of false implication cannot be ruled out – PW-1 was found to be unreliable by the trial court insofar as the other accused are concerned, except accused Nos.1 and 3 – Other witnesses, including PW-3, wife of the deceased, only stated that all of the accused persons came to their home in the village and exhorted that they had killed the deceased – On the basis of very same evidence, all the accused, except accused No.1-appellant and accused No.3 were acquitted by the trial court – High Court disbelieved the testimony of PW-1 insofar as accused No.3 is concerned and he was acquitted on the ground that he was arrested by the police within few days after the incident (which happened on 14.09.2004), whereas the arrest is shown on 22.09.2004 – Reasoning given by the High Court in distinguishing the case

of the present appellant as against accused No.3 is totally perfunctory—Appellant's conviction could not have been based solely on the testimony of PW-1, without corroboration – Impugned judgment quashed and set aside – Appellant acquitted of all the charges levelled against him – Penal Code, 1860 – ss.302, 341. [Paras 9-13, 15, 16 and 18]

LIST OF CITATIONS AND OTHER REFERENCES

Khema alias Khem Chandra etc. vs. State of Uttar Pradesh 2022 SCC-OnLine SC 991; *Vadivelu Thevar vs. State of Madras* [1957] SCR 981 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 886 of 2023.

From the Judgment and Order dated 31.03.2022 of the High Court of Judicature at Madras in CRLA No.34 of 2019.

Appearances:

Venugopala Gowda, Sr. Adv., Shiva Krishnamurti, Balaji Srinivasan, Advs. for the Appellant.

Dr. Joseph Aristotle S., Shobhit Dwivedi, Ms. Vaidehi Rastogi, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

B. R. GAVAI, J.

1. This appeal challenges the judgment and order dated 31st March 2022, passed by the High Court of Judicature at Madras in Criminal Appeal No. 34 of 2019, wherein the High Court dismissed the appeal preferred by accused No. 1, appellant herein, against the judgment and order of conviction dated 20th December 2018, passed by the Additional District and Sessions Judge, Hosur (hereinafter referred to as ‘trial court’), in S. C. No. 7 of 2007, for the offences punishable under Sections 302 and 341 of the Indian Penal Code, 1860 (for short ‘IPC’), sentencing him to undergo life imprisonment.

2. The case of the prosecution in a nut shell is as follows:

2.1. One Rajappa (the deceased) along with all other accused persons, including the appellant herein, hail from Oozhiyalam village in Krishnagiri district. It is pertinent to note that the deceased and the accused persons belong to different communities. Radha (PW-3), wife of Rajappa, was the president of the local Outreach Women Self Help Group.

2.2. A portion of land in Oozhiyalam village was purchased by the aforesaid Self Help Group. To build a compound wall around the said land, a contract for building the same was given to the people hailing from the deceased's community. Such an act inflamed tensions between the two communities and several quarrels ensued, one of which led to criminal cases being registered against both the parties in the Bagalur Police Station. Both the parties were facing prosecution in the Court of Judicial Magistrate, Hosur.

2.3. While the situation stood thus, Rajappa, on 14th September 2004 at around 10 AM, left his home on his motorcycle along with his elder brother Narayanappa (PW-1) to depose before the Court of the Judicial Magistrate, Hosur. On their way to Court, accused Nos. 1 to 5 waylaid them near a check post, quickly sprinkled chili powder on the face of Rajappa and hacked him to death. It is specifically alleged that the present appellant threw chili powder on Rajappa and subsequently used his sickle to deliver a blow on the left side of Rajappa's head. After committing the crime, all the accused went back to the village and pelted stones at the house of Rajappa while loudly proclaiming that they had finished Rajappa off, and that other members of Rajappa's family would meet the same fate too. In the meanwhile, Narayanappa(PW-1), who had escaped from the place of occurrence, ran back to the village and informed Radha about the attack on Rajappa. Thereafter, they along with others, returned to the place of occurrence. In the meanwhile, the son of Koopaliappa, who is Rajappa's brother, rushed to the Bagalur Police Station to lodge a complaint, whereas Koopaliappa (PW-4) himself rushed to the check post where he found his brother Rajappa dead.

2.4 Thereafter, on the basis of the statement given by PW-1 to Rajsekhar (PW-11), the Village Administrative Officer, which was treated as a complaint, a case being Crime No. 251 of 2004 was registered at

HUDCO Police Station on the same day, i.e. 14th September 2004, at around 1 PM, for the offences punishable under Sections 147, 148, 341 and 302 of the IPC, against five accused persons, including accused No. 1- Nagaraja Reddy, the appellant herein. Muthamizh Mudalvan (PW-16), the Investigating Officer (IO), prepared a mahazar report and, thereafter, conducted an inquest over the dead body of Rajappa. The dead body of Rajappa was then sent to Government Hospital, Hosur, where an autopsy was performed and the cause of death was determined to be injury to a vital organ, i.e. the brain. The IO, thereafter, arrested accused Nos. 2 to 5, with the date of their arrest being shown as 22nd September 2004. On the very next day, i.e. 23rd September 2004, the appellant herein surrendered before the Judicial Magistrate Krishnagiri and, on 1st October 2004, he was taken into police custody.

2.5 During the course of investigation, the role of accused Nos. 6 to 13 came to the fore and they too were arrested, on the allegation that they had conspired to get rid of Rajappa, a prominent figure of his community. Thereafter, the trial commenced where all the accused pleaded not guilty. Nagi Reddy, accused No. 2, perished during the course of trial and as such, the trial against him abated.

2.6 At the conclusion of trial, the trial court, vide its judgement and order dated 20th December 2018, acquitted accused Nos. 4 to 13 but convicted accused Nos. 1 and 3 for the offences punishable under Sections 302 and 341 of the IPC and sentenced them to undergo life imprisonment along with a fine of Rs. 1500/- . The trial court largely relied on the testimonies of PWs 1, 3 and 4 for convicting them.

3. Aggrieved by their conviction and sentence, accused Nos. 1 and 3 preferred an appeal before the High Court. Pertinently, the State did not prefer any appeal against the acquittal of accused Nos. 4 to 13. The High Court, vide the impugned judgment and order, confirmed the conviction and sentence imposed on the appellant herein but acquitted Sridhar Reddy, accused No. 3 of all the charges levelled against him, finding that, while he had been arrested a few days after the incident, the date of his arrest was shown only as 22nd September 2004.

4. Hence, the present appeal.

5. We have heard Shri Venugopala Gowda, learned Senior Counsel appearing for the appellant and Dr. Joseph Aristotle S., learned counsel appearing for the respondent-State.

6. It is submitted on behalf of the appellant that the High Court has grossly erred in convicting the appellant for the offences punishable under Sections 302 and 341 of the IPC. He submitted that on the basis of the evidence of Narayanappa (PW-1), accused No. 3 – Sridhar Reddy has been acquitted. He further submitted that, the conviction of the appellant on the basis of the same is not tenable in law.

7. Dr. Joseph Aristotle S., on the contrary, submitted that the trial court as well as the High Court has concurrently, found the present appellant guilty of the offence on the basis of appreciation of evidence. He submits that no perversity could be noticed in the concurrent findings of fact.

8. The conviction by the trial court and the High Court is primarily on the basis of evidence of Narayanappa (PW-1).

9. Narayanappa (PW-1), in his evidence, has stated about the deceased's previous enmity with the accused persons in the year 2002, wherein the deceased and his wife Radha (PW-3) had gotten injured after a scuffle between the parties. PW-1 also stated that the trial with regard to that incident was ongoing in the Judicial Magistrate Court, Hosur. PW-1 further stated that on 14th September 2004 at around 09:45 hours, he and his deceased brother were riding on a TVS 50 motor vehicle. When they were riding towards MS Nursery Farm, accused No. 1 – Nagaraja Reddy, accused No. 2 – Nagi Reddy, accused No. 3 – Sridhar Reddy, accused No. 4 – Krishna Reddy and accused No. 5 – Ranganatha Reddy, stopped them by brandishing harvest knives and then threw chili powder in their eyes. He stated that accused No. 1 – present appellant, stabbed the deceased with a harvest knife, due to which the deceased Rajappa fell down. Thereafter, accused No. 2 – Nagi Reddy attacked him with a harvest knife with considerable force on his right leg. Resultantly, his leg was severed into two parts. PW-1 further stated that, thereafter, accused No. 3 – Sridhar Reddy attacked the deceased on his left foot. After that, accused No. 4 – Krishna Reddy attacked him on the middle part of the deceased's head. He submitted that, thereafter, he ran through a short cut route and informed Radha (PW-3), wife of Rajappa about the said incident.

10. Insofar as other witnesses are concerned, undisputedly, none of them is an eye witness. The other witnesses, including Radha (PW-3), wife of the deceased, only stated that all of the accused persons came to their home in the village and exhorted that they had killed Rajappa.

11. On the basis of the very same evidence, all the accused, except accused No. 1 – present appellant and accused No. 3 – Sridhar Reddy, were acquitted by the trial court. The High Court acquitted accused No. 3 - Sridhar Reddy, only on the ground that he was arrested by the police within few days after the incident, whereas the arrest is shown on 22nd September 2004. The present appellant was convicted on the ground that he was absconding after the incident and that he surrendered voluntarily before the Magistrate on 23rd September 2004.

12. We find that the reasoning given by the High Court in distinguishing the case of the present appellant as against accused No. 3 is totally perfunctory.

13. Undisputedly, Narayanappa (PW-1) is an interested witness, being the brother of the deceased. He has also admitted that there existed previous enmity between the parties. As held by this Court in a catena of cases including a recent decision in the case of *Khema alias Khem Chandra etc. vs. State of Uttar Pradesh*¹, previous enmity is a double-edged sword. On the one hand, it provides for the motive and on the other hand, the possibility of false implication cannot be ruled out.

14. This Court in the case of *Vadivelu Thevar vs. State of Madras*² has held thus:

“11. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

¹ 2022 SCC-OnLine SC 991

² (1957) SCR 981

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way – it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial...”

15. Undisputedly, Narayanappa (PW-1) has been found to be unreliable by the trial court insofar as the other accused, except accused Nos. 1 and 3, are concerned. The High Court has also disbelieved the testimony of PW-1, insofar as accused No. 3 is concerned.

16. In that view of the matter, we are of the considered opinion that the conviction could not have been based solely on the testimony of Narayanappa (PW-1), without corroboration of his testimony.

17. In the result, the appeal is allowed.

18. The impugned judgment dated 31st March 2022, passed by the High Court of Judicature at Madras, thereby confirming the conviction and sentence of the present appellant passed by the trial court, vide its judgment and order dated 20th December 2018, are quashed and set aside. The appellant herein is acquitted of all the charges levelled against him and is directed to be set at liberty forthwith, if not required in any other case.

19. Pending application(s), if any, shall stand disposed of.