Duvvur Dasratharamma Reddy

Vs

State of Andhra Pradesh

Appeal No. 169 of 1970

(C. A. Vaidilingam, A. N. Ray JJ)

13.04.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, by the accused is against the judgment and order, dated March 11, 1970, of the High Court of Andhra Pradesh confirming his conviction for an offence under Section 302, I.P.C. and the sentence of death passed for the said offence.

2. The appellant was charged of the offence of causing the death of his father-in-law Adepareddi be beating him with a battle axe on his head on the night of May 9, 1969 and also for an offence under Section 201, I.P.C. by digging a pit and burying the dead body and thus causing the evidence of murder to disappear. Though he was convicted also for the offence under Section 201, I.P.C., no separate sentence has been passed as he has been sentenced to death for the offence under Section 302, I.P.C.

3. The deceased Adepareddi was a ryot of Varagali owing five acres of land irrigated by pumpset. He was aged about 60 years and he was living in his village with his wife P.W. 3, aged about 40 years, two daughters, P. Ws. 4 and 5, and his two young sons. One K. Ramireddi, a cousin brother of the deceased was also living along with the family in the same house. P.W. 5, the eldest daughter of the deceased had been married to the appellant about 1 1/2 years prior to the incident and he was also staying with the deceased as his Illatam son-in-law and helping the deceased in his agricultural operations. There was two servants P. Ws. 1 and 2, who were also staying in the house. P.W. 1 was looking after the cattle of the deceased and P.W. 2 was attending to cultivation under the direction and control of the deceased and the appellant. It may be mentioned that P.W. 1 belonged to the village of the appellant and he came over to the house of the deceased along with the appellant when he was married.

4. According to the prosecution the appellant was in illicit intimacy with his mother-in-law P.W. 3 and in consequence there were frequent quarrels between the appellant and his father-in-law, the deceased. After quarrelling, every time the deceased used to leave the house and stay elsewhere for a short time and later on return to the house. On May 9, 1969, one Kesareddi Adepareddi, a casteman of the deceased died in the village and the deceased was requested by his relations to come and light the funeral pyre. The deceased was inclined to agree to the request, but the appellant objected to the same. The deceased yielded to the appellant's protest and he merely attended the funeral of Kesareddi Adepareddi and came back to the house. After taking food in the night at about 8.00 or 8.30 p.m., the deceased, as usual, left his house to sleep in the field which was about 1 1/2 miles from the village. When the deceased was leaving the house, the appellant seems to have

angrily demanded for payment of the price realised by the sale of groundnut and the deceased replied that he would go to another village, collect the money and give it to the appellant.

5. After the deceased left the house for his field, the appellant is stated to have asked P.W. 1 to accompany him to the field to kill his father-in-law. P.W. 1 refused to accompany him. The appellant went inside the house and came out with an axe and left the house with P.W. 2. The appellant, after going to the field, is stated to have given a blow on the head of the deceased with the axe and end P.W. 2 attempted to run away from the scene, he was brought back by the accused with the threat that he too will meet the same end. P.W. 2 came back and saw the appellant digging a pit and burying the body of the deceased. Both the appellant and P.W. 2 came back to the house sometime in the midnight and put the axe inside the house.

6. P.W. 1 when he went to the field next morning to attend to the agricultural operations, he found blood near the cot where the deceased used to sleep and also saw a new mound in the field. He became suspicious and he asked the accused about the mound which was not there the previous day. The accused threatened P.W. 1 by saying that he would be killed if he mentioned to anybody about what he had seen or what be knew.

7. P.W. 3 after a few days, finding that her husband had not come back to the house, asked her daughter P.W. 5 to write to her uncle in another village, who came and informed them some days afterwards that the deceased has not come to his village. In the meanwhile there were rumours in the village that the appellant had murdered his father-in-law and buried him in his field. P.W. 7, the father of P.W. 2 on hearing about the rumours, asked her son (P.W. 2) about the matter, and he mentioned to her that the appellant had killed his father-in-law and that he has threatened to kill him also if he disclosed the fact to any one. One hearing about this, P.W. 7 went and informed the widow of the deceased P.W. 3. P.W. 1 was attempted to be beaten by the appellant a few days after the incident for stealing groundnuts and therefore he went and mentioned to a friend of his P.W. 6 about the appellant having murdered his father-in-law some days back. On the suggestion of P.W. 6, P.W. 1 went and gave the report Ex.P. 1 to the village Munsif P.W. 9, on July 1, 1969. In Ex.P. 1, P.W. 1 has stated that he was an employee of the deceased and that on the night when his master died, the appellant wanted P.W. 1 to accompany him to kill his father-in-law and bury his body in the field. It is further stated that P.W. 1 declined to accompany the appellant and it was only on the next morning that he was blood-stains on the cot on which the deceased used to sleep and he also saw a freshly erected mound. As the appellant threatened him that he too will meet the same fate, he has no mentioned the same to anybody so far.

8. On the basis of this report, the village Munsif contacted the police authorities who took up the investigation. The body of the deceased was exhumed on July 3, 1969, in the presence of the Magistrate P.W. 13 and the doctor P.W. 15 and P. Ws. 1 to 5. There were also a number of other people of the village at that time. P.W. 12 conducted the post-mortem on the body of the deceased and the certificate is Ex.P. 11. It is mentioned therein that the body was a in a highly decomposed state and the following injuries were noted :

> "1. Defect on the right side of skull anteriorly 4" x 2" with cominuted fracture of skull bone, right parietal and right temporal bones. Six bits of bone loosely attached to soft tissues decomposed at the defect.
>
> 2. Fracture of 1 lumber vertebra spine body laminae and traverse process.

3. Fracture of IV lumber vertebra spine and body. These two injuries correspond to defects in banian. No other bony injury could be made. But all soft tissues and viscera liquified into one mass due to decomposition and nothing could be made out."

P.W. 15 has stated in the certificate that the deceased appeared to have died due to injuries on head and spine. During the course of investigation P.W. 3 is stated to have produced from the house the axe M.O.I. Though the Chemical Examiner has reported that it contained blood-stains, the Serologist has stated that the blood-stains have become so disintegrated that the blood group could not be established.

9. The prosecution relied on the evidence of P. Ws. 1 to 5 regarding the quarrels that took place frequently between the appellant and the deceased and for establishing that the appellant armed with the axe left on the night in question along with P.W. 2 and came back late in the night. They have also spoken to the appellant demanding the sale proceeds of the groundnuts from the deceased when the latter was leaving the house to go to the field. They have also spoken to the fact that the deceased was last seen only on that night that attempts to trace him in other places failed. In particular so far as the actual is concerned, the prosecution almostly entire based its case on the evidence of P.W. 2.

10. The accused denied the offence and pleaded that the evidence given against him is false and that he was not in the village on the night in question.

11. Both the learned Sessions Judge and the High Court have accepted the evidence of P.Ws. 1 to 5 and in particular regarding the incident the evidence of P.W. 2. Both the Courts are of the view that it is quite possible that P.W. 2 must, whether willingly or unwillingly, have also been a party to the murder, but nevertheless his evidence can be safely acted upon. The prosecution had relied on the confession stated to have been made by the appellant regarding the murder to his mother-in-law P.W. 3 and his wife P.W. 5. The learned Sessions Judge was not prepared to act on these confessional statements, but the High Court was prepared to act on the same. Ultimately on the basis of the evidence of these witnesses and the medical evidence regarding the cause of death, the appellant has been convicted as stated above.

12. On behalf of the appellant Mrs. E. Udayarathnam, Amicus Curiae, has very strongly urged that the evidence is very flimsy and untrustworthy and artificial. The counsel pointed out that P.W. 2, if his evidence is true, is an accomplice and his evidence should have been tested in that light. On the other hand, both the courts have proceeded on the basis that he is an independent witness speaking to what he has witnessed without having anything to do with the crime. The counsel also stressed that though the incident has happened on May 9, 1959, P.W. 1 who is fully aware of what has happened did not mention to anybody about the incident till as late as July 1, 1969. The reasons given by him for not mentioning to anybody for such a long time about the occurrence are unconvincing. P.W. 2 had admittedly, on his own evidence, left the service of the appellant within two days after the incident and any threat that the appellant may have administered must have ceased then. He also did not mention this to anybody till nearly four or five weeks afterwards and that too when his mother P.W. 7 is stated to have asked him on the basis of the rumours in the village. None of the members of the family including P.W. 3 have evinced any interest to trace the deceased when he did not come back within a few days after he left the house on the night of May 9, 1969. She further urged that the High Court should not have acted on the so-called confessional statements stated to have been made by the appellants to P.Ws. 3 and 5. P.W. 3 is a woman of no

character and her evidence is absolutely untruthful. For all these reasons, the counsel pointed out, that there is a grave doubt created regarding truth about the prosecution evidence and the appellant must be given the benefit of the same.

13. On the other hand, Mr. P. Ram Reddy, learned counsel for the State pointed out that the appellant appears to have been a tyrant and threatening everybody who was not inclined to agree with him. Even on the basis that P.W. 2 is to be treated as an accomplice, the Courts have not acted on his sole testimony and that the conviction of the appellant was made only after corroboration has been found for his evidence. The counsel urged that such a corroboration is to be found in the detection of blood by P.W. 1 near the cot of the deceased next morning, the threat administered to P.W. 1 when he asked about he earthen mound the evidence of the doctor that no instrument like M.O.I. could have caused the injuries on the body of the deceased and detection of blood-stains by the Chemical Examiner on the axe. Quite naturally he relied on the evidence of P.Ws. 3, 4 and 5 regarding the appellant having left the house on the night in question with the axe accompanied by P.W. 2 and to both of them returning home about midnight. He has also placed reliance on their evidence regarding the frequent quarrels between the appellant and the deceased and the illicit relationship between the appellant and P.W. 3. According to him the High Court was justified in accepting as true the confession stated to have been made by the appellant to P.Ws. 3 and 5. In particular, he urged, that P.W. 5 is none else than the wife of the appellant and she would not be a party to give false evidence against her husband thereby implicating him in a very serious crime.

14. We have given out careful consideration to the various aspects placed before us by the learned counsel on both the sides as also the reasons given by the High Court for agreeing with the conclusions arrived at by the learned Sessions Judge. We are of the opinion that though there may be a very strong suspicion against the appellant, it cannot be stated, in the circumstances of this case, that the prosecution has proved the crime as against the appellant beyond all reasonable doubt.

15. It is not necessary for us to deal with the entire evidence in the case. We will only refer to such part of the evidence of the witnesses to show that the witnesses are not stating the whole truth.

16. P.W. 1 admittedly deposed that on the night in question he was sleeping in the house of the deceased. He has stated that the appellant woke him up and asked him to follow to the field where his father-in-law, the deceased, had gone, so that he may be killed and his body buried in the field. When this conversation took place P.W. 2 was at a little distance away from them. P.W. 1 says that he refused to go with the accused, on which the latter went inside and came out with an axe and went out of the house with P.W. 2. It is only the next morning that when he went to the field and found blood drops near the cot of the deceased and a fresh earthen mound he became suspicious. When he asked the accused, he was threatened to keep quiet and not to mention to anybody on pain of death.

17. It was only after a lapse of very many days that when he was attempted to be beaten by the appellant that he became angry and mentioned for the first time to P.W. 6 and on his suggestion gave the report to the village Munsif P.W. 9 on July 1, 1969. He has admitted that he had not mentioned about the incident between May 9, 1969 and about a day prior to July 1, 1969. He has also stated that P.W. 2 left the service of the appellant two days after the incident. His explanation for not mentioning to anybody is the threat administered by the accused on the next day after the incident.

18. It will be seen from the evidence of this witness that though he knew on the morning of May 10, 1969 that the appellant had murdered his father-in-law, he has not cared to mention about the same

to anybody till July 1, 1969. It is rather strange that the threat stated to have been administered to him by the appellant on May 1, 1969 was haunting him and prevented him from mentioning it to any body. All the more it is strange that he did not mention even to any of the inmates though he was staying in the house all along. But the more important point to be noticed and which has been missed by the two courts is that even on the night of May 9, 1969 the witness knew very well that the appellant was planning to murder his father-in-law. In fact his evidence is that he was called by the appellant to accompany him for the said purpose and to bury the body and that he declined. So when he was the appellant going with the axe immediately thereafter in the night along with P.W. 2 to the field, the witness must have realised that the object of the appellant in going to the field was to murder his father-in-law. Though assuming that he may not be courageous enough to stop the appellant from going, nothing prevented him from immediately rushing into the house and telling P.Ws. 3 to 5, who, on the evidence it is clear, were all wide awake, about the evil design of the appellant. He does not do anything of that sort. It is in evidence that along with the members of the family of he deceased, the latter's cousin brother K. Ramareddi was also in the house. Even assuming that P.Ws. 3 to 5 were women and informing them would not have served any purpose, when there was available in the house and adult male member, who could have taken some action immediately, if informed. P.W. 1 made no attempt to contact K. Ramareddi, who was in the house. P.W. 1 has further stated in his cross-examination that he did not know the purpose for which he was called by the accused to accompany him to the field though in the chief-examination

he has categorically stated that the accused had mentioned the purpose. P.W. 1 has stated that when the accused left the house in the night, all the inmates were fast asleep whereas the evidence of P.Ws. 3 to 5 is that all of them were fully awake and knew about the accused going out of the house with P.W. 2 with the axe as also his coming back to the house. P.W. 1 also did not ask P.W. 2 after he came back with the accused in the middle of the night as to whether anything happened in the field. All these circumstances, which have not been noted by the two courts clearly indicate that P.W. 1 is not a truthful witness, and there is a considerable doubt caused in the case of the prosecution.

19. Coming to P.W. 2, admittedly his evidence has to be treated with great caution. According to him, the appellant took him to the field saying that there is a theft of mangoes in the field, which has to be watched. The witness accompanied the appellant, who is stated to have given a deadly blow to his father-in-law, who was sleeping on the cot. As he became afraid, he began to run away, but he was threatened to come back by the appellant. But the witness did not do, according to him, anything further in the manner except watching the appellant digging a pit, carrying the body of the deceased and burying the same into the pit and covering it with mud. Does it mean that the appellant took this witness only to enable him to come as a witness to speak to the occurrence ? Further, even according to his evidence, P.W. 2 left the service of the appellant within two days after the crime. Therefore, even if there was any threat by the appellant it must have vanished after the witness left the service and nothing prevented him from mentioning about the incident to any of the villagers, or even to the police authorities. On the other hand, he does nothing of the sort and it is only after four or five weeks after the incident, when his mother P.W. 7 asked him about the rumours in the village that he mentioned to her for the first time that the appellant had murdered his father-in-law. The witness does not strike to be a very truthful witness and what part he had in the death of the old man is a mystery. Both the High Court and the learned Sessions Judge have not given due importance to some of the aspects mentioned above and they have merely accepted as true his evidence as if he is an independent witness.

20. P.W. 3, the widow of the deceased, admits that she was on illicit relationship with her son-in-law, the appellant, and it shows that she is a characterless person. No serious attempt has been made

by her to trace the whereabouts of her husband even though he had not come back to the house within a reasonable time after May 9, 1969. No doubt, there is on record a post card Ex.P. 2, written by P.W. 5 on behalf of P.W. 3, dated May 25, 1969 to P.W. 10. That post card refers to so many other matters and there is only a very casual inquiry regarding the whereabouts of the deceased. P.W. 10 has given evidence to the effect that he came to the village and informed P.W. 3 after 10 or 15 days later than the deceased did not come to his house. This only shows the very scanty regard that P.W. 3 had regarding the existence of the deceased. P.Ws. 3, 4 and 5 have stated that on the night in question, the appellant took the axe and left the house with P.W. 2 saying that he is going to the field and that he came back at about midnight or 1 a.m. Their evidence gives an impression that nobody in that house appears to be sleeping because all of them are awake the whole of the night at the material time to see the appellant going out of the house and coming back though very late in the night or even early next morning.

21. No doubt there is evidence of P.W. 5 to the effect that the appellant went out with an axe on the night accompanied by P.W. 2, but according to P.W. 5, the purpose of his going out was to watch the theft of mangoes and this by itself does not in any manner implicate the appellant in any crime.

22. The evidence of P.Ws. 3 and 5 that the appellant confessed to them that he had murdered his father-in-law, has not been rightly acted upon by the learned Sessions Judge. We have gone through that part of their evidence and we are of the opinion that the evidence in this regard is so artificial that it is not safe to place any reliance on the same. According to P. W. 3 when several weeks after the incident and when rumours were afloat in the village, P.W. 7 came and informed her about the information given by her son P.W. 2 that the appellant has killed his father-in-law and buried him in the field. On this P. W. 3 is stated to have asked the appellant whether the rumour is true and the appellant confessed that he murdered his father-in-law and his body was buried in the field. Similarly, P.W. 5 states that along after the incident, she found the appellant one day in a very distressed mood and when she asked him the reason, the appellant stated to her that he had killed her father. The evidence regarding this confession stated to have been made to P.Ws. 3 and 5 is very artificial and cannot be acted upon. Their evidence does not appear to be true. The High Court was not justified in acting on the basis that the appellant had made any confession to P.Ws. 3 and 5. Their evidence appears to be somewhat unusual and mechanical. They did not evince any anxiety about the whereabouts of the deceased after he failed to return the house within a reasonable time. In view of the above circumstances, it is no safe to place reliance on their evidence. Even otherwise their evidence regarding the appellant going out of the house for the purpose of watching the theft of mangoes by itself will not implicate the appellant in any offence.

23. According to P.W. 1 when the accused left the house on the day in question and came back in the night, all were fast asleep, whereas according to P.Ws. 3 to 5 they were all awake when the accused left the house with the axe along with P.W. 2. In fact their further evidence is that the accused stated that he is going to the field to watch as there is theft of mangoes. They have also stated that they saw the accused returning to the house late in the night and putting the axe in the chillis pot. Here again it is to be noted that when the accused had told them that he is going only to watch the theft of mangoes, they never asked him why he has come back even before the day break. The have also stated that the accused was in the habit of taking the axe whenever he went to he field.

24. P.W. 15 though in his post-mortem certificate has stated that the deceased would appear to have died of injuries on head and spine, in his evidence he categorically stated that he cannot say whether he injury No. 1, which was a fatal one, is an ante-mortem or post-mortem. This additional

circumstance again strengthens the doubt that already exists in the case of the prosecution. In one the case of the prosecution regarding the offence of murder is not accepted, it follows that the appellant cannot be convicted for the officer under Section 201, I.P.C., either because the evidence relating to that offence is common.

25. Though normally this Court does not re-appreciate the evidence, which has been accepted concurrently by the two courts, in view of the strong suspicious circumstance, pointed out above, regarding the truth of the evidence given by P.Ws. 1 to 5, we have considered it necessary in the interest of justice to consider their evidence more critically.

26. For the above reason we are on the opinion that it cannot be said that the prosecution has been proved the guilt of the accused beyond all reasonable doubt. In consequence the appeal is allowed. The conviction of the appellant under Section 302, I.P.C. and the sentence of death imposed for the said offence as well as his conviction for the offence under Section 201, I.P.C., by the Sessions Judge, as confirmed by the High Court, are set aside and the accused is acquitted of those offences. He shall be set at liberty.

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