Pattipati Venkaiah

Vs

State of Andhra Pradesh

Criminal Appeal No. 286 of 1977

(Syed M. Fazal Ali, A. Varadarajan JJ)

16.08.1985

JUDGMENT

FAZAL ALI, J. -

1. This appeal under Section 379 of the Code of Criminal Procedure, 1973 is directed against a judgment dated April 4, 1977 of the Andhra Pradesh High Court which reversed the order of acquittal passed by the trial court and convicted the appellant under Section 302 IPC and sentenced him to imprisonment for life.

2. The facts of the case have been detailed in the judgments of the High Court and the trial court and need not be repeated all over again. The main evidence consists of PWs 1 and 2 who were the eyewitnesses to the assault and had proved that the deceased died as a result of the injuries inflicted upon him by the accused. The trial courts as also the High Court disbelieved PWs 6 to 9 and, therefore, it is not necessary for us to refer to their evidence. The main witnesses - PWs 1 and 2 - were examined on the very day of inquest and their statement carries great value.

3. Mr. R. K. Garg, learned senior counsel for the appellant, submitted that the High Court was not at all justified in reversing the judgment of the trial court in the absence of any clear error of law and more particularly because the view taken by the trial court was "reasonably possible".

4. There is no dispute with respect to the above proposition but the sheet-anchor and the fundamental core of the argument of Mr. Garg was that the FIR was full of infirmities which intrinsically went to show that it was fabricated by the Investigating Officer after the death of the deceased. It was further urged Mr. Garg that if the FIR fails and is held to be a spurious document then the entire edifice of the prosecution case would fall to the ground. We agree that so far as the proposition of law stated by the learned counsel is concerned, there can be no quarrel with the same.

5. The question for determination, however, is whether the defence had proved that the FIR was really a false and fabricated document. We have ourselves gone through the long and detailed FIR but we are unable to find any serious infirmity in the same because, according to the prosecution, the FIR was recorded by the Investigating Officer (PW 23) as narrated to him by PW 1. To begin with, therefore, we are unable to agree with the learned counsel for the appellant that we should start with a presumption that the FIR was false or fabricated.

6. The circumstances relied upon by the counsel for the appellant may be narrated as follows :

7. The FIR was belated and does not appear to have been made at the time when it was purported to

be made. This is, according to the counsel, supported by the fact that there was sufficient delay in dispatching the FIR to the Magistrate. Taking a very meticulous view of the time lag between the lodging of the FIR and the time of death of the deceased, as proved by the doctor, the argument was that at the time when the FIR was lodged there could be no question of PW 1 having made the statement before the Investigating Officer (PW 23).

8. We might state that the argument in this form was not addressed to the High Court which was the first court of appeal. Stress was only laid by the defence counsel on the time when the FIR was given and it was contended that there was unexplained delay which was fatal to the prosecution case. In these circumstances, the very basis of the most important point stressed before us by Mr. Garg does not appear to have been raised before the High Court.

9. Secondly, regarding the question of delay in the FIR being sent to the Magistrate, that also does not appear to be very vital. It is well known that when a murderous assault of this nature takes place in broad daylight, the first anxiety of the nearest ones of the victim would be to take him to the nearest hospital to get him medical aid to save his life. In the instant case, as the FIR was lodged at about 1 p.m. on July 2, 1975, after the occurrence took place at 9.30 a.m. and the victim had died by 10.55 a.m., it cannot be said that there was great delay. Furthermore, the mere fact that there was some delay in dispatching a copy of the FIR to the Magistrate is not sufficient to put the case the prosecution out of court. On the other hand, we find that the FIR reached the Magistrate at about 5.15 p.m., i.e., only about 4-5 hours after it was lodged. It is also well known that a Magistrate is a very busy person and the mere fact that there is some delay before necessary entries are made, would not be fatal to the prosecution case.

10. Another circumstance stressed by Mr. Garg was that according to the medical evidence the deceased must have died by about 5.30 a.m. on July 2, 1975 and no reasonable explanation has been given by the prosecution as to why the dead body was taken to the hospital at about 10.55 a.m. after about five hours when the hospital was quite near. Here, the learned counsel as also the trial court have committed a serious error in the appreciation of evidence. A perusal of the evidence of the doctor does not conclusively show that the deceased must have died at about 5-6 a.m. Medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerized or mathematical fashion so as to be accurate to the last second. Moreover, the trial court as also the counsel for the appellant have not properly interpreted the evidence of the medical officers (PWs 20 and 21). To begin with, Dr. Padmanabharao (PW 20) had stated that "the injuries could have been caused by a sharp weapon like a spear" and that "the injuries were aged about an hour or so". In cross-examination, however, the doctor has stated that "the margin of time of the causing of the injuries in Ex. 9-17 could not have been 5 or 6 hours". But, later on, he (PW 20) corrected himself by saying that the injured must have died one hour prior to his examination. The doctor has made a clear admission in the following words :

> I cannot pinpoint the time of the causing of the injuries; it may be 5 to 6 ours prior to my examination.

11. It is, therefore, clear that PW 20 is not in a position to determine with absolute exactitude and precision the actual time of causing injuries on the deceased and the criticism made with respect to the medical evidence by the trial court was wholly uncalled for and against the medical evidence, if properly lead.

12. Dr. S. Karunadevi (PW 21) also had deposed that the time of death could be mentioned only

approximately and it could be a few hours either way. She further admitted in cross-examination that she did not mention the approximate time of death of the deceased.

13. In these circumstances, the entire argument that the deceased must have died at about 5.30 a.m. and there was considerable delay in taking him to the hospital cannot possibly survive. If the defence has failed to establish this fact then the argument that the FIR was a concocted document must also fail. That being so, the comments of the learned counsel for the appellant that the FIR could not have been lodged by PW 1 at the time mentioned by him cannot be accepted.

14. Further, there is no reliable material to show that the FIR was fabricated. PWs 1 and 2 were actual eyewitnesses, being servants of the deceased, and they had enough time to see the occurrence and had also accompanied the deceased to the hospital, and therefore whatever was seen by PW 1 was narrated by him to the Investigating Officer who recorded the FIR. The argument that the FIR was fabricated merits outright rejection.

15. The High Court has dealt with the evidence of the eyewitnesses in detail and pointed out that shorn of a few discrepancies here and there, there does not appear to be any material infirmity in the evidence of PWs 1 and 2 who, according to the case proved by the prosecution, were doubtless present at the place of occurrence, a fact which has been elaborately dealt with by the High Court which made the following observations :

> It must also be noted that unless the cart enters the Donka near the curve PWs 1 and 2 could not have seen the deceased or the accused. Their evidence is very cogent and consistent in this regard .... At that time they did not see the accused but immediately they saw the accused behind the deceased and stabbing him, and the distance was about 20 to 25 yards. These details in the cross-examination would show that as the ceased covered a distance of 5 to 10 yards the accused from somewhere emerged and stabbed the deceased .... The assailant must have been lying in wait by hiding himself in the palmyra fencing or in the bushes. Otherwise, the deceased himself would have noticed the accused if the assailant whatsoever in the evidence of PW 1 or PW 2 in this regard.

16. In these circumstances, we do not see any reason why the trial court should have disbelieved the evidence of PWs 1 and 2 merely on a misreading of the medical evidence which, instead of supporting the view of the trial court, was fully consistent with the evidence of Pws 1 and 2.

17. Another argument advanced before us was that although PWs 1 and 2 were supposed to be eyewitnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only stated to be rejected. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible.

18. Thus, on a sum total of the evidence and the circumstances mentioned above and considering the reasons given by the trial court for acquitting the accused, we are of the opinion that the Sessions

Judge has committed a serious error on a point of law while acquitting the accused without applying his mind to the effect of the evidence on record particularly of PWs 1 and 2 which has been perused by us and we see no reason to discard. We are, therefore, clearly of the opinion that the judgment of the trial court is extremely perverse. In our opinion, this is positively not a case in which another view is reasonably possible.

19. For the reasons given above, we dismiss the appeal and uphold the conviction and sentence awarded to the appellant by the High Court. In case the appellant is on bail, his bail bonds are hereby cancelled and he shall be taken into custody and sent to prison to serve out the remaining portion of the sentence.

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