SUPREME COURT OF INDIA

Anisetti Veerabhadra Rao

Vs.

State of A.P.

Crl.A.No.1274 of 2009

(Harjit Singh Bedi and Chandramauli Kr. Prasad,JJ.,)

25.01.2010

ORDER

1. This appeal arises out of the following facts :- Four persons, A-1-Anisetti Veerabhadra Rao, A-2-Anisetti Venkata Ramana, A-3-Anisetti Ramulu and A-4- Anisetti Sesharatnam were put on trial for offences punishable under Section 448 read with Section 34, 302 and 302 read with Section 114 of the Indian Penal Code. As per the prosecution story the four accused were closely related to each other; A- 1 and A-2 being the sons of A-3 and A-4. The houses of the accused and that of Yanamandra Subba Rao since deceased were separated by a path. A-3 had hired the tractor belonging to the deceased about 5 or 6 years prior to the date of occurrence and he was to pay him a sum of Rs.3000/- towards the hire charges but as this amount had not been paid over a period of time, PW-10-Kona Bapiraju intervened in the dispute and pursuant to a settlement, A-3 had paid the hire charges. The accused were however slighted and aggrieved as they felt that a personal dispute had been made public by the deceased and as a consequence of this ill-will, A-1 and A-2 had often threatened him with dire consequences. At about 6:00 p.m. on the 12th August, 2001 the deceased was sitting in front of his house when A-1 and A-2 attacked him. He attempted to ward off the blows but his right hand got severed in that process. A-1 and A-2 thereafter caused several other injuries to the deceased. The mother of the deceased, PW-1-Surya Prakasamma, rushed to the site, on hearing the noise. She noticed that A-3 and A-4 too were standing outside the house of the deceased. The incident was also seen by PW-3- Kada Subrahmanyam, Subba Rao's servant . PW-3 then rushed to the house of PW- 5-Vithanala Ganiraju who came to the scene and the deceased, who was then alive, told him that he had been attacked by A-1 and A-2. PWs 1, 3 and 5 thereafter shifted him to the Government Hospital Kakinada in a car owned by PW-11- Madhavarapu Ramachandrarao @ Rajababu and on the way PW-2- Yanamandra Venkateswara Sidhanthi, Yanamandra Subba Rao's brother also joined them. On an enquiry by PW-2, Subba Rao told him that he had been injured by A-1 and A-2. After the injured had reached the hospital, PW-16-Dr. K. Appalacharyulu, Civil Assistant Surgeon of the Government General Hospital, Kakinada, sent intimation to the police post on which PW-19-K.V. Raghavulu, Head Constable reached the casualty ward and recorded Subba Rao's statement Exhibit-P-18. On the basis of the information received by the police, a case under Sections 448 and 307 read with section 34 of the Indian Penal Code was registered.

PW-17-Dr. B. Rangarao of the casualty department in the hospital also requisitioned the services of a Magistrate to record the statement of Subba Rao, on which PW-14- K. Chandrasekhara Rao, Special Mobile Magistrate, reached the hospital and recorded the dying declaration Exhibit P-12 in which he stated that the first and third sons of A-3 had attacked him. Subba Rao was thereafter referred to the Care hospital on the 13th August, 2001 where he succumbed to his injuries the next day at 10:00 a.m. The offence under Section 307 read with Section 34 of the Indian Penal Code was altered to one under Section 302 of the Indian Penal Code. The accused were also arrested during the course of the investigation and several weapons were recovered at their instance.

2. The trial court relying on the eye-witness account of PWs- 1, 3 and 4 and on the two dying declarations, one recorded by the police officer and the other by the Magistrate, convicted A-1 and A-2 for offences punishable under Sections 448 and 302 of the Indian Penal Code and sentenced them to undergo imprisonment for one year and life respectively. A-3 and A-4 were, however, acquitted.

3. Aggrieved by the judgment of the trial court, the appellants herein filed an appeal before the High Court. During the course of arguments on the 27th January, 2006 the High Court found that the statements of the appellants under Section 313 of the Criminal Procedure Code had not been properly recorded as all the incriminating circumstances had not been put together, particularly the dying declaration Exhibit P-12. The matter was thereafter remitted to the trial court for framing fresh questions with regard to the dying declarations Exhibit P-12 and P- 18. The trial court recorded the statements of the appellants on the 17th May, 2006 by putting question Nos.88 to 94 to them with reference to the two dying declarations. The appellants stated that they were the fourth and second sons of their parents and they also filed several documents including birth certificates with respect to their identities. The trial court, however, chose not to rely on these documents as they had been produced at a belated stage and also observed that this evidence was not trustworthy. The appellants were again sentenced to undergo six months rigorous imprisonment under Section 448 and to life imprisonment under section 302 of the Indian Penal Code. An appeal was thereafter filed before the High Court impugning the judgment on remand made by the Sessions Court. This appeal too has been dismissed, leading to the present appeal before us.

4. Before us today, the learned counsel for the appellants has reiterated the stand of the appellants taken in the High Court that in the dying declaration Exhibit P-12, the deceased had made a statement that the appellants were the first and third sons of A-3 but in the light of the evidence on record it was clear that they were infact the second and fourth sons of A-3, and as such their very identification was in doubt. It has further been highlighted that as the incident had happened during the hours of darkness it could not have been possible for PW-1 and PW-3 to have identified the appellants. It has also been submitted that the two dying declarations were discrepant in material particulars and that they too could not be relied upon.

5. The learned counsel for the State has, however, supported the judgment of the trial court and has contended that there was absolutely no reason whatsoever to discard the evidence of

PW-1 and PW-3 and as the incident had happened at about 6:30 p.m. and as darkness had not fully set in, there could be no mistake as to the identity of the as the rival parties as they were neighbours. It has also been submitted that the dying declarations had been recorded by entirely independent observers and that there was no material difference between the two. It has further been pleaded that the medical evidence supported the ocular version.

6. We have heard learned counsel for the parties and considered the arguments advanced by them. We find that there is no material difference between the two dying declarations Exhibits P-12 and P-18. In Exhibit P-18, which is earlier in point of time and which had been recorded at about 9:15 p.m. on the 12th August, 2001 in the presence of the medical officer who had attested the same, the deceased had specifically named the two appellants as his assailants. The dying declaration Exhibit P- 12 was recorded about an hour later in which the deceased referred to the accused as the eldest and the third sons, but otherwise he virtually reiterated what he had said in the dying declaration Exhibit P-18. As a consequence of this somewhat uncertain identification, the High Court, had at the first instance, remanded the matter to the Sessions Court to render an opinion afresh. The Sessions Court, on a reconsideration of the evidence now produced on behalf of the appellants, held that the plea that the appellants were the first and third sons of their parents could not be accepted as this defence was an after thought and more particularly as the appellants had been specifically named as the assailants in the dying declaration Exhibit P-18.

7. In any case, we have absolutely no doubt that the prosecution story is even otherwise proved by the evidence of PW-1, the mother of the deceased and PW-3, a servant of the deceased. The medical evidence clearly supports the eye-witness account. The deceased had 13 injuries on his person most of them incised wounds which could have been caused with a cutting weapon. It is also evident that PWs 1 & 3 presence at the spot was natural as the incident had happened in the house of the deceased at about 6:30 p.m. For this reason also there could be no confusion about the identity of the appellants.

8. We are, therefore, of the opinion that there is no merit in the appeal.

9. Dismissed.