

SUPREME COURT OF INDIA

Kusti Malliah

Vs.

State of Andhra Pradesh

Crl.A.No.642 of 2008

(Dr.B.S.Chauhan and Dipak Misra JJ.)

28.05.2013

JUDGMENT

DIPAK MISRA, J.

1. Calling in question the legal propriety of the judgment of conviction and order of sentence passed in Criminal Appeal No. 990 of 2005 by the High Court of Judicature, Andhra Pradesh whereby the Division Bench has concurred with the conviction and the imposition of sentence by the learned Principal Sessions Judge, Medak at Sangareddy in S.C. No. 79 of 1998 wherein the learned trial Judge, after finding the appellant along with one Koninti @ Yerrolla Veeraiah, A-1, guilty of the offences punishable under Sections 302 and 404 read with 34 of the Indian Penal Code (for short "IPC"), had sentenced each of them to undergo rigorous imprisonment for life on the first count and three years on the second score.

2. Shorn of unnecessary details, the case of the prosecution as unfolded is that on 9.2.1997 in the morning hours Koninti @ Yerrolla Veeraiah, A-1, and Kusti Malliah, A-2, took the deceased, Neelagiri Parvamma, with them Shiver in the Thimmaiapally hillocks. Kusti Yellaiah, PW-6, eye witness to the occurrence, had accompanied them. The accused persons and the deceased consumed liquor and, thereafter, both the accused removed her clothes, ravished her and assaulted her. The said action of the A-1 and A-2 was objected to by PW-6, but he was pushed away and being scared he went and stood at a distance of approximately 300 yards. Thereafter, both the accused persons stole the gold and silver ornaments and brutally assaulted with stones, as a consequence of which she sustained injuries and succumbed to the same. PW-6, being panicky-stricken, ran away from the spot. On the next day, i.e., 11.2.1997 about 8.00 a.m. PW-1, P. Vittal Reddy, the

Village Administrative Officer, Thammaiahapally, coming to know about the dead body of a woman lying in the forest, from a village shepherd, rushed there and found the dead body of the deceased lying half naked. He returned from the forest and about 11.30 a.m. and gave the information at Papannapet Police Station. On the basis of said information the investigating agency proceeded to the spot, prepared the inquest report, registered an FIR under Section 302, IPC, sent the dead body for post mortem and after PW-4, Neelagiri Bhoomiah, husband of the deceased and PW-5, Neelagiri Mogulamma, daughter of the deceased, identified the photograph and small cloth purse to be that of the deceased, recorded their statements. On 7.5.1997, the accused persons were arrested and 30 gold gundlu weighing about half tula was seized from the custody of A-1 and two silver anklets and one hand bolukada weighing about 22 tulas from the possession of A-2. On that day itself the statement of PW-6, who was an eye witness to the incident, was recorded. After completion of investigation charge-sheet was laid before the competent Magistrate who, in turn, committed the case to the Court of Session. The accused persons denied the charges, pleaded innocence and claimed to be tried.

3. The prosecution, in order to bring home the charges, examined as many as 14 witnesses and got marked exhibits P-1 to P-11 and also MO-1 to MO-9. On behalf of the accused Ext. D-1 to D-3, the contradictions in the statements of PWs-4 and 5 were marked.

4. The learned trial Judge, after considering the evidence on record, came to the conclusion that the prosecution had been able to establish the guilt of the accused persons for the offences punishable under Sections 302 and 404 read with 34 IPC and convicted them to suffer imprisonment as has been referred to hereinbefore.

5. Challenging the judgment of conviction and order of sentence, A-1 preferred Criminal Appeal No. 909 of 2002 wherein the High Court, analyzing and appreciating the ocular and documentary evidence on record, came to hold that the finding of guilt recorded by the learned trial Judge on the basis of the sole testimony of PW-6 could not be faulted. Being of this view the High Court dismissed the appeal and confirmed the conviction and sentence. It is worthy to note that the said appeal was disposed of on 21.9.2004. Thereafter, A-2, the present appellant, preferred Criminal Appeal No. 990 of 2005 which has been dismissed relying on the earlier judgment on 10.7.2006.

6. We have heard Mrs. Rachana Joshi Issar, learned counsel for the appellant, and Mr. D. Mahesh Babu, learned counsel for the respondent- State.

7. It is urged by the learned counsel for the appellant that there are material contradictions in the evidence of PWs-4 and 5, namely, the husband and daughter of the deceased, and further their statements under Section 161 of the Code of Criminal Procedure and the depositions in court being irreconcilable, their version should be treated as totally untrustworthy and unreliable. It is canvassed by her that the learned trial Judge as well as the High Court has completely erred in relying on the ocular testimony of PW-6 as his evidence is not beyond reproach. The learned counsel would emphatically submit that there is delay in lodging the FIR which would clearly reflect that the appellant has been roped in as the husband of the deceased had harboured some kind of suspicion relating to his relationship with the deceased and, therefore, the prosecution story deserves to be thrown overboard.

8. Resisting the aforesaid submissions it is urged by Mr. Babu that there are no contradictions which would make the prosecution version unreliable and further there is no reason to discard the evidence of husband and daughter. That apart, contends the learned counsel for the respondent, the evidence of PW-6 being absolutely credible the High Court, after analyzing it, given due acceptance and hence, judgment of conviction does not call for any interference.

9. First, we shall deal with the submission pertaining to the delay in lodging of the FIR. The occurrence, as has been stated, took place on 10.2.1997. The FIR was lodged by Vittal Reddy, PW-1, and it contained that dead body of a woman was lying naked in the forest and it had been noticed by a shepherd who was grazing the cattle and on the basis of the same a report under Section 174 of the Code of Criminal Procedure was registered and, accordingly, the body was sent for post mortem. The post mortem report revealed the following external and internal injuries: -

“External injuries:

1. Lacerated injury fore head left side 2½” x ½” communicating into the cavity of skull.
2. Lacerated injury right temple 1½” x ¼” x 1/8”
3. Incised wound right cheek ½” x ¼” x ¼”
4. Contusion front of chest right side 2” x ½”

5. Contusion right thigh upper 1/3" x 2" x 1"
6. Lacerated injury dorsum of the left foot 2 1/2" x 1/2" x 1/2"
7. Incised wound Labinamejorce left 1/2" x 1/4" x 1/4"
8. Incised wound left inguinal region in 2" x 1/2" x 1/4".

Internal Injuries:

1. Fracture frontal bone
2. Clotted blond was found over the frontal area of brain.
3. Fracture 1st metatarsal bone.

All the above injuries were ante mortem in nature."

10. Be it noted, the autopsy was done and photograph of the deceased, Ext. P-8, was taken by PW-14, the photographer. It is clear from the evidence on record that when the wife of PW-4 and mother of PW-5 did not come back from her parental home after two days as per schedule, the husband requested one of the villagers to go to his father-in-law's house and ask his wife to return to her matrimonial home. After the information was sent, on the next day his mother-in-law and sister-in-law came to the house and informed that the deceased had not come to their house. Thereafter, his brother, Lingaiah, and he searched for her and on 18.2.1997 they came to know that some woman was found dead in Thammaiahapally and the police had been informed. Thereafter, he along with his daughter went to the police station where they were shown the photograph of the deceased and a small cloth purse which they identified to be that of the deceased and, thereafter, the investigation commenced for offences punishable under Sections 302 and 404 read with 34 IPC was registered. Thus, the chronology of events clearly shows that the police, on the basis of the report recorded under Section 174 CrPC, conducted the inquest and after the PW-4 and his daughter, PW-5, identified the photograph, commenced the investigation. During this time the husband and his brother was searching for the deceased. Regard being had to the totality of the circumstances, the submission that there has been delay in lodging of the FIR and for that reason the entire prosecution story should be thrown overboard does not deserve acceptance.

11. The next ground of assail pertains to material contradictions in the statement recorded under Section 161 of CrPC and the depositions in court and further in the evidence of PW-4 and PW-5. It is urged that the said contradictions destroy the very marrow of the prosecution case. To appreciate the said submission, we have scrutinized the statement recorded under Section 161 CrPC of PW-4 and noticed that he has said everything in detail about whatever he has stated in his deposition in court except that his wife and he had a quarrel on the date of Ramjan festival. We do not really perceive any contradiction which can be called material contradiction. We say so as the omission in the statement of PW-4 recorded under Section 161 CrPC is not a significant omission so that it can be regarded as a contradiction so significant and glaring that the prosecution case should be disbelieved. As far the contradiction in the evidence of PWs-4 and 5 is concerned, on a studied scrutiny of the same we find that there are minor discrepancies. For the aforesaid purpose, we proceed to analyse the evidence of PWs-4 and 5. The husband of the deceased, PW-4, has deposed that A-1 had wanted to marry his daughter and A-1 had illicit relationship with his wife. He had clearly stated that he had identified the gold and silver ornaments. He had also identified the small cloth purse and the photograph in court. The version of the daughter, PW-5, is that prior to the day of death when her mother left the house there was a quarrel between her parents. She has also identified the ornaments of her mother. Thus, there is no material contradiction which would make their version untrustworthy. True it is, there are certain minor discrepancies regarding the timing, the factum of meeting of A-1 and the deceased in the market by the daughter, the quarrel between the husband and the wife but they are absolutely minor. They even cannot earn the status of minor contradictions.

12. In *Ousu Varghese v. State of Kerala*[1], it has been opined that the minor variations in the accounts of witnesses are often the hallmark of the truth of the testimony. In *State of Rajasthan v. Smt. Kalki and another*[2], it has been observed that material discrepancies are those which are not normal, and not expected of a normal person.

13. At this juncture, it is also apt to reproduce a passage from *State of U.P. v. M.K. Anthony*[3], wherein it has been laid down as follows: - “10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier

evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.”

14. Similar view has been reiterated in State Rep. by Inspector of Police v. Saravanan & Anr.[4]

15. In the case at hand neither PW 4 nor PW 5 has made any endeavor to make any attempt to materially improve their earlier statement in their deposition before the court to make their evidence acceptable. It is also not a case where it can be said that they had withheld something material during investigation and embellished certain aspects during their deposition in court. That being the position we are unable to agree with the submission of the learned counsel for appellant that there are such material contradictions which discredit the testimony of said witnesses and accordingly the said submission is rejected.

16. The last limb of submission pertains to the credibility of the testimony of PW-6. The learned counsel has seriously criticized the evidence of the said witness on the ground that he had not told anyone about the incident and only revealed it when the dead body was identified. Criticism is also advanced against the investigating agency that it recorded his statement after ten days. As is manifest from the evidence brought on record, he had accompanied the accused on the fateful night. He has deposed that A-1 and A-2 consumed liquor along with the deceased and after ravishing her hit her with a big stone. The scare compelled him to run away from the scene but he witnessed the occurrence from a distance of approximately 300 yards. The principal attack is that it is quite unnatural that he would not reveal the incident to anyone. It is worth noting that he had accompanied the accused persons and the deceased. The illicit relationship between the deceased and A-1 has been unequivocally stated by PWs-4 and 5. As per the evidence of PW-6, the three consumed liquor and thereafter the whole episode took place. This witness has deposed about the stealing of ornaments from the deceased. There has been recovery of the ornaments from the accused persons and the same have been recovered from their custody in presence of PW-9. The seizure memo, Ext. P-6, has been duly proven and there is nothing on record to disbelieve the testimony of PW-9 or to discard Ext.P-6. Proper procedure has been followed as per the deposition of the Investigating Officer, PW-13. The post mortem report, Ext.P-7, clearly mentions that the deceased died on account of head injury. Thus, the

testimony of PW-6 gets corroboration from the medical evidence and also from the factum of recovery. That apart, nothing was suggested to him that he had any animosity with the accused persons. Thus, the cumulative nature and character of the evidence of this witness is difficult to ignore solely on the ground that he did not tell the incident to any one and only revealed after the police examined him. It is common knowledge that people react to situations in different manner. As is evincible, he had accompanied the accused persons along with the deceased. As deposed by the husband and daughter, the deceased had an illicit relationship with A-1. Three of them consumed liquor and she was ravished by the accused persons and, eventually, there was assault. Having accompanied them and witnessing the incident it is natural that a sense of fear would creep in. In such circumstances the delay in recording of his statement by the Investigating officer would not corrode the version of the prosecution. That apart, nothing has been put to him in the cross-examination that he was not present at the spot or he was involved in the crime along with the accused persons. The roving cross- examination only concentrated on his seeing the occurrence from 300 yards away because of darkness, which we think is absolutely immaterial, for they belonged to the same village, he had accompanied them and there was no one else except the accused persons and the deceased at that distance. That apart he has categorically stated that he was able to see the assault by the accused persons and removing the gold and silver ornaments. Thus, there is no impediment to place reliance on his evidence as it is trustworthy and unimpeachable.

17. It has been held in catena of decisions of this Court that there is no legal hurdle in convicting a person on the sole testimony of a single witness if his version is clear and reliable, for the principle is that the evidence has to be weighed and not counted. In *Vadivelu Thevar v. The State of Madras*[5], it has been held that if the testimony of a singular witness is found by the court to be entirely reliable, there is no legal impediment in recording the conviction of the accused on such proof. In the said pronouncement it has been further ruled that the law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness.

18. Similar view has been expressed in *Lallu Manjhi and another v. State of Jharkhand*[6], *Prithipal Singh and others v. State of Punjab and another*[7] and *Jhapsa Kabari and others v. State of Bihar*[8].

19. On the analysis of evidence of PW-6 we find that his evidence is cogent and trustworthy and further gets corroboration from the medical evidence and also for the factum of recovery of gold and silver ornaments which has been clearly proven by PW-9.

20. In view of the aforesaid analysis, we do not perceive any error in the judgment of conviction and order of sentence passed by the learned trial Judge that has been affirmed by the High Court and, accordingly, the appeal, being devoid of merit, stands dismissed.

[1] (1974) 3 SCC 767

[2] (1981) 2 SCC 752

[3] (1985) 1 SCC 505

[4] AIR 2009 SC 152

[5] AIR 1957 SC 614

[6] (2003) 2 SCC 401

[7] (2012) 1 SCC 10

[8] (2001) 10 SCC 94