

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 373 OF 2008

Vallabhaneni Venkateshwara RaoAppellant

State of A.P.Respondent

Versus

(With Criminal Appeal No.393 of 2008)

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. These two appeals are directed against the common judgment of the Andhra Pradesh High Court. Seven accused persons had filed the appeal before the High Court questioning their conviction for offences punishable under Sections 302 read with Sections 149, 148 of the Indian Penal Code,

1860 (in short the 'IPC'). Additionally, A1 appellant in present Criminal Appeal no.373 of 2008 was convicted for offence punishable under Section 341 IPC. Charge was made against all the accused persons that on 9.10.2002 at about 11.30 a.m. all of them formed an unlawful assembly near the fish tanks of Chevuru village and beat Adusumalli Ranga Rao (hereinafter referred to as the 'deceased') with casuarian sticks and caused his death.

2. The version of the prosecution as put forth is to the effect that all the material witnesses as well as the accused are residents of Chevuru village of Mudinepalli Mandal, Krishna District and there have been ill feelings between the accused and the prosecution witnesses. Accused Nos.1 and 2 are brothers, 4 and 5 are the sons of A.1 and A.2. A.3 is the cousin and A.6 and A.7 are brothers-in law of A.1. PWs 1 to 6 belong to one group, and the deceased is the brother of PWs 3 and 5. PW.4 is the sister's son of the deceased. On 9-10-2002 PW.1 went to Singarayapalem village to bring a doctor by name B.Satynarayana (LW.2) to attend his maternal grandmother who was suffering from ill-health. While bringing the doctor on his scooter, at that time the deceased was also walking along on the road. When PW.1 crossed Singarayapalem Centre, the deceased stopped his scooter for a lift.

Then the deceased was picked up on his scooter and when they reached Chevurupalem Anjaneya Swamy temple, at that time PW.2 was also coming by walk. Since the road repair works were going on, PW.1 asked the doctor (LW2) and the deceased to get down and when he was coming on the road margin along with the scooter and reached the tanks of Dr.Vijay Kumar, by stopping his scooter and was waiting for the arrival of the Doctor (LW2) as well as the deceased, at that point of time all the accused who were holding stout sticks and were proceeding towards Singarayapalem started abusing the deceased. Later, accused No.1 caught hold of the deceased and beat with a stout stick on the head of the deceased. A.4 and A.5 beat the deceased on the right shoulder. A.2 and A.3 also beat the deceased on the left thigh and further beat near the joint of leg. A.6 and A.7 also beat the deceased on the right leg. At that time the road coolies who are attending road works also raised cries requesting not to beat the deceased. Later PW.1 went to the village and informed about the incident to PW.3. Thereafter, PW.3 came to the scene of offence and came to know about the incident through the deceased. Immediately for some time the deceased was taken to the hut of Jagan (LW.15) situated on the tank bund and thereafter, the deceased was shifted to Mudinepalli Police Station in Car. Assistant Sub-Inspector, PW.8 who was in the Police Station recorded the statement of the deceased under

Ex.P.12 and initially registered a case in Crime No.96 of 2002 for the offences punishable under Sections 341, 324, 325 read with 34 IPC in P.S.Mudinepalli and issued FIR to all the concerned. Ex.P.13 is the FIR. Afterwards, the deceased was referred for treatment to the Government Hospital, Gudivada through PC No.795 along with a hospital memo. PW.10 is the doctor treated the deceased. Ex.C.2 is the relevant entry in Ex.C.1 the accident register pertaining to the treatment of the deceased.

Later on PW.8 took up investigation and went to Gudivada hospital and recorded the statement of the deceased while he was alive, under Ex.P.14 and recorded the statements of PWs 3, 5, 4 and left the Gudivada Hospital and reached Chevuru village and also examined and recorded the statements of PW.1 and LW.2 and again visited Chevuru village examined and recorded the statements of LWs.12 and 13 and secured the presence of mediators PW.6 and LW.21 and observed the scene of offence in the presence of the above mediators and got prepared the observation report under Ex.P.1. Further, he seized one pair of Hawaii chappals (MO8) and drew the rough sketch and thereafter examined PWs. 15 and 16 and visited the house of the accused and came to the Police station at about 6.30 p.m. on 9-10-2002. Meanwhile Police Constable 975 came to the Police Station and

handed over the death intimation of the deceased under Ex.P.15 and consequently PW.8 altered the Section of law into one under Sections 147, 148, 341, 302 read with 149 IPC. Ex.P.16 is the altered F.I.R.

Subsequently, PW.9, the Circle Inspector of Police took up further investigation. On a requisition given by PW.9, the Judicial First Class Magistrate Kaikaluru sent the material objects to RFSL, Vijaywada along with a letter of advice under Ex.P.17. After receipt of the RFSL report under Ex.P.19 and post mortem certificate under Ex.P.20, PW.9 filed charge sheet before the Judicial First Class Magistrate, Kaikaluru and later on, the case was committed to the Court of Session.

As accused persons pleaded innocence trial was held.

On consideration of the evidence on record the trial Court found that the accused persons were guilty as aforementioned. Reliance was placed on two dying declarations i.e. Ext.P-12 and Ext.P-14. Questioning their conviction 7 convicted persons filed appeal before the High Court which as noted above held that A4 and A7 were not guilty and they were acquitted of the charges. For their acquittal main reason is that Ext.P-14 was disbelieved. So far as accused 1 to 3 are concerned, the appeal was dismissed.

The present two appeals are by A1 to A3. It is to be noted that there were three dying declarations. The High Court has given various reasons for rejecting Ex.P14 for recording acquittal of A4 to A7.

4. According to learned counsel for the appellant the reasons for rejecting Ex.P14 are equally applicable to the Ex.P12 and, therefore, the present appellant are entitled to acquittal. A1 is the appellant in Criminal Appeal No.373 of 2008 while A2 and A3 are the appellants in Criminal Appeal no.393 of 2008.

5. It is submitted that apart from the reasons relating to Ex.P14 there are several other reasons which would warrant rejection of Ex.P12.

6. Learned counsel for the respondent, on the other hand, supported the judgment of the High Court. It would be necessary to take note of the reasons given by the High Court for the rejection of Ex.P14.

“1. P.W.10 Doctor has stated the deceased would have become unconscious after receipt of head injury and he could not be in a position to speak. In view of the Doctor's evidence, the deposition of

P.W.8 that he has recorded Ex.P.14 at the hospital is not reliable. Further Ex.P14 was not recorded in the presence of the Doctor.

2. Ex.P.14, the 2nd dying declaration, is the improved version of Ex.P12 first dying declaration implicating new set of accused and introducing new set of eyewitness. So Ex.P14 is to be rejected. Consequently, the presence of P.W1 and P.W.2 at the scene as mentioned in Ex.P14 has to be held doubtful.

3. P.W.10 Doctor says when the injured deceased was admitted in the hospital he was not able to speak and therefore he questioned P.W.3 about the incident and recorded his statement in Ex.C-2 Accident Register. So the deceased who was not able to speak could not have given Ex.P14 statement at the hospital to P.W.8 A.S.I.

7. In order to appreciate the stand taken by the appellants who contend to Ex.P12 has also to be rejected the following factors need to be noted:

(1) P.W.8 A.S.I stated that on 9.10.2002 at 12.45 P.M. the injured deceased was brought to police station by his elder brother P.W.3 and

at the Police Station the Ex.P12 Statement was recorded from the injured deceased by P.W.8 A.S.I of Police between 12.45 P.M. and 1.15 P.M. Ex.P.12 would indicate, that P.W.8 obtained the L.T.I of deceased. The evidence of P.W.8 and Ex.P12 statement cannot be true because P.W.10 the Doctor stated that :

- (i) The victim after receipt of first injury on the head would have become unconscious; and
- (ii) That he could not have been in a position to speak.; and
- (iii) That because of the injury No.6 in the left elbow joint, he could not be in a position to put left thumb impression.

Thus the above statement of P.W.10 Doctor falsifies the deposition of P.W.8 who stated that he recorded Ex.P12 from the deceased and deceased put LTI in Ex.P12.

According to P.W.8 after recording Ex.P12, the 1st dying declaration he sent the injured deceased to the hospital along with a constable and Hospital Memo. This statement can not be true because, P.W.10 doctor specifically stated that the injured was not sent by the police and there was no hospital memo. He further stated

that since injured was not in a fit condition to give statement, he asked P.W.3 who accompanied the deceased about the incident. P.W.10 Doctor admits while referring to Ex-C-2 that police did riot accompany the deceased and that was the reason as to why Ex.C-2 does not contain the reference about the Hospital Memo sent by the Police or the requisition of the Police and number of the Police Constable who was said to have taken the deceased to hospital. Ex.C-2 shows, the victim deceased was brought to the Hospital by P.W.3 alone and not by the police. Hospital Memo was not marked. The concerned Police Constable also has not been examined. There is no explanation from the prosecution in this regard such there is no corroboration for the statement of P.W.8, on the other hand the evidence of P.W.10 and Ex.C-2 is contradictory to the evidence of P.W.8. The fact that it is not established that Police Constable accompanied the victim deceased to the hospital along with Hospital Memo, would indicate that P.W.3 would have come to the Hospital directly from the scene of offence without going to the Police Station. Therefore, the evidence of P.W.8 that he recorded the statement of injured person in Ex.P12 at the Police Station is not reliable.

According to P.W.3, when the deceased was sitting in the car in front of the Police Station, P.W.8 came out of the Police Station and recorded Ex.P12 statement from the injured deceased. But according to P.W.8, the injured deceased was brought inside the station from the car and his statement Ex.P12 was recorded at the verandah of the Police Station. Thus there is a variation. But the fact remains that both had stated Ex.P12 was recorded at the Police Station before reaching the hospital. If this is true P.W.3 would have stated to the doctor P.W.10 that 3 persons attacked the deceased with sticks as refer to in Ex.P12. On the other hand P.W.3 specifically stated to P.W.10 Doctor that 10 persons attacked the deceased with crow bar as referred to in Ex.C-2. As such the statement of P.W.3 to the Doctor P.W.10 is contradictory to Ex.P12. This shows Ex.P12 was never recorded by P.W.8 in the police station in the presence of P.W.3 before reaching the hospital as they directly went to the hospital. It was suggested to P.W.3 that they shifted the deceased directly to the hospital from the scene of offence without going to the Police Station.

Ex.P.14 is not a mere improvement of Ex.P12. The story projected in Ex.P12 is entirely different from Ex.P14. As per Ex.P12

from the bus stop the injured deceased proceeded to the village by walk and at that time A-1 to A-3 attacked him in the presence of one eye witness Jagan. But according to Ex.P.14 the deceased came to the road side along with PW.1 Sriniva Rao and one R.M.P. Doctor in the scooter and at that point of time A-1 to A-7 appeared and attacked the deceased. The story in Ex.P.12 has been given up and new case has been projected in Ex.P-14 by introducing new set of eyewitnesses and new set of accused. Hence both Ex.P12 and Ex.P14 can not be believed.

It is seen from the records, 3 different stories have been projected by the prosecution. As per Ex.P12 recorded at 12.45 P.M., 3 persons attacked with sticks in the presence of one eye witness Jagan. As per C-2 recorded at 2.30 P.M. ten persons attacked with crow bar. As per Ex.P14 recorded by P.W.8 before the death of deceased at 2.50 P.M. seven persons attacked with sticks in the presence of two new eye witnesses. No clear answer comes from the prosecution as to which of the three versions is believable.

Ex.P12 suffers from two infirmities. Firstly, medical evidence is contradictory. Secondly, only eye witness Jagan mentioned in Ex.P12 was not examined. The non-examination of the said eyewitness would result in the lack of corroboration to Ex.P-12.

8. It is to be noted that the High Court wrongly states that Ex.P14 does not refer to Ex.P12. In fact, it clearly states that the police recorded his statement which is Ex.P12.

9. Above being the position, it would be unsafe to convict the accused-appellants. Their convictions are accordingly set aside. They be set at liberty forthwith if not required to be in custody in any other case.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
May 08, 2009