

CASE NO.:
Appeal (crl.) 1026 of 1997

PETITIONER:
Sabbita Satyavathi

RESPONDENT:
Bandala Srinivasarao & Ors.

DATE OF JUDGMENT: 15/03/2004

BENCH:
N. Santosh Hegde & B.P. Singh

JUDGMENT:
JUDGMENT

B.P.SINGH, J.

This appeal by special leave has been preferred by the wife of the deceased, who is said to have been murdered by respondents 1, 2 and others on January 9, 1992 at about 6.30 p.m. The appellant has impugned the judgment and order of the High Court acquitting the respondents 1 and 2 herein of the charge under Section 302 IPC and convicting them instead under Sections 326 and 324 IPC respectively. The aforesaid respondents shall be referred to hereinafter as A-1 and A-2. According to the appellant, the facts proved by the prosecution clearly established an offence under Section 302 IPC and therefore, the High Court was not justified in acquitting them of the charge under Section 302 IPC and convicting them under Section 324 IPC respectively.

The occurrence giving rise to the instant appeal is alleged to have taken place at about 6.30 p.m. on January 9, 1992. The case of the prosecution was that six persons including A-1 and A-2 way laid the deceased and assaulted him with knife, iron rods and sticks as a result of which, he succumbed to his injuries in the hospital. All the six accused A-1 to A-6 were tried by the Additional Sessions Judge, West Godavari Division, Eluru charged of offences under Sections 148 and 302 read with Section 149 IPC in Sessions Case No.130 of 1992. A-1, A-2 and A-6 are brothers while accused A-3 to A-5 are alleged to be their associates. The trial court by its judgment and order of November 21, 1994 acquitted A-3 to A-6 of the charges levelled against them and found only A-1 and A-2 (respondents herein) guilty of the offence under Section 302 IPC for which it sentenced them to undergo imprisonment for life.

A-1 and A-2 preferred an appeal before the High Court of Judicature Andhra Pradesh at Hyderabad being Criminal Appeal No. 238 of 1995. The High Court by its judgment and order of July 3, 1996 acquitted A-1 and A-2 of the charge under Section 302 IPC but found them guilty of lesser offences. A-1 was found guilty of the offence under Section 326 IPC and sentenced to four years rigorous imprisonment while A-2 was found guilty of the offence under Section 324 IPC and sentenced to two years rigorous imprisonment. The impugned judgment of the High Court has been challenged by the wife of the deceased to seek the conviction of A-1 and A-2 under Section 302 IPC thereby seeking enhancement of their sentence A-1 and A-2 (respondents) on the other hand contend that the

evidence on record is highly suspicious and doubtful and does not justify their conviction at all. Since an appeal has been preferred for enhancement of their sentence, they contend that this Court should consider the evidence on record and direct their acquittal since the evidence on record is unworthy of belief and does not prove the case of the prosecution.

In view of the contentions urged on behalf of the parties, we consider it necessary to appreciate the evidence on record since the appeal is wide open before us and not confined to the question of nature of offence or sentence.

The prosecution evidence in this case rests on the testimony of three alleged eye witnesses, namely, PWs 2, 3 and 4. The prosecution also relies upon the dying declaration made by the deceased to PW-1 as also the statement made to the Medical Officer, PW-13 when he was examined by her at the Narsapur Hospital. The second dying declaration forms part of the wound certificate prepared by PW-13 and has been marked as Ex.P-10.

The case of the prosecution is that on January 9, 1992 at about 6.30 p.m. the deceased and PW-1 were returning to their village Mangaliguntapalem from Narsapur. They were both coming on their bicycles and on the way they met Satyanarayana, PW-5. The deceased stopped and started talking to PW-5 while PW-1 proceeded ahead. After he had covered a distance of about 2 furlongs PW-4 G. Anil Kumar came from behind and told him that six persons were assaulting the deceased. After giving this information PW-4 proceeded ahead while PW-1 returned to the place of occurrence and found the deceased in an injured condition. When he asked the injured as to how he had sustained injuries, he was told by the deceased that A-1, A-2, A-6 and three others had assaulted him saying that he was obstructing them in all matters. They abused him and thereafter A-2 beat him with an iron rod on his left fore arm and A-6 also beat with an iron rod on the left fore arm. A-1 stabbed him with a knife on the left side of his abdomen and the other three persons beat him with sticks on his head. A-1 again stabbed him on the left side of his abdomen. Thereafter, PW-1 took the deceased to the Government Hospital at Narsapur on a rickshaw. According to PW-1, while the statement of the injured was being recorded by the doctor, he died. Several other persons had assembled at the hospital which included the local MLA and some other political personalities. After the death of the deceased he went to the Police Station Narsapur and lodged the FIR Ex. P-1. According to this witness, several persons were present when the doctor recorded the statement of the deceased. He was also present and he heard the statement given by the deceased. The recording of the statement took about 1-1/2 hours.

He further deposed that when he came to the place of occurrence he found profuse blood on the ground. He lifted the deceased and made him walk for some distance till he got a rickshaw and placed him upon the rickshaw. He denied the suggestion that the deceased had not named A-6. He also denied that in the FIR as also in his statement recorded under Section 161 Cr.P.C. he had stated that the deceased had told before him that only A-1 and A-2 and one other unknown person had attacked him. He was confronted with his earlier statement where it was so recorded. He also denied the suggestion that the deceased was unconscious by the time he reached him, and that he succumbed to his injuries on the way to the hospital.

PW-13, Dr. P. Martho was the Assistant Civil Surgeon at the Government Hospital, Narsapur, where the deceased was brought in an injured condition at 8.45 p.m. PW-13 examined the injuries of the deceased and found the following injuries :-

"1. Stab injury chest, on the left side, over 6 to 7th intercoastal space in the anterior axillary line. It is spindle shape, edges clean tissues cut sharply obliquely, directed and 1-1/2" x 1/2" depth leading into the thoracic cavity.

2. Incised injury 1" x 1/2" x 1" depth suspected to enter into the thoracic cavity. Present over the left side of the chest in the posterior axillary line 7-8 inter costal space bleeding.

3. Lacerated injury of 1-1/2" x 1/2" x 1/2" over the head on the frontal area in the mid line. Transversed placed 2-1/2" above the forehead from hair line.

4. Contused swelling 4" x 4" over the left hand. Fracture metacarpal bone suspected.

5. Incised injury over the left hand little finger over palmaric dorsal aspect measure 1" x 1/2" x 1/2" bleeding oblique.

6. Incised injury of 1/2" x 1/2" x 1/8" over the forehead in the mid line.

7. Incised injury 1/2" x 1/2" x 1/2" over the left elbow.

8. Incised injury 1" x 1/2" x 1/2" over the left fore arm near to wrist on the post aspect bleeding.

9. Fracture of left middle finger.

10. Incised injury over left leg."

PW-13 claimed that she had recorded the statement of the deceased in the wound certificate itself Ex.P-10. The same doctor conducted the post-mortem examination over the dead body of the deceased and found the following injuries on internal examination :-

"Internal examination:- Incised injury 1/2" x 1/2" depth opens into the left cavity oblique. Present over the 7th intercoastal space. Oblique. Edges clear cut spindle shape. 7th rib left side fracture at the site of injury. Corresponds to the external injury No.3. Another incised injury over the 8th inter costal space on the left side of the chest 1" x 1/2" x 1/2" over the space. It is not external into the plural cavity. It is oblique edges clear cut. Thoracic cavity on the left side contains dark blood about 2 litre of blood. On the right side contains about 500 cc of dark blood. Left lung present with an incised injury 1" x 1/2" x 1/2" over the anterior surface over the lower lobe. Another incised injury of 1/2" x 1/2" x 1/2" on the post aspect, the same lower lobe left right lung. Opinion as to cause of death; congested: Heart : Congested it present with an incised injury 1" x 1/2" x 1/2" over the ventricle

area of the heart, over the anterior aspect. Injuries over the heart left lung communicates with the external injury No.3. Pericardium of heart contains 100 cc of blood".

In her opinion, the deceased died due to injuries to his vital organs such as heart and left lung causing hemorrhage, shock and injuries to the skull.

In cross-examination, PW-13 stated that the patient was alive for 1-20 minutes in the hospital. She asked the deceased as to what had happened and whatever was stated by the deceased was recorded in the wound certificate. The treatment and the recording of his statement were done simultaneously. 5 or 6 minutes after she started the treatment of the injured, she recorded his statement which took about 10 or 15 minutes. At the time of the recording of the statement, PW-1 was present apart from the local MLA and other political leaders. At about 9.15 p.m. the patient was gasping for breath and became unconscious. She further stated that having regard to the injuries sustained by the deceased he would not be able to walk with the assistance of anyone. She admitted that even if there was loss of 2- = litres of blood the patient will become unconscious. She had not recorded any injury on the pericardium 100 cc of blood was found in the pericardium sack. In her opinion, the injury to the heart meant that the injured must have become unconscious and was likely to die at any time. There was injury on the left ventricle and such an injury makes the patient unconscious.

It may be noticed that so far as the statement recorded by the Medical Officer is concerned, the deceased did not mention about the presence of A-3 to A-6 and had only stated that he was assaulted by A-1, A-2 and one unidentified person.

We may now consider the evidence of the alleged eye witnesses. PW-2 was declared hostile, as he did not support the case of the prosecution. PW-3 claimed to be an eye witness and according to him, when he witnessed the occurrence PW-2 was with him. According to PW-3, on the date of occurrence at about 7.00 p.m. when he and PW-2 were going to village Mangaliguntapalem from Narsapur, they had heard the deceased crying for help. When they went near him they saw A-2 and A-6 beating the deceased with rods while A-3 to A-5 were assaulting him with sticks. A-1 stabbed the deceased with a knife on the left side of his abdomen twice. Seeing the occurrence he got frightened and returned to Narsapur. He stayed at Narsapur for two days and when he came to know thereafter that the police had visited the village he went to the village whereafter his statement was recorded by the police. According to this witness, it was a moonlit night and he had witnessed the occurrence from about a distance of 10 yards. He stated that though he had no fear to go to the police station, he neither went to the police station nor did he inform anyone at Narsapur about the occurrence. He had stayed with his sister at Narsapur but he did not inform any member of the family there about the occurrence.

The only other witness who claimed to have witnessed the occurrence is PW-4. We have earlier noticed the fact that after witnessing the occurrence he had informed PW-1 about what he had seen and thereafter he had proceeded ahead. In cross-examination, this witness admitted that he did not inform anyone in village Mangaliguntapalem about the occurrence nor did he inform any of the relatives of the deceased. He could not

identify the accused. He did not know A-1, A-2 and A-6. He could not say whether these accused were present at the time of occurrence.

The prosecution also examined PW- 6 and PW-9 to prove the motive for the commission of the offence. From their evidence, it was sought to be established that the deceased was a village elder and whenever any occurrence took place he intervened and took active part to secure justice to the person aggrieved. When A-1 had a quarrel with PW-6 or had assaulted PW-9, he had been instrumental in admonishing A-1 and in lodging a report against him with the police. These two occurrences relating to which PW-6 and PW-9 have deposed took place on 30.12.1991 and 16.9.1991. The case of the prosecution is that on account of such interference by the deceased A-1 and his associates were aggrieved and they, therefore, had a motive to commit the murder of the deceased.

The trial court having noticed the evidence of the eye witnesses has rightly not attached much importance to the evidence of PW-3 because this witness admitted that he neither went to the police station nor did he inform anyone about the occurrence for about two days. He had named all six accused as the assailants, which does not appear to be true. So far as PW-4 is concerned, the trial court accepted his evidence to the effect that he had, after witnessing the occurrence reported the matter immediately to PW-1, who returned to the place of occurrence and thereafter took the injured to the Narsapur Hospital. Even assuming that this witness may have seen the occurrence, his evidence does not implicate the accused because he admitted in his deposition that he did not identify the assailants nor did he know A-1, A-2 and A-6. He also could not say whether these accused were present at the time of occurrence. The other thing to be noticed in the evidence of this witness is that according to him, he had informed PW-1 that 5 or 6 persons armed with rods, sticks and knives were assaulting the deceased which also appears to be untrue. This witness has, therefore, implicated 5 or 6 persons whom he could neither name nor identify. We, therefore, do not consider it safe to place reliance upon these two witnesses, namely PWs. 3 and 4.

Considering the two dying declarations, one made before PW-1 and the other before the medical officer, PW-13, the trial court found that in those two statements made by the deceased, only A-1 and A-2 had been named and the third person who participated with them in the assault was unidentified. Having regard to these two dying declarations, the trial court found the evidence of PW-1 unacceptable to the extent that in his deposition he had stated that the injured had named all the six accused. The trial court, therefore, came to the conclusion that the two dying declarations only proved the complicity of A-1 and A-2. Accordingly it acquitted the remaining four accused persons.

The High Court on an appreciation of the evidence on record excluded the participation of A-2 to A-6. However, it noticed that injuries found on the person of the deceased were more in number than those mentioned by the witnesses. Though, the participation of A-1 and A-2 could not be doubted, having regard to the evidence on record, it was not possible to conclude that they had committed the offence under Section 302 IPC. There was a doubt as to the role played by each of the accused, the nature of arms used and the nature of injuries caused by them on the deceased. The evidence on record only justified the conviction of A-1 under Section 326 IPC and of A-

2 under Section 324 IPC.

Having gone through the evidence on record, we are satisfied that PW-1 cannot be categorized as a fully reliable witness. In the FIR lodged by him soon after the death of the deceased he had mentioned about the dying declaration made to him by the deceased which implicated only A-1 and A-2 apart from another unidentified person. However, in the course of deposition, he sought to implicate four other persons. He was obviously not speaking the truth because we find from the second dying declaration recorded by the Medical Officer that to her also the deceased is alleged to have reported that he was assaulted by A-1, A-2 and another unidentified person. It will, therefore, be dangerous to rely upon the oral dying declaration alleged to have been made by the deceased to PW-1. We shall, therefore, keep that dying declaration out of consideration.

The next question is whether the second dying declaration made to the Medical Officer can be acted upon to convict A-1 and A-2. We have found on a careful scrutiny of the evidence on record, a few features which have remained unexplained. According to the prosecution, only A-1 was armed with a sharp cutting weapon such as knife and according to the prosecution evidence, A-1 stabbed the deceased twice. However, we find as many as seven incised injuries on the person of the deceased. There is only one lacerated injury and one contused swelling apart from the fracture of the left little finger. The manner of occurrence, therefore, as alleged by the prosecution does not fit in with the findings of the Medical Officer having regard to seven incised injuries found on the person of the deceased.

There is yet another reason which casts a serious suspicion on the second dying declaration. According to the Medical Officer, PW-13, the injured was brought to the hospital at about 8.45 p.m. and was alive for about 1-20 minutes thereafter. She started the treatment of the injured in right earnest and 5 or 6 minutes thereafter she recorded the statement of the deceased which took about 10 to 15 minutes. According to her, at 9.15 p.m. the patient started gasping for breath and became unconscious. The picture that we get is that as soon as the Medical Officer completed recording his statement the injured became unconscious. He is said to have ultimately died at about 10.10 p.m. The respondents have contended that the presence of large number of political personalities at the hospital, having regard to the fact that the deceased was also a person well-known in the locality makes it doubtful whether the statement was correctly recorded or recorded at all. In fact, it is contended that having regard to the injuries sustained by the deceased, he would not have been in a position to make any statement even if he was alive. He must have become unconscious soon after suffering the injuries and there was no question of his either making a statement before PW-1 or before the Medical Officer. There is substance in the argument advanced on behalf of A-1 and A-2. PW-13 admitted that death of the deceased was due to injuries to vital organs such as heart and left lung. We find from the post-mortem report that the left lung had suffered incised injuries at two places. Apart from the injuries to the left lung, it was also found that one of the injuries caused on the left side of the chest had pierced the body to such an extent that the ventricle of the heart also suffered an incised injury over the anterior aspect. It appears from the post-mortem report that the same stab injury caused damage to the left lung as also to the heart. This only indicates that the stab injuries were caused to the deceased with such great force that they not

only fractured one of his ribs but also entered the thoracic cavity and injured the left lung and the ventricle of the heart. With such injuries, we entertain serious doubts as to whether the injured could have given two dying declarations as alleged by the prosecution, one at about 7.00 p.m. and the other at about 8.45-9.00 p.m. This is also supported by the medical evidence on record in as much as PW-13 has herself stated that if such an injury is caused to the heart, the injured would become unconscious immediately. It, therefore, appears to us that after suffering the injuries the deceased must have become unconscious immediately. There was, therefore, no question of his making a dying declaration to anyone thereafter. We also notice the fact that according to PW-1 after making a dying declaration, the accused walked a few steps with him with his help till such time they got a rickshaw which carried them to the hospital. According to the Medical Officer, PW-13, a person with such injuries could not walk at all even with the help of someone else. Having regard to the sever nature of injuries and the vital organs involved which suffered incised injuries such as heart and the lungs, we entertain a serious doubt about the recording of the second dying declaration by the Medical Officer almost two hours after the occurrence.

In this state of the evidence on record, we are not satisfied that the prosecution has proved its case beyond reasonable doubt. A-1 and A-2 (respondents herein) are entitled to the benefit of doubt. We, therefore, dismiss this appeal but having regard to our findings, we acquit the respondents of the charges levelled against them.