

AKULA VEERA VENKATA SURYA PRAKASH @ 'BABI
V.

PUBLIC PROSEUCTOR, HIGH COURT OF A.P.
Criminal Appeal No. 951 of 2001

MAY 5, 2009

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

Penal Code, 1860 — s.302 — Prosecution u/ss. 120-B, 148, 149, 324, 307 and 302 IPC — Of nine accused — Injured eye-witnesses and eye-witnesses to the incident — Trial court acquitting all the accused — High Court convicting Accused No.1 u/s.302 relying on the evidence of PW1 (injured eye-witness) -- Acquittal of others affirmed holding that eye-witnesses not reliable as they were planted by changing the site of occurrence — On appeal, held: Conviction of accused No.1 not called for — Evidence of PW1 also not reliable as there are various discrepancies in his evidence – There are various other discrepancies in prosecution case.

Appellant -accused No. 1 alongwith accused Nos. 2 to 9 u/ss. 120B, 148, 149, 324, 307 and 302 IPC. PW 1 (first informant), PW 2 (driver of the car) who were accompanying the deceased at the relevant time, were injured eye-witnesses. Pws 3 to 6, the close relatives of the deceased were also the eye-witnesses. Trial court acquitted all the accused of all the charges. High Court confirmed the acquittal except of A-1 disbelieving the evidence of PWs 3 to 6 as eye-witnesses relying on the evidence of PW 15(photographer) holding that scene of occurrence was purposely shifted in order to plant these eye-witnesses. A-1 was convicted u/s. 302 IPC holding that PW1 has given his name in FIR and he being an injured witness was reliable . Hence the present appeal by A-1.

Allowing the appeal, the Court

A HELD:1.1 Evidence of PW1 is not reliable. According
to PW.1 both in the FIR and evidence, the car was stopped
near to the house of deceased and then car glasses were
broken and both deceased and P.W.1 were attacked inside
the car and thereafter the deceased was dragged out of
B the car, again attacked and pushed him on the ground. If
P.W.15's evidence to the effect that scene of offence is
different and dead body was found inside the car is
accepted, the evidence of P.W.1 to the effect, the
occurrence took place near to the deceased house and
C deceased was dragged out of the car and again attacked
and he fell down on the ground and thereafter the
deceased was taken to hospital is false. As a matter of
fact P.W.5 and PW-6 who are eye-witness to the
occurrence had stated that the deceased died on the spot.
D [Para 10] [549-G-H; 550-A-B]

1.2. PW.1, in Ex.P.1 had stated that when the car was
reaching the house of deceased, A-1 was following the
car in the scooter, but in evidence he had stated that A1
was standing there and A1 and others stopped the car.
E Though in Ex.P.1, P.W.1 stated that all the eight accused
attacked the deceased, in evidence P.W.1 had given
special role to A-1 stating that A-1 first attacked the deceased
and 5 other accused thereafter attacked the deceased.
According to P.W.15, P.W.5 and P.W. 6 the deceased died
F on the spot. In Ex.P.1 there is no reference about the death
of deceased. In evidence P.W.1 and P.W.22 would state
that the deceased was taken to hospital for treatment. This
is false especially as P.W. 1 gave telephonic information
about the murder of the deceased. [Para 11] [550-C-E]

G 1.3. P.W.1 in his evidence stated that he had given all
the names of accused in Ex.P-1 Complaint. This is not
correct because he had mentioned only A-1 and 8 others.
P.W.22 also stated that P.W.1 did not give all the names.
P.W.1 did not choose to give the statement immediately
H when P.W.22 reached the scene. P.W.22 also did not care

to take statement from P.W.1. Even though P.W.22 came to the scene at 8.00 P.M, along with photographer (PW 15), the complaint was registered at only 10.00 P.M. after shifting the deceased from the scene of offence. The reason appears to be that at that time Police was not able to fix the identity of person who had attacked. That is the reason why no names have been given in Ex.P.1 except A-1. PW-1 gave telephone information stating that the deceased was murdered. PW-22 confirms the information. But PW-1 says he has not given any such information. [Para 11] [550-E-H; 551-A]

2. There are various other infirmities. There is no reason as to why the damaged car was not seized. P.W.23 admits that in spite of instruction to S.I. Police the same was not seized. P.W.23 Inspector of Police admits that blood stain found in the car was not scrapped and sent for the chemical experts. No reason is given for the same. Though it is claimed that the blood stained earth and sample has been taken from the new scene of offence, Ex.P.94 shows it did not contain blood, it was soil and ash. If the deceased was lying unconsciously, there is no reason as to why photographer was asked to take photograph. There is no reason as to why P.W.22 did not get the complaint from P.W.1 before taking the deceased to hospital. P.W.1 identified A1, A2 and A4 in the Identification Parade before P.W.19 Magistrate, but P.W.2 identified only A4. [Para 12] [551-A-D]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 951 of 2001

From the Judgement and Order dated 17.07.2001 of the Hon'ble High Court of Judicature at Hyderabad, A.P. in Criminal Appeal No. 1786 of 1999.

M. Karpaga Vinayagam, P.S. Narasimha, A. Venayagam Balan, Swarup Reddy, A. Ramesh, D. Mahesh Babu, with him for the Appellant.

A Altaf Fathima, D. Bharathi Reddy, for the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

B 1. Challenge in this appeal is to the judgment of a Division
Bench of the Andhra Pradesh High Court partly allowing the
appeal filed by the State and setting aside the acquittal so far
as the present appellant is concerned while upholding the
acquittal in respect of rest of the accused persons.

C 2. A-1 to A-9 were tried for the offences under section
120B, 148, 149, 324, 307 & 302 of Indian Penal Code, 1860
(in short the 'IPC') for having caused the death of one Abbai
Reddy and injuries to Yedukondalu (P.W.1) and Mohammed
Basha (P.W.2). The trial Court acquitted all the accused on
D 12.7.1999. State preferred appeal before the High Court. The
Appeal was allowed in respect of A-1 alone and he was
convicted for offence under Section 302 IPC and sentenced to
suffer imprisonment for life. The appeal in respect of A2 to A-9
was dismissed. Challenging the same, Criminal Appeal has
E been preferred by A-1.

3. Prosecution version in nutshell is as follows:

F On 4.11.1993 at about 7.00 P.M. Abbai Reddy (hereinafter
referred to as the 'deceased') and Yedukondalu (P.W.1) came
in the car driven by P.W.2 Basha. While coming to the turning
near to the house of the deceased, the accused persons A1 to
A8 stopped the car and broke the front glass of the car. Then
they broke open the doors of the car. All the accused persons
attacked the deceased Abbai Reddy with knives. Some accused
attacked P.W.1 also, P.W.1 and PW-2 managed to escape after
G receiving injuries. P.W.3 to 6 are the close relative of the
deceased. Abbai Reddy on hearing the cries came out of the
house and saw these accused running away from the scene
after attacking the deceased.

H P.W.1 made a telephonic call to P.W.22 S.I. of Police and

informed about the incident. P.W.22 after giving information to higher official came to the scene of offence along with P.W. 15 the professional photographer. He took photograph of the victim deceased, car and the scene of offence. Then the deceased and P.W.1 were taken to the hospital. There the Doctor (not examined) declared Abbai Reddy dead. PW-1 was examined by PW-16 Doctor on 4.11.1993 at 9.00 p.m. The PW-16 doctor issued Ex.P53 wound certificate. Thereafter, PW-22, S.I. Police obtained the statement Ex.P1 from PW-1 at 9.30 p.m. and registered the case at about 10.00 p.m. under Section 302 IPC and other offences. PW-23 the Inspector of Police took up the investigation and conducted the inquest on 5.11.1993. PW-17 conducted autopsy and issued post mortem certificate Ex.P54.

P.W.23 Inspector of Police continued the investigation and arrested the accused. During the course of investigation Identification parade was conducted by P.W.19 Magistrate, P.W.1 identified A1, A2 and A4. P.W.2 identified A4 alone. After completing the investigation P.W.23 filed the charge sheet.

P.W. 1 to 23 were examined on behalf of the prosecution. Ex.P-1 to P-94 marked. D.W.1 was examined on behalf of accused. Ex.D-1 to D4 were marked.

A1 is the son of A9, A2 is the clerk under A-9, A3 to A5 are close friends of A1, A6 to A8 are friends of A2, A9 is A1's father. There was a Quarry Business rivalry between A9 on the one hand and deceased Abbai Reddy on the other hand. The land belonging to one Haribabu was put to sale. Both A9 as well as deceased were trying to purchase the same, and ultimately deceased Abbai Reddy purchased the land at higher price. Due to this there used to be frequent quarrels between A9 and deceased. P.W.1 Yedukondalu is business partner of deceased. P.W.2 Basha is the driver. P.W.3 is the elder brother, P.W.4 is the friend, P.W.5 is the brother-in-law and P.W.6 is the wife of the deceased Abbai Reddy.

The trial Court disbelieved the case of the prosecution and acquitted all the accused. However, the High Court in the appeal

- A filed by the State set aside the order of acquittal in respect of A1 and convicted him for offence under Section 302 IPC and confirmed the acquittal in respect of other accused.

- B 4. It is relevant to take note of the grounds on which the High Court sustained acquittal of A2 to A9. According to the prosecution the occurrence had taken place near to the house of the deceased from where P.W.3 to 6 had witnessed the occurrence. The evidence of P.W.3 to 6 is not reliable because P.W.3 to 6 could not have seen the occurrence from the deceased house as the scene of offence has been purposely shifted from the actual scene of offence to a place near to the market yard from the place near to the house of deceased in order to plant P.W.3 to 6 as eye witnesses. The evidence of P.W.15 Photographer who had photographed the actual scene of offence would show that the scene of offence is a place opposite to the market yard which is far away from the house of deceased.

- E 5. Now the reasons which weighted with the High Court to set aside acquittal of A1 need to be noted. Since P.W.1 has given the names of A1 in Ex.P.1 FIR and he is an injured witness, his evidence alone is believed to convict A-1 for Section 302 IPC.

- F 6. Learned counsel for the appellant submitted that the High Court disbelieved the evidence of P.W.3 to 6 mainly on the basis of the evidence of P.W.15. If the finding given by the High Court in the light of the evidence of P.W.15 Photographer that P.W.3 to 6 is unreliable, would falsify the entire prosecution case. As such P.W.1 also cannot be believed also.

7. The specific findings of the High Court are as follows :

- G (1) The exact scene of offence is in front of market yard which is far away from the house of deceased and not the place near to the house of the deceased.

- H (2) P.W.15 has taken the photograph of the dead body inside the Car. So deceased must have been attacked and murdered inside the car itself.

(3) Scene of offence is purposely shifted from the Market yard to place near to the house of deceased in order to plant P.W.3 to 6 relatives of the deceased as eyewitnesses. Since the scene of offence is different place, P.W.3 to P.W.6 could not have seen the occurrence. So they are unreliable.

8. The Special Leave Petition filed against acquittal of A2 to A9 by the State has been dismissed on 16.9.2002. So this finding has become final. As such the finding of the High Court as well as evidence of P.W.15 Photographer on the basis of which the said finding was given would completely falsify the case of prosecution. So P.W.1 also cannot be believed.

9. To this effect, the following finding has been given by the trial Court.

"PW-15 Gathula Syamalarao, Photographer and his evidence shows that on 4.11.1993 he took photos in connection with the death of deceased Abhai Reddy at Korukonda road. In this Chief examination he stated the exact place is opposite to market yard and it was done in the evening time. He took Exs. P.17 to 34 photos and Exs. P.35 to 52 are its negatives. He further says that he took the photos on the dead body of the deceased and the car. In the cross examination he says that he took more than 20 photos in the crime and also stated the police have shifted the position of the dead body of the deceased so as to suit better appreciation. But the photograph was taken while the dead body was inside the car".

10. Learned counsel for the respondent supported the judgment of the High Court. Analysis of the evidence in the background of conclusions of the High Court would reveal following aspects. According to P.W.1 both in the FIR and evidence, the car was stopped near to the house of deceased and then car glasses were broken and both deceased and P.W.1 were attacked inside the car and thereafter the deceased was dragged out of the car, again attacked and pushed him on the

A ground. If P.W.15's evidence to the effect that scene of offence is different and dead body was found inside the car is accepted, the evidence of P.W.1 to the effect the occurrence took place near to the deceased house and deceased was dragged out of the car and again attacked and he fell down on the ground and thereafter the deceased was taken to hospital is false. As a matter of fact P.W.5 and PW-6 who are eyewitness to the occurrence had stated that Abbai Reddy died on the spot. Similarly P.W.15 would state he had taken photograph of dead body.

C 11. Coming to the evidence of PW.1, in Ex.P.1, he had stated that when the car was reaching the house of deceased, A-1 was following the car in the scooter, but in evidence he had stated that AI was standing there at Ramakrishna Mission and AI and others stopped the car. Though in Ex.P.1, P.W.1 stated D that all the eight accused attacked the deceased, in evidence P.W.1 had given special role to A-1 stating that A-1 first attacked the deceased and 5 other accused thereafter attacked the deceased. According to P.W.15, P.W.5 & P.W. 6 Abbai Reddy died on the spot. In Ex.P.1 there is no reference about the death E of deceased. In evidence P.W.1 and P.22 would state that the deceased was taken to hospital for treatment. This is false especially as P.W. 1 gave telephonic information about the murder of Abbai Reddy. P.W.1 in his evidence stated that he had given all the names of accused in Ex.P-1 Complaint. This F is not correct because he had mentioned only A-1 and 8 others. P.W.22 also stated that P.W.1 did not give all the names. P.W.1 did not choose to give the statement immediately when P.W.22 reached the scene. P.W.22 also did not care to take statement from P.W.1. Even though P.W.22 came to scene at 8.00 P.M, along with photographer, the complaint was registered at only G 10.00 P.M. after shifting the deceased from the scene of offence. The reason appears to be that at that time Police was not able to fix the identity of person who had attacked. That is the reason why no names have been given in Ex.P.1 except A-1. PW-1 gave telephone information stating that the deceased was H

murdered. PW-22 confirms the information. But PW-1 says he has not given any such information. A

12. There are various other infirmities. There is no reason as to why the damaged car was not seized. P.W.23 admits that in spite of instruction to S.I. Police the same was not seized. P.W.23 Inspector of Police admits that blood stain found in the car was not scrapped and sent for the chemical experts. No reason is given for the same. Though it is claimed that the blood stained earth and sample has been taken from the new scene of offence, Ex.P.94 shows it did not contain blood, it was soil and ash. If the deceased was lying unconsciously, there is no reason as to why photographer was asked to take photograph. There is no reason as to why P.22 did not get the complaint from P.W.1 before taking deceased to hospital. P.W.1 identified A1, A2 and A4 in the Identification Parade before P.W.19 Magistrate, but P.W.2 identified only A4. B C D

13. The inevitable conclusion is that the appeal deserves to be allowed which we direct. The bail bonds executed to give effect to the order of bail passed by this Court on 29.11.2001 shall stand discharged.

K.K.T.

Appeal allowed.