Rajulapadu Rambabu Vs The State of Andhra Pradesh

Court: Andhra Pradesh High Court

Date of Decision: Dec. 29, 2010

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 174, 313, 374(2)
Evidence Act, 1872 â€" Section 114, 118, 134
Oaths Act, 1969 â€" Section 4(1), 5
Penal Code, 1860 (IPC) â€" Section 302

Citation: (2011) 2 Crimes 437

Hon'ble Judges: N.R.L. Nageswara Rao, J; K.C. Bhanu, J

Bench: Division Bench

Advocate: I.V.N. Raju, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

K.C. Bhanu, J.
This Criminal Appeal u/s 374(2) Code of Criminal Procedure is directed by the Appellant-A1 against the judgment, dated

25-06-2007 in Sessions Case No. 43 of 2006, on the file of the Metropolitan Sessions Judge, Hyderabad, where under and whereby the

Appellant-A1 was convicted of the charge u/s 302 of the Indian Penal Code, 1860 (for short "IPC") and sentenced to undergo rigorous

imprisonment for life and also to pay a fine of Rs. 100/-, in default to undergo simple imprisonment for one month.

2. Brief facts, that are necessary for disposal of the present appeal, may be stated as follows:

A2 is the sister"s son of A1. P.W.1 is the mother and P.W.2 is the brother of Smt. Rajulapudi Dhanalakshmi (hereinafter referred to as "the

deceased"). P.W.3 is the son of the deceased and A1. The marriage of A1 with the deceased was performed 8 years prior to the incident.

Immediately, one year after the marriage, deceased gave birth to P.W.3 and now aged about 7 years at the time of occurrence, A1 and the

deceased who hail from Akiveedu came to Hyderabad in search of their livelihood. A1 was working as a driver with a private person. He was

living with his family in Flat No. 121, Amruthavilla Apartments, Somajiguda, Hyderabad. Prior to the occurrence, the deceased became sick and

she was suspected of suffering with sorcery. For treatment of sorcery, she was taken to her native place Akiveedu by the mother of A1 and after

recovery, she came back to Hyderabad. Again she was taken to Akiveedu for treatment as she was not keeping good health. Thereafter, she was

brought to Hyderabad. A1 was ill-treating her prior to going to Akiveedu and after coming back to Hyderabad as he intended to marry his sister''s

daughter. On the night of 02-08-2003 A1 picked up a quarrel with the deceased and P. W. 1 who was present in the house of the accused was

asked to go away by the deceased as A1 was quarrelling. A1 continued the quarrel. A1 obtained co-operation of his nephew-A2 who came from

the village. A2 poured kerosene on the deceased and A1 set fire to her and caused burn injuries. At about midnight, A1 went to the house of

P.W.1 and informed her that her daughter was burning. Then P.W. 1 and her husband rushed to the scene of offence. In the meanwhile P.W.4

who was working as Assistant Security Officer in the same Apartment rushed to the scene with another security person went to Yashoda hospital

for the purpose of securing a doctor, but doctors refused to come in the absence of police requisition. Then he telephoned to Punjagutta Police

Station. P.W.9-the then Sub Inspector of Police, Punjagutta Police Station after receipt of phone call about the incident in question, went to the

scene of offence and shifted the deceased and A1 to Gandhi Hospital as A1 also received burn injuries. He recorded the statement of P.W.1

under Ex.P1. He went to the Police Station and handed over Ex.P1 to Head Constable, who registered a case in Cr. No. 1224 of 2003 under the

head ''Woman Burns'' and issued Ex.P6-FIR. P.W.9 again visited the scene of offence and prepared Ex.P2-observation report in the presence of

P.W.5 and another and seized M. Os. 1 to 4. He drew rough sketch of scene of offence under Ex.P7 and got scene of offence photographed

through P.W.7. Though he sent a requisition to the Magistrate to record the statement of the deceased, the same could not be recorded as she did

not recover from injuries and continued to be unconscious. On 03-08-2003 at about 3.30 P.M. one Uma Maheswara Rao, Sub Inspector of

Police of the same Police Station received death intimation and he altered the section of law from Women Burns to Section 174 Code of Criminal

Procedure under Ex.P8. During the course of investigation, P.W. 10, the then Inspector of Police, Punjagutta Police Station altered the section of

law to 302 IPC and sent alteration memo to the concerned Court. He visited the scene of offence and examined P. Ws. 1, 3, 4 and others and

recorded their statements, conducted inquest on the dead body of the deceased on 04-08-2003 at Gandhi Hospital mortuary in the presence of

P.W.6 and others under Ex.P3 inquest report. Thereafter, the dead body was subjected to post-mortem examination. P.W.8 who conducted

post-mortem examination on the dead body of the deceased opined that she sustained 95% superficial ante-mortem burns except scalp, that cause

of the death was due to burns and issued Ex.P5 post mortem certificate. P.W. 10 arrested the accused and after completion of investigation, he

filed the charge sheet.

3. The learned Sessions Judge, framed the following charges against the accused:

That you A1 and A2 on the night of 3rd day August, 2003 at 00.15 hours at Flat No. 121, Amrutha Villa Apartments, Somajiguda, Hyderabad,

did commit murder by intentionally causing the death of Smt. Rajulapudi Dhanalakshmi in such act, you A2 poured kerosene on her and you Al set

her on fire and caused burn injuries to the said Dhanalakshmi and thereby committed an offence punishable u/s 302 IPC.

When the above charge was read over and explained to the accused in Telugu, they pleaded not guilty and claimed to be tried.

4. To bring home the guilt of the accused, the prosecution examined P. Ws. 1 to 10 and got marked Exs.P1 to 12 besides case properties, M. Os.

1 to 4.

5. After closure of the prosecution evidence, the accused were examined u/s 313 Code of Criminal Procedure with reference to the incriminating

circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. No oral evidence was adduced except

marking Ex.D1 on behalf of the accused.

6. The trial Court after considering the oral and documentary evidence available on record, while acquitting A2 of the offence with which he was

charged convicted and sentenced the Appellant-A1 as above. Challenging the same, the Appellant-Al preferred this appeal.

7. Now the point that arises for consideration in this appeal is whether the prosecution has proved its case against the Appellant-A1 of the offence

punishable u/s 302 IPC beyond all reasonable doubt?

8. Smt. K. Sesharajyam, learned Counsel appearing for the Appellant-Al contended that except the child witness P.W.3, there is no other

evidence to show that the accused No. 1 poured kerosene on the body of the deceased and set fire to her, that originally the case was registered

under "Women Burns" and after the death it was altered to Section 174 Code of Criminal Procedure and thereafter u/s 302 IPC, that the F.I.R.

and altered memos were sent to the Court at one and the same time, which suggest the fabrication of the case, that as admittedly P.W.3 is under

the care and custody of his maternal grand mother who was examined as P.W.1, the possibility of P.W.1 tutoring P.W.3, who is aged about 7

years at the time of incident cannot be ruled out, that prior to the death, the deceased was not keeping good health and she was being treated by

the mother of A1 and the possibility of the deceased committing suicide cannot be ruled out, that in the course of same transaction, admittedly, A1

also sustained burn injuries and he had taken treatment, which suggest that he tried to extinguish the fire, that if really, he is the culprit, he would not

have tried to extinguish the fire, that immediately after the incident, he went to the house of his mother-in-law and informed the same, that therefore,

the conduct of A1 is quite natural to bring to the notice of the mother of the deceased about the incident, that if really he is the assailant of the

deceased, he would have fled away from the scene of occurrence, that police have not sent any requisition to the concerned Magistrate to record

the statement of the deceased, that purposefully the prosecution failed to examine the eldest daughter of the deceased, who was present at that

time, who could be in a position to throw a light as to the sequence of events that took place on the fateful day of the incident and therefore, she

prays to set aside the conviction and sentence recorded against the Appellant-A1.

9. On the other hand, counsel representing the learned Public Prosecutor contended that P.W.3 is natural witness to be present at the time of

incident being the son of the deceased and A1, that if really P.W.3 had not witnessed the incident, he would not have stated that the accused

poured kerosene and set fire to his mother, that when the neighbours came to the scene of occurrence, A1 was merely standing without trying to

extinguish the fire, that there was continuous harassment meted out to the deceased prior to the incident, that as a matter of fact, on the date of

incident also, A1 was under the influence of alcohol, that it is quite possible in that state of mind to pour kerosene and set fire to the deceased, that

the trial Court after elaborate consideration of evidence on record rightly convicted and sentenced the Appellant-A1 and absolutely there are no

grounds to interfere with the same.

10. P.W.6 is one of the inquest mediators who was present when police held inquest over the dead body of the deceased. The inquest mediators

opined that the deceased died as a result of burn injuries.

11. P.W.8 is the doctor who conducted autopsy over the dead body of the deceased on 04-08-2003 between 11.30 PM and 12.30 PM, found

superficial ante-mortem burns throughout the body, except the scalp. The burns percentage was 95. The cause of the death was due to burns and

he issued Ex.P5 post mortem certificate. Practically, the evidence of P.W.8 and the recitals in Ex.P5 remained unchallenged. Therefore, it is

established beyond reasonable doubt that the deceased died as a result of burn injuries. Even the accused is not denying or disputing about the

sustaining burn injuries by the deceased.

12. Now it has to be seen whether the Appellant-A1 is the assailant of the deceased or not?

13. The entire case rests upon the solitary testimony of P.W.3, who is admittedly a child witness, aged about 7 years. He is no other than the son

of the deceased and A1. They are living in the Flat in Somajiguda. Because P.W.3 is a child witness, aged about 7 years, the learned Sessions

Judge ought to have put some preliminary questions to him to know whether the witness is capable of giving rational answers and to know the

mental condition of the witness. In the case f child, it depends on the capacity of the child, his appreciation of the difference between truth and

falsehood as well as his duty to tell the former. The trial Judge may resort to any examination, which will tend to disclose the capacity and

intelligence. The obligation of trial Judge to put preliminary questions is to know whether the child witness is answering the questions intelligently

without any fear, because the intellectual capacity of a child to understand and to give rational answers thereto is the test of testimonial

competency. No such questions were recorded in the deposition of P.W.3 though it is observed that some questions put to child witness, he was

giving rational answers. The trial Court ordinarily ought to have noted the nature of preliminary questions in the deposition to satisfy itself in regard

to the competency u/s 118 of the Evidence Act as well as under the proviso to Section 4(1) of Oaths Act. It is highly desirable to bring on record

the questions and answers put to the witness and to make a record of the satisfaction of the Court. There cannot be any dispute that if the evidence

of a child witness is found to be true and trustworthy and not an outcome of tutoring or prompting by any relatives, it can be acted upon. Since

children are prone to tutoring, much care and caution should be taken in appreciating the evidence of a child witness. The evidence of P.W.3 is

only five line statement made in the chief-examination, which reads thus:

My name is Sai Prakash. Mo mother''s name is Meena. She is no more. My father''s name is Rambabu. He is in the accused''s dock. My mother

died about 3 years back. On one day night about 3 years ago, A2 poured kerosene on the person of my mother and A1 lit a match stick and set

fire to my mother. A2 is our relation. I was examined by the police.

The above statement is laconically cryptic and tersely and does not reveal anything about the sequence of events that took place on the date of

incident. He did not say as to the reason for woke up and further he attributes specific overt-acts against A1 and A2. In view of the fact that

P.W.3 is in the control, care and custody of P.W.1, the possibility of P.W.1 tutoring P.W.3 to give cryptic statement cannot be ruled out. In

evaluating and appreciating the evidence of a child witness, it has to be seen in the facts and circumstances of the case whether he is in a position to

witness the manner of incident and whether he is tutored to give evidence. On this aspect, it is pertinent to refer to a decision reported in Dattu

Ramrao Sakhare and Others Vs. State of Maharashtra, wherein it was held thus:

The entire prosecution case rested upon the evidence of Sarubai (Public witness 2 a child witness aged about 10 years. It is, therefore, necessary

to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts

and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be

considered u/s 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof.

The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court

should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like

any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a

witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have

the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to

consider the evidence of Sarubai (Public witness 2.

Bearing the above principles in mind, the evidence of P.W.3 has to be scrutinized very carefully and with great circumspection. According to

P.W.3, A2 poured kerosene on his mother and A1 lit matchstick. That part of the statement of P.W.3 that A2 pouring kerosene on the deceased

has been disbelieved by the trial Court. Similarly, there is no evidence which suggests the presence of A2 at the time of incident. The persons who

gathered at the scene of occurrence stated that A1 and children of the deceased were alone present and outsiders were not present in the flat.

Therefore, pouring of kerosene on the body of the deceased by A2 appears to be false and the same cannot be accepted. No doubt a part of the

statement can be relied upon by the Court, but at the same time the remaining part of the statement of the witness can be discarded if the Court is

able to disengage the truth from falsehood. If truth and falsehood are inextricably mixed up and it is not possible to disengage the truth from

falsehood, the only course left open to the Court is to discard the entire statement of the witness. The statement of P.W.3 that A2 poured kerosene

on the body of the deceased and A1 lit matchstick and set fire to the deceased is intertwined. In the circumstances of the case, the falsehood

cannot be separated from the truth. In the facts of the case, the evidence requires corroboration. There is no other evidence to corroborate the

evidence of P.W.3 to show that A1 poured kerosene on the body of the deceased and set fire to her.

14. Furthermore, an important witness who is elder sister of P.W.3 and who was admittedly present at the time of incident was not examined by

the police. She is the best person to speak about the incident proper as she was admittedly residing with her parents at the relevant point of time of

the incident. No explanation of whatsoever was given by the prosecution as to why such an important witness whose presence is not in dispute

was not examined. The Investigating Officer has not given any explanation at all for not examining the elder sister of P.W.3. Section 114(b) of the

Evidence Act provides that the evidence which could be and is not produced, if produced, be unfavorable to the person who withholds it. If the

prosecution wantonly and willfully withholds best evidence, every presumption to its disadvantage consistent with the facts admitted or proved will

be adopted. Therefore, in the facts and circumstances of the case, for non examination of Dhaneswari, who is elder sister of P.W.3, an adverse

inference can be drawn. Section 4(1) of the Oaths Act, 1969 reads that oaths or affirmations shall be made by the following persons, namely:

a) All witnesses, that is to say, all persons who may lawfully be examined, or give or be required to give, evidence by or before any Court or

person having by law or consent of parties to examine such persons or to receive evidence;

b) ...

c) ...

Provided that where the witness a child under 12 years of age and the Court or person having authority to examine such witness is of opinion that

though the witness understands the duty of speaking the truth, he does not understand the nature of oath or affirmation, the foregoing provisions of

this section and the provisions of Section 5 shall not apply to such witness, but in any such ase the absence of an oath or affirmation shall not

render inadmissible any evidence given by such witness nor effect the obligation of the witness to state the truth. Section 118 of the Evidence Act

reads that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them,

or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause, of the

same kind. No doubt, Section 134 of the Evidence Act provides that no particular number of witnesses shall in any case be required for the proof

of any fact and the prosecution is obliged to examine witness after witness to prove the same fact, but at the same time the witness examined to

prove a fact in issue, must be put in the category of wholly reliable. If the testimony of single witness is found to be entirely reliable and trustworthy,

then it requires no support from other evidence. The evidence of P.W.3 is put in the category of neither wholly reliable nor wholly unreliable, then

the examination of elder sister of P.W.3 is very much essential to lend assurance of the evidence of P.W.3. If an adverse inference is drawn, it can

be said that the prosecution is wantonly and consciously suppressed her presence before the trial Court.

15. Though P.W.1 is residing near the scene of occurrence, she stated that preceding the incident, there was an altercation took place between A1

and the deceased and that A1 used to ill-treat her daughter by abusing her in filthy language and also causing mental agony. If really there was any

such ill-treatment or harassment prior to the incident, the same should have been stated in the F.I.R. She did not state anything with regard to the

harassment prior to the incident. She simply stated that A1 was abusing her daughter in filthy language stating that she has to go out from the house.

Except that, there are no other allegations of whatsoever so as to infer that A1 has taken extreme decision to do away with the life of the

deceased.

16. P.W.2 is the brother of the deceased. Admittedly, he is not residing in the flat at the time of incident and he came to know about the incident.

Therefore, his evidence is not much helpful to the case of the prosecution.

17. P.W.4 who is the immediate neighbour of the deceased stated that on hearing cries, himself and Mohd. Moinuddin rushed to the flat No. 121

in Amrutha Villa Apartments, Somajiguda, Hyderabad and they saw the deceased with flames and at that time, A1 was at the entrance room of the

flat. They tried to put off the flames with the help of pillow and blanket. At that time, A1 took his children saying that their mother was burning. So,

his evidence is also not much helpful to the case of the prosecution because A1 is not disputing about his presence at the time of incident. May be

under the fear that both the children may also caught with flames, he might have shifted the children outside the flat. It does not mean he is the

perpetrator of the crime. The other witness P.W.5 speaks about the investigation with regard to seizure of material objects and observing scene of

occurrence as in Ex.P2. P.W.6 is one of the inquest mediators who was present when P.W.10 held inquest on the dead body of the deceased and

P.W.9 is the investigating Officer who speaks about for mal investigation.

18. According to the learned Counsel for the Appellant, the theory of suicide by the deceased cannot be ruled out and this aspect of the case can

be gathered from the proved circumstances. If the theory of suicide is also reasonably possible, the view which is favorable to the accused should

be adopted. On this aspect, it is pertinent to refer to a decision reported in Kali Ram Vs. State of Himachal Pradesh, wherein it was held thus:

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence

adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be

adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule

has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is

inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in

case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt

regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a

firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding he benefit of doubt also does

not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of The

State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, a criminal trial is not like a fairy tale wherein one is free to give flight to one''s

imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is

charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the

accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the

animus of witnesses. Every case in the final anolysis would have to depend upon its own facts. Although the benefit of every reasonable doubt

should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful

or in the nature of conjectures.

From the above decision, it is clear that when two views are reasonably possible, the view which is favorable to the accused should be adopted. It

has to be seen whether the case of suicide is possible or not in this case in the circumstances of the case. The circumstances indicate that

immediately after the incident, A1 rushed to the house of P.W.1 and informed about the incident. It is not in dispute that A1 also sustained burn

injuries. The nature and extent of burn injuries caused, nature of treatment and period of treatment have not been brought on record when

admittedly A1 sustained burn injuries during the course of same transaction. It is the duty of prosecution to cite the doctor who examined and

treated A1. The prosecution must be fair in examining the doctor. So the possibility of A1 sustaining burn injuries while extinguishing the fire on his

wife cannot be ruled out. The facts of the case suggest that he must have made some efforts to put off the flames on the deceased, as a result, he

sustained some burn injuries. Similarly if it is a case of homicidal burns, A1 should have escaped from the scene of occurrence so that nobody

would notice him. Therefore, the immediate conduct of Al shows that the possibility of the deceased committing suicide for the reason that she was

not keeping good health cannot be ruled out in view of the fact that prior to the incident, the deceased was being treated for sorcery by the mother

of A1 at their native place. Therefore, due to health problems and unable to overcome the health condition, the deceased might have committed

suicide by setting fire to herself. In these circumstances, it is not safe to place an implicit reliance on the solitary testimony of P.W.3 alone who is a

child witness so as to base a conviction and if really, P.W.3 had seen the offence, he would have informed the same to his grand mother and also

the persons gathered immediately after the incident about A1 letting fire to the deceased. Therefore, these aspects of the case have not been

considered by the trial Court in a right perspective. Hence, we have no hesitation to hold that the prosecution miserably failed to establish the guilt

of Al beyond all reasonable doubt and as such, A1 is entitled for acquittal.

19. Accordingly, the Criminal Appeal is allowed setting aside the conviction and sentence recorded against the Appellant-A1 by the Metropolitan

Sessions Judge, Hyderabad, vide judgment, dated 25-06-2007, in Sessions case No. 43 of 2006 of the charge u/s 302 IPC. The Appellant-Al is

found not guilty of the charge u/s 302 IPC and accordingly, he is acquitted of the same. The Appellant-A1 shall be released forthwith if he is not

required to be detained in any other case. Fine amount, if any, paid by the Appellant-Al shall be returned to him.