
(2014) 01 AP CK 0066

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1048 of 2009

Adapa Ram Babu @ Ramu

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 1 ALD(Cri) 966

Hon'ble Judges : M.S.K. Jaiswal, J; L.N. Reddy, J

Bench : Division Bench

Advocate : G. Vijaya Saradhi, Advocate for the Appellant

Judgement

L. Narasimha Reddy, J.—The appellant is the sole accused in S.C. No. 45 of 2009 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad. He was convicted for the offence u/s 302 I.P.C. and sentenced to undergo imprisonment for life. No fine was imposed. The case of the prosecution is that on 30.04.2008, at about 11.00 p.m., P.Ws.1 and 2, two Constables attached to Marredpally Police Station, were on patrolling duty and they received VHF message from the control room to the effect that a quarrel is taking place on a road leading from Cantonment Check Post to Patny and immediately, they reached the place. They are said to have noticed that one person i.e. the accused, was indiscriminately beating a rag picker in the process of snatching away the bag from him and he started beating whoever has intervened to separate them. One Sri Hernia Naik, who tried to intervene, was said to have received injuries in the hands of the accused.

2. P.Ws.1 and 2 are said to have overpowered the accused, handed over him to P.Ws.5 and 6, the Constables at Begumpet Police Station, and took the injured to Gandhi Hospital, Secunderabad at about 12.00 in the midnight. The Doctor, who examined the injured is said to have declared him as dead. Thereafter, P.Ws.1

and 2 are said to have submitted a complaint to Begumpet Police Station and the same was registered as Crime No. 153 of 2008. P.W.12, the Inspector of the Police Station, caused the inquest, sent the body for post-mortem examination, and has undertaken investigation. He examined L.Ws.1 to 17 and submitted a charge sheet u/s 173 Cr.P.C. stating inter alia that the accused asked the deceased to give a beedi and when the latter refused, the accused has become wild and beaten him to death. Offence u/s 302 I.P.C. was alleged.

3. Before the trial Court, P.Ws.1 to 13 were examined and Exs.P1 to P13 were filed. In addition to that, Material Objects 1 to 4 were also taken on record. Through its judgment, dated 05.08.2009, the trial Court convicted the accused for the offence u/s 302 I.P.C. and sentenced him to undergo imprisonment for life.

4. Sri G. Vijaya Saradhi, learned counsel for the appellant, submits that the version presented by P.Ws.1 and 2 is totally unbelievable. He contends that P.Ws.1 and 2; did not even furnish the source of information with reference to acceptable material and they have simply stated that the information was received from the control room. He submits that in the evidence of those two witnesses, neither the number of the vehicle in which they have travelled, nor the details of VHF said to have been used by them, were furnished despite being asked pointedly. He further submits that in case the information was received from the control room, either the person who passed the information ought to have been examined or the details of the information culled out from the device could have been furnished.

5. Learned counsel further submits that a serious lapse has taken place before the trial Court in the form of failure on the part of the prosecution to examine Hernia Naik. He contends that in the charge sheet, Hernia Naik, L.W.4, was described not only as an eye-witness, but also a victim, since he is said to have received injuries in the hands of the appellant, and failure to examine such a person is fatal to the entire version of the prosecution. Other grounds are also urged.

6. Learned Public Prosecutor, on the other hand, submits that the prosecution has established a perfect link between the incident relating to the death of the deceased on the one hand and the appellant on the other. He contends that this is a rare case in which the police constables reached the spot even when the quarrel was going on and the version of P.Ws.1 and 2 cannot be doubted at all. He submits that the sequence of events is such that hardly any scope was there for anybody to mediate. Learned Public Prosecutor submits that soon after the message was received by them, P.Ws.1 and 2 have rushed to the spot, apprehended the appellant, shifted the injured to the hospital and submitted complaint. He further submits that when there is cogent and consistent evidence on record, failure to examine one person, who too witnessed the incident, cannot be treated as fatal.

7. The deceased in this case was a rag picker. The accused is said to be a vagabond. One does not expect any serious dispute between such persons. It was not alleged that they were acquainted with each other, nor any serious motive was attributed. The source of information for P.Ws.1 and 2 to reach the spot where a quarrel is said to have taken place is VHF message received from the control room. Charge sheet was filed after examining quite a good number of witnesses. Ultimately, what the Investigating Officer stated is:

From the facts and evidence collected so far in this case, it is established that the accused lost his parents in his childhood and having criminal background. He was arrested by various police stations. About 1 1/2 months back, he was released from jail, as he was remanded to judicial custody by Karkhana Excise Police about 8 months back. On 30.04.2008 night, he approached the deceased near 22 bus stop and demanded a beedi, when the deceased refused to give, the accused in an aggressive mood picked up a concrete debris from nearby and hit the deceased severely on his head and face repeatedly. On seeing this some passersby gathered and tried to rescue the victim, but he threatened them. Meantime, Police came there and caught him. Thus, the accused committed an offence punishable u/s 302 IPC.

8. The motive attributed to the appellant is the refusal by the deceased to give a beedi to him. It is keeping in view this aspect, that further discussion needs to be undertaken.

9. It hardly needs any emphasis that no prudent person would expect that a man to kill another just because his demand for a beedi was not acceded to. If such a conduct can be treated as normal, half of the population must vanish in matter of hours, if not days. Be that as it may, if the prosecution is able to establish through cogent evidence that the accused has in fact, caused the death of the deceased, the trivial nature of mens rea cannot be a factor to condone the criminal act.

10. The source of information for P.Ws.1 and 2 to reach the spot is said to be VHF message received from the control room. Specific questions were put to both the witnesses about the particulars of information. They were not able to furnish even the description of the wireless set used by them. In these days of improved communications, it would not have been difficult for them to get the extract of the relevant information from the control room. In such an event, it would be possible for anyone to know the person who gave the information about the incident, and the one, who passed the same to P.Ws.1 and 2, and their reaching the spot.

11. P.W.1 stated that soon after the information was received, he, along with P.W.2 proceeded to the spot and they found that the accused was attacking the persons whoever were intervening in the quarrel between him and the deceased. He has also made a mention about a person receiving the injuries i.e. Hernia Naik. He stated that after the accused was apprehended by them and handed

over to Begumpet Police Station, they shifted the injured to Gandhi Hospital and there, he was declared dead. In the cross-examination, he stated that he was not accompanied by P.W.2 from the place of occurrence to Gandhi Hospital. However, P.W.2 has a different version. He stated that he accompanied P.W.1 to the hospital. He further stated that it is only after they have reached the spot, that the incident of quarrelling started. To be precise, he stated in the cross-examination, as under:

By the time, we reached the spot, police from cantonment check post not reached the spot. Galata took place three or four minutes after we reached the spot. After we seen the injured, we informed the same to 108 ambulance. We received message in VHF stating that there is a galata without more particulars, without major or minor galata.

If this is superimposed with the following statement of P.W.1 in the chief-examination, one can easily guess the reliability on the evidence of these witnesses:

When myself and above Home Guard, D. Narayana (P.W.2), were on patrolling duty on a Motor cycle and at about 11.30 p.m. when we reached Ganesh Temple of YMCA, we received a VHF message which was available with me stating that a quarrel was going on, on the road leading to Patny to Cantonment. Immediately, myself and Home Guard proceeded to the spot and found a mob near Patny bus stop on the road and the accused was beating to aged person of 45 years with a stone. The accused also beating the public whoever intervened to separate both of them. Then, myself and Home Guard caught hold the accused and taken in custody and on inquiry, he told that his name is Ramu. At the same time Begumpet Blue Colds patrolling team and 108 ambulance came to the scene, then we handed over the accused to Begumpet Blue cold police and we shifted the injured person in 108 ambulance to Gandhi Hospital. One Begumpet police also accompanied in the ambulance.

12. Whatever be the truthfulness or otherwise of the evidence of a police official, it is not at all safe to convict an individual on the basis of that. It is only in extreme cases where other evidence is not available and the suspicion that surrounds the evidence of a police official is almost removed, that the Court can rest its conclusions on the evidence of the police officials.

13. In the instant case, even according to the prosecution, one Sri Hernia Naik is an injured eye-witness. He is said to have received injuries in the hands of the appellant when he tried to intervene in the quarrel. He too was sent to the hospital, for treatment. In the charge sheet, Hernia Naik was described as a victim eye-witness. When such an important witness was available, failure on the part of the prosecution to examine him would lead to an adverse inference referable to Section 114 of the Indian Evidence Act. The Investigating Officer did not even mention the factors that prevented or disabled them from examining L.W.4 as a prosecution witness. It is not at all necessary to refer the precedents,

which enunciated that the failure to examine a material witness by the prosecution would certainly weaken its case.

14. P.W.3 is a Hamali said to be employed in the nearby check post. His presence itself is highly doubtful. The check post is not a place where goods are loaded or unloaded. The only activity that takes place there is that the vehicles, which pass through the check post, are levied tax. Added to that, his version does not at all commend acceptance. More over, P.W.4 who is said to be another eye-witness has turned hostile. In any criminal prosecution, mens rea is as important as the evidence to prove the occurrence. Hardly, there exists any standard in this behalf. A small factor can be sufficient, a provocation for one to commit an offence, whereas the same would not matter for another. Even if the attitude or conduct of a person with utmost self-respect is treated as standard, it is impossible to imagine that one would kill a person, on the sole ground that such a person did not accede to the request to give a beedi. Such a thing cannot at all constitute motive, even for a short tempered person, to commit a serious offence running the risk of being imposed punishment of the highest order. It is rather unfortunate that the appellant, who according to the prosecution itself, was a vagabond, was implicated in the murder of an unknown rag picker and the trial Court has convicted him to undergo imprisonment for life.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 45 of 2009 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad, dated 05.08.2009, against the appellant-accused, are set aside. The appellant-accused shall be set at liberty forthwith, if he is not required in any other case. The miscellaneous petition filed in this appeal shall also stand disposed of.