
(2014) 02 AP CK 0009
In the Andhra Pradesh High Court
Case No : Criminal A No. 1184 of 2009

Afroz Khan and three Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 302 326 34

Citation : (2014) 1 ALD(Cri) 753 : (2014) 3 ALT(Cri) 172

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

Bench : Division Bench

Advocate : Naseeb Afshan, for the Appellant;

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—In S.C. No. 199 of 2008 on the file of I-Additional Sessions Judge, Adilabad, A-1 to A6 were tried for the offence of committing murder of Sk. Wahid Kureshi on 26.03.2007 near Nataraj Talkies, Adilabad at 1230 noon. Through its judgment dated 23.09.2009, the trial Court acquitted A5 and A6, but convicted A1 to A4 for the offence, punishable under Sec. 302 IPC, and sentenced them to undergo rigorous imprisonment for life. Fine of Rs. 2500/- on each was imposed, and in default of payment of fine they were directed to undergo simple imprisonment for three months. Hence, A1 to A4 filed this appeal under Sec. 374(2) of Criminal Procedure Code. The case of the prosecution was that the deceased was running a lottery with the help of others, and on 26-03-2007, he left the home at 10.00 am, after taking meals and was conducting the lottery in front of the Nataraj Talkies. At that time, A1 to A6 are said to have come to the deceased and A-1 asked him to pay his share. The deceased is said to have refused to pay anything, denying his liability. It was alleged that, A1 to A4 outraged by the said reply have attacked the deceased, A5 was threatening the bystanders from interfering in the matter by wielding his shirt; and A-6 was standing, there to prevent others from interfering.

2. The father of the deceased, PW-1 is said to have received a phone call from one Mr. Sikandar, to the effect that the deceased was attacked by A-1 indiscriminately and suffered serious injuries. PW-1 said to have rushed to the spot in an auto, and on his finding his son in seriously injured condition, he engaged another auto and shifted him to Government Hospital. After half-an-hour of treatment in that hospital, the injured is said to have been shifted to another Hospital, at Yavatmal in Maharashtra, by arranging a vehicle and that A-5 accompanied the deceased. PW-1 is said to have remained at Adilabad and submitted a complaint, Ex. P.1 to I-Town Police, Adilabad, alleging that his son was attacked by A-1 and his (A-1's) friends, when his son refused to pay the commission to them. The same was registered as Crime No. 41 of 2007 alleging offences punishable under Sec. 326, read with Sec. 34 IPC. After some time, PW-1 said to have received information from A-5 that Wahid Kureshi died on the way and the dead body was brought to Adilabad, at about 5.00 p.m. The police officials are said to have conducted inquest, panchanama and arranged for postmortem of the deceased. Recovery of sticks is also said to have been made by the police. The section in the FIR was altered by inserting Sec. 302 IPC.

3. After investigating the matter, PW-14 filed a charge sheet against the accused. The trial Court framed necessary charges with reference to the provision of law, and conducted trial.

4. Ms. Naseeb Afshan, learned counsel for the appellants, submits that there are serious lapses in the case of the prosecution and each one of them are sufficient to result in acquittal of A1 to A4 also. She contends that PW-1 is said to have received information from one Mr. Sikandar about the incident, but he was not examined before the Court despite the fact that he was examined as LW-7. She contends that PW-2 is none other than the brother of the deceased and son of PW-1 and though this witness stated that he saw A-1 to A-4 attacking his brother, and himself received injuries, his presence was not spoken to by PW-1 at all. She further submits that according to PW-2 the information about the incident was given to PW-1, by PW-6. Learned counsel further submits that while according to PW-1, A-5 accompanied the deceased to the Hospital at Yavatmal; PW-4 stated that he too accompanied and his presence was not referred to by PW-1 at all. She contends that PW-1 admitted that he and the deceased were convicted by the Court for the offence of smuggling Ganja and even the post-mortem report revealed that the deceased has sutured injuries. She submits that while according to PW-7, the doctor who gave the first aid, there were only two injuries on the body of the deceased, the post-mortem report, Ex. P.15 revealed as many as 12 injuries, and the trial Court did not take this material inconsistency, into account.

5. The learned Public Prosecutor, on the other hand, submits that this is a rare case in which as many as "three" eyewitnesses deposed about the occurrence. She contends that the ocular and medical evidence is consistent as to the cause of death of the deceased. It is argued that the discrepancies pointed out by the

learned Counsel for the appellants are trivial in nature.

6. Among the six accused that were put on trial, two were acquitted by the trial Court and four have been convicted and sentenced to undergo rigorous imprisonment for life.

7. The case of the prosecution, in brief, is already stated in the preceding paragraphs. The complaint, Ex. P.1, was submitted by P.W. 1, the father of the deceased. In the chief-examination, he stated that he received the information about the attack on his son from one Mr. Sikandar (LW-7). However, the prosecution did not examine LW-7 as a prosecution witness. This omission is material since he was the person who is said to have witnessed the occurrence. PW. 1 admitted that Ex. P.1 was not written by him and he does not know who authored it. It is too well-known that a complaint submitted to the police would be the first step in the compendious process of prosecution, and an accused has every right to ensure that the subsequent steps taken by the police accord with the contents of the complaint. Though the Court does not expect total conformity with what is contained in the complaint and what emerges at a later stage in the course of investigation, the material inconsistencies in this behalf are certainly to be taken into account, in determining whether or not the charge against an accused is proved.

8. A serious doubt arises about the truth of the version of PW. 1. The reason is that though PW. 2, his another son, claimed to be an injured-eyewitness, his presence was not spoken to by PW. 1. The evidence of PW. 2 is not consistent. He stated that he went to Nataraj Talkies to see a movie and since he missed it, he was waiting for the next show. That was not the time for starting of any show whatever. As regards his noticing the attack on the deceased, his version is not consistent. At the first spell, he said that A.1 to A.4 started attacking his brother, and in the next spell, he stated that he received the information about the attack on his brother from PW. 4, when he was standing at a lorry on which he was working as a Cleaner. While, according to this witness, he was beaten by A.1 to A.4 on his head, back and other parts of the body, the medical certificate, Ex. P.9, reveals only one abrasion over his forehead. Therefore, version of either PW-1 or his son PW-2 cannot be treated as truthful.

9. PW. 3, who claims to be another eyewitness, stated that he has seen A.1 to A.4 attacking the deceased and noticed presence of A.5 and A.6. He also stated that after the deceased was taken to Government Hospital, Adilabad, he was shifted to Yavatmal, and he too accompanied the injured person. However, PW. 1, who has meticulously given the particulars of the persons accompanied the deceased to the Hospital at Yavatmal, did not mention the name of PW. 3. Similarly, PW. 4 also stated that he accompanied the deceased to the Hospital at Yavatmal, and his presence was also not spoken to by PW. 1 or for that matter, by PW. 3.

10. If, in fact, PWs. 3 and 4 have seen the participation of A-5 in the attack on

the deceased, they were not supposed to keep quiet when he was accompanying the deceased, that too at the instance of PW. 1. The normal course of conduct would be to nab him and to hand over to the police.

11. Another serious defect we noticed in the case of the prosecution is that PW. 7, who treated the deceased at the Government Hospital and gave first-aid, noticed only two injuries on him, as mentioned in Ex. P.19, but, in the postmortem that was conducted hours thereafter, as many as "twelve" injuries were noticed. Two "sutured wounds", which occurred to the deceased before the attack, were noticed. When so many lapses are noticed in the entire version of the prosecution, it is not safe to convict A.1 to A.4. In the result, the criminal appeal is allowed. The conviction and sentence ordered in S.C. No. 199 of 2008 on the file of I-Additional Sessions Judge, Adilabad, dated 23.09.2009, against the Appellants-Accused Nos. 1 to 4, are set aside. The appellants-Accused Nos. 1 to 4 shall be set at liberty forthwith, unless their detention is needed in any other case. The fine amount, if any, paid by the appellants-Accused Nos. 1 to 4 shall be refunded to them.