
(2014) 04 AP CK 0063

In the Andhra Pradesh High Court

Case No : Crl. A. Nos. 386, 387 and 467 of 2010

Akula Pullaiah (A-11)

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 164
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324

Citation : (2014) 04 AP CK 0063

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

Bench : Division Bench

Advocate : A. Hariprasad Reddy, G. Vijaya Saradhi and D. Sangeetha Reddy,
Advocate for the Appellant

Judgement

L. Narasimha Reddy, J.—The factionism, which was a typical characteristic of villages in Rayalaseema in Andhra Pradesh, slowly had its way to some parts of neighbouring districts of Guntur and Nellore. This batch of appeals is in relation to an event, which is the result of factional disputes in a village, by name, Donthali. The differentiating factor, however, is that while in Rayalaseema faction is not on the lines of castes, the faction in Donthali was purely on those lines. The disputes were mainly between the persons of Xamma" community, on the one hand, and the Tappers" community, on the other hand. It percolated into the elections and other activities in the village.

2. At about 8.00 P.M., on 26.09.2001, two persons, by name, Papasani Venkaiah - D1 and Rudrapati Ramanaiah - D.2, were put to death. The manner in which the information reached the police, P.S. Nellore Rural, is not clear. However, the police arrived at the scene of offence at about 10.00 or 10.30 P.M. The statement of P.W. 1 was recorded as Ex. P.1. According to this, there existed long standing disputes between two sections, and each was trying to exhibit its superiority over the other in the matter of Gram Panchayat elections and other affairs. He has also referred to various events and cases. As regards incident that lead to the

death of D.1 and D.2, P.W. 1 stated that himself, the deceased, P.Ws. 2 to 6 and A.11 boarded the bus together with vegetable bags, to be taken to the market at Nellore. The bus is said to have proceeded from the stage of Donthali and when it reached B.C. Colony, A. 11 is said to have asked the driver to stop the bus stating that some more persons would board it.

3. After the bus stopped, about 15 persons are said to have boarded from the front and rear entrances, and soon thereafter, A.1 is said to have attacked D.1 with an axe, and that was followed by A.4 and A.10 on D.1. A.3 and A.8 are said to have attacked D.2 with axe and knives. Thereafter, the remaining accused are also said to have attacked. He stated that when he sought to intervene, he was inflicted with injury by A.2. The bodies of D.1 and D.2 are said to have been dragged from the bus to the nearby open place. Out of fear, he is said to have gone to his house and on being called by the police, he came to the scene of offence on the next day morning, and his statement was recorded in the bus itself.

4. The police registered Crime No. 219 of 2001 on the basis of Ex. P.1 at 11.30 on 26.09.2001, alleging offences punishable under Sections 302 and 147 I.P.C. against the accused. A comprehensive scene of offence panchanama was prepared, inquest was conducted on both the dead bodies and thereupon, sent them for post-mortem examination. After conclusion of the investigation, the police filed a charge-sheet alleging offences against the accused in different combinations, and the case was committed to the Court of I Additional Sessions Judge, Nellore as S.C. No. 238 of 2003. As many as five charges were framed mentioning offences punishable under the relevant provisions of law. All the accused pleaded not guilty. Trial was conducted, wherein P.Ws. 1 to 17 were examined and Exs. P.1 to P.62 were filed. M.Os. 1 to 23 were taken on record. On behalf of the defence, D.W. 1 was examined. The contradictory portions elicited from the witnesses were marked as Exs. D.1 to D.10.

5. Through its judgment, dated 11.03.2010, the trial Court convicted all the accused for various offences and sentenced them to undergo imprisonment for life for the offence punishable u/s 302 I.P.C. independently, or u/s 302 read with 149 I.P.C. Separate punishment of Rigorous Imprisonment for one year for the offence u/s 148 I.P.C. was also imposed. The charge referable to Section 324 I.P.C. against A.2 was held not proved. These appeals are filed by all the accused in S.C. No. 238 of 2003.

6. Sri T. Bali Reddy, learned Senior Counsel, Sri O. Kailashnadh Reddy, and Sri Vijay Saradhi, learned counsel argued on behalf of the accused. They submit that there is any amount of uncertainty as to how the information about the incident reached the police. They submit that P.W. 7, who was said to be the first person to convey the information, was declared hostile and nothing substantial was elicited from him. They further submit that the evidence of P.W. 1 is totally inconsistent not only with Ex. P.1, but also the statement recorded from him by the Magistrate, at about 10.30 on the next day. It is pointed out that while in Ex.

P.1, it was mentioned that the signature of P.W. 1 was obtained before 11.30 on 26.09.2001, P.W. 1 stated that he put his signature at 5.00 A.M., on the next day, and either way, he cannot be treated as truthful witness. Learned counsel submit that apprehending that there may be danger to the life of P.W. 1, the police arranged for recording of dying declaration, at about 10.00 A.M., on the next day, and since P.W. 1 survived, the same needs to be treated as a statement recorded u/s 164 Cr.P.C. it is argued that P.W. 1 did not name anyone, much less, did he attribute any specific acts to the accused, in the said statement, whereas in Ex. P.1, which is said to have been submitted 10 hours earlier to that, a detailed account of the incident, together with the particulars of the accused and their acts, was mentioned.

7. Another point urged by the learned counsel for the accused is that the statements of P.Ws. 2 to 6, the so-called eyewitnesses, were recorded 3 to 5 days after the incident, despite the fact that almost all of them were very much present, when the police arrived at the scene of offence; so much so P.W. 2 and others figured as signatories to the scene of offence panchanama. They further submit that though the prosecution made an attempt to present P.W. 1 as an injured eyewitness, the trial Court itself did not believe the version of P.W. 1 as to the receiving of injuries and that itself would have been sufficient to ignore his evidence in its entirety. It is submitted by them that the trial Court convicted all the accused, despite there not being any acceptable evidence.

8. Learned Additional Public Prosecutor, on the other hand, submits that A.1 to A. 16 had a clear, premeditated plan to liquidate their opponents and in pursuance of that plan, A. 11 boarded the bus at the starting point and rest of the accused boarded the bus at a different point and committed the offence, once it was clear that D.1 and D.2 were in the bus. She contends that the minor discrepancies as to the statements made by P.W. 1, be it in Ex. P.1 or the cross-examination are not on important aspects. It is also urged that the delay in recording the statements of the eyewitnesses does not vitiate the case of the prosecution. Learned Additional Public Prosecutor further pleaded that the source of information to the police virtually pales into insignificance, once there is a written version of the eyewitnesses.

9. At the threshold itself, we expressed doubt as to how the information about the incident reached the police. We propose to elaborate the same, since it would have its own bearing upon the case of the prosecution. This is particularly so because the case has all the characteristics of faction disputes. To the extent that the bus started in the village at about 8.00 P.M., there is no serious controversy. According to P.W. 1, himself, deceased 1 and 2, P.Ws. 2 to 6 and A. 11 boarded the bus at the starting point, together with the loads of vegetables. The bus has stopped after it reached the B.C. Colony of the village. There are different versions as to how it came to be stopped there.

10. P.W. 1 stated that A. 11, who was in the bus, asked the driver to stop the bus at B.C. Colony stating that some more passengers would board it, together with

the vegetables. In Ex. P.1, the relevant portion reads as under:

The bus started from the Village at 8.15 p.m. and when the bus reached B.C. Colony which is at a distance of 1 km from the village, Akula Pullaiah who was in the bus asked the driver to stop the bus and he got down from the bus and stood in front of the bus.

11. In his chief examination, P.W. 1 stated that:

When the bus was moving near B.C. Colony, Dontalli, All stopped the bus by telling driver that his womenfolk are coming. A. 11 got down the bus and stood in front of the bus.

12. P.W. 7 is the driver of the bus. His evidence in this behalf reads:

When the bus was moving B.C. Colony a person came from a lane and signaled me to stop the bus in order to board the bus. On that, I stopped the bus. When questioned by me, he replied that his womenfolk were coming.

13. From the evidence of P.W. 7, it is clear that the bus was not stopped at the instance of A. 11, but, on a signal by a person, who came from a lane.

14. As to what happened after the bus stopped, P.W. 7 proceeded to add that after he stopped the bus at B.C. Colony, 5 or 6 persons, boarded it through front door and A. 11 was standing in the footboard and stated that there is going to be a fight. On hearing this, P.W. 7 and the conductor of the bus are said to have got down from it, and thereafter, he alone went to Nellore by covering a distance of 5 kilometers, by walk, and thereafter, by boarding a bus; and informed the matter to the Controller. The latter was not examined. On the advice given by the Controller, he is said to have gone to a Police Station at Nellore, and lodged the report. On finding that the version of P.W. 7 is not helpful to them, the Public Prosecutor requested the trial Court, to treat him as hostile. In the cross-examination, certain suggestions were put to him. The witness was also cross-examined by the defence. He stated in the cross-examination as under:

I and my conductor went to police station (rural) to lodge report on that night at 11.00 P.M. or 11.10 P.M. We reached police station. To my knowledge, the conductor of the bus did not give report in writing to our Controller.

15. This obviously means that the information to the police must have reached only after 11.00 P.M. However, P.W. 1 stated that after the incident, the police reached the village between 10.00 and 10.30 P.M.

16. Whatever be the source of information, once the police becomes aware of an incident, the first step required to be taken by them is to register a crime, or at least to make an entry in the General Diary and then to proceed to the scene of offence. In the instant case, it is only after the police reached the spot, that a detailed statement, running into four closely written pages, marked as Ex. P.1, was recorded from P.W. 1, that too, while he was in the bus. At more places than one, it was mentioned that P.W. 1 was seriously injured and that he was shifted

to Government Head Quarters Hospital, Nellore. In Ex. P.1, it was mentioned that the statement was recorded based on the version of P.W. 1 and the crime was registered at 11.30 P.M. In his cross-examination, however, P.W. 1 stated that he signed Ex. P.1, at 5 A.M., on the next day. P.W. 1 has also stated that he was examined by the police once again between 3.00 and 4.00 P.M., on 26.09.2001.

17. Reeling under the impression that the condition of P.W. 1 was precarious, the police arranged for recording of declaration from P.W. 1. The jurisdictional Magistrate reached the hospital at about 10.00 A.M., on 27.09.2001. After P.W. 1 was examined by the Medical Officer and certified to be in a position to speak, his statement was recorded by the Magistrate. Obviously because P.W. 1 survived the injuries, the statement recorded from him was not treated as dying declaration. However, it can be treated as a statement, recorded u/s 164 Cr.P.C. P.W. 1 himself did not dispute the recording of the statement. On the other hand, he gave detailed account of it as under:

Witness is shown dying declaration. Witness has verified the signature found on DD. He admits his signature on D.D. Judl. Magistrate came to Govt. Hq. hospital, Nellore at 9.00 A.M. in the morning hour. I stated what all mentioned in D.D. recorded by the Judl. Magistrate in the hospital for the questions put by him. At the time of recording of D.D. by the Magistrate, medical officer also examined me. After recording the D.D. by the Magistrate medical officer again examined me. I affixed my signatures in each page of D.D. I signed on all three pages of D.D.

18. As regards the contents of the said declaration, the following was elicited from P.W. 1:

I do not remember if I did not state before the Magistrate the names of the accused, who caused injuries to the deceased No. 1 and the deceased No. 2. I don't remember if I stated to the Magistrate 8 persons entered from the front door of the bus and 8 persons entered from the front door of the bus and 8 persons entered from the rear door of the bus. I don't remember if I did not give out the names of the accused persons before the Magistrate that committed the crime against the deceased No. 1 and the deceased No. 2.

19. This Court does not at all intend to place any reliance upon the said declaration. However, the limited purpose for which it is referred to is to point out the discrepancies about the versions of P.W. 1.

20. Normally, whenever a serious incident takes place and the person, who furnished the information about it, is himself injured, one expects a brief and succinct version, immediately after the incident, and as and how the things improve, he would be in a position to give a detailed account thereof. In the instant case, the reverse had happened. In Ex. P.1 which is said to have been recorded within 2 hours after the incident, a detailed account which contained not only the names of all the accused, but also the respective roles played by them in the incident, was furnished. In addition to that, the nature of disputes

that existed in the village for the past several decades was mentioned. About 12 hours thereafter, a declaration was recorded from P.W. 1 by the Magistrate. This, however, is totally silent about the particulars of the accused, much less about the roles said to have been played by them. Nothing prominent was mentioned against A. 11. Except for stopping the bus, no act whatever was attributed to him. Though A.2 was said to have attacked P.W. 1, that was disbelieved by the trial Court.

21. The time at which the police received the information and the nature of steps that are taken immediately thereafter has its own significance in a criminal case. The accused are accorded their right of total silence and they are entitled to point out every discrepancy. Depending on the gravity of the case, even delay of one hour is treated as fatal. The importance of the earliest version available to the police, is in relation to the cross verifying the truthful nature of the witnesses who depose at a later point of time. For all practical purposes, the version contained in a complaint or First Information Report, is treated as basis and rest of the information is expected to be in conformity with that. Any contradiction would certainly lead to a doubt, which naturally must accrue to the benefit of the accused.

22. Assuming that there is nothing abnormal about Ex. P.1 or the evidence of P.W. 1, it needs to be seen as to how far they are corroborated by the evidence of other witnesses. The prosecution projected P.Ws. 2 to 6 as eyewitnesses. The statements made by them in the chief-examination are on the same pattern and uniform, on several aspects such as the person, who boarded the bus, the stoppage of the bus by A. 11 at the B.C. Colony, boarding of the accused at that place, causing injuries to the deceased.

23. If any person has witnessed the occurrence, basically he is supposed to share the information with the police, immediately or at least to pass on the same to others, who were acquainted with him. Invariably, from all the so-called eyewitnesses i.e. P.Ws. 2 to 6, it was elicited that they did not inform about the incident to anyone till their statements were recorded by the police, after several days from the date of incident. For example, P.W. 2 stated as under:

On the next day morning at 6.00 A.M. I visited the place of occurrence. Police were also present at that time. Police had not recorded my statement when I visited the spot on the next day in the morning hour. Police recorded my statement two days later. I did not try to narrate the events that transpired at the time of the occurrence when I visited the spot on the next day morning to police.

24. It is not as if the presence of P.W. 2 was not noticed by the police, before his statement was recorded. In the scene of offence panchanama, marked as Ex. P.26, P.W. 2 figured as one of the witnesses. P.W. 3, who too stated that he boarded the bus along with P.Ws. 1 and 2, deceased 1 and 2 and P.Ws. 4 to 6, and witnessed the entire occurrence, stated in the cross examination as under:

On the next day of the incident, I did not try to contact police to inform I was an eye witness to the occurrence. On the next day of the incident, no police officer came to me to record my statement. On the next day of incident, our Kamma people did not asked me to come and report before police what have witnessed at the time of incident. I cannot remember when how many days thereafter, I was examined by the police.

25. Similar answers were extracted from P.Ws. 4, 5 and 6. It is important to note that P.W. 6, figured as a witness in Ex. P.26. He stated in his cross-examination as under:

I do not remember the date when I was examined by police. I was examined by police either on 3rd day or 4th day, or 5th day of incident. Police examined me at my house. Police themselves visited my house and examined me. I did not approach the police. Prior to my examination under Sec. 162 Cr.P.C. at my house I was not examined by inspector of police.

26. He admitted his signature on Ex. P.26.

27. One of the steps to be taken by the prosecution, on noticing the occurrence of a crime is to record the statements of the persons that are acquainted with the incident. This would be of great help to the prosecution in the further investigation. In a way, the statement recorded from the persons acquainted with the crime, provides the guidance to the police to proceed further in the matter. It is too well known that the statements recorded u/s 161 Cr.P.C., cannot be treated as substantive evidence. However, their importance lies in cross checking the truthfulness of the witness, whose evidence is recorded, in the course of trial. Any delay in recording the statements, albeit u/s 161 Cr.P.C., is prone to be utilized for deliberating and scheming the further course, be it by the victim party, or the police. Just as the delay in submitting the complaint, is prone to be treated as an effort to avail the time to meditate and implicate the persons inimically disposed to the victim, the unexplained delay in recording the statements of the so-called eyewitnesses would have its own impact upon the case of the prosecution.

28. The result of our discussion undertaken so far, would indicate that,

- 1) the version of P.W. 1 is totally inconsistent;
- 2) the trial Court itself found that the plea of P.W. 1 that he received injuries in the hands of A.2 is unbelievable;
- 3) the statements of P.Ws. 2 to 6 were recorded long after the incident notwithstanding their availability, soon after the incident and there is every likelihood of their being introduced at the instance of someone; and
- 4) P.W. 7 the only independent witness, who is supposed to know everything that happened in the bus did not support the case of the prosecution.

29. With this background, it cannot be said that the prosecution proved its case

to the satisfaction of the Court. This is not even a case of benefit of doubt being extended. Just as any other faction case, in this case also every effort was made to ensure that as many persons as are possible to settle scores, taking advantage of an unfortunate incident, leading to the death of two persons.

30. In the result, the Criminal Appeals are allowed. The conviction and sentence ordered in S.C. No. 238 of 2003 on the file of the I Additional Sessions Judge, Nellore, dated 11.03.2010, against the appellants-accused Nos. 1 to 16, are set aside. The appellants-accused shall be set at liberty forthwith, unless their detention is needed in any other criminal case. The fine amount, if any, paid by the appellants-accused shall be refunded to them.

31. The miscellaneous petition filed in this appeal shall also stand disposed of.