
(2014) 02 AP CK 0063
In the Andhra Pradesh High Court
Case No : Crl. Appeal No. 1282 of 2009

Ashok Ramji Roy

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2014) 2 ALT(Cri) 177

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

Bench : Division Bench

Advocate : B. Vasanta Laxmi, Advocate for the Appellant

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The sole accused in S.C.No.165 of 2009 on the file of I-Additional Metropolitan Sessions Judge, Hyderabad was tried for the offence of committing murder of one Mr. Pallapu Veeresham, and injuring Mr. Makkala Ganesh-PW.1 on 23.11.2008 at Domalguda, Hyderabad. The charges referable to Section 302 and 307 IPC were framed against him. Through its judgment dt. 12.08.2009, the trial Court convicted him for both the offences. It has imposed punishment of imprisonment for life and fine of Rs. 300/-, and in default to under simple imprisonment for three months, for the offence under Sec. 302 IPC; and imprisonment for ten years and to pay fine of Rs. 200/-, and in default, simple imprisonment for two months, for the offence under Sec. 307 IPC. Both the sentences of imprisonment were directed to run concurrently. Hence this appeal.

2. There are different versions as to how the police first came to know about the incident that give raise to death of Veeresham. The complaint-Ex.P.1 was submitted by PW-2, who is the brother-in-law of injured witness, PW.1- Ganesh, at around midnight before the Police Station, Chikkadapally. Basing on the same Cr.No.577 of 2008 was registered. According to the contents of Ex.P.1, PW-2 a resident of Moulali went to Vaddera Basthi of Domalguda to see his sister and

brother-in-law, PW-1 on 23.11.2008 at 5.00 pm. Himself, the deceased and their friends had liquor around 5.30 pm. Thereafter, himself, deceased, PW-2 and two others went nearby the Public Toilets, at Rose Colony, Domalguda, Hyderabad to play cards and started the same. At that time about ten rag-pickers were also said to have been playing cards at that place.

3. The accused, who is one of the rag-pickers is said to have asked the deceased, PW.1 and PW.2 and two others to move away from that place. Thereupon, the deceased said to have replied stating that it is their locality and the question of their moving does not arise. The accused is said to have become angry and went away. Ten minutes thereafter, he said to have come back from a shop with a knife and he first stabbed Ganesh, PW.1 in the abdomen and other parts of the body. Afterwards, the accused is said to have stabbed Veeresham, the deceased. PW.2 stated that after seeing the incident, he and other persons ran away with bleeding injuries, and that Veeresham and PW.1 were being shifted to Hospital, and Veeresham died on the way. PW.2 further stated that the accused, who was in a drunken condition, has stabbed one Mr. Mogalaiah also. However, a perusal of the evidence of PW.2, the de facto complainant reveals that even while the quarrel between the two groups was in progress, police arrived there, and shifted PW.1 and Veeresham to the hospital in the police van itself.

4. Whatever be the source of information, the police commenced its investigation, prepared the scene of offence panchanama, and conducted inquest and post-mortem report in accordance with law. The accused is said to have been apprehended on receiving some information about his movements. Charge sheet was filed alleging the offences punishable under Sections 302 and 307 of IPC against the accused. After that, the case was committed to the trial Court. The nature of disposal given to the case by the trial Court has already been indicated.

5. Smt.B.Vasanta Laxmi, learned Counsel for the appellant submits that there is any amount of uncertainty and inconsistency not only as to the cause of death of the deceased but also the sequence of the events. She submits that PW.1, who, by any standard is injured witness, did not speak of the presence of his brother-in-law (PW.2), the de facto complainant, and the manner in which the incident is described by him is totally different from what is mentioned in Ex.P.1. She contends that while according to PW.1, only himself and the deceased went to Rose Colony, where the accused and others were playing cards; PW.2 stated that all the persons, who consumed alcohol, namely, PWs.1, 2, deceased, Srinu and two others have gone to that place, and about ten rag-pickers were already playing cards. Another contradiction, which learned Counsel points out is, that PW.2 stated that after the verbal exchanges took place, the accused went out and came after 10 minutes with a knife; whereas this was not spoken to, by PW.1. Learned Counsel further contends that while according to PW.2, the accused stabbed the deceased, PW.2 and one Mr.Mogili, a follower of the accused, the version presented by PW.1 is different. She submits that the

Investigating Officer was not consistent and at several places admitted the lapses pointed out to him. Learned Counsel contends that the accused is a total stranger to the deceased as well as PWs.1 and 2 and one just cannot expect any person in his place, to recollect all the features, particularly when the incident is said to have taken place at about 9.30 p.m., in the night.

6. Learned Public Prosecutor, on the other hand, submits that the evidence of PW.1 is consistent and reliable and since he happens to be the injured witness, the Court can safely rest the conviction of the accused upon his evidence. She contends that the discrepancies pointed out by the learned Counsel for the appellant are trivial in nature. She further submits that when a serious incident of stabbing takes place, it is quite natural that the persons, particularly those who received injuries, may not be able to remember the persons who are around them. Learned Public Prosecutor submits that the trial Court has examined the material on record from the correct perspective and has arrived at proper conclusions.

7. It has already been mentioned at the threshold of the judgment that there are conflicting versions as to how the matter came to the notice of the police. The quarrel leading to the death of the deceased is said to have taken place around 9.30 p.m. on 23-11-2008. The complaint-Ex.P.1 was submitted to the police at 11.00 p.m. In Ex.P.1, there is no reference to the arrival of the police and the manner in which the deceased and injured- PW.1 were shifted to the hospital. PW.2, however, stated in his evidence that on seeing the incident of stabbing of the deceased, P.W.1 and one Mogili, by the accused, he went and informed the people in the locality and by the time they came back, the police came and shifted the injured persons to Gandhi Hospital, Secunderabad. The relevant portion reads as hereunder:

In the meanwhile, the police came there and shifted the three injured persons to Gandhi hospital for treatment. The hospital doctors declared that the Veeresham was died. The other two injured Ganesh (PW1) and Mogalaiah were undergoing treatment in the hospital. From the hospital, I came to the P.S., at about 11.00 or 12.00 in that night and gave Ex.P.1 complaint drafted by somebody in the police station on my dictation to the police. The contents of Ex.P.1 were read over and explained to me and put my signature on Ex.P.1 and gave it in police station.

From a perusal of this, it becomes clear that he has admitted that he was shifted to the hospital in the police van itself; and if that is so the knowledge of the incident to the police must be prior to the submission of Ex.P.1.

8. We noticed serious lapses on the part of the prosecution. The record discloses that the police noticed Veeresham, when he was alive, in an injured condition, but no steps were taken to record his statement. Secondly, assuming that PW.1 was in a conscious state, the case ought to have been registered on the strength what was noticed by them. There are also conflicting versions about the source

of Ex.P.1. While, the Investigating Officer stated that PW.2 submitted Ex.P.1, which was already prepared, PW.2 stated that it was prepared in the Police Station to his dictation in the presence of the police and he has just signed it. He answered in negative, the question as to whether he can identify the scribe of Ex.P.1. The confusion in this regard gets confounded, if one takes into account Ex.P.11, the wound certificate given in respect of PW-1. According to this, the injured was brought to the hospital by his wife-PW.4.

9. Leaving this controversy aside, it needs to be examined how far the prosecution was able to prove the allegation against the accused. According to the prosecution there are two eye-witnesses to the occurrence, namely, PWs.1 and 2. Since PW-1 is an injured witness, his evidence gets more authenticity, if it is not at variance with the other evidence on record. Left to itself, it may stand on a higher footing. However if anything contrary to it is elicited or emerges, the reliability gets a little diluted.

10. The version of PW-1 is that himself, the deceased, PW-2, Swami, Srinu and Shankar consumed liquor around 6.00 p.m. and at about 8.30 or 9.00 p.m. himself and the deceased went to Rose Colony, where the accused and his friends were playing cards. The accused is said to have come nearer to them and asked them to go away and not to play cards. The deceased is said to have questioned the attitude of the accused, since the latter was an outsider. Thereafter, a quarrel is said to have taken place between the deceased and the "friend" of the accused. At that time, the accused is said to have come there and stabbed Veeresham with knife on his back at around 9.00 p.m. Srinu, Swami and Shankar, who were said to be playing cards are said to have left the place. When the deceased Veeresham and friend of the accused were quarrelling, he is said to have noticed the stabbing of deceased by the accused. Thereon, the accused is said to have stabbed him on the right side of the abdomen, when he sought to intervene. He further stated that some other person, who came along with the accused, stabbed him on the right side of his abdomen. The relevant portion reads as under:

When I questioned with regard to the stabbing of the accused to Veeresham, the accused also stabbed on my left side of my abdomen. Some other person, who came along with the accused also stabbed on me on the right side of my abdomen. When the accused stabbed me, I stopped it. On that, the accused stabbed me and tore with same knife from my abdomen towards chest. Again the accused stabbed me above the right side of my chest. Again the accused stabbed me on my back and also stabbed on left hand and stabbed on my left leg with the same knife. Then, I became unconscious after the attack. Thereafter, we were shifted to Gandhi Hospital.

11. If, in fact, another person, in addition to the accused stabbed PW-1, it is not known as to how he was not shown as an accused. This part of it remained unexplained. In the cross-examination, PW-1 stated that except himself and the deceased, no outsider was present at the time of incident. He has also stated

that his statement was recorded in Gandhi Hospital, after he regained consciousness. He too referred to the name of one Mogili in addition to accused, but stated that he does not know the name of other rag-pickers. Similar contradictions with reference to the statements recorded under Sec. 161 Cr.P.C., were elicited.

12. If one superimposes this evidence of PW.1 with the evidence of another eye-witness, PW-2, who is none other than his brother-in-law, a totally different picture emerges. According to PW.2, he was about to go, after consuming liquor with his friends, and on being insisted by the deceased and PW-1, he stayed back for playing cards. He deposed that only those three were playing cards and at that time the accused came nearer to them, abused them in filthy language and asked them to leave the place. This is totally different from the version of PW-1, who stated "myself, Veeresham, Swamy and Shankar are playing cards at that time". The batch of these four persons does not include PW-2; whereas the names of Swami and Shankar did not figure in the batch, named by PW-2.

13. The manner in which the quarrel lead to stabbing was described by PW-2 as under:

Then, PW-1 questioned the accused, stating that this is our locality, we cannot leave that place, who are you to ask. Then, the accused went away. Ten minutes thereafter, the accused again came there and asked us to leave the place. Then, PW-1 and the deceased told the accused that they will not leave the place. On that, the accused stabbed Veerasham and Ganesh with knife and caused multiple injuries to both of them. I saw the accused stabbed Ganesh with that knife on PW-1's abdomen and other parts of his body. After witnessing the said stab injuries by the accused to Ganesh and the deceased due to fear I rushed to the Basthi of my brother-in-law Veeresham and Ganesh and called the public in that Basthi. By the time, we reached the scene of offence, I saw Ganesh fell down on the road with injuries and Veeresham was coming with injuries and fell down.

14. From a perusal of this, it is clear that PW-2 saw the accused stabbing PW-1 first in the abdomen and other parts of the body and then, the deceased. He further stated that by the time he returned along with Basthi people, Ganesh fell down whereas Veeresham was coming with injuries and fell down later on. PW-2 has also stated that the accused has stabbed one Mr.Mogili, his own follower, and he too was taken to hospital by the police itself for treatment. In the entire case of the prosecution, there is no reference to Mogili, a person, who is said to have received injuries in the hands of the accused. In the cross-examination, PW-2 stated that it was Mogili, who exhorted them to leave the place. Further, while, according to PW-1, he became unconscious on the spot, the PW-2 stated that PW.1 was in a position to talk when they were proceeding to hospital.

15. The Investigating Officer-PW13 was not able to explain several contradictions. In the cross-examination it was elicited from him that there were interpolations in Ex.P.1. Even the manner in which the panchanama was

conducted at various stages was proved to be defective, since he admitted that signatures of panchas were not taken on relevant pages. PW-5 was said to be the only source of identification of the accused. The Investigating Officer has admitted that he did not collect any record from PW-5 to show that the accused was working with him as worker in the shop. Similar lapses are plenty in the cross-examination of PW-13.

16. Even according to the prosecution, the accused was a rag-picker. It is not uncommon that many a time, the police implicate the rag-pickers for statistical purposes, being confident that not much of resistance would be there from them. We are of the view that this is one such case.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C.No.165 of 2009 on the file of the I-Additional Metropolitan Sessions Judge, Hyderabad, dated 12.08.2009, 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 fine amount, if any, paid by the appellant-accused shall be refunded to him.