
(1992) 11 AP CK 0020

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1105 of 1991

Barla Ganga Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 18-11-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1993) CriLJ 1998

Hon'ble Judges : V. Sivaraman Nair, J;Iyyapu Panduranga Rao, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This appeal arises from the judgment of the Sessions Judge, Adilabad, in Sessions Case No. 91/89, convicting the appellant for an offence under S. 302 of the Indian Penal Code and sentencing him to imprisonment for life.

2. The prosecution case is as follows :

On 9-8-88 at about 5-30 p.m., P.W. 5 was going to his field through a lane in front of the cattle shed of the deceased. He heard a groaning sound and looked into the shed. When he reached the Varandah of the shed, he found the accused stabbing on the throat of Lingaiah, the deceased. P.W. 5 then called "Ore Ore" and tried to catch hold of the accused. But he escaped and ran into the house of P.W. 2, who was his tenant. Lingaiah; the deceased fell down and died immediately. P.W. 5 then ran to the house of the deceased and informed P.W. 1 and the wife of the deceased. All of them went to the cattle shed and saw the dead body. P.W. 1 approached the village doctor and with his assistance drafted Ex. P-1 report. He went to the Police Station and lodged the report at about 10.00 p.m. on that day. The police registered the same as Crime No. 39/88 under S. 302, IPC. On receipt of express FIR, P.W. 11 the C.I. of Police, Nirmal, took up further investigation. P.W. 11 visited the scene of offence and recorded the statements of P.Ws. 1, 2, 5 and 7 to 10. He held an inquest over the dead

body in the presence of P.W. 3 and prepared Ex. P. 3 inquest report. He seized M.Os. 1 to 4. During the inquest, he also prepared Ex. P-11, sketch of the scene of offence. P.W. 11 sent the dead body for post-mortem examination. P.W. 6, Civil Assistant Surgeon, Government Hospital, Nirmal conducted post-mortem examination over the dead-body on 10-8-88 from 1.00 p.m. and prepared Ex. P-7 post-mortem certificate. On 20-8-1988, H.C. 566 and P.C. 676 of Soan Police Station arrested the accused at 2.00 p.m. The accused was alleged to have made a confession; the admissible portion of which has been marked as Ex. P-4. The confession was made in the presence of P.W. 4 and another. Pursuant to Ex. P-4, the accused led the investigating officer to his house and showed M.O. 7 knife, which the police recovered under Ex. P-5 panchanama. On 15-10-88 on the basis of a requisition, P.W. 11, the Munsif Magistrate Bhainsa, recorded the statements of P.Ws. 2 and 5 under S. 164 Criminal Procedure Code.

3. The prosecution examined P.Ws. 1 to 11 and marked exhibits P-1 to P-11. The defence examined D.W. 1 and marked Exs. D-1 to D-3. The learned Sessions Judge, on a consideration of the evidence held the accused guilty of the offence under S. 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life. The accused has appealed.

4. The only eye witness whom the prosecution has examined was P.W. 5. Learned Counsel for the appellant submitted that his evidence is artificial and absolutely unreliable. He also submitted that his evidence having been rejected in part, there was no justification for entering a conviction against the accused on the basis of the remaining portion of the evidence of P.W. 5 and in the absence of corroboration of a substantial measure.

5. We have been taken through the evidence of witnesses with particular reference to Ex. P-11 sketch. Counsel for the appellant invited our attention to the rough sketch of the scene of offence in an error to show that P.W. 5 need not have gone along the lane in front of the cattle shed of the deceased, since there were other lanes nearer to the place of his residence through which he could have reached his field. He submitted further that the statement of P.W. 5 that he went to his field at about 5.00 p.m. to check the water level in his paddy fields is absolutely unbelievable, since even according to P.W. 5 there were two Neeradies on the canals to look after the feeding of water to the fields. He submitted further that P.W. 1 being a close relative of the deceased, it was not safe to rely upon his evidence. Counsel submitted further that the evidence of P.W. 5 that he was attracted to the cattle-shed where the accused allegedly stabbed the deceased by the groaning sound and the words "agura-agura", cannot be reconciled with the evidence of P.W. 6, who stated that the injuries to the throat of the deceased were such that after receipt of the same, the deceased would have succumbed forthwith and would not have been in a position to speak at all. He submitted further that the nature and location of the injuries on the throat of the deceased were such that P.W. 6 was almost positive that those injuries could have been administered only if the deceased was standing in front of the assailant. But the

evidence P.W. 5 was to the effect that he saw the deceased in a sitting position on the floor. Yet another submission which counsel made was that the evidence of P.W. 5 was disbelieved, as to his statement that the accused had gone to the house of the deceased earlier and had threatened his family for the reason that the deceased was practicing sorcery on his bulls. He submitted that part of the evidence of P.W. 5 thus being suspicious should not have been the sole basis for entering a conviction against the accused.

6. Ex. P-11, sketch of the scene of occurrence is in no manner helpful in understanding the prosecution case. The oral evidence of P.Ws. 1 and 5 sufficiently specified the house, hotels, and shops in the locality. The lanes going south the paddy fields from the main road connecting Madapur to Siddalakunta village, through any one of which lanes P.W. 5 could have gone to his paddy fields, have not been marked in the plan. Nor does the plan contain a reference to important land-marks like the hotel of Sheik Ahmed or Chinna Rajanna's house. Nor does the plan indicate the house of the deceased and P.W. 5. Undue importance seems to have been given to an enclosed compound belonging to P.W. 1, Ganga Reddy and his brother Raja Reddy. We tried our level best to get some assistance from Ex. P-11 sketch to understand the evidence of the prosecution and the defence of the accused. We are sorry to state that Ex. P-11 sketch only helps to confuse the issues rather than clarify them.

7. The argument of Sri. C. Padmanabha Reddy, Counsel for the appellant that P.W. 5 need not have gone to his paddy field along the lane which is the farthest among the lanes connecting the road in front of his house to the paddy fields and that too at 5.00 p.m. does not appeal to us. P.W. 5 was specific in his evidence that he used to go to his fields along the lane in front of the house of the accused in a portion of which was located the cattle shed of the deceased. The mere fact that other short cuts were available is no reason to hold that P.W. 5 would not have gone along the road which he asserted he used to take. P.W. 5 asserted that he used to visit his paddy fields along that way and none other. He may have any number of reasons why he preferred that particular lane or abandoned any of the short cuts. We are not in a position to accept the submission that the normal conduct of people is always to take short cuts. Nor are we impressed by the submission that since there were two Neeradies in the fields on the canal to supervise distribution of water, P.W. 5 would not have gone to his paddy field at the time he did. We cannot find fault with the farmer going to his paddy field to check the water level before dusk. We are therefore not inclined to disbelieve the testimony of P.W. 5 for those reasons.

8. It is true that the learned Sessions Judge did not get much store by the evidence of P.W. 5 that the accused had gone to the house of P.W. 1 and threatened that he would take revenge on the deceased for having practiced sorcery causing disease to his bulls. It may be that in his over enthusiasm he tried to improve upon his testimony to make as if there was consistent conduct of hostility on the part of the accused against the deceased. The fact that he

showed over-anxiety is no reason, in all circumstances, to hold that the remaining part of his testimony is also unreliable. The Sessions Judge seems to have taken care to scrutinise the evidence of P.W. 5 who had apparently tried to improve upon his testimony. We need only state that the only fact that a part of the evidence of a witness is rejected is no reason to hold that the entire evidence is unreliable. Reference in this connection may be made to the decision in Sohrab and Another Vs. The State of Madhya Pradesh, to the effect that "Falsus in uno falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries, or embellishments." The Supreme Court observed that (at page 1306; of Cri LJ) :-

"In most cases, the witnesses when asked about details, venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered."

9. Almost to the same effect is the decision in Ranbir and Others Vs. State of Punjab, . The court observed :

"If a witness is found to have given unreliable evidence, then it is the duty of the court to scrutinise the rest of the evidence with care and caution. If the remaining evidence is trustworthy and the substratum of the prosecution case remains intact, then the court should uphold the prosecution case to the extent it is considered safe and trustworthy."

10. The same proposition was reiterated in Bhagwan Tana Patil Vs. The State of Maharashtra, , Shri Sat Kumar Vs. State of Haryana, , Bava Hajee Hamsa and Others Vs. State of Kerala, and in Amir Hussain Vs. State of U.P., by the Supreme Court.

11. On the basis of the above principles, what we have to consider is whether the remaining evidence of P.W. 5 relating to the incident was such as inspires confidence in his credibility or whether the infirmities in his evidence indicated by the other part which was disbelieved affects the substratum of the prosecution case. On a careful scrutiny of the entire evidence, we are inclined to hold that the learned Sessions Judge has examined the evidence of P.W. 5 with that amount of caution and circumspection as is necessary in scrutinising the same.

12. The evidence of P.W. 5 is to the effect that he saw the accused stabbing at the deceased thrice on his neck. There were six injuries which P.W. 6 found on the dead body at the time of post-mortem examination. They were -

1. Stab wound 1" x 1/6" x 1/2" depth, edges sharp gradually meeting at the edges 1" below right clavicle on lateral 1/3rd region obliquely.

2. Stab wound 1 1/2" x 1/2", 1/2" left angle of mandible.

3. Stab wound 1" x 1/4" x 2", 1" below the left mandible middle.
4. Stab wound 2" x 1/2" x 2 1/2" above the two clavicles middle.
5. Stab wound 1" x 1/4" x 1/2", 1/2" away from the 4th wound vertically present.
6. 4 bruises 1" x 1/2" sizes vertically present 1" below the left clavicle 1" to 1/2" distance at each other.

P.W. 6 found the following internal injuries as well :

1. Carotid artery on right side severed.
2. Carotid Vessels (artery and vein) severed.
3. Trache below the thyroid cartilage severe or cut.
4. Oesophagus below the thyroid cartilage was cut. Rice particles and bloodish fluid coming out from the wound.

He opined that the cause of death was shock and Haemorrhage due to injuries to carotid vessels and injuries to Trachea and Oesophagus due to stab wounds. He opined that the knife like M.O. 7 could cause the injuries described as external and internal injuries. In cross-examination he stated that all the injuries were stab injuries, and their direction was from upward to downward and in oblique shape. He stated that injuries 1 to 5 could be inflicted while the victim was standing or in a lying position, and all the injuries were fatal. The effect of this evidence was that injuries could have been caused while the deceased was in a standing position. It is on this basis that counsel submitted that the evidence of P.W. 5 that he saw the accused stabbing the deceased while he was sitting on the floor of the cattle shed is unbelievable.

13. On a consideration of the evidence of P.W. 5 and the medical evidence of P.W. 6, we are of the view that it is not impossible to inflict the injuries while the deceased was in a sitting position. The direction of the injuries from upwards to downwards indicates the person who inflicted the injuries, must have done so while he was standing and the deceased was crouching before him. The medical evidence of P.W. 6 does not negative the possibility of the deceased being in a sitting position while the stabs were administered.

14. In this view we do not find any reason to disbelieve the testimony of P.W. 5 on which the learned Sessions Judge has convicted the accused. We are also of the view that the fact that immediately after seeing the incident P.W. 5 rushed to inform P.W. 1 the son of the deceased and soon thereafter he informed the police by filing Ex. P-1 report lend sufficient corroboration by conduct to the evidence of P.W. 5. We also find that Ex. P-1 statement which was prepared on the basis of the information which P.W. 5 gave to P.W. 1 also substantially corroborates the evidence of P.W. 5.

15. In the light of the above circumstances, we find that the learned Sessions Judge was correct in accepting the evidence of P.W. 5 though he was the only

eye-witness and in convicting and sentencing the accused. We therefore dismiss the appeal in affirmation of the judgment of the Sessions Judge.

16. Appeal dismissed.