
(1993) 06 AP CK 0026

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1143 of 1992

Bellana Kannam Naidu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-06-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 325

Citation : (1994) 1 ALT(Cri) 717 : (1994) CriLJ 1146

Hon'ble Judges : S.V. Maruthi, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : Duba Mohan Rao, for the Appellant; P.P., for the Respondent

Judgement

G. Radhakrishna Rao, J.—The sole accused in S.C. No. 23 of 1992 on the file of the Court of the Sessions Judge, Vizainagaram, was tried for an offence under S. 302 of the Indian Penal Code for causing the death of his father, Bellanna Rama Murthy, hereinafter referred to as the "deceased" by beating him with a stout casurina stick on his head on 20th September, 1991 at about 7.00 a.m. at Konda Konguva village, and was convicted by the learned Sessions Judge and sentenced to undergo imprisonment for life.

2. For the purpose of disposal of this appeal, it is necessary to set out the case of the prosecution in detail : The accused is the son of the deceased. The deceased had four daughters and three sons. The accused is the eldest son. The deceased and his sons partitioned their properties, and at the partition of the family properties, the sons left two small plots of land to the deceased for his maintenance. The deceased along with his wife, Pydithalli, were living separately. His younger son was cultivating the plots and was giving paddy to him. Accused wanted to grab the two plots of land allotted to his father and was demanding the deceased to part with the same.

3. On 20-9-1991 at about 7.00 a.m. the accused went to the house of the deceased and questioned as to why he had retained two plots of land for him and

how the accused should survive. Then there was altercation between the father and the son and ultimately the accused told the deceased that he would take away the two plots of land which was retained by his father and he also beat the deceased on his head with a stout casurina stick and ran away. Thereafter, the deceased was taken to the Government Hospital, Salur and the deceased was admitted by P.W. 6, Deputy Civil Surgeon of the Hospital. The admission of the deceased into the hospital was immediately sent to the Police by P.W. 6, and also to the Munsif Magistrate. P.W. 5, Munsif Magistrate, Salur, recorded the dying declaration of the deceased. It is marked as Ex. P-5. P.W. 7, Head Constable of Salur Town Police Station, proceeded to the hospital and recorded the statement of the deceased. It is marked as Ex. P-9. He registered a case in Crime No. 81 of 1991 of Salur Police Station and express F.I.Rs. were issued by him. It was, however, transmitted to Ramabhadrapuram Police Station on point of jurisdiction. On receipt of the copy of the F.I.R. P.W. 8, Head Constable of Ramabhadrapuram Police Station, re-registered the same as Crime No. 44 of 1991 of Ramabhadrapuram Police Station and issued express F.I.Rs. to all the concerned authorities. P.W. 8 sent two constables to take the injured to King George Hospital at Visakhapatnam. On 21-9-1991 the deceased was admitted into the K.G.H. Hospital. Before the deceased was admitted into the K.G.H. Hospital, the Sub-Inspector of Police Ramabhadrapuram Police Station, P.W. 9, went to Salur Police Station and recorded the statement of the deceased. It is marked as Ex. P-12. Later, P.W. 9 proceeded to the scene of offence and drew up Ex. P-13, rough sketch of the scene of offence. He also drew up Ex. P-3, a report incorporating therein his observations of the scene of offence. Later, he seized M.Os. 1 to 5 - stick, banian, pancha, blood stained earth and control earth. The deceased died in the K.G.H. Hospital, Visakhapatnam, on 28-9-1991 at 12 noon. Intimation of death of the deceased was sent to the Police Station at Ramabhadrapuram. On receipt of the intimation, P.W. 9 issued revised F.I.Rs. under S. 302 of the Indian Penal Code to all the concerned authorities. Ex. P-14 is the revised copy of the express F.I.R. P.W. 9, Sub-Inspector of Police Ramabhadrapuram Police Station visited the K.G.H. and hold inquest over the dead body of the deceased. Ex. P-4 the inquest report and sent the dead body for post-mortem examination. P.W. 12, Professor, Forensic Medicine, Andhra Medical College, Visakhapatnam, conducted autopsy over the dead body of the deceased and issued the certificate Ex. P17. In the opinion of P.W. 12, the deceased died of skull intracranial haemorrhage, P.W. 10, Inspector of Police, Kotiya Circle, took over investigation, arrested the accused and after completing investigation into the case filed the charge-sheet

4. The accused when examined under S. 313 of the Code of Criminal Procedure denied the commission of the offence and denied generally the circumstances appearing in evidence against him.

5. In support of the case of the prosecution, P.W. 1 to 12 were examined and Exs. P-1 to P-17 and M.Os. 1 to 5 were relied upon. P.Ws. 1 and 2 are the eye-witnesses to the occurrence. They did not support the case of the prosecution

and they were treated as hostile by the prosecution. It was suggested to P.W. 1 that she deposed falsely to help the accused who is her son. One can imagine and understand mother's love to her first born son. It was unfortunate that she lost her husband untimely and in unconscionable circumstances. Evidently, she was not prepared to lose her eldest son, the accused, by deposing against him. Under the circumstances, it is quite possible that a mother overcome by maternal love and affection would pardon her son who has committed patricide. In this view of the matter, absence of her evidence in support of the prosecution would not affect the truth of the prosecution case if it could be established from other evidence. P.W. 2, a resident of Konda Konguva, who is an alleged eye-witness to the incident did not support the case of the prosecution. He was also treated as hostile and was cross-examined. P.W. 3 is the Panch witness who supports the observation report, Ex. P3. P.W. 4 is an inquestdar. P.W. 5 is the Munsif Magistrate, Salur, who recorded the dying declaration of the deceased. It is marked as Ex. P5. P.W. 6 is the Doctor who treated the deceased at the first instance and issued the wound certificate, Ex. P7. P.W. 7 is the head Constable of Salur Police Station. He recorded the statement of the deceased which is marked as Ex. P9. P.W. 8 is the Head Constable at Ramabhadrapuram Police Station, who has arranged for shifting the patient to K.G. Hospital, Visakhapatnam, P.W. 9 is the Sub-Inspector of Police, Ramabhadrapuram Police Station, who visited the scene of offence, arrested the accused and seized M.Os. 1 to 5. Ex. P-12 is the statement recorded by P.W. 9 from the deceased and P.W. 10 is the Inspector of Police who took over investigation and filed the charge-sheet. P.W. 12 is the Doctor who conducted post-mortem over the dead body of the deceased and Ex. P-17 is the post-mortem certificate.

6. Sri Duba Mohan Rao, the learned counsel for the appellant, contends that there is no evidence that the accused had inflicted the injury on the head of the deceased and that the prosecution had deliberately omitted to examine the competent witnesses. It is also contended that the dying declarations were recorded at the instance of third parties inasmuch as the deceased was not conscious at that time. It is contended further that the witnesses presented at the time of inquest do not support the case of the prosecution. It is also the contention of the learned counsel for the appellant that the injury inflicted on the deceased is not sufficient in the ordinary course of nature to caused death or that the act is so imminently dangerous that it must, in all probability, cause death and that the conviction recorded by the Court below is only based on the alleged dying declaration said to have been recorded and the two dying declarations are at variance and create any amount of doubt.

7. It is clear from the evidence of the prosecution witnesses that there are three dying declarations of the deceased. They are Exs. P5, P9 and P12. Ex. P5 was recorded by P.W. 5 at 2.45 p.m. on 20-9-1991 in the presence of P.W. 6. Ex. P9 was recorded by P.W. 7 on the same day at about 4.30 p.m. in the presence of P.W. 6. P.W. 6 made endorsement on both the statement, Exs. P5 and P9 about the mental status and capacity of the injured to make a statement about the

injuries he received. Ex. P12 was recorded by P.W. 9 on the same day at about 8.30 p.m. The incident occurred at 7.30 a.m. on 20th September, 1991. Distance between Konda Konugua village and Salur is about 30 kms. and the injured was brought to Salur Hospital by a cart and he was admitted in the hospital at 2 p.m. On intimation from P.W. 6, the duty doctor who attended on the injured, P.W. 5 came and recorded the statement Ex. P5 at 2.45 p.m. and P.W. 7 came and record Ex. P9 statement at 4.30 p.m. P.W. 9 who took over investigation after registering the case came to the hospital and recorded the statement of deceased Ex. P12 at 8.30 p.m. The evidence of P.W. 6 and other medical evidence amply establish the fact that the injured was quite conscious and capable of making a statement as to how he received the injuries. Moreover, there was no scope for tutoring or prompting the injured by anybody to speak falsely against his eldest son, the accused. The evidence discloses that the statements, Exs. P5, P9 and P12, were voluntarily made by the injured. Therefore, we are of the view that the statements recorded from the deceased are truthful and reliable and they conclusively establish that the accused beat the deceased on the morning of 20-9-1991 resulting in injuries to him.

8. The only question which, however, falls for determination is the nature of the offence committed by the accused. It may be recalled that the accused wanted to take the two plots of land allotted to his father and was demanding to part with the same. On the fateful day the accused went to the house of the deceased and renewed his demand. Thereafter there was altercation between the two and thereupon the accused brought a stick and dealt blows on the head of the deceased. Undoubtedly, the attack on the deceased was not a premeditated one. We have scanned the entire evidence of the prosecution and we are not convinced that the accused attacked the deceased with the intention of causing the death or with the intention of causing such bodily injury to cause the death of the deceased or that he intended to cause such bodily injury as is sufficient in the ordinary course of nature to cause death or that he knew that the act committed by him was so imminently dangerous that it would, in all probability, result in the death of the deceased. In our considered opinion, the offence committed by the accused squarely falls under S. 325 of the Indian Penal Code. We accordingly set aside the conviction of the accused under S. 302 of the Indian Penal Code and sentence of imprisonment for life inflicted on him. Instead, the accused is convicted under S. 325 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a term of two (2) years.

9. The appeal is accordingly allowed in part.

10. Appeal partly allowed.