
(2011) 08 AP CK 0002
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 2489 of 2004

Besta Ramachandra

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Evidence Act, 1872 — Section 25, 26, 27
Penal Code, 1860 (IPC) — Section 302, 304, 448

Citation : (2011) 08 AP CK 0002

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Hema Jaiswal, for the Appellant;

Final Decision : Dismissed

Judgement

Honourable Sri Justice Samudrala Govindarajulu

1. The appellant/accused was convicted by the VI Additional Sessions Judge (Fast Track Court), Anantapur by judgment dated 20.02.2004 in Sessions Case No. 862 of 2002 of the offence u/s 304 Part-I I.P.C. and sentenced him to rigorous imprisonment for 10 years and fine of Rs. 100/-; and was also convicted of the offence u/s 448 I.P.C. and was sentenced to rigorous imprisonment for one month. Questioning the same, the accused filed this appeal.

2. It is the prosecution case that on 28.05.2002 at about 2.30 P.M. when the deceased Sunkanna along with his brother Sriramulu (P.W-1) went to house of P.W-2, the accused went there armed with M.O-7 sickle and M.O-8 pestle (chutney pounder) and that the accused questioned the deceased as to why he developed illicit intimacy with his wife and attacked the deceased with the said weapons causing bleeding injuries and that the deceased/injured was taken to Government Hospital, Uravakonda, where P.W-11 gave first aid and advised to take the injured to Government Hospital, Anantapur and that on the way to Anantapur, the deceased succumbed to injuries at Penna Ahobilam. Plea of the

accused is one of total denial and not guilty. He did not take up any other specific plea of defence. After trial, the lower Court found the accused guilty of the offences punishable under Sections 448 and 304 Part-I I.P.C. though not u/s 302 I.P.C.

3. In this appeal, the appellant's counsel contended that there is only evidence of P.W-1 in support of the prosecution case and that P.W-1 being brother of the deceased, cannot be relied upon and no conviction can be based on interested evidence of P.W-1. No doubt, P.W-1 being brother of the deceased, is naturally interested in his deceased brother and in the prosecution. But that itself is no ground to reject P.W-1's evidence. That may be a ground to scrutinise evidence of P.W-1 more carefully and meticulously to find out whether his evidence is reliable and acceptable. The contention of the appellant's counsel that solitary witness of P.W-1 is not enough to find the accused guilty of the charges, is not tenable because if evidence of the said solitary witness P.W-1 is reliable, then nothing prevents the courts to base conviction on the solitary testimony of single witness. Ultimately, it all depends upon reliability of P.W-1's evidence in this case.

4. P.W-1 speaks to he and the deceased going to P.W-2's house in the village to have discussion with P.W-2's husband on landed property. P.W-5 is mother and P.W-9 is wife of the deceased. P.Ws 5 and 9 also speak to P.W-1 and the deceased going from their house towards the house of P.W-2. P.W-2's husband's name is Bestha Sreeramulu which is the same name as P.W-1. But, P.W-2's husband was of son of Anjaneyulu whereas P.W-1 is son of Timmappa. It is evidence of P.W-1 that he accompanied the deceased to P.W-2's house when the deceased requested him to do so.

5. It is further evidence of P.W-1 that the deceased went inside the house of P.W-2 whereas he went to attend urinal and that when he was passing urine, he saw the accused armed with the sickle entering in the house of P.W-2 and that immediately he ran towards the house of P.W-2 and also heard and witnessed the accused hacking on neck of the deceased on back side. He says that the deceased sustained a sliding injury and that the deceased while hacking stated as to why the deceased kept his wife as mistress and that immediately the deceased caught hold of sickle in the hand of the accused and threw it away and that the accused took a pestle and hit on head of the deceased and also beat on back, left shoulder, chest, right hand wrist of the deceased and that due to bleeding injuries, the deceased fell down and that after the deceased fell down, the accused kicked his brother on his testicles twice and that the accused ran away towards his house and that the accused while running away proclaimed that he killed the deceased and that the accused ran away in front of his (P.W-1's) house. With the same allegations, P.W-1 gave Ex. P-1 report to P.W-12 who is the head constable in Vidapanakal Police Station. P.W-12 registered Ex. P-1 as case in Crime No. 19/2002 u/s 302 I.P.C. and issued Ex. P-10 F.I.R. As per evidence of P.W-1 and Ex. P-10, he gave Ex. P-1 report at about 5.30 P.M. on the same date of offence.

6. P.W-2 did not support the prosecution case by expressing that she does not know the deceased and does not know whether the deceased died or not. She expressed total ignorance about the incident. P.W-4 also turned hostile to the prosecution totally. P.W-3 is husband of sister of the deceased. After coming to know about the offence he went to Uravakonda hospital and saw dead body of the deceased. P.Ws 5 and 9 narrated the incident on information furnished to them by P.W-1, though they were not eye witnesses to the occurrence. It is evidence of P.W-9 that after hearing the commotion she, P.W-5 and P.W-5's husband came out of the house and that they found the accused proceeding in front of their house while proclaiming that he killed the deceased and that the accused challenged them to go and see the dead body. P.W-5 did not speak to the proclamation of the accused before going to the scene of offence.

7. During investigation taken up by P.W-13, who is the Inspector of Police, Uravakonda circle, he conducted inquest on dead body of the deceased in the presence of mediators including P.W-6 under the cover of Ex. P-4 inquest report and also observed the scene under the cover of Ex. P-5 observation report. During inquest, P.W-13 examined witnesses and recorded their statements. There is no consistency in the prosecution material during inquest that the accused killed the deceased due to the deceased developing illicit intimacy with the wife of the accused. Ex. P-4 reads that P.W-1 was also examined during inquest not only as younger brother of the deceased but also as eye witness to the occurrence. But, P.W-2 was not examined during inquest. In Ex. P-4, injuries on dead body of the deceased were noted in Column No. 7.

8. P.W-11 is the medical officer who examined the deceased when he was alive and when he was brought to the hospital at about 3.00 P.M. and he advised relations of the deceased to take him to Government Hospital, Anantapur. P.W-10 is the doctor, who conducted post mortem examination on dead body of the deceased and gave Ex. P-7 post mortem certificate. Evidence of P.W-10 and Ex. P-7 show that the deceased was having the following external injuries.

1. A lacerated wound measuring 4 cms x 1/2 x 1/2 cms on the parietal aspect of the scalp left side.
2. A lacerated wound 5 cms x 1/2 x 1/2 cms on the back occipital region.
3. A lacerated wound 3 cms x 1/2 x 1/2 cms over the back of fore arm just below the elbow joint right side.
4. Multiple small abrasions over the left side neck and on collar bone.
5. Scrotal swelling 15 cms x 10 cms x 5 cms.

Opinion as to cause of death given by P.W-10 is to the effect that the deceased died of Asphyxia due to Haemorrhage and compression of lungs. Internal examination revealed that there was fracture of great horn of hyoid bone. P.W-10 found presence of thick fluid (Mucus and froth) in Trachea and presence of haemorrhage fluid of 300 ml in thoracic cavity. She also found the lungs

congested at cut section as well as stomach. In view of the said haemorrhagic fluid entering into lungs and trachea, there was asphyxia resulting in death of the deceased.

9. Placing reliance on Datar Singh Vs. The State of Punjab, it is contended by the appellant's counsel that the prosecution has failed to prove that M.O's 7 and 8 are the weapons used by the accused against the deceased by collecting finger prints on those weapons and comparing the same with the specimen finger prints of the accused. Collection and comparison of finger prints is not the only method for arriving at identity of the weapons. The Supreme Court did not lay down any principle that without such collection and comparison of finger prints, the accused is entitled for benefit of doubt in all cases. It was a decision rendered by the Supreme Court on facts of that particular case. In the present case, M.Os 7 and 8 sickle and pestle were seized by P.W-13 in the presence of P.Ws 7 and 8 under the cover of Ex. P-6 arrest and seizure panchanama. No doubt, P.Ws 7 and 8 turned hostile to the prosecution. It is their evidence that they signed in Ex. P-6 panchanama in the police station. It is evidence of P.W-13 that he arrested the accused on 13.06.2002 at Velpumadugu bus stop and that the accused gave confessional statement. The alleged confessional statement said to have been given after his arrest, is hit by Sections 25 and 26 of the Evidence Act, except to the extent of recoveries made in pursuance of the said confession u/s 27 of the Evidence Act. It is P.W-13's evidence that in pursuance of the said confessional statement, the accused lead them to the hut of Besta Anjaneyulu and brought M.O-7 and 8 from that house and handed over the same to P.W-13. P.W-13 sent those weapons also along with other wearing apparel of the deceased to Forensic Science Laboratory for examination and report by filing Ex. P-13 letter of advice and Ex. P-14 requisition letter. After examination, Regional Forensic Science Laboratory, Anantapur gave Ex. P-15 report to the affect that M.Os 7 and 8 sickle and pestle (which are items 6 and 7 of R.F.S.L. report) were blood stained and that the said blood stains are of human origin and of "A" group. Wearing apparel of the deceased M.Os 1 to 4 also were stained with the same group blood. Thus, the prosecution was able to connect M.Os 7 and 8 as the weapons used in this case against the deceased. P.W-1 identified the said weapons in his evidence in order to connect that the accused used those weapons against the deceased.

10. Except stating that P.W-1 being brother of the deceased, is interested in the prosecution, it could not be shown as to how P.W-1's evidence cannot be believed. Evidence of P.W-1 is consistent from stage to stage from Ex. P-1 to Ex. P-4 and also before the lower Court. His evidence is also corroborated by medical evidence. I do not find any circumstances to disbelieve evidence of P.W-1 in this case. In that view of the matter, I am of the opinion that the lower Court rightly recorded conviction of the accused for the offence u/s 304 Part-I I.P.C. I do not find any valid or legal reasons to come to a different conclusion in this appeal.

11. In the result, the appeal is dismissed.