
(2016) 03 AP CK 0055
In the Andhra Pradesh High Court
Case No : Criminal Appeal No.787 of 2010

Bheemgonda

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

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

Citation : (2016) 3 ALTCrI 8 : (2017) 1 AndhLDCriminal 93 : (2017) 2 Crimes 149

Hon'ble Judges : Sri C.V. Nagarjuna Reddy and M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Smt. C. Vasundhara Reddy and Mr. Palle Sriharinath, Advocates, for the Appellants; Public Prosecutor (AP), for the Respondent

Final Decision : Allowed

Judgement

Sri C.V. Nagarjuna Reddy, J.—Accused Nos.1, 2, 3, 10, 17, 20, 22, 24 and 29 in Sessions Case No.66 of 2006, on the file of learned II Additional District and Sessions Judge (Fast Tract Court), Sangareddy, filed this appeal against the judgment, dated 17.06.2010, whereby the learned Sessions Judge convicted appellant No.1/accused No.1 for the offences punishable under Section 302 I.P.C. read with Section 149 I.P.C. and Section 148 I.P.C. and sentencing him to suffer imprisonment for life and to pay a fine of Rs.2,000/- (Rupees two thousand only), in default, to suffer simple imprisonment (S.I.) for six months and also convicted appellant Nos. 2 to 9/accused Nos.2, 3, 10, 17, 20, 22, 24 and 29 respectively for the offences punishable under Section 324 I.P.C. read with Section 149 I.P.C. and Section 148 I.P.C. and sentencing them to suffer rigorous imprisonment (R.I.) for two years each and also to pay a fine of Rs.500/- (Rupees five hundred only) each, in default, to suffer S.I. for three months each.

2. The case of the prosecution, in brief, is that all the accused including the appellants belonged to Congress Party and one Babu (hereinafter referred to as ?

the deceased") belonged to Telugu Desam Party and there were longstanding political factions between both these groups. All the accused bore grudge against the deceased as he gave evidence against appellant No.1/accused No.1 in a murder case of one Mangali Bheemaiah, who died more than a decade back and further suspected the deceased of causing the death of one Usha Prakash. On 23.05.2004, at around 6.00 p.m., near Ambedkar statue of Chaptak(V) Village, the deceased, PWs.1, 4, 5, 6, 9 and 14 and others were chitchatting. At that time, all the accused, after attending the funeral function of one Prakash, while returning, on their way at Ambedkar statue, picked up quarrel with the deceased and others, saying that they would file a case against the deceased in connection with the death of Usha Prakash and so saying, they have attacked the said prosecution witnesses. Accused Nos. 1, 2, 7, 17, 20, 22, 24, 29 and others beat P.W.1 by pelting stones and also with axe, as a result of which, the latter received bleeding injuries over his head and back. Accused No. 1 beat P.W.3 on her head. Accused Nos. 10 and 22 beat P.W.4 with sticks, as a result of which, the latter received fracture on his right leg below the knee. Accused No. 3 beat P.W. 6 with stone on his forehead, due to which, the latter received bleeding injury. Accused No. 7 caught hold of the deceased and accused No. 1 beat him with stone over his head, as a result of which, the deceased fell down with severe bleeding injuries. Immediately after the incident, P.W. 10 informed the incident to Kangti Police, by making a phone call.

On receiving the information, P.W. 20, the then Sub-Inspector of Police, Kangti Police Station, rushed to the scene and found the deceased and nine others with injuries. He immediately shifted the injured to Narayanakhed Government Hospital, wherein they were examined at around 9.15 p.m. by P.W. 19, the then Civil Assistant Surgeon, who issued Exs. P-9 to P-15 - wound certificates of P.Ws. 1, 3 to 7 and 9 respectively. On the same day of occurrence, at about 10.00 p.m., on receiving Ex.P-1 report at the Police Station from P.W. 1, he (P.W. 20) registered the same as crime No. 27 of 2004 and issued Ex.P-19-First Information Report (F.I.R.). On the next day of occurrence, at around 6.00 a.m., he visited the scene of offence, secured the presence of P.Ws. 2 and 3 and recorded their statements. That at about 7.30 a.m., he conducted the scene of offence panchanama in the presence of P.W.16 and seized M.Os.1 to 5, i.e., stone and sticks under the cover of Ex. P-6 - panchanama. He prepared Ex.P-7 - rough sketch of the scene, and thereafter, he proceeded to the Government Hospital, Narayanakhed and recorded the statements of P.Ws. 4 to 10. At about 10.00 a.m., he held inquest over the dead body of the deceased in the hospital in the presence of P.W.17, prepared Ex. P-8 - inquest report and sent the dead body of the deceased for postmortem examination.

On 24.05.2004, P.W. 19 held autopsy over the dead body of the deceased and he opined that the cause of death of the deceased was due to haemorrhage and shock, and issued Ex. P-18 - postmortem report. On 26.05.2004, P.W. 21, the then Inspector of Police, Narayanakhed, took over the investigation, examined P.Ws. 11 to 15 and recorded their statements. On 30.05.2004, he arrested all the

accused and sent them for remand. He forwarded all the material objects to R.F.S.L. and obtained Ex.P-21-F.S.L. report. After receiving the relevant documents and on completion of the investigation, he filed the charge sheet.

3. In support of its case, the prosecution examined P.Ws. 1 to 21 and marked Exs. P-1 to P-21, besides marking M.Os.1 to 5. On behalf of the defence, no oral evidence was adduced, however, Ex.D-1 was marked. P.Ws. 2, 5, 8 and 13 did not support the prosecution case and accordingly, they were declared hostile.

4. On appreciation of the oral and documentary evidence, the trial Court acquitted accused Nos. 4 to 6, 8, 9, 12 to 16, 18, 19, 21, 23 and 25 to 28 of all the charges and convicted and sentenced the appellants and accused No. 7 as noted hereinbefore.

5. At the hearing, Smt.C.Vasundhara Reddy, representing Sri Palle Sriharinath, learned counsel for the appellants, strenuously submitted that the alleged incident for which the appellants and others have been prosecuted not taken place in the manner as set up by the prosecution, that the entire prosecution case falls to ground only for the reason that though the incident taken place at around 6.00 p.m. and information in respected thereof was passed on by P.Ws. 1 and 10 over phone to the Police of Kangti Police Station, no F.I.R. was registered till 10.00 p.m. She further submitted that it clearly comes out in the evidence that Ex.P-1 report was prepared after due discussions and deliberations among the prosecution party and that in view of the admitted rivalry between the group of the appellants on the one side and the group of the prosecution witnesses on the other, there was every possibility of false implications, improvements and embellishments, thereby vitiating the whole case of the prosecution. The learned counsel taken the Court through the evidence and relied upon the judgment of the Supreme Court in State of A.P v. Punati Ramulu and other, 1993 CrI.J 3684.

6. The learned counsel, representing the learned Public Prosecutor (TS) appearing for the respondent-state, supported the case of the prosecution and also the judgment of the trial Court.

7. We have carefully considered the respective submissions of the learned counsel for both the parties and perused the material on record.

8. Admittedly, the case is the offshoot of a longstanding political rivalry in the village. Both the groups dabbled in local politics and several crimes were registered against one another. The present incident is also the result of the hostilities between the appellants group and the prosecution witnesses. A day prior to the incident in question, one Usha Prakash was found lying dead in a well and for that the deceased and his followers, some of whom are the prosecution witnesses, have been suspected and as a matter of fact, the Police also registered a case against the deceased and others for their alleged involvement in the death of the said Usha Prakash. The incident in question is said to have taken place after the mortal remains of Usha Prakash were consigned to flames.

9. The main stay of the argument of the learned counsel appearing for the appellants is that there is a delay in lodging the F.I.R. and she further submits that if the entire evidence of the prosecution witnesses is carefully analysed, it is manifest that long before lodging Ex. P-1 - report by P.W. 1, investigation commenced, the statements of the witnesses were recorded and even the deceased and injured were shifted to the hospital through the police agency. She also submits that suppressing all these statements, in view of the group rivalries, Ex. P-1 was brought into existence, after due deliberations and consultations amongst the group of the deceased and injured. She taken us through the evidence of the material prosecution witnesses, in support of her submissions.

10. In the light of the above submissions of the learned counsel for the appellants, we have to first examine whether there is delay in registering the F.I.R., and in the absence of proper explanation therefor, whether the prosecution case is liable to be thrown out.

11. We are conscious of the fact that delay in lodging the F.I.R. will not be fatal to the case of the prosecution in every case. The totality of the facts and circumstances of the case to be taken into consideration before mulcting its consequences to the version of the prosecution. In the instant case, the incident took place between 6.00 p.m. and 6.30 p.m. on the day of occurrence, Ex. P-1-report was lodged at 10.00 p.m., the same was registered and express F.I.R. was issued, which was received by the jurisdictional Magistrate through a Police Constable at 09.50 a.m. on the next day. The purpose of forthwith communication of a copy of F.I.R. to the Magistrate is to check the possibility of its manipulation. The delay in transmitting the F.I.R. to the Magistrate is linked to the lodging of the F.I.R. One of the external checks against antedating and ante-timing an F.I.R. is the time of its dispatch to the Magistrate and of its receipt by the Magistrate. The dispatch of a copy of F.I.R. forthwith ensures that there is no manipulation or interpolation in the F.I.R.

12. Per se, the crime was registered within 3? hours of the riotous attack on the prosecution witnesses and the deceased. This would have been insignificant had it not been the case of a factious feud and the existence of longstanding hostilities between the two groups. In a case of this nature, such a delay will give scope for suspecting the authenticity of the complaint. The credibility of the complaint further erodes when it is brought out on record that long prior to the lodging of the complaint and immediately after the incident, the Police Officers have visited the scene of offence, shifted the injured including the deceased to the hospital with requisition and recorded the statements of the material witnesses.

The above facts were spoken to by the several prosecution witnesses as discussed hereunder:

P.W.1, the brother of the deceased, who himself is the injured, deposed that the Police came to the scene of offence at 6.25 p.m. on the day of occurrence, and

took the injured persons to the hospital after taking them to the Police Station. He further asserts that the Police have recorded the statements not only from himself, but also from his mother (P.W. 3) and father at the Police Station. The prosecution failed to place this material before the Court.

P.W.2 was the wife of the deceased. She reiterated that the Police have recorded her statement within thirty minutes after the incident and thereafter, they were taken to the hospital.

P.W.3 also asserted that the Police came to the spot within thirty minutes and all the injured were taken to the Police Station before being shifted to the hospital. She also deposed that the Police have recorded the statements before they were sent to the hospital.

P.W.4 would have it that the Police came to the scene of offence along with P.W. 1 and that the deceased was alive by the time when the statement of P.W. 4 was recorded by the Police.

P.W.7 also says about the arrival of the Police to the scene of offence by 6.30 p.m. on the day of occurrence.

The fact that Ex. P-1 is the outcome of deliberations and discussions is admitted by P.W. 6, who says that the case was filed after discussions among themselves.

13. The above admissions from the mouth of the material prosecution witnesses gain more significance, if the evidence of P.W. 5 is perused. He clearly deposed that one Mogulappa, who is not the accused, and some other Madiga people started beating the deceased and then he interfered. He further deposed that one Hussain Balappa also attacked the deceased. He admitted that neither Madiga Mogulappa nor Hussain Balappa was arrayed as the accused. Even though this witness was treated hostile by the prosecution, this statement from him can be looked into, more particularly, when almost all the prosecution witnesses categorically say that even before lodging Ex. P-1-report nailing the present accused, the statements of all the witnesses were recorded. The statement of P.W. 5 goes to show that the persons other than the accused were involved in the crime and those particulars were given by the witnesses before the complaint was lodged. Subsequently, however, after due consultations and discussions, Ex. P-1 came to be filed with a delay of nearly 3? hours after the incident took place.

P.W.10 swears to the fact that immediately after some of the accused attacked the deceased, he left the scene out of fear and immediately informed the Police by phone and that the Police immediately rushed to the spot and the deceased and other injured were taken to the hospital. He also admits that against himself, the deceased and three others, two criminal cases bearing C.C.Nos.55 of 1985 and 97 of 1986 were also filed.

On similar lines is the evidence of P.W.11, who also says that the Police came to the scene of offence and shifted the injured and the deceased to the hospital.

PWs.12, 14 and 15 say that the Police came to the scene of offence within 15 minutes after the occurrence and shifted the injured and the deceased to the hospital.

The fact that the investigation commenced even prior to the lodging of Ex. P-1 is admitted by P.W.20-the then Sub-Inspector of Police. He admits that at about 07.00 p.m., on a telephonic message, he went to the scene of offence and shifted all the injured to the hospital. That thereafter, at 10.00 p.m., P.W.1 came to the Police Station and lodged Ex.P-1 ? report.

In *Mehraj Singh v. State of U.P.*, (1994) 5 SCC 188, while dealing with the delay in lodging F.I.R., the Supreme Court held at para-12:

"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR lost its value and authenticity and it appears to us that the same been "ante-timed and had not been recorded till the inquest proceedings were over at the spot by P.W.8."

14. In *Punati Ramulu* (supra), the Supreme Court dealt with a similar situation. It is apt to refer to the facts in that case. The murder of one Krishna Rao took place on 28.03.1991 at about 7.00 or 8.00 a.m. at a village called Pamidipadu. P.W.1

went to Narasaraopet from the scene of occurrence and contacted P.W.13 to draft the report addressed to the Circular Inspector of Police. On reaching the Police Station at Narasaraopet, P.W.1 was informed by the Constable on duty that the Circular Inspector had already received the information about the occurrence and had left for the village. The Police Constable at the Police Station refused to record the complaint presented by P.W.1 on the ground that the said Police Station had no territorial jurisdiction over the place of crime. P.W.22, the Circular Inspector, who had received the information of the incident from the Police Constable who was on bandobast duty, left for the village of occurrence and started the investigation in the case. Before proceeding to the village to take up the investigation, he not made any entry in the daily diary or in the general dairy about the information that had been given to him by the constable. It was only when P.W.1 returned from the Police Station along with the written complaint to the village that the same was registered by P.W.22 during his investigation of the case at about 12.30 p.m. On these facts, the Supreme Court declined to treat the report given by P.W.1 as the F.I.R. as it certainly would be a statement made during the investigation of the case and hit by Section 162 Cr.P.C. The Supreme Court observed:

"Once we find that the investigating officer deliberately failed to record the first information report on receipt of the information of a cognisable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussions, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted report, as one would not know where the police officer would have stopped to fabricate evidence and create false clues. when the bona fides of the investigation been successfully assailed, it would not be safe to rely upon the testimony of these witnesses either in the absence of strong corroborative evidence of a clinching nature, which is found wanting in this case."

Similar is the situation in the present case, where P.W.20 ? the then Sub-Inspector of Police, categorically admitted that at 7.00 p.m. on the day of occurrence, he received a telephonic message and without making any entry in the general diary, he went to the scene of offence and shifted all the injured to the hospital. It is only at 10.00 p.m. i.e., 3 hours later, that P.W.1 came to the Police Station and lodged Ex.P-1.

15. In his evidence, P.W.20 ? Sub-Inspector of Police, admitted that in Ex.P-1 - report, it is not stated that accused Nos.1 to 3, 7, 20 and 22 attacked the deceased. He further admitted that P.W.1 did not state that he was beaten by accused Nos.7, 20, 17 and 24 when the complaint was given before the Police. He also admitted that P.W.3 did not mention the names of all the accused except accused No.1 as have attacked her son - the deceased, and that she (P.W.3) also not mentioned in her statement that all the accused encircled the deceased and P.W.1 and beat them. He further admitted that P.W.4 did not state before him

that he was also beaten by the accused when he interfered, that he (P.W.4) also did not speak about the presence of P.W.14 at the time of the incident, that P.W.7 did not mention the name of accused No.29 in his statement, that he (P.W.7) did not state that accused No.7 caught hold of the deceased when he was beaten by accused No.1, that P.W.9 did not state about the presence of Hanumugonda, S/o Nag Gonda and P.W.3 at the scene of offence, that he (P.W.9) did not mention that P.W.3 fell upon the feet of accused No.1 to beg the deceased and that in spite of the same, accused No.1 attacked the deceased. He further admitted that P.W.9 did not state that accused Nos.3, 5, 6 and 9 also attacked the deceased, that P.W.9 did not speak about the presence of accused Nos.7, 10, 17 and 18 at the scene of offence and that he (P.W.9) also did not state that accused No.2 beat the deceased with a stick.

16. Ordinarily, every omission in the prosecution case is fatal. But, in a case of this nature, where Ex.P-1 - report was prepared, admittedly after confabulations, with a delay of more than three hours, these omissions assume significance and give rise to a serious suspicion whether the attack on the deceased taken place, in the manner, in which it was projected by the prosecution. Applying the ratio of the judgment of the Supreme Court in Punati Ramulu (supra), it follows that Ex.P-1 cannot be treated as an F.I.R., that the investigation made by the Police based on such report becomes tainted, that the accused cannot be convicted based on such tainted investigation, more so, when more than one witness had admitted that discussions and deliberations had taken place before Ex.P-1 was drafted and that the whole prosecution theory is untrustworthy as is evident from the fact that there are many material contradictions and omissions in the case as projected by it. In these facts and circumstances of the case, we are of the opinion that due to failure of the investigation agency to conduct proper investigation, commencing from the time of registration of the F.I.R. and various omissions and contradictions in its case, it is not safe to convict the accused.

17. For the aforementioned reasons, the conviction and sentence recorded against all the appellants/accused Nos.1, 2, 3, 10, 17, 20, 22, 24 and 29 in judgment, dated 17.06.2010, in S.C.No.66 of 2006 on the file of learned II Additional District and Sessions Judge, (Fast Track Court), Sangareddy, for the respective offences punishable under Section 324 I.P.C. read with Section 149 I.P.C., Section 148 I.P.C. and Section 302 I.P.C. read with Section 149 I.P.C. are set aside. All the appellants/accused Nos.1, 2, 3, 10, 17, 20, 22, 24 and 29 are set at liberty and they shall be released forthwith, if they are not yet released and unless they are required in connection with any other offence. The fine amount, if any, paid by the appellants/accused Nos.1, 2, 3, 10, 17, 20, 22, 24 and 29 shall be returned to them forthwith.

18. The Criminal Appeal is, accordingly, allowed.