
(2006) 12 AP CK 0065
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 888 of 2005

Bhukya Balu

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

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

Citation : (2007) 1 ALD(Cri) 369 : (2007) 2 ALT(Cri) 41

Hon'ble Judges : G. Yethirajulu, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : P. Purushotham Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This Appeal is preferred by the sole accused in S.C. No. 742 of 2004 on the file of the VI Additional Sessions Judge at Mahabubabad in Warangal District. He was charged for the offence u/s 302 of I.P.C. for allegedly causing the death of the deceased Bhukya Earya at his house at about 9-00 PM on 13-02- 2003. The accused denied the charge and claimed for trial.

2. The case of the prosecution leading to the conviction of the accused is briefly as follows:

The accused and the deceased are residents of Nazi Thanda. PW-1 is the wife and PW-2 is the mother of the deceased. On 13-12-2003 at about 9-00 PM, the younger brother of the deceased, who is the accused herein, came to the house in a drunken state, picked up a quarrel with the deceased saying that he was not seeing his wife and children well and took a knife from his nab and stabbed on the right side of the stomach of the deceased, due to which the deceased fell down on the ground, struggled with life and removed the knife. Immediately, PW-1 and others shifted the deceased to the hospital for treatment. On the way, when they reached near Mangalavaripet, the deceased died. PW-1 presented

Ex.P-1 complaint to the police and it was registered as a crime. The police took up investigation, held inquest over the dead body of the deceased, observed the scene of offence, sent the dead body for postmortem examination, examined the witnesses, arrested the accused, recovered the weapons and after conclusion of the investigation, laid the charge sheet.

3. The prosecution, in order to prove the guilt of the accused, examined PWs.1 to 12 and marked Exs.P-1 to P-13 and M.Os.1 to 6. No oral or documentary evidence was adduced on defence side. The lower Court, after considering the oral and documentary evidence, came to a conclusion that the prosecution proved the guilt of the accused beyond reasonable doubt and accordingly, convicted him for the offence u/s 302 of I.P.C. and sentenced to undergo imprisonment for life and also to pay a fine of Rs. 5,000/- in default to suffer simple imprisonment for six months. The accused, being aggrieved by the Judgment of the trial Court, dated 06-05-2005, preferred the present Appeal challenging its validity and legality.

4. The case of the accused is one of denial and further attributed that PW-1 killed the deceased and falsely implicated him, therefore, the point for consideration is:

Whether the prosecution proved the guilt of the accused beyond reasonable doubt and whether the conviction and sentence imposed on him are liable to be set aside?

5. The motive for the accused attacking the deceased is the quarrels between them on petty issues, therefore, the accused bore grudge against the deceased, who is no other than his elder brother, and ultimately, stabbed him with knife which resulted in his death.

6. The defence version is that PW-1 developed illicit intimacy with another brother of the deceased and when the deceased observed her in a compromising position with his brother, with an apprehension that the deceased is likely to leak the said information to others, PW-1 resorted to kill the deceased and threw blame on the accused.

7. In the light of the contentions, it has to be examined whether the evidence placed by the prosecution is sufficient to make out a case against the accused. The incident occurred at about 9-00 PM on 13-02-2003, the complaint was given at 9-00 AM on 14-02-2003 and the Police Station was at a distance of 8 KMs.

8. PW-1 gave Ex.P-1 complaint. In the said complaint, she stated that the accused used to quarrel with the deceased frequently on every petty matter. Keeping the same in view, the accused came to their house in a fully drunken state on 13-02-2003 at about 9-00 PM and stated to the deceased that he was not treating his wife and children well and he is causing nuisance without any reason. By saying so, the accused removed a knife from his waist and stabbed the deceased on his stomach, as a result of which the deceased fell down and after struggling for sometime, he removed the knife from his stomach. Later,

with the help of the others, she took the deceased for treatment and by the time they reached Mangalavaripet, the deceased died at about 9-20 AM.

9. In the evidence PW-1 stated that on the date of offence, the deceased took his meal at about 5 or 6 PM in the evening and after that, the accused came and stabbed the deceased on the right side of his abdomen without any reason and at that time, she raised hue and cry upon which PWs.3 and 4 and others reached the scene and on seeing her, the accused ran away from the place. Later, on the way while they were shifting the deceased to the hospital, he died and they brought the dead body to the house. In the next morning, she went to the police station and preferred Ex.P-1 complaint. In the cross-examination, she stated that the contents of Ex.P-1 were not read over to her.

10. PWs.2 to 10 turned hostile and did not support the prosecution.

11. PW-11 is the doctor, who conducted postmortem examination over the dead body of the deceased. He found the following ante-mortem injuries:

1. Incised wound on the right side of the abdomen. Stab injury

1 1/2 x 6 x 1.

2. Abrasion on the right side of the throat 2 x 2.

3. 3 contusions on the left side of the throat 1/2 x 1/2.

4. Abrasion on the left toe 1 x 1.

5. Abrasion on the right knee 1 x 1.

The doctor opined that the cause of death was due to hemorrhage and shock on account of stab injury on the liver. Injury Nos. 2 and 3 are possible to have been caused in a scuffle.

12. PW-12 is the Inspector of Police, who investigated the case. He gave detailed narration of the investigation done by him.

13. After examining the above evidence, it is clear that except PW-1 no other witnesses supported the prosecution, therefore, it has to be considered whether on the basis of the solitary testimony of PW-1, the conviction of the accused can be sustained.

14. The learned Counsel for the appellant Sri Malla Reddy submitted that there were many laches in the investigation and no recovery of the weapon was proved and M.O.1 dagger which was said to be used by the accused was not sent to the Forensic Science Laboratory to find whether there was any bloodstains on it. The question of recovery of the weapon does not arise when the weapon in the abdomen of the deceased was removed by the deceased himself. Though PW-1 stated in Ex.P-1 that the deceased himself removed the weapon, it was not sent to the Forensic Science Laboratory for examination, but the fact remains that PW-1 witnessed the occurrence and the weapon there itself. When the nature of

the weapon used is known to the prosecution, there is no need to send the said weapon to the Forensic Science Laboratory as there is no necessity of using of the weapon and corresponding injury are tallying or not, therefore, on this ground the accused is not entitled for benefit of doubt.

15. The learned Counsel for the appellant further submitted that there is a solitary testimony of PW-1 who alleged to have witnessed the occurrence and she is an interested witness and there is a scar on her character as she developed illicit intimacy with the brother of the deceased and as there are no other circumstances to establish that the accused committed the offence, it is not safe to rely on the solitary testimony of PW-1, therefore, the benefit of doubt must be given to the accused.

16. The learned Counsel further submitted that there is no evidence to show that the accused ran away from the scene of offence with the knife and there was no indication whether there was any light at the scene of offence to identify the accused and there was delay in preferring the complaint and the FIR was registered advancing the time and there is no corroboration for the evidence of PW-1 regarding her witnessing the occurrence, therefore, it is not safe to come to a conclusion that the accused was responsible for the death of the deceased.

17. So far as the solitary testimony is concerned, the legal position is very clear and there is settled position of law on the credibility and trustworthiness of such witness.

18. In *Madhab Roy alias Madha Roy Vs. State of West Bengal*, , the Supreme Court held:

The question of credibility of a witness has primarily to be decided by referring to his evidence and finding out as to how the witness has fared in the cross examination and what impression is created by his evidence, taken in the context of other facts of the case.

19. In *Madhab Roy alias Madha Roy Vs. State of West Bengal*, , the Bombay High Court held:

In assessing the credibility of any witness, the main considerations are (1) his integrity (2) his ability and consistency with each other (3) his conformity of his testimony with experience and his corroboration by prompt, FIR, medical evidence, consistent statement and other collateral circumstances.

20. Regarding illiterate, rustic woman, the Supreme Court observed in the following Judgments:

In *Budhwa and Ors. v. State of Madhya Pradesh* 1979 CRI.L.J. 66, it was held:

The rustic people have no sense of time and they at the most give out the approximate time, which could be an hour or two on either side, hence time mentioned by a rustic witness regarding the incident does not necessarily discredit her.

In *Beti Padia Vs. State of Orissa*, , the Supreme Court held:

Where in a murder case, an unsophisticated Adivasi woman is an eye witness, her evidence with minor and nominal discrepancies can be accepted.

In *Boya Ganganna and Another Vs. The State of Andhra Pradesh*, , the Supreme Court held:

Where illiterate and ignorant women are eye witnesses, their evidence cannot be rejected for minor contradictions.

In *Sadre Alam Mullick Vs. State*, , the Calcutta High Court held:

The Court cannot expect computerized precision in the narration of the incident by the witness and as such minor discrepancies and inconsistencies in the evidence of witnesses are neither unnatural nor surprising especially when the evidence of witnesses recorded after gap of long years.

21. In view of the above legal position, it is clear that the conviction can be based on the solitary testimony of the witness after assessing the credibility of the witness. PW-1 is no other than the wife of the deceased. Her presence at the time of occurrence in the house is quite natural. It was not sleeping time, therefore, the people will be awake and doing some domestic work. The offence took place in the house, therefore, there will be some light in the house by either kerosene lamp or some other lamp, therefore, there could not be any difficulty for PW-1 to observe the assailant who is no other than the brother of the deceased. A little light will be sufficient for her to identify the assailant and the weapon used by him in the commission of the offence. There is no scope to fraud PW-1 as a chance witness or an unnatural witness and the credibility of her evidence cannot be doubted.

22. So far as the hostile attitude of the mediators for the seizure of the weapons is concerned, the Supreme Court held that the testimony of the police officials can also to be taken into consideration. This aspect was also dealt by the Supreme Court in the following Judgments:

In *Pradeep Narayan Madgonkar etc. etc. Vs. State of Maharashtra*, , the Supreme Court held:

The testimony of a witness cannot be jettisoned merely because he is a Police Officer. Where a police witness bore no grudge, nor had any rancor against the accused, his testimony if otherwise reliable, can be believed.

In *Sukhpal Vs. State of Haryana*, , the Supreme Court observed:

It may be indicated here that as a rule of prudence corroboration (of police witness) probably by a reliable witness is desirable but in all cases such corroboration cannot be insisted as a matter of course because it may not be possible in all cases to get corroboration from an independent witness.

In *Dwarka and Another Vs. State*, , it was held:

The testimony of police officials should be treated in the same manner as the testimony of any other witnesses and the view that their testimony without corroboration by an independent witness is unworthy of belief can be supported. There is no presumption that police officials are liars.

In *Nathusingh Vs. The State of Madhya Pradesh*, , the Supreme Court held:

The mere fact that the prosecution witnesses are police officers is not enough to discard their evidence in the absence of evidence of their hostility to the accused.

23. In view of the above legal position, there is no bar for the Court to accept the evidence of the Investigating Officer regarding the recovery of the weapons etc.

24. The accused introduced a story through hostile witnesses that PW-1 developed illicit intimacy with the brother of the deceased since long time; that the deceased was not liking the said relationship between them; that on the date of offence, the deceased found PW-1 and his brother in a compromising position and by observing the same, PW-1 resorted to kill the deceased and threw blame on the him.

25. The learned Counsel for the appellant submitted that PW-1 having resorted to kill the deceased, attributed the offence to the accused who has no motive to attack the deceased at the time of occurrence. He further submitted that it is not safe to rely on the testimony of a woman, who has no faith towards her husband and who developed illicit intimacy with the brother of the deceased.

26. The learned Counsel for the appellant in support of his contentions cited the following Judgments:

In *Middolla Harijana Thimmaiah @ Thimmappa Vs. State of A.P.*, , a Full Bench of this Court held:

The evidence of a prosecution witness, who turned hostile need not be totally rejected and it can be accepted to the extent his version is found to be dependable. The accused may also take advantage of such portion of the evidence of the hostile witness, which is contradictory to the prosecution version.

In *Dandu Lakshmi Reddy v. State of Andhra Pradesh* 1999 (2) ALD (CrL.) 648 , the Supreme Court held:

When the court does not put any question to the witness with reference to his statement u/s 161 of Cr.P.C., it is not permissible for the court to use that statement.

27. After going through the above Judgments, we are made to understand that the principles laid down in the above decisions vary from case to case and as there is convincing evidence of PW-1 in support of the prosecution, we have no hesitation to hold that that the prosecution proved the guilt of the accused beyond reasonable doubt and the lower Court was right in convicting the accused for the offence u/s 302 of I.P.C.

28. The accused could elicit some information from the hostile witnesses in support of his version.

29. PW-2, the mother of the deceased, deposed that the deceased was killed by PW-1. PW-1 developed illicit intimacy with her younger son prior to the death of the deceased and after the death of the deceased also, she started leading life with her younger son Bhukya Ramesh.

30. PW-3, the father of the deceased, deposed that the deceased was killed by PW-1.

31. PW-4 also stated that PW-1 killed the deceased.

32. Though PWs.2 to 4 stated that PW-1 was responsible for the offence, they are not the witnesses to the occurrence and they made the said statement only on imaginary basis.

33. PW-5, a resident of the same village, deposed that during the night on the date of offence, he heard some cries from the house of the deceased and he rushed to the said house. By that time, the deceased was lying in a pool of blood and PWs.1 and 2 were present there. He observed a knife in the hands of PW-1 and PWs.2 and 3 who were present there stated that PW-1 stabbed the deceased. On the night of the date of offence, he went to the police station and informed the police that the deceased was stabbed by PW-1.

34. According to PW-5, he gave complaint to the police. He did not furnish the details regarding the mode of conveyance to the police, whether anybody accompanied him during that midnight, whether the police recorded his statement and obtained any thumb impression or signature and what was the interest of the police to falsely implicate the accused when there was sufficient evidence to find the real culprit. This witness also did not state as to why he kept quiet and none of the prosecution witnesses stated that they had PW-5 at the time of PW-1 killing the deceased. This witness did not stick to his earlier version and fell in trap of the accused, therefore, it is not safe to rely on the testimony of this witness as he turned hostile and did not support the prosecution.

35. PW-6 also stated that he came to know that PW-1 killed the deceased, therefore his evidence is not helpful to the defence.

36. The hostile witnesses did not give the details as to how they came to a conclusion that PW-1 killed the deceased and what was the weapon used by her and how they came to know about the murder of the deceased without there being any cries from the persons who witnessed the occurrence. If the evidence of the hostile witnesses is accepted without any corroborating material, there is every likelihood of the accused influencing the witnesses and getting their version introduced in the evidence of the prosecution witnesses. But after going through the principles laid down by the Supreme court and the evidence placed by the prosecution, we are convinced that the evidence of PW-1 is trustworthy and there was no motive for her to unnecessarily implicate the accused when

there was no enmity between the accused and PW-1.

37. In the light of the above circumstances, we do not find any merits in the Appeal, therefore, the Judgment of the lower court is liable to be confirmed in all respects.

38. In the result, the Appeal is dismissed by confirming the Judgment of the lower Court lower Court in all respects.