
(1992) 02 AP CK 0044

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 635 of 1991

Bhupathi Bulliabbai

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-02-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2), 383
Evidence Act, 1872 — Section 32

Citation : (1992) 1 ALT 562 : (1992) 1 AnWR 631

Hon'ble Judges : Sivaraman Nair, J; Jagannadha Raju, J

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Jagannadha Raju, J.—This Criminal Appeal is filed by the sole accused against the Judgment dt.13-11-1990 in Sessions Case No. 150/1990 on the file of the Sessions Judge, Rajahmundry, convicting the accused on the offence u/s 302 IPC and sentencing him to suffer imprisonment for life.

2. The facts of the prosecution case are as follow:

On 10-7-1989 the deceased who is the wife of the accused left her house and went into the casurina garden of one A. Satyanarayana for answering calls of nature. After a few minutes she raised cries to the effect that she has been stabbed by her husband and was seen running with bleeding injuries. P.Ws.3 and 2 and some others saw the accused chasing the deceased and on seeing these people the accused ran away. P.Ws.2 and 3 and some others immediately rushed to the place where the deceased had fallen down in the coconut garden of Donga Anjaneyulu. The deceased informed them that she was stabbed by her husband. Immediately P.W.2 ran to the house of P.W.1 and informed him as to what they saw and what the deceased told him, his mother and others. P.W.1 and his wife and some others also heard the cries of the deceased and they came running to

the garden of Donga Anjaneyulu and when they asked the deceased, the deceased informed P.W.1 that her husband stabbed her. She told her father that his son-in-law stabbed her. Then she was carried to the house and after fifteen minutes she died.

3. The matter was reported to the police very promptly through the Village servant and the Village Assistant. On the basis of Ex.P-1 report with Ex.P-2 endorsement P.W.8, Head Constable, registered the same as Crime No. 91 of 1989 at 12-30 p.m. Then the Inspector of Police, reached the place within a short time and conducted the investigation.

4. In this appeal Mr. P. Raghava Reddy, appearing for the appellant contends that the theory of the deceased giving oral dying declaration cannot be believed, because she received the injury on the root of the neck, a vital part and hence she could not have spoken anything. He also claims that in a case of injury No. 1, death would have been instantaneous, he also contends that while P.Ws.1 and 3 speak about the deceased going to the garden with her baby none speaks as to what happened to the baby. He contends that while the deceased was holding the baby the accused could not have stabbed her without injuring the baby. Mr. Raghava Reddy contends that the evidence about the oral dying declaration cannot be accepted and it should be rejected.

5. On behalf of the State the Public Prosecutor contends that in this case, there is overwhelming evidence to establish the guilt of the accused for the offence of murder. Even if the oral dying declarations are discarded the circumstantial evidence fully establishes the guilt of the accused. The learned Sessions Judge has clearly set out ten circumstances which bring home the guilt of the accused in para 22 of his Judgment. There is absolutely no justification for doubting the evidence of P.Ws.1 to 4 who are the natural witnesses and who have no grouse against the accused. The Public Prosecutor submits that the motive for the crime is that the accused was suspecting the fidelity of his wife and there were frequent quarrels and there were occasions when he was beating his wife. The proximate cause for the murder was the trouble that arose two days earlier for her not cooking the food on the ground that there were no grains in the house.

6. The point for consideration in this appeal is, whether the prosecution evidence establishes the guilt of the accused for the offence u/s 302 I.P.C. beyond reasonable doubt?

7. P.W.2 is an young boy, aged 14 years. According to his evidence while he was at his house at 9 or 9-30 a.m. which is about 20 yards away from the garden of Donga Anjaneyulu, he heard cries coming from the side of the garden. Then himself, his mother, P.W.3, Veeramma and Mangamma rushed towards the garden. They noticed the accused chasing the deceased holding a knife and on seeing them the accused ran away taking the knife with him. The deceased then slumped down in the garden. On their enquiry the deceased informed them that her husband stabbed her with a knife. She was having bleeding injuries on her

neck, left shoulder, back and right hand. Immediately he went to the house of P.W.1 and informed him as to what has happened. P.W.1, his wife, Anandarao and Venkateswara Rao P.W.4 accompanied by him came to the garden and again the deceased told her father that her husband stabbed her. Then she was carried to the house of P.W.1 and fifteen minutes after reaching the house she expired. His evidence is fully corroborated by the evidence of his mother P.W.3. She clearly stated that when she heard cries from the direction of the garden, they ran towards the garden, Mangamma and Veeramma also accompanied her and her son and then they saw the accused chasing the deceased and the accused was holding a knife. On seeing them the accused ran away. On enquiry the deceased informed them that her husband stabbed her. The witness also speaks about the second dying declaration made by the deceased after her parents and P.W.4 came there. The evidence of P.Ws.2 and 3 is not at all shaken in the cross-examination. P.W.4 who came along with P.W.1 clearly stated that while he was at the house he observed P.W.1 and his wife running along the street raising cries that her daughter was stabbed. P.W.1 was accompanying them. Immediately himself and Anandarao went to the garden of Donga Anjaneyulu. They found the deceased lying in the garden and when P.W.1 enquired as to what happened, she stated that she was stabbed by her husband. Then they brought a cot to the garden and carried the deceased to the house on that cot and fifteen minutes after reaching the house she expired.

8. P.W.1 the father of the deceased speaks about the motive and the unhappy married life of the deceased with the accused and about the accused suspecting the chastity of the deceased. He also speaks about the prior incidents, especially about the incident that took place three days prior to the occurrence. After that incident the accused went away. On that occasion the accused beat P.W.1 also. Then the witness speaks about the events that took place on the date of the occurrence. He found that his daughter went towards the garden for answering calls of nature. She took her baby along with her. Subsequently P.W.2 came and informed him that the deceased was stabbed by the accused and that the deceased was lying in the garden of Donga Anjaneyulu. Immediately himself, his wife, Anandarao, P.W.4 and P.W.2 went to the garden. He found his daughter lying with stab injuries on the neck, left shoulder, back and right fore-arm. Veeramma, Ratnamma and Mangamma were already there. On his questioning, his daughter informed him as follows "your son-in-law stabbed me, father". Then he speaks about his daughter being carried home and her dying about fifteen minutes after reaching the house. The Village servant came and brought some officer and Ex.P-1 was recorded from him and subsequently it was sent to the Police.

9. On reading the evidence of P.Ws.1 to 4 there is absolutely no infirmity in their evidence and the evidence of P.Ws.2 and 3 is fully corroborated by the evidence of P.Ws.1 and 4 P.Ws.2 and 3 had seen the accused chasing the deceased with a knife and then they saw the deceased slumping down in the garden with bleeding injuries. There is also the evidence of the dying declaration made in the presence

of P.Ws. 2 and 3 and the same being repeated after P.W.1 and 2 P.W.1's wife came along with P.W.4. We have carefully gone through the judgment of the learned Sessions Judge. He has correctly appreciated the evidence and has set out ten circumstances which fully establish the guilt of the accused, in para 22 of his judgment. We do not find any justification to deviate from the conclusions drawn by the learned Sessions Judge.

10. The argument of the defence counsel that the deceased could not have made a dying declaration is not based upon facts. In this case though the deceased received an injury on the root of the neck, none of the organs which are necessary for speaking are injured. The tongue, mouth, pharynx and larynx and windpipe were not injured. There is no impediment for her speaking. She certainly had the capacity to make a dying declaration. It is interesting to see that no suggestion was made in this aspect when the Doctor gave evidence as P.W.7.. The Doctor's evidence clearly indicates that the death was caused due to the cutting of carotid artery partly. The internal injury clearly reveals that the right carotid artery was partly cut and it was covered by the cut sternomastoid muscle and this would have reduced the speed of bleeding and there was possibility for the deceased surviving for a longer periods In fact the Doctor himself stated that after the carotid artery was cut there is the possibility for survival for about half-an-hours. This statement of the Doctor in the cross-examination lends weight to the evidence of P.Ws.1 to 4.

11. P.Ws.1 and 3 had mentioned about the deceased taking the baby daughter with her when she went to answer calls of nature. No evidence was adduced as to where the child was left and how the child was taken back. No cross-examination was made, perhaps finding that it is unnecessary. It is interesting to see that all the injuries are on the right side. Normally a female carries a child with her left arm. There is no impediment for the accused stabbing the deceased even if she was holding a baby. The two arguments of the defence counsel are not justified on the facts of this case. There is overwhelming evidence to establish the guilt of the accused. The learned Sessions Judge has written a well-reasoned Judgment and we do not find any justification to differ from his views.

12. In the result, the appeal is dismissed as devoid of merits and the conviction and sentence are confirmed.