
(1995) 12 AP CK 0068
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 172 of 1995

Bonthu Arjuna Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (1996) 1 ALT(Cri) 433 : (1996) CriLJ 1807

Hon'ble Judges : K.M. Agarwal, J;B.K. Somasekhara, J

Bench : Division Bench

Advocate : Padmanabha Reddy, C.C. Praveen Kumar and C.S. Venkatesh, for the Appellant; Public Prosecutor, for the Respondent

Judgement

K.M. Agarwal, J.

1.The appellant was tried for offences u/s 302 and 307, I.P.C. in Sessions Case No. 396 of 1993 by the Second Additional Sessions Judge. East Godavari, Rajahmundry and by the impugned judgment dated 27-1-1995, found guilty and accordingly convicted and sentenced to life imprisonment and a fine of Rs. 100/-, or in default S.I., for two months, for the offence u/s 302, I.P.C., and further to undergo R.I. for 10 years and a fine of Rs. 100/-, or in default S.I. for two months, for the offence u/s 307, I.P.C., both sentences to run concurrently. Being aggrieved, he has filed the present Criminal Appeal.

2. According to the prosecution, the deceased Arti Vishnu was earlier having illicit relations with the accused appellant. Later on she deserted him and developed intimacy with Pasupuleti Nageswara Rao (P.W. 1) and, therefore, the appellant was unhappy with both of them. P.W. 1 was the watchman of one Maddala Venkatachalam for watching his fields. On 8-5-1993 at about 9.00 p.m., when P.W. 1 was going to the fields of Venkatachalam along with the deceased, the accused came from behind and started making indiscriminate criminal assault by means of a curved knife on the deceased by saying "You bitch, going with that

ruffian, (i.e., P.W. 1)". When P.W. 1 tried to intervene, the accused made an attempt at his life by inflicting knife injuries on his right shoulder, above his lips and on his right thumb. The accused then ran away from the spot. P.W. 1 found that Arti Vishnu was dead and, therefore, he ran back to his house at Termarda, informed P.W. 2 about the incident, who in turn informed others and then lodged the report with Peddapuram Police Station on the same night at about 12-30 a.m., which was alleged to have been recorded by P.W. 11, the Assistant Sub-Inspector of Police, which is marked as Ex. P. 1. It was sent to Jaggampet Police Station from Peddapuram Police Station, as that Police Station was found to have had territorial jurisdiction for investigating the offences. P.W. 1 was sent to the hospital, where he was examined by P.W. 8 on 9-5-1993 at 1.00 a.m. Ex. P-16 is the Wound Certificate issued by P.W. 8. Post-mortem of the dead body was also conducted by P.W. 8 and Ex. P-17 is the post-mortem report. On the basis of Ex. P-1, received at about 6.00 a.m. on 9-5-1993 in Police Station House, Jaggampet, P.W. 12, the Sub-Inspector of Police, Jaggampet registered Crime No. 43 of 1993, investigated the crime and filed the charge-sheet. The accused was, thereafter, tried for the said offences. He denied the guilt, but was found guilty and accordingly convicted and sentenced as aforesaid. Hence this Criminal Appeal.

3. The case of the prosecution was based on the evidence of the alleged eye-witness P.W. 1 and on the recovery of a knife in pursuance of a statement made by the accused u/s 27 of the Evidence Act. That knife was found to contain blood stains of the same blood group as were found on the clothes of the deceased.

4. The learned counsel for the appellant argued that the report Ex. P. 1 did not appear to have been received at 12-30 a.m. on 9-5-1993, because in the requisition Memo (Ex. P-25) issued by P.W. 11 and addressed to the Medical Officer, Peddapuram for medical examination of P.W. 1, it was mentioned that "some one hacked him on his right shoulder"; whereas in the report (Ex. P-1), the name of the accused was mentioned. It was also pointed out that as per the evidence of Dr. K. Trinadha Rao (P.W. 8) as well, the injured P.W. 1 had not disclosed him the name of his assailant by saying that he did not know him. Accordingly in the Accident Register (Ex. P-18) it was mentioned that the injured was "alleged to have been injured with knife by an unknown man." Further, as provided in Standing Order 495 of the A. P. Police Code, F.I.R. was not issued and its substance not entered in the general diary.

5. We find considerable force in the aforesaid contentions of the learned counsel for the appellant. Ex. P-25 itself mentioned the date and time of incident as "On 8/9-5-1993 night at 12-30" and, thereafter, it is stated that P.W. 1 was hacked on shoulder by someone. Ex. P-1 also mentions similar date the time of incident, but here the name of the accused is disclosed. If the accused was known at 1.00 p.m. of 9-5-1993, his name would have been disclosed in Ex. P-25 and also by P.W. at the time of his medical evidence. There is no material to show that Standing Order 495 of A.P. Police Code was complied with by P.W. 11 after

receiving a report of the incident from P.W. 1. The report Ex. P. 1, therefore, appears to be a false document, prepared sometime after the medical examination of P.W. 1. For all these reasons, the accused cannot be held guilty of any offence for the injuries found on the person of P.W. 1.

6. If P.W. 1 is disbelieved in reference to his own injuries, he cannot be believed in reference to the homicidal death of the deceased. After this, the only material remains against the accused is the recovery of knife at his instance, which was proved to contain blood stains of the same blood group as were found on the clothes of the deceased, Now, knowledge of the accused about the place where the knife was lying, would not prove that the knife belonged to the accused and was used by him to murder the deceased. If it were so, the accused was not obliged to prove or explain the blood stains found on the blade of the knife.

7. It has to be remembered that the deceased was a lady of easy virtue. She appeared to have had several connections. She might have been, therefore, murdered by someone, but it cannot be said affirmatively that the accused and the accused alone was responsible for her death. In the absence of any convincing evidence on record, the accused is entitled to benefit of doubt and consequent acquittal.

8. For the reasons, this appeal succeeds and it is hereby allowed. The accused is acquitted of all the charges against him by giving him benefit of doubt. He is in custody and, therefore, directed to be set free forthwith, if not required in connection with any other offence.

9. Appeal allowed.