
(2013) 02 AP CK 0076

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 108 of 2009

Burka Kannaiah

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 302, 304, 307, 427, 447

Citation : (2013) 1 ALD(Cri) 939 : (2013) 3 ALT(Cri) 321

Hon'ble Judges : N.V. Ramana, J;G. Krishna Mohan Reddy, J

Bench : Division Bench

Advocate : Nageshwara Rao Pappu, for the Appellant;

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—This appeal u/s 374(2) Cr. P.C. is directed against the conviction and sentence passed in S.C. No. 357 of 2008 by the VI Additional Sessions Judge (III Fast Track Court), Warangal at Mahabubabad dated 05-01-2009. According to the prosecution, PW 1 filed the complaint stating that he is the resident of Damaravancha and on 05-02-2008 while himself and PWs 2 and 3 were returning on his motor cycle from Mahabubabad after seeing one Gudimetla Laxmaiah who met with an accident and when they reached near Damaravancha cross roads at about 6.00 PM, the deceased came in the opposite direction with bloodstained clothes and requested them to save him. On that, PW 2 who was travelling as a pillion rider asked him as to what happened. The deceased informed them that his name is Esarapu Prakasham, son of Yellaiah and that he is a resident of Macherla Village and is working as a Private Forest Watcher. About fifteen minutes back when he raised an objection for taking teak-logs from the forest, Burka Kannaiah, son of Buchiramulu, the accused who is also resident of the said village had axed on his neck and fled away. In the meantime, LW 4 and PW 4 came in an auto and they tied one cloth around the neck of the deceased and immediately they informed to 108 ambulance and also

to PW 14, the Circle Inspector of Police, Gudur and requested him to take action against the culprit. The said complaint was handed over to PW 14 when he came to the scene of offence and then PW 14 endorsed on the complaint and forwarded the same to the police station with Assistant Sub Inspector of Police, Gudur Police Station to register the case under the appropriate section of law for taking further action. Accordingly, the Assistant Sub Inspector of Police, Gudur had handed over the complaint in the police station. On that, the Head Constable of Police, Gudur Police Station, PW 13 registered a case in Crime No. 23 of 2008 for the offences under Sections 447, 427 and 307 IPC and issued F.I.R. He also recorded the statement of PW 1 and proceeded to the Government Hospital, Narsampet to record the statement of the deceased. By the time he went there the deceased was already shifted to M.G.M. Hospital for better treatment and he succumbed to the injuries at 11.10 PM on 05-02-2008 in M.G.M. Hospital while undergoing treatment. On that, the Station House Officer, Gudur altered the section of law from Sections 447, 427 and 307 IPC to Sections 447, 427 and 302 IPC and issued express alteration memo to all the concerned. In the meantime, PW 15, the doctor conducted post mortem examination over the dead body of the deceased and issued post mortem examination report Ex. P-15 opining that the cause of death is due to injury to neck and its complications. On 09-02-2008 at 11.00 hours, the accused was arrested by PW 14 at Macherla cross road bus stop and he secured the presence of panchas and conducted confession and recovery panchanama and on enquiry by the panchas, the accused admitted the commission of offence and produced the axe MO 5 used in the commission of the offence and blood stained shirt and the same were seized under confession and recovery panchanama Ex. P-14. After completion of investigation, PW 14 filed the charge sheet.

2. The court below has framed charge u/s 302 IPC against the appellant-accused and he pleaded not guilty for the said charge and claimed to be tried.

3. In order to establish the said charge, the prosecution examined PWs. 1 to 15 and got marked Exs. P-1 to P-15 and MOs 1 to 6. No oral or documentary evidence was adduced by the accused in defence.

4. The trial Court basing on the above said evidence found the appellant-accused guilty for the offence punishable under Sections 302 IPC and convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 500, in default to undergo simple imprisonment for two months.

5. Aggrieved by the said conviction and sentence, the present appeal is filed by the appellant-accused.

6. Now the point for consideration is whether the prosecution could establish the charge under Sections 302 IPC against the appellant-accused beyond reasonable doubt.

7. Learned counsel for the appellant-accused contended that the prosecution has not proved the identity of the accused. When there are no eyewitnesses to the

incident, convicting the appellant-accused relying upon the circumstantial evidence of PWs 1, 2, 3 and 4 is not correct. He also contended that the injury received by the deceased was simple in nature and even though he died of the said injury, the offence committed by the accused would fall u/s 304 Part I IPC as the accused had no intention to kill the deceased.

8. On the other hand, learned Additional Public Prosecutor appearing for the respondent-State supported the judgment of the trial Court and submitted that in view of the consistent evidence of PWs 1, 2, 3 and 4, the prosecution could prove the charge against the accused beyond reasonable doubt. The prosecution has also proved that the deceased died due to neck injury caused with the axe MO 5.

9. PW 1 who gave Ex. P-1 complaint is the Sarpanch of Damaravancha Village is an independent witness. He stated that on the date of incident i.e., on 05-02-2008, while himself and PWs 2 and 3 were proceeding on the motor cycle towards their village from Mahabubabad and when they reached near Damaravancha cross road in the evening at about 6.00 PM the deceased came in the opposite direction with blood stains on his clothes and that they stopped and enquired him as to what happened? Then he told them that his name is Prakash and he was beaten by the accused B. Kannaiah of his village when he raised objection for taking teak wood from the forest. In the meantime, one auto came and in the said auto, LW 4 and PW 4 also came there. After a few minutes, PW 14 also came there and on their enquiry, the deceased informed that the accused had bet him with an axe. Immediately, they tied a cloth to stop the bleeding and informed 108 ambulance and thereafter, he was shifted to the hospital. PW 1 stated that he gave complaint Ex. P-1 to PW 14 and the police recorded his statement.

In his cross examination, PW 1 admitted that he did not see the accused and he cannot identify him. After the accused stabbed the deceased within ten minutes, the police as well as 108 ambulance came. The police recorded his statement and he informed the police that the deceased told him that he was beaten by the accused. He further stated that the deceased received injury on the left side of the neck and he denied the other suggestions. Though PW 1 was cross examined at length, nothing was elicited to disbelieve his evidence.

10. PW 2 is another independent witness. He was travelling on the motorcycle along with PW 1 on the date of incident. He supported the version of PW 1 with regard to the deceased approaching them with bleeding injuries and on enquiry informing them that he was beaten by the accused. In his cross examination he stated that the deceased informed them that the accused bet him 15 minutes prior to their meeting. Though PW 2 was cross examined at length, nothing was elicited to disbelieve his evidence.

11. PW 3 who is a resident of Ekuru Village was also accompanying PWs 1 and 2 on the date of incident. He supported the version of PW 1 with regard to the

deceased approached them and informing them that the accused bet him. He stated that the deceased was working as a Forest Watcher. He further stated that the deceased also informed PW 14 that he was beaten by the accused. However, in the cross examination he stated that the police filed cases against the accused as he was having connection with naxalites.

12. PW 4 is another independent witness who in his chief examination stated that he saw PWs 1, 2 and others along with the deceased who sustained injury on the neck. According to him, the deceased informed them that he was beaten by the accused and he tied a cloth over the injury to stop bleeding. In the cross examination, he stated that he knew the deceased and denied the suggestion that the deceased did not tell him about the fact that the deceased was beaten up by the accused and is deposing at the instance of the police.

13. Thus, from the evidence of PWs 1, 2, 3 and 4 it is clear that it is the accused who beat the deceased with axe when he raised an objection for taking teak wood from the forest.

14. PW 5 is another independent witness. According to him, after the incident one of the villagers informed him about the injuries sustained by the deceased and thereafter he went to the hospital to see the deceased. In his cross examination, he stated that the accused belongs to his village and there are no disputes between the accused and the deceased.

15. PW 6 is the son of the deceased. He stated that on the date of incident while he was in his house, he was informed over phone that the deceased was admitted in MGM Hospital and he went to the hospital and saw the dead body. Later, he came to know that the accused bet the deceased when he raised objection for taking teak wood from the forest.

16. PW 7 who is working in the Forest Department stated that the deceased worked as Forest Watcher prior to his death and that he came to know that while the accused was taking teak logs from the forest, the deceased raised objection due to which the accused bet him on his neck with axe and that thereafter, he died in the hospital.

17. PW 8 is a panch witness to the inquest panchanama. According to him, PW 14 conducted inquest panchanama over the dead body of the deceased and seized blood stained lungi MO 1 and underwear MO 2. The police read over the contents of inquest panchanama Ex. P-2 and obtained his signature.

18. PWs 9, 10 11 were turned hostile.

19. PW 12 is a panch witness. He stated that the police seized blood stained earth MO 3 and the controlled earth MO 4 and prepared scene of offence panchanama Ex. P-6 and rough sketch of the scene of offence Ex. P-7.

20. PW 13 is the Head Constable of Gudur Police Station. He stated that on 05-02-2008, the Assistant Sub Inspector of Police, Gudur Police Station came to

him with a written complaint Ex. P-1 duly endorsed by PW 14 and basing on the same, he registered a case in Crime No. 38 of 2008 for the offences under Sections 447, 427 and 307 IPC and forwarded FIR Ex. P-8 to the Court. After registering the case, he shifted the dead body of the deceased to the Government Hospital, Narsampet in 108 ambulance and thereafter, he was shifted to MGM Hospital, Warangal. As the deceased was unconscious when he went to him, he could not record his statement. On the next day, on receipt of message that the deceased succumbed to the injuries, he altered the section of law from Sections 447, 427 and 307 IPC to Sections 447, 427 and 302 IPC and issued express alteration memo to all the concerned.

21. PW 14 who is the Circle Inspector of Police, Gudur Police Station is the investigating officer. He stated that on the date of incident he received written complaint from PW 1 and at that time, the deceased and PWs 2, 3 and 4 were also present. He observed injury over the neck of the deceased. He stated that he examined the deceased but could not record his statement. He telephoned to 108 ambulance and shifted the deceased to the Government Hospital, Narsampet. After endorsing on the complaint, he sent the same to the police station through the Assistant Sub Inspector of Police for registering the crime. He also narrated the investigation conducted by him in detail.

22. In his cross examination, PW 14 stated that by the time he reached the scene of offence, he found five or six persons and out of them PWs 1 to 4 and the deceased were there. He did not enquire about the persons by name Kannaiah in surrounding villages.

23. PW 15, the Professor in Kakatiya Medical College who has conducted autopsy over the dead body of the deceased on requisition from the Station House Officer, Gudur, found the following injury:

Sutured lacerated wound 8 Cms with five intact sutures are present over the left side neck. On opening sutures the underling neck structures are injured. The surrounding tissues are contused.

24. PW 15 issued post mortem examination report Ex. P-15 opining that the said injury is anti mortem in nature and could have been caused by a heavy sharp edged weapon like axe MO 5. According to him, the cause of the death is due to neck injury and its complication and the said injury is sufficient to cause death of a person in ordinary course of nature.

25. In order to prove that the death of the deceased is homicidal, the prosecution has examined PW 15, the doctor who conducted post mortem examination over the dead body of the deceased. As per his evidence, the deceased sustained sutured lacerated wound measuring eight centimeters with five intact sutures present over the left side of the neck which is corroborated with the oral evidence of PW 1 who stated in his cross examination that the deceased received injury on the left side of the neck. Even the inquest panchanama Ex. P-8 which was conducted immediately after the incident

indicates that the deceased suffered a cut of four inches on the left side with an axe. Further, in the complaint Ex. P-1 which was given immediately after the incident, it was mentioned that the deceased received injury on the left side of the neck. Apart from this, after the recovery of MO 5 blood stained axe, it was sent to FSL and FSL report Ex. P-13 indicates that the blood group "A" which is found on MO 5 is that of the deceased. Thus, the prosecution has established beyond reasonable doubt that the death of the deceased is homicidal.

26. To prove that the accused caused injury to the deceased, though there are no direct eyewitnesses to the incident, PWs 1 to 4 who are independent witnesses who saw the deceased immediately within 15 minutes of the incident were examined by the prosecution. It is clear from their evidence that they have nothing to do with the incident or with the accused or the deceased so as to implicate the accused falsely. While they are accidentally going on the motor cycle, the deceased came with blood stained clothes and sought their help. Though PWs 1 to 4 were cross examined at length nothing adverse was elicited to disbelieve their evidence. Thus, the prosecution could prove that it is the accused who caused injury on the neck of deceased and who committed the offence.

27. Even though the learned counsel for the appellant-accused contended that the identity of the accused is not proved beyond reasonable doubt, it is to be seen that in their evidence PWs 1 to 4 categorically stated that when they enquired the deceased as to who bet him, the deceased told them that he was beaten up by B. Kannaiah of Macherla Village when he raised an objection for taking teak wood from the forest. Nothing was elicited from their cross examination that some other person by name Kannaiah bet the deceased. Further, no evidence was put forth by the accused that there are other persons who are having same name in Macherla Village. In the absence of any explanation put forth by the accused with regard to his identification, the trial Court rightly held that except the accused no other person has committed the offence.

28. Learned counsel for the appellant further contended that the accused had no intention to kill the deceased as he had given only one blow. Before we deal with this contention, we deem it appropriate to discuss the law laid down by the Apex Court in Pulicherla Nagaraju @ Nagaraja Reddy Vs. State of Andhra Pradesh, has dealt with how the intention to cause death can be gathered generally from a combination of facts and discussed about circumstances where from the Court can come to a decision with regard to intention (1) Nature of the weapon used; (2) Whether the weapon was carried by the accused or was picked up from the spot; (3) Whether the blow was aimed at a vital part of the body; (4) The amount of force employed in causing injury; (5) Whether the act was in the cause of sudden quarrel or sudden fight or free for all; (6) Whether the incident occurred by chance or whether there was any pre-mediation; (7) Whether there was any prior enmity or whether the deceased was a stranger; (8) Whether there

was any grave and sudden provocation and if so, the cause for such provocation; Whether it was in the heat of passion; Whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; and (11) Whether the accused dealt a single blow or several blows. Then the Court further observed that the above list of circumstances if of course not exhaustive and there may be several other special circumstances with reference to individual cases which throw light on the question of intention. The Court proceed to decide the pivotal question of intention with care and caution as that will decide whether the case falls u/s 302 or 304 Part-I or 304 Part-II. There may be no intention, there may be no-mediation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalties of murder by attempting to put forth a case that there was no intention to cause death.

29. As per the law laid down by the Apex Court in the above referred judgment, if we look at the facts of the case on hand, the accused has used the axe to cause injury to the accused and he has given the blow just below the neck, a vital part of the body. Any normal man can understand the fact that the injury on the neck in the ordinary course will cause the death or cause severe bodily injury to the deceased. Here in this case, there is no element of sudden provocation for the reason that the accused who was cutting the forest produce is very much aware of the fact that doing it is illegal, if any of the forest officer finds him cutting and transporting, he would be caught hold of. The accused has committed the murder of a person who is on duty in furtherance of his illegal activity of cutting the forest produce. The medical evidence clearly discloses that the said injury is sufficient to cause death of a person in ordinary course of nature. In view of the law laid down by the Hon"ble Apex Court as discussed by us, the contention of the learned counsel cannot be accepted that the accused has no motive to kill the accused.

30. Thus, the prosecution by adducing the evidence of PWs 1 to 4 and PWs 14 and 15 could prove that the death of the deceased is homicidal and that it is the accused alone who caused the death of the deceased. Therefore, we hold that the prosecution could establish the guilt of the appellant-accused for the offence punishable u/s 302 IPC beyond all reasonable doubt. Hence the conviction and sentence imposed against the appellant-accused by the Sessions Judge warrants no interference in this appeal. In the result, the appeal is dismissed confirming the conviction and sentence imposed by the trial Court against the appellant-accused by judgment dated 05-01-2009 passed in S.C. No. 357 of 2008 by the VI Additional Sessions Judge (III Fast Track Court), Warangal at Mahabubabad.