

(1999) 04 AP CK 0057

In the Andhra Pradesh High Court

Case No : Criminal A No. 1266 of 1998

Chand Basha and others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 302, 313, 34

Citation : (1999) 3 ALD 505 : (1999) 1 ALD(Cri) 800 : (1999) 3 ALT 604 :
(1999) 2 ALT(Cri) 423 : (1999) CriLJ 3441

Hon'ble Judges : Vaman Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. A. Hanumantha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Motilal B. Naik, J.—The appellants 1 to 3 herein are the accused in SC No.276 of 1997 on the file of the Additional Sessions Judge, Hindupur. A1 was tried on a charge u/s 302, IPC and A2 and A3 on a charge u/s 302 read with Section 107, IPC. They were found guilty and convicted and sentenced to suffer imprisonment for life under Section 302, IPC by the judgment of the trial Court in SC No.276 of 1997 dated 9-9-1998.

2. The gravamen of the charge against the accused-appellants is that on 20-11-1996, around 10.30 p.m. while A2 was passing on the ratha in front of the house of the deceased, an altercation took place over the barking of a dog at A2 in which A2 and A3 held the deceased and A2 stabbed him on his vital parts resulting in his death.

3. In order to justify the charges against the accused, the prosecution examined as many as eight witnesses Exs.PI to P8 and Exs.C1 to C3 - wound certificates issued to A1, A3 and A3 were also marked by the Court in respect of the injuries received by them during the same altercation. On behalf of the accused, DW1 was examined and got marked Exs.D1 to D5. The gist of the prosecution as found from the evidence of the witnesses, particularly the evidence of PWs. 1, 2

and 3, was put to the accused u/s 313, Cr.PC. The accused, however, denied the allegations and pleaded not guilty. However, the trial Court believed the version of the prosecution and found the accused guilty and convicted and sentenced them as indicated above.

4. The case of the prosecution in brief is as follows:

5. A1 and A2 are brothers and A3 is their father. PW1 is the wife of the deceased PWs.2 and 3 and LWs.3 and 5 are the sons of the deceased. The accused and the deceased are all close neighbours and residents of Gaddameedigeri of Hindupur and they are also distantly related to each other and there was no enmity between them prior to the incident.

6. On 20-11-1996, around 10.30 p.m. in the night, the deceased, PWs.1 and 2 and LW3 were sleeping in their house while PW3 and LW5 were sleeping in front of their Borugula Batti adjacent to their house. In order to go to the house of the accused, the accused have to necessarily pass through the lane in front of the house of the deceased and the Batti. While so, when A2 was passing through the lane in front of the house of the deceased around 10.30 p.m. on the night of 20-11-1996, a dog barked at him. A2 seemed to have abused the deceased saying that the deceased's legs be broken and then the dog be beaten. This utterance of A2 was overheard by PW3 and LW5, who came out of their house and picked up quarrel with A2. The deceased and PWt and LW3 joined them. A2 brought A1 and A3. According to the prosecution, A3 instigated the other accused A1 and A2 to teach a lesson to the deceased. A2 and A3 held the deceased and A1 stabbed him with a knife resulting in serious injuries on the deceased and he fell down. LWs.6 and 9, neighbours also came out on hearing the cries of the deceased on the scene of offence. PWs. 1, 2 and 3 and LWs.3, 5, 6 and 7 rushed the deceased to the hospital. (According to PW1, they took the deceased first to the police station where P\\V7 was present and on his advice the deceased was then rushed to the Government Hospital, Hindupur without recording any statement.) PW1 got a report prepared and presented the same to the II Town Police who were present in the hospital. According to PW2, he and his brothers were held by the neighbours and as such they could not catch the accused.

7. PW4 is an eye witness to the drafting of the observation of the scene of offence. PW5 is a witness for the inquest report. PW6 is the Medical Officer. He filed Cx.P4 -post-mortem certificate issued by LW14 who conducted post-mortem examination, but later died in the month of December, 1997. According to Ex.P4, there were two injuries on the body of the deceased, the first injury being incised injury on the left side of the chest at the 8th inter-costal space and the second injury is an incised wound over the left side of the chest near the sternum; fracture of the rib present. The experts opined that the wounds as shown in Ex.P4 are possible by sharp edged weapon like a dagger. They further opined that if a stab injury is inflicted with a weapon having one sharp edge and other blunted the injury will have lacerated edge on one side. PW6 also filed Exs.C1, C2 and C3 - wound certificates relating to A1, A2 and A3. According to the wound

certificates, all the injuries were found on the heads of the accused and they were described as lacerated injuries.

8. PW7, the Head Constable of Hindupur II Town Police Station registered the case on being apprised by PWi, who came to the police station around 11.30 p.m. on 20-11-1996 and gave oral statement which was reduced into writing and the said statement was registered as Crime No.51/96 for the offence u/s 302, IPC read with Section 34, IPC. He visited the hospital at 2.45 a.m. and visited the scene of offence around 5.30 a.m. He got prepared Ex.P2 - observation report of the scene of offence. He also seized three sticks - MO5 lying at the scene. He conducted inquest in the present of PW5 and LW13. When PW7 was registered in the case, he came to know that A1 to A3 have also received injuries and admitted in the Government Hospital, Hindupur. Another Head Constable was deputed to record the statements of the accused who were under treatment in the hospital and a case in Crime No.52/96 was also registered against the prosecution witnesses on the basis of the statements made by the accused.

9. PW8, Inspector of Police, II Town Police Station, who took over the investigation from PW7 on 26-11-1996, arrested the accused on 28-11-1996 on being produced from the Government Hospital. He also sent MOs.1 to 4 - clothes of the deceased to the Regional Forensic Science Laboratory through Ex.P7. Ex.PS is the report of RFSL. MO5 was not sent to RFSL by PW8. The charge-sheet was filed on 11-2-1997 along with Exs.C1 to C3 - wound certificates which relate to A1 to A3. He referred the case in Crime No.52/96 registered against the deceased and his sons and later on closed the case on the ground of mistake of fact.

10. On behalf of the defence, DW1 was examined.

11. As indicated above, the trial Court believed the version of the prosecution and convicted the accused-appellants for the charge and sentenced them to life imprisonment against which this appeal is filed.

12. Sri Hanumantha Reddy, learned Counsel for the appellants firstly contended that during the same transaction A1 to A3, who are appellants herein, have received injuries as disclosed by the wound certificates - C1, C2 and C3 issued by the medical authorities. Having received the injuries in the same transaction, the prosecution has to necessarily explain the circumstances under which the injuries are found on the accused. Having failed to explain the injuries found on the accused, according to the learned Counsel, the conviction against the accused cannot be sustained inasmuch as it assumed significance to show that the prosecution witnesses did not reveal the real events to the Court to reach a reasonable conclusion. The learned Counsel further submitted that none of the prosecution witnesses have spoken about the accused being armed at the time of incident and as such when no witness on behalf of the prosecution is able to find the accused armed with any weapon, the probable explanation as narrated by DW1 who has been examined on behalf of the defence, gives a rise to a

reasonable inference that the prosecution party are the aggressors and the accused though were not armed but as the deceased and the accused grappled, in that process the deceased received injuries and, therefore, pleaded that these two aspects are very crucial for the Court to examine whether the accused could be held guilty for the charge. In support of his contention, the learned Counsel has drawn our attention to two decisions of the Supreme Court in Lakshmi Singh and Others Vs. State of Bihar, and Shiv Karan & another v. State of Rajasthan, 1998 SCC (Cri) 712. Relying on these two decisions the learned Counsel states that in the absence of the prosecution probabalising the circumstances under which the accused received injuries and explaining such circumstances to this Court, the accused are entitled for a benefit of doubt which would further entitle them to acquittal.

13. The learned Public Prosecutor appearing on behalf of the State, on the contrary, justified the conviction and sentence imposed by the trial Court and submitted that even though the prosecution has not explained the injuries found on the accused persons, but when the evidence let in by the prosecution probabalise that the accused are the aggressors and when such evidence indicate that it is the accused alone responsible for the cause of the death of the deceased, the Courts have no other go than to accept the version of the prosecution and to convict the" accused for the offence. The learned Public Prosecutor while distinguishing the ratio laid down by the Supreme Court in the two decisions cited by the Counsel for the appellants, stated the three circumstances pointed out by the Supreme Court in Lakshmi Singh's case (supra) and submitted that if the ratio is lo be made applicable in the facts of the case, the present facts differ and, therefore, pleaded that the trial Court is justified in finding the accused guilty and sentencing them.

14. In the light of the submissions made on behalf of the appellants-accused as well as the prosecution by both the learned Counsel and in the light of the decisions cited by the Counsel for the appellants and in the facts and circumstances of the case, we are called upon to examine whether the matrix indicated by the Supreme Court in the above two decisions could be made applicable to the present set of circumstances.

15. The three appellants who are accused before the trial Court in SC No.276/97, were found guilty of committing murder of the deceased on 20-11-1996 around 10.30 p.m. The record placed before us docs show that these accused who are the appellants herein have also received different injuries as per Exs.C1 to C3. Ex.C1 relates to A1 -first appellant herein. As per the wound certificate - Ex.C1, the first accused received two lacerated injuries 2" x 1/4" and 1" x 1/4" in size over the centre of the head; fresh bleeding present. The opinion is that the above injuries are simple. Ex.C2 relates to the second appellant herein, who is A2 before the trial Court. The injuries mentioned in the certificate are - (1) two contusions adjacent to each 2" x 1" and 1" x 1/2" in size over the forehead right side just below the hair line; (2) Laceration below the left eye 1/2" x 1/4"; fresh

bleeding. The opinion of the Doctor is that the above injuries are simple. Ex.C3 relates to A3, who is the third appellant in this appeal. Three injuries were found on A3; (1) lacerated injury left parietal region of scalp 2" x 1/4"; fresh bleeding present; (2) Contusion over the right forearm 1/2" x 1/2" in size; (3) Contusion 1/2" x 1/2" over the dorsal of left hand. As per the opinion, injuries 1 and 2 are simple, but, however, injury No.3 is grievous in nature. As against these injuries which are received by the accused during the same transaction, according to the prosecution, the deceased sustained several injuries as evident from Ex.P4 - post-mortem certificate. The following injuries were found by the Doctor:

(1) An incised wound over the left side of the chest 1" x 1/2" x 1" at the 8th intercostal space, plural cavity contain 2 oz. of clotted Blood. Plural and the left lung are teared.

(2) An incised wound over the left side of the chest near the sternum 1" lateral to it 1" x 1/2" x 1-1/2". In the 4th inter-costal space fracture of the rib present. Pericardium contain 2 oz. of clotted blood. Pericardium and left atrum teared.

The expert opined that the death of the deceased could have been caused due to the injuries to lung and heart. The expert further opined that the injuries as mentioned in Ex.P4 are possible by a sharp edged weapon like a dagger.

16. The prosecution apart from examining other witnesses, have examined three important witnesses; PW1 being the wife of the deceased, PWs.2 and 3 being sons of the deceased. According to these witnesses, on a small incident, the galata took place between the accused and the prosecution party. A2 went to his house and brought A1 and A3. A2 and A3 in turn caught hold of the deceased on both sides and at that point A1 inflicted stab injuries with knife on the chest and abdomen of the deceased. PW1, the wife of the deceased who claims to be present along with her husband in the house deposed that after hearing exchange of words between A2 and PW3 and LW5, she came out along with her husband (deceased) and tried to question the accused as to the reasons for creating problem before their house. She further deposed that after seeing her husband falling on the ground which was witnessed by others also, she along with her children and others took her husband to the police station where PW7 was present and on his advice he was shifted to the hospital where the statement was recorded by PW7, who visited "the hospital in the early hours on 21-11-1996. A scrutiny of the evidence of these three witnesses, no doubt, fixes the presence of the accused at the scene of offence which has not been denied by the accused, as is evident from the defence produced on their behalf through DW1. The fact remains to be considered is whether the prosecution party narrated the incident truthfully enabling the Court to appreciate the evidence and render just order either way. On a further scrutiny of evidence of PWs.1, 2 and 3, we are at a loss to find that these witnesses have not noticed any weapon or instrument being carried by the accused party. On the contrary, these three witnesses have indicated their unawareness about the injuries found on the accused party who are appellants before this Court. It is seen that the

certificates issued by the Doctor under Exs.C1, C2 and C3 relating to A1, A2 and A3 indicate the injuries found on them, who were taken to the hospital by DW1, Subhan, who seemed to have also witnessed the incident. The evidence of PWs.7 and 8 further revealed that on the basis of the complaint made by the accused, a case in Crime No.52/96 was also registered against the prosecution witnesses, though PW8 later explained in the evidence that the said crime was found to be a mistaken fact and that the case was closed.

17. On behalf of the defence, DW1 has been examined to say that on that night he was passing through the street and noticed the galata between the accused party and the prosecution party. He also deposed that the prosecution party who were aggressors were armed with deadly weapons, whereas the accused party were unarmed and in the process of grappling between the deceased and the accused party, the deceased who was in possession of a dagger received injuries. This place of evidence which has been adduced by the defence throws light on the nature of incident which has taken place on the said date and the injuries which have been received by the accused. Unfortunately, the circumstances under which the accused received injuries have not been explained by the prosecution.

18. In Lakshmi Singh's case (supra), the Supreme Court was examining the effect of non-explanation of the injuries sustained by the accused at the time of occurrence. On the facts of the case, the Supreme Court visualised certain circumstances and observed that the Court could draw the following inferences in the absence of the prosecution not explaining the injuries sustained by the accused in the same transaction:

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes improbability with that of the prosecution one. The three inferences which were enumerated by the Supreme Court thus indicate that when the prosecution fails to explain the injuries on the accused, the reasonable presumption would be that the prosecution is not coming up with clear picture before the Court, the witnesses being partisan and such evidence cannot be given weight and the accused party are entitled for a benefit of doubt.

19. The second decision of the Supreme Court in Shiv Karan's case (supra) has further reiterated its earlier view and the Supreme Court opined that the inability to explain the injuries found on the accused during the course of same transaction by the prosecution, entitles the accused a benefit of doubt for seeking acquittal.

20. In the facts of the case as discussed by us, the three accused persons who are appellants before us also received injuries and the nature of the injuries are indicated in Exs.C1 to C3. Out of these injuries which were received by the appellants, they are of the nature of lacerated as well as a serious injury were found on A3 under Ex.C3. As held by the Supreme Court in Lakshmi Singh's case (supra), the non-explanation of injuries by the prosecution may not affect the prosecution case in cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. In such cases, the failure on the part of the prosecution may not entitle the accused to seek benefit of doubt and the Court has to accept such evidence to find the accused guilty of the offence.

21. But, in this case, as discussed by us, in the evidence let in by the prosecution through PWs.i to 3, who are none else than the wife and sons of the deceased and who cannot said to be disinterested witnesses, we find inconsistency which has bearing on vital aspects; the witnesses were unable to find the accused armed with any weapons and the nature of injuries found on the accused persons as described in Exs.C1 to C3 relate to the same transaction as spoken to by DW1, probalilises that the prosecution party were the aggressors and no explanation is forthcoming from the evidence of PWs.1 to 3 as to the circumstances under which these appellants received injuries. We are convinced that the prosecution is unable to explain the injuries found on the accused. The evidence let in by the prosecution is not such that to overweigh the effect of omissions disentitling the benefit of doubt to the accused. We are, therefore, of the view that the accused-appellants are entitled for the benefit of doubt and we grant them this benefit.

22. In the circumstances, we set aside the conviction and sentence imposed on the appellants-accused by the triai Court in SC No.276/97 and allow the appeal. The appellants-accused shall be set at liberty forthwith if not required in any other case.