

(1998) 12 AP CK 0040

In the Andhra Pradesh High Court

Case No : Criminal A. No"s. 1734 and 1741 of 1997

Chiguripati Suryanarayana and another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 21-12-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1999) 1 ALD 590 : (1999) 1 ALD(Cri) 300 : (1999) 1 ALT(Cri) 219 :
(1999) CriLJ 1201

Hon'ble Judges : Vaman Rao, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : M/s. C. Padmanabha Reddy and C. Praveen Kumar, for the
Appellant; Addl. Public Prosecutor, for the Respondent

Judgement

Vaman Rao, J.—Roth these appeals (Crl. Appeal No. 1741 of 1997 preferred by A1 and A2 and Crl.Appcai No. 1734 of 1997 preferred by A3 and A4) are directed against Judgment dated 4-12-1997 in SC No.239 of 1994 on the file of Addl.Sessions Judge, Guntur under which A1 to A4 were convicted for the offence u/s 148 IPC, A1 was convicted for the offence u/s 302 IPC and A2 to A4 were convicted for the offence u/s 302 read with Section 149 IPC and A5 to A8, A10 to A13 were acquitted. A1 to A4 were sentenced to undergo R.I. for three years for the offence u/s 148 IPC, A1 was sentenced to under go life imprisonment and to pay a fine of Rs.5,000/- in default to undergo Simple imprisonment for five months for the offence u/s 302 IPC, A2 to A4 were sentenced to undergo R.I. for life each and to pay a fine of Rs.5,000/- each in default to undergo Simple imprisonment for the offence u/s 302 read with Section 149 IPC.

2. The facts of these appeals may be stated briefly as follows: The accused and the deceased Manchineni Jagamohan Rao belong to Didugu village of Amaravathi mandal, Guntur District. It is a factious village with predominant population of Kammas followed by Harijans, Reddies, Talagas and other communities. There are factions between Kammas themselves from long time. The deceased was

leading one group as opposed to the group lead by A1 and A3. There were several clashes between two groups previously resulting in several criminal cases against both the groups. On 11-12-1992, Cr.Nos.104 of 1992 and 105 of 1992 under Sections 147, 148, 506, 307 r/w Section 149 IPC of Amaravathi police station were registered against both the groups and they were under investigation. Each group was trying to assert its superiority. In Cr.No.105 of 1992, the persons belonging to the group of the deceased got bail from the Sessions Court, Guntur. The persons belonging to the group of the accused who were involved in Cr.No.104 of 1992 also got anticipatory bail from the Sessions Court, Guntur.

3. On 23-1-1993, the group of the accused who got anticipatory bail in Cr.No.104 of 1992 sent sureties to get released on bail, at Amaravathi police station. They went in a tractor for executing the necessary bail bonds at Amaravathi police station but on that pretext they had planned to attack the persons of opposite group and its leaders. As the accused were aware that the members of the opposite group also got bail in Cr.No.105 of 1992 and were in Didugu village. With this background, the accused went in the tractor of A13 to Didugu village to attack the deceased Manchineni Jagamohan Rao. The deceased along with PW1 Manchineni Nageshwar Rao, PW2 Manchineni Venkata Prasad PW3 Ananthaneni Pallabhiramaiah were at the request bus stop at Didugu village to go to Guntur at 7-30 p.m. on 22-1-1993, the accused went there in the tractor of A13 armed with deadly weapons like spears, axes and sticks with the common object of doing away the members of the group of the deceased and suddenly attacked the deceased jumping out from the tractor. A1 gave a call to others to kill the deceased by uttering "Jaggadini Champandi Raa". When the deceased tried to skulk away to save himself, A2 and A3 held the deceased tight, then A1 speared the deceased and the deceased raised hue and cry saying "Nannu Champakandi Raa" (Don't kill me). The accused also chased PWs. 1 to 4 calling "Migilina Vallanu Kooda Champandi Raa" (kill the remaining also), on that PWs. 1 to 4 took to their heels for fear of assault raising cries. On this commotion, the police picket personnel came to the said bus stop. PWs.1 to 4 also came there and found the deceased lying with bleeding injuries. The deceased was shifted to Amaravathi police station in a tractor by PWs. 1 to 4 and PW5 Bandela Raghwamaiah, but on the advice at the police station, as the condition of the deceased was precarious, he was taken to the hospital, Guntur where the casualty Medical Officer declared him dead. On intimation from the hospital, the statement of PW1 (brother of the deceased) was recorded at 11-30 p.m. on 22-1-1993 at Kothapet police station and the same was transferred to Amaravathi police station on the point of jurisdiction. On receipt of the statement and intimation of death from Kothapet police station, Guntur town, a case in Cr.No.7 of 1993 under Sections 147, 148, 302 read with 149 IPC was registered at Amaravathi police station at 5-30 a.m. on 23-1-1993 and investigation was taken up. Inquest was held over the dead body of the deceased between 10 a.m. to 1 p.m. at the hospital, Guntur on 22-1-1993 and thereafter the dead body was

sent for post mortem examination. PW13 Dr. G.B. Raj Kumar conducted post-mortem over the dead body of the deceased and found one spindle shaped slab wound over the front of the left side of chest below inner to the areola of left nipple, entered into thoracic cavity through the space between 4th and 5th ribs. Besides this, the deceased received contusion on the right shoulder and upper end of right scapula, abrasion over front of lower part of right knee and abrasion over front of lower part of left knee. According to the Medical Officer PW13, the death of the deceased was due to above said injuries which resulted in shock and haemorrhage. During the investigation, the tractor and the trailer which are said to have been used during the offence were seized from the house of one Venkat Ramaiah of Didugu village who was the owner of the tractor. Subsequently, A4 to A13 were arrested, A1 to A3 surrendered before the Court and were granted anticipatory bail. After completion of investigation, charge sheet was filed.

Thus on behalf of the prosecution Pws 1 to 23 have been examined, Exs:P1 to P10 and M.Os 1 to 12 have been marked. The plea of the accused was that of total denial. No defence evidence has been adduced on behalf of the accused. However, Exs:D1 to D3 have been marked in the statements of witnesses. Ex:D4 is the entry in the General Diary of Amaravathi police station, Ex:D5 is a notebook.

4. As can be seen, the prosecution relies on the ocular evidence of PWs.1 to 4, the medical evidence of PW13 which is said to corroborate the version given by the eye witnesses. The other evidence relates to surrounding circumstances relating to the incident. Thus the case of the prosecution hinges on the evidence of eye-witnesses PWs.1 to 4 and the medical evidence as given by PW13 and post-mortem certificate Ex:P6.

5. The trial Court accepted the version of PWs. 1 to 4 and also held that there was no inconsistency between the evidence of ocular witnesses and medical evidence as to the cause of death as stated by PW13 in Ex:P6. The trial Court also brushed aside the criticism that there was delay in lodging the FIR at the police station. The trial Court also negated the criticism that PWs.1 to 4 being close relatives of the deceased are interested witnesses as such they should be disbelieved in view of the fact that even according to the prosecution case there were factions in the village between the deceased on one hand and A1 and A3 on the other. The trial Court thus held A1 guilty of the offence u/s 302 IPC and A2 and A3 guilty of the offence u/s 302 read with 149 IPC.

6. The learned Counsel for the appellants Sri. C. Padmanabha Reddy seeks to assail the prosecution case on various grounds. Firstly it is contended that the prosecution case cannot be believed due to a very significant discrepancy and variance as to the place of incident. According to the prosecution case, as stated in the charge-sheet, the incident occurred at the request bus stop of Didugu village and that during the incident PWs.1 to 4 ran away from the place and later the police picket personnel went to the scene on hearing commotion and PWs.1 to 4 also returned to the place and found the dead body of the deceased lying

there with injuries. But the prosecution version as stated by the witnesses in the Court is to the effect that the deceased was found in a pool of blood about more than 300 metres away from the place of incident viz., the request bus stop of Didugu village. According to the learned Counsel this variance in respect of an important aspect of the prosecution case cannot be brushed aside as inconsequential.

7. It is then contended that according to the prosecution version PWs.1 to 4 took the deceased believing to be injured but alive to the police station, Amaravathi, but strangely no FIR was recorded at the Amaravathi police station and the deceased was taken to Government general hospital, Guntur where he was declared dead. The contention is that PWs.1 to 4 in collusion with the police deliberately avoided to give a report at Amaravathi police station and went to Guntur knowing that the deceased was already dead only for the purpose of consultation with the lawyer and gave the report Ex.PI only after consulting the lawyer falsely implicating the accused due to factions.

8. The next contention canvased on behalf of the accused is that the prosecution evidence as given by PWs.1 to 4 that the incident occurred at the request bus stop of Didugu village where the deceased was injured and that by the time, the police picket personnel and PWs.1 to 4 returned to the said bus stop after some time, the deceased was not found there and that he was found in a pool of blood in a field about more than 300 metres away from the request bus stop of Didugu village where the incident occurred is in conflict with the medical evidence given by PW13 who conducted post-mortem examination over the deceased. PW13 during post-mortem examination observed that 600 C.Cs of blood clotted in pleural cavity and based on this observation his opinion is that the death might have occurred soon after receiving the injuries. At any rate, according to PW13, the deceased might have survived only for a few minutes after receipt of injuries and that he might have lost consciousness a few minutes after receipt of stab wound noted as injury No.1 in the post-mortem report. It was his further observation that there was mechanical obstruction for the functioning of heart due to puncture of lung and the pleural cavity being filled up with blood. It was his further opinion that after receiving such an injury, the deceased could have run or walked for a few metres but not to a distance of 380 metres. From this an argument is advanced that the incident might have occurred somewhere in the field where the deceased was found and that the prosecution deliberately shifted the place of incident to the request bus stop at Didugu village to enable the prosecution to present a case that the so-called eye witnesses were in a position to observe and identify the assailants in the street lights available at that place and that if the incident was shown to be in the field, the witnesses could not have observed the faces of the assailants in the darkness. These contentions are countered by the learned Public Prosecutor. In regard to discrepancy as to where the deceased was found after the incident, it is submitted that when police personnel and PWs.1 to 4 went to request bus stop of Didugu village and looked for the deceased, they found him at some distance. It is contended that after

receiving the injuries, the deceased might have tried to run away from the place and after some distance might have fallen in the field. In regard to failure to lodge a complaint at Amaravathi police station, the learned Public Prosecutor seeks to explain that PWs. 1 to 4 were more concerned about saving the life of the deceased and as such they did not think of giving a complaint and that the Sub-Inspector of police concerned was not informed of the details of the incident and as such he did not record any FIR. In regard to contention on behalf of the accused relating to the shifting of the scene of offence, it is stated that the incident might have occurred at the bus stop but the deceased to save himself might have run away and fallen in the field as stated above. As to variance between the medical evidence given by PW13 the Doctor and eye witnesses PWs.1 to 4, it is argued that when there is an inconsistency between the expert opinion given by the Doctor and the eye witnesses to the incident, the evidence of the eye-witnesses must prevail over the mere opinion evidence of the doctor.

9. To appreciate these contentions, it is necessary to take into account the background of the incident which seems to have its origin in the faction between the group led by the deceased on one hand and the one led by A1 and A3 on the other in this case. This is an admitted fact and has been deposed to by PW1 himself. Admittedly there have been previous mutual assaults between them which resulted in criminal cases against each other. A reading of the charge sheet filed by the police in this case would disclose that it is conspicuous for absence of any mention of the deceased having been found in a pool of blood in the field about more than 300 metres away from the request bus stop of Didugu. The tenor of the charge sheet would indicate that after PWs. 1 to 4 having run away from the scene and after they returned to the place of incident along with police personnel they found the deceased with injuries at the place where they earlier witnessed the incident viz., near the bus stop. The version of PWs. 1 to 4 given in the Court is irreconcilably inconsistent with the version given by PW1 in Ex:P1 on this aspect inasmuch as the deceased was found in a field about more than 300 metres (according to PW 1 300 yards) away from the request bus stop of Didugu village. Infact, PW1 has come forward with the version that after receiving the spear injury, the deceased ran away upto a distance of 300 metres from the scene of offence and fell down on the ground which is situated on the eastern side of the scene of offence. According to him after the arrival of the police, they joined them and together went to the place where the deceased was lying. This version given by PW1 and other witnesses is admittedly an improvement over their statements given to the police. The earlier version was that the police constables went to the bus stop and in the meanwhile PWs. 1 to 4 also reached there and they found the deceased was lying there on the ground with injury on his chest. Thus the version of PW1 and other eye witnesses that after they went to the bus stop, they did not find the deceased there and they went in search of the deceased and ultimately found him in a field, as stated by them in the Court, is at complete variance and an improvement over the version given to the police. The explanation for this omission as stated by PW1 is inadvertence on his part. It

is admitted by PW1 in his cross-examination that the day (22-1-1993) on which the incident occurred was "Amavasya" day (Krishna paksham) which was full of darkness. PW1 further admitted in his cross-examination that in such darkness even a person who was having good sight would not be able to identify another person even from a near distance. This variance in the version assumes some significance in view of the fact, as admitted by the Investigating Officer PW22 that on the same day i.e., on 22-1-1993 at 11-53 p.m. a report was received at the police station regarding assault on Neelam Koteswar Rao of Didugu village and in that report four people including the deceased in this case, two sons of PW1 and another person figured as accused. According to PW22 the concerned Sub-Inspector of police concluded that it was a false report. PW22 is unable to say whether the said report in respect of assault of Neelam Koteswar Rao was received in Amaravathi police station first in point of time earlier to the report in this case. PW22 rather than denying, states that he did not know whether the accused in this case received injuries at the place and in the same transaction in which Neelam Koteswar Rao got injured. Even in regard to the place of incident now shown by the prosecution as at the request bus stop at Didugu village, it does not appear free from suspicion. PW22 in his cross-examination admitted that the word "request" in the very first sentence of his C.D. dated 23-1-1993 before the words "bus stop" was added subsequently.

10. As noted above, the medical evidence as given by PW13 is very categorical that after receiving the stab injury which resulted in the puncture of the lung, the deceased could not have survived for more than a few minutes and at any rate he could have run or walked only for a few metres. Going by this evidence, the prosecution version as given by eye-witnesses PWs.1 to 4 that the incident occurred at the request bus stop of Didugu village which is more than 300 metres away from the place where the deceased was found with injuries (alive as per the version of the prosecution witnesses and dead as per the contention of the accused) appears highly improbable. As regard the contention of the learned Public Prosecutor that when there is a conflict between the version of the eye-witnesses and the medical opinion, the latter must yield place to the version of the eye-witnesses cannot under the circumstances of this case be accepted. It is not a universal principle supported by any authority that in all cases when there is a variance between the account given by the eye-witnesses and the medical evidence, the evidence of eye-witnesses must prevail ignoring the medical evidence. Whether in a given case the version of the eye-witnesses shall prevail or it is the medical evidence which would be conclusive, depends on the nature of evidence given by the eye witnesses and the matter in respect of which and the nature of opinion given by the medical expert. Further it is not always a question of straight choice between the acceptance of the version of the eye-witnesses or acceptance of the evidence of the medical expert. In appreciating the evidence of eye-witnesses, the medical evidence which is said to improbabilise their version is an important circumstance which has to be considered in conjunction with other circumstances and evidence in the case. It

is true that the medical opinion as to the time of death cannot be treated as conclusive because it depends on various circumstances. Thus the evidence of eye-witnesses had to be evaluated on its own merits as to its credibility and it cannot be thrown away merely on the ground that it is inconsistent with medical evidence. But such expert evidence, however, will be one of the factors along with other circumstances in the case to judge the truthfulness of the eyewitnesses. In the case of State of U.P. Vs. Krishna Gopal and Another, , the Supreme Court observed that eye witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely pre-judged making any other evidence including medical evidence as the sole touchstone for test of such credibility.

11. In this case, a thorough scrutiny of evidence of eye witnesses would lead to the conclusion that their evidence is unworthy of belief, Firstly, their evidence as to where the deceased was found after the incident, is at variance with the earlier version in the First Information Report that the deceased was found near the request bus stop of Didugu village as against their version in the Court that the deceased was found in a field about more than 300 meters away from the said bus stop. Secondly, there is material to show that at about the same time a report was given at the Amaravathi Police Station in respect of an incident in which Neelani KotesInvar Rao is said to have been attacked in which the deceased was shown as one of the accused. It is also in the evidence of PW22 the Circle Inspector that according to General Diary in Cr.No.6 of 1993 relating to that case, Neelam Koleshwar Rao was sent to the Doctor at 11-30 p.m. at Amaravathi and was treated by the Doctor at Amaravathi. Thus, the contention that the incident in which Koteswar Rao was injured and at about the same time, the deceased was also injured was a part of the same transaction, as contended by the accused, is probalised by the above said complaint of Neelam Koteswar Rao at Amaravathi Police Station and the attempt of the prosecution witnesses to shift the scene of offence from the field to the bus-stop. Considering the nature of injury involving puncture of the lung sustained by the deceased it appears probable that he could not have survived for more than a few minutes and he could have hardly walked for a few metres after receiving the injury. The account of eye-witnesses that the deceased ran upto 300 metres or so after receiving such an injury appears implausible. The cumulative effect of these circumstances would be that PWs.1 to 4 have been far from being truthful in stating that they witnessed the incident at request bus slop of Didugu village. The attempt of shift the scene of offence is further probaliscd by the circumstance that as admitted by PW 1 it was a dark night (Amavasya) and if the incident had occured in the fields the prosecution witnesses could not have claimed to have observed and identified the assailants as there were no lights at that place. Hence the shifting of the scene to the bus stop where illumination from the street lights was available.

12. The fact of omission to record the FIR at Amaravathi police station at the earliest point of time and the delay in lodging the FIR cannot be brushed aside

under the circumstances as inconsequential in this case. In the light of medical evidence that the deceased might have died within minutes after receiving the critical injury, the version of PWs.1 to 4 that the deceased was alive and they were in great haste to take him to the hospital for treatment has to be taken with a pinch of salt. At any rate, the fact remains that according to PWs.1 to 4 they took the deceased to Amaravathi police station and the conduct of the Officer in charge of the police station appears strange in not recording the FIR. According to PW21 the then S.I. of police, Amaravathi police station, at about 10 p.m. while he was in the police station, PW1 and some others came in a tractor with the deceased and stated to him that A1 and A2 caught hold of the deceased at request bus stop of Didugu village and A1 stabbed the deceased with a spear. According to him the Government doctor at Amaravathi Government hospital was not present, hence he advised them to take the deceased to General Hospital, Guntur for immediate treatment. He thereafter went to Didugu. Admittedly, he was the Station House Officer when the deceased was brought to the police station. He admits that the information given to him at the police station was in respect of a cognizable offence and it was his duty to reduce the information into writing and register a case. His explanation that PW1 had not given the names of the accused and that he gave a vague information appears a mere pretence. He admits that his General Diary does not contain any information as to the names of the persons who gave information about this offence. The General Diary does not mention that he directed to take the deceased to Guntur General Hospital on the ground that the Doctor at Amaravathi was not available. Even this fact that the Doctor was not available does not appear free from doubt, as PW21 had admitted that Neelam Koteswar Rao who was injured in an assault in which the deceased was shown as accused in Cr.No.6 of 1993 of Amaravathi Police station was in fact, sent to Government Hospital, Amaravathi at 11-30 p.m. on the same day and he was treated there. Interestingly, he discloses that according to General Diary there was a scuffle at Didugu village and therefore he went to Didugu. Even assuming that there was an urgent need to shift the deceased to Government hospital, Guntur, it is in the evidence that some other witnesses also came with PW1 besides constables who visited the scene of offence, PW21 could have retained any one of the eye-witnesses and recorded his statement or he could have recorded the statement of one of the police constables and issued FIR. Thus there is deliberate omission to record the FIR at the earliest. The circumstance that no FIR was recorded at Amaravathi even though the deceased was taken there and that the deceased thereafter was taken to Guntur hospital and only at Guntur General Hospital FIR was given probalises the contention that there was a deliberate omission to give any report at Amaravathi police station and there was a delay in giving the report with a view to have consultation and give the report after deliberation. In view of these circumstances and considering the fact that PWs.1 to 4 are interested witnesses being members of faction opposed to the accused implicit reliance cannot be placed on their evidence. The various circumstances discussed above render the testimony of PWs.1 to 4 suspicious. It is not possible to base conviction of the

accused on the strength of their evidence. Under the circumstances, the accused are entitled to the benefit of doubt.

13. In the result, the appellants-accused are held not guilty of the offences for which they are convicted by the trial Court and convictions and sentence imposed by trial Court is set aside. A1 to A4 are acquitted of the offence u/s 148 IPC. A1 is acquitted of the offence u/s 302 IPC. A2 to A4 are acquitted of the offence u/s 302 read with 149 IPC. The appeals are accordingly allowed. Their bailbonds shall stand discharged.