
(2012) 11 AP CK 0089

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 110 of 2008

Churukuru Narayana @ Arava Narayana

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Penal Code, 1860 (IPC) — Section 302, 307, 326

Citation : (2013) 2 ALT(Cri) 85

Hon'ble Judges : P. Durga Prasad, J; N.V. Ramana, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—This Criminal Appeal, u/s 374(2) of the Code of Criminal Procedure, is filed questioning the conviction and sentence imposed against the appellant herein, by judgment dated 11-12-2007 passed in S.C. No. 253 of 2006 by the III Additional District and Sessions Judge (Fast Track Court), Nellore. The appellant-accused was prosecuted for the offence punishable u/s 302 I.P.C. According to the prosecution, the accused and the deceased namely Gopal Abbu are painters and that there is a professional rivalry between them. On 15-01-2006, a dance programme was conducted at C.R.P. Donka and some people, including the accused went to the dais and caused obstruction to the dance programme. The deceased went to the dais and asked them to get down from the dais. As the accused refused for the same, the deceased pushed him due to which an altercation took place. At about 2.30 a.m. on 16-01-2006, after completion of the dance programme, the deceased was proceeding to the tea shop and when he reached Swathi Wines, the accused asked him Rs. 10/-. The deceased replied that he has no money. Thereafter, questioning the act of the deceased at the dance programme, the accused stabbed him with a knife and caused bleeding injury. On seeing PWs 1 and 2 coming towards the deceased, the accused ran away. The injured was thereafter shifted to the hospital. The dying declaration of the deceased was recorded by PW 7, the II Additional

Judicial Magistrate of I Class, Nellore. PW 9, the Head Constable, II Town Police Station, Nellore also recorded the statement of the deceased which was forwarded to PW 13, the Sub-Inspector of Police, II Town Nellore Police Station who registered a case in Crime No. 5 of 2006 u/s 307 IPC, took up investigation, examined the witnesses, visited the scene of offence, prepared rough sketch and seized the blood stained clothes from the deceased. Later, he apprehended the accused and seized MO 1 from his possession in the presence of PW 5 and another. On 24-01-2006, while undergoing treatment, the injured succumbed to the injuries and on receiving intimation about the same, PW 13 altered the section of law to 302 IPC. PW 14, the Inspector of Police took up further investigation and held inquest over the dead body of the deceased, examined witnesses and sent the material objects to F.S.L. After completion of investigation, he filed charge sheet against the accused for the offence punishable u/s 302 IPC.

2. The Sessions Judge framed a charge against the appellant-accused for the offence punishable u/s 302 I.P.C. and the appellant-accused pleaded not guilty.

3. To prove the guilt of the appellant-accused, the prosecution examined P.Ws. 1 to 14 and marked Exs. P-1 to P-18 and M.Os. 1 and 2. No evidence, either oral or documentary, was adduced by the accused in defence.

4. The Sessions Judge, having appreciated the entire evidence available on record, held the accused guilty of the offence punishable u/s 302 I.P.C., and convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 100/-, in default to undergo simple imprisonment for a period of one month.

5. Questioning the said conviction and sentence imposed on him, the appellant-accused preferred the present appeal.

6. We have heard the counsel for the appellant-accused and the Additional Public Prosecutor for the State and perused the judgment under appeal and other material available on record.

7. The point that arises for consideration in the present appeal is whether the prosecution could establish the guilt of the accused for the offence punishable u/s 302 I.P.C. beyond all reasonable doubt?

8. PWs 1 and 2 are the witnesses who saw the accused stabbing the deceased. PW 3 was examined to prove that there was an altercation between the accused and the deceased at the dance programme. PW 4 is the mother of the deceased. PW 5 is the mediator to the seizure of blood stained clothes of the deceased under MO 2 and also confession of the accused and recovery of MO 1 at his instance. PW 6 is the mediator to the inquest report. PW 7 is the Magistrate who recorded the dying declaration of the deceased. PW 8 is the doctor who examined the deceased initially and issued wound certificate. PW 9 is the Head Constable who recorded the statement of the deceased. PW 10 is the doctor in

whose presence, the statement of the deceased was recorded by PW 7. PW 11 is the constable who handed over the dead body to the relatives of the deceased. PW 12 is the doctor who conducted post mortem over the dead body of the deceased. PWs 13 and 14 are the investigating officers.

9. According to the prosecution, the accused and the deceased are painters and having professional rivalry and keeping the same in mind, the accused caused the homicidal death of the deceased.

10. P.W. 1 is a rickshaw puller. He deposed that on the date of incident, dance programme was organised near Mahalakshmi Temple at C.R.P. Donka, Nellore in the night. So many young people including the accused went to the dais and the deceased asked all of them to get down from the dais. As the accused has not got down from the dais, the deceased pushed him with both the hands due to which he fell down and an altercation took place between them. The people who were present there pacified them and the dance programme continued till 2.00 a.m. According to PW 1, the deceased went ahead of himself and his cousin PW 2 for tea after the dance programme and that they found the accused stabbing the deceased with a knife on his stomach. On seeing them, the accused ran away and that they could not catch him. He further stated that PWs 2 and 5 shifted the deceased to the hospital and that when he questioned the deceased as to why the accused stabbed him, he told that due to galata at the dance programme, the accused stabbed him.

11. PW 2 is the sister of the deceased. She deposed that there are some disputes between the deceased and the accused regarding painting works. On 15-01-2006, a dance programme was conducted at Mahalakshmi Temple, Nellore in the night and she went to the programme. While the dance programme was continuing, some people including the accused went to the dais and then the deceased asked them to get down from the dais. As the accused refused to do so, the deceased pushed him from the dais due to which an altercation took place. The programme continued till 2.00 a.m. and after all the people left the place, the deceased went for tea. Herself and PW 1 also proceeded for tea and when they reached Swathi Wines, they found the accused and the deceased shouting at each other and the accused stabbing the deceased with a knife. PW 1 chased the accused and in the meanwhile, an auto came in which herself and PW 4 shifted the deceased to the Government Hospital. According to PW 2, due to the altercation that took place at the dance programme, the accused stabbed the deceased. She identified MO 1 to be the knife with which the accused stabbed the deceased and MO 2 to be the shirt of the deceased.

12. Thus the evidence of PWs 1 and 2 which is corroborated with each other indicates the involvement of the accused in the commission of the crime. Though they were cross-examined at length, nothing adverse was elicited to disbelieve their evidence.

13. PW 3 is a resident of CRP Donka, Nellore. He deposed that he knows the

accused, the deceased and PWs 1 and 2. On 15-01-2006, a dance programme was conducted in Mahalakshmi Temple in their village. At about 9.30 p.m. or 10.00 p.m., the accused and other people went to the dais and doing dance. When the deceased asked all of them to get down from the dais, all the people except the accused got down from the dais. Then, the deceased pushed the accused from the dais and the accused fell down. There was an altercation between the accused and the deceased and that the people present there have pacified them. The dance programme continued till 2.00 a.m. and all the people left to their houses after the programme and on the next day morning, he came to know that the accused stabbed the deceased.

14. Thus, the evidence of PW 3 reveals that an altercation took place between the accused and the deceased at the dance programme on the date of incident.

15. PW 4 is the mother of the deceased. She deposed that the accused and the deceased were having disputes regarding their works. The dance programme was organised at Mahalakshmi Temple and she also went to attend the programme. At about 10.30 p.m., the programme was started and so many people including the accused went to the dais and the deceased asked them to get down from the dais. As the accused did not heed to his son's words, he pushed the accused. The accused fell down and raised a dispute. The people who were present there pacified both of them. At about 2.00 a.m., the programme was over and that the deceased told her that he would come to home after taking tea and therefore she returned home and slept. After sometime somebody informed her that the accused stabbed the deceased and then she rushed to the place of incident where she found the deceased with bleeding injuries. She further deposed that on enquiry, the deceased informed her that the accused stabbed him. Herself and PW 2 shifted the deceased to the hospital and that 15 days later, he died at Chennai.

16. PW 5 who is an auto driver is the mediator to the scene of observation report. He deposed that the police seized MO 2-blood stained shirt of the deceased in his presence. On 17-01-2006, on the request of the Sub Inspector of Police, he went to the police station where the accused was present and revealed his name as Narayana. He identified the accused to be the person who was apprehended by the police. He further deposed that the accused produced MO 1 from his house which was seized under the cover of Ex. P-3 and that himself and one Ravi have signed on the Mahazar.

17. PW 6 who is a mediator to the inquest report has categorically deposed about the police conducting inquest on the dead body of the deceased in his presence.

18. Thus, the prosecution could prove recovery of MO 1-knife from the house of the accused beyond all reasonable doubt.

19. PW 7 is the then II Additional Judicial Magistrate of I Class, Nellore, who has recorded the dying declaration of the deceased. It is in his evidence that on the request of the hospital authorities, he proceeded to the hospital on 16-01-2006

at 4.40 a.m. to record the statement of the deceased and identified him with the help of the duty medical officer. After satisfying that the deceased was in a fit condition to make a statement and also after certification of the duty doctor that the deceased was conscious, coherent and in a fit state of mind to give a statement, the dying declaration of the deceased was recorded wherein the deceased has stated that he is a Member of Mahalakshmi Temple and on the date of incident, dance programme was continuing. The accused went to the stage and disturbed the programme. Then he went to the stage and questioned the accused and pushed him. The accused threatened him that he would see his end and left the place. After the dance programme was over, while he was proceeding to his house the accused stabbed him with a knife on the left side of his stomach with an intention to kill him and ran away with the knife.

20. PW 8 is the Civil Assistant Surgeon, Head Quarters Hospital, Nellore who examined the injured and found the following injury:

An incised inverted V. shaped injury over left iliac fossa region, 5 x 3 cms. size breaching the peritoneum, fresh bleeding present.

21. PW 8 deposed that the said injury sustained by the deceased is grievous in nature and it endangers the life of the injured.

22. PW 9 is the Head Constable, II Town Police Station, Nellore who recorded the statement of the deceased in the hospital. He deposed that on 16-01-2006, in the presence of the duty doctor who certified that the patient is conscious and coherent, he recorded the statement of the deceased. The deceased stated that last night dance programme was conducted at his village at 10.30 p.m. and so many people including the accused came to the dais and then he asked the accused to get down from the dais and pushed him and both of them fell down from the stage. After the dance programme was over at about 2.00 a.m. or 2.30 a.m., he came to the wood house center to take tea, then the deceased came to him and asked for Rs. 10/- to consume liquor, for which he stated that he has no money. The accused questioned him as to why he has thrown out him from the dais and stabbed him with a knife on the left side of his stomach. His sister and his mother came and admitted him in the hospital.

23. PW 10 is the Civil Assistant Surgeon D.S.R. Head Quarters Hospital, Nellore who was present when PW 7 recorded the dying declaration of the deceased. He certified that the deceased was conscious, coherent and mentally fit to give a statement.

24. PW 12 is the doctor who conducted post mortem examination over the dead body of the deceased. He opined that the deceased appears to have died of complications of stab injury to abdomen and that the injury found on the deceased, in normal course, is sufficient to cause death.

25. PW 13 is the Sub-Inspector of Police, II Town Nellore Police station who registered a case in Crime No. 5 of 2006 u/s 307 IPC on receipt of Ex. P-8

statement of the deceased recorded by PW 9. He deposed that he examined the deceased and recorded his statement and also seized MO 2 blood stained clothes from his possession in the presence of PW 5 and another under a cover of Mahazar. He then rushed to the scene of offence and prepared Ex. P-15 rough sketch. On 17-01-2006, he arrested the accused in the presence of PW 5 and Ex. P-2 is the admissible portion of the confession of the accused. It is also in his evidence that the accused went inside his hut and produced MO 1 knife which was seized by him in the presence of PW 5 and another under the cover of Ex. P-3.

26. PW 14 is the Inspector of Police, Nellore Town who investigated the crime and filed the charge sheet after completion of investigation.

27. Learned counsel for the appellant-accused contended that the incident has happened in a spur of moment and that there is no consistency in both the dying declarations. The deceased might have died due to infection to the injury, since he was admitted in the hospital on 16-01-2006 and discharged on 18-01-2006, but subsequently died on 24-01-2006 in the hospital at Chennai. She further contended that there is nothing on record as to why the deceased was shifted to the said hospital at Chennai, where he died. Hence, the offence may be treated as the one u/s 326 IPC but not u/s 302 IPC and benefit of doubt may be given to the accused because of lack of evidence on record with regard to the subsequent development of the injury.

28. Learned Additional Public Prosecutor supported the judgment of the trial Court contending that both the dying declarations are consistent.

29. It is a settled principle of law that in cases resting on multiple written dying declarations, the Court cannot pick and choose any one dying declaration but all the dying declarations have to be consistent in respect of material aspects of the incident. If in the dying declarations the truthfulness of the narration itself is rendered doubtful, no reliance can be placed on the dying declarations. The dying declaration has to pass all the tests of reliability as the declarant is not available for cross-examination. In cases where there are multiple dying declarations and acceptance of one dying declaration falsifies the other, the dying declarations have to be necessarily rejected. In the backdrop of this settled law, it is apt to refer to the dying declarations recorded by PW 7, the Magistrate and PW 9, the Head Constable Exs. P-6 and P-8 respectively.

30. Ex. P-6 was recorded by PW 7 at about 4.40 a.m. on 16-01-2006 wherein the deceased has stated that he is the committee member of Mahalakshamma Temple and a dance programme was conducted on that day. As there were number of persons on the stage, he asked them to get down from the stage and in that process, he pushed the accused who went away saying that he would see his end. After the dance programme, when he was proceeding to his house, the accused came to him with a knife and stabbed on the left side below the stomach. He also stated that the accused stabbed intentionally to kill him. It is

pertinent to note that PW 7 recorded the dying declaration immediately after the incident and the duty doctor also certified that the patient is conscious, coherent and mentally fit to give his statement.

31. PW 9, the Head Constable also recorded the statement of the accused under Ex. P-8 which corroborates with the statement of the deceased in Ex. P-6. In the said statement, the deceased stated that while he went to wood house sangam center for having tea after the programme at about 2.30 a.m., the accused asked him Rs. 10/- for taking liquor for which he refused. The accused then picked up a quarrel asking as to why he pushed him from the stage and stabbed him with a knife on the left side below the stomach and ran away.

32. PW 10-the doctor has certified about the fit state of mind of the deceased when Ex. P-6 dying declaration was recorded by PW 7-the Magistrate and also at the time of recording his statement under Ex. P-8 by PW 9-the Head Constable. Hence, it can be said that the deceased was in a fit state of mind when the dying declaration was recorded by PW 7 and also when his statement was recorded by PW 9.

33. A comparative reading of both the dying declarations makes it clear that except detailing the incident in the second statement there is no material variation in both the dying declarations. Thus, it cannot be said that there is inconsistency in both the dying declarations. Further, the evidence of PWs 1 and 2-eye witnesses reveals that the incident has taken place after some time of the altercation between the accused and the deceased and at a different place and hence, it cannot be said that the incident has occurred in a spur of moment.

34. It is also in the evidence of PW 8, the doctor who examined the deceased that the injury is grievous in nature since it is in abdomen and it endangers his life. PW 12, the doctor who conducted post mortem examination also stated that the injury found on the deceased, in normal course, is sufficient to cause death. He also denied the suggestion due to septic to the injury, the liver was damaged and the deceased died due to damage to the liver. Thus, the medical evidence also proves that the deceased died due to stab injury.

35. Though there is no explanation put form by the prosecution with regard to shifting of the deceased to hospital at Chennai, the direct evidence of PWs 1 and 2 coupled with the evidence of PWs 7 and 9 and the dying declarations Exs. P-6 and 8, makes it clear that the accused caused the death of the deceased by stabbing him. Therefore, we hold that the prosecution could establish the guilt of the appellant-accused for the offence punishable u/s 302 I.P.C. beyond all reasonable doubt, and hence the conviction and sentence imposed by the Sessions Judge need not be interfered with in appeal. In the result, the criminal appeal is dismissed and the conviction and sentence imposed against the appellant, by judgment dated 11-12-2007 passed in S.C. No. 253 of 2006 by the III Additional Sessions Judge (Fast Track Court), Nellore, is hereby confirmed.