
(2004) 09 AP CK 0117
In the Andhra Pradesh High Court
Case No : Criminal A. No. 431 of 1998

Gaddala Deshaiah A-2

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 233, 234, 235, 236, 239
Penal Code, 1860 (IPC) — Section 109, 147, 149, 300, 302

Citation : (2005) 1 ALD(Cri) 219 : (2005) 1 ALT(Cri) 117 : (2005) CriLJ 828

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Prabhakar Reddy, for the Appellant; Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—A-2, who was convicted for an offence u/s 364 IPC and sentenced to undergo Rigorous Imprisonment for a period of four years and also to pay a fine of Rs. 500/- in default, to undergo Rigorous Imprisonment for one month in Sessions Case No. 101 of 1995 on the file of Additional Sessions Judge, Khammam, on 13-2-1998, had preferred the present appeal.

2. Sri P. Prabhakar Reddy, Counsel representing the appellant-accused No. 2 would: contend that the charges framed as against A-1 to A-5 in Sessions Case No. 101 of 1995 were under Sections 147, 302 read with Section 149 IPC and no specific charge was framed u/s 364 IPC. The learned counsel also would contend that Section 364 IPC is a substantive and distinct offence falling under different chapter altogether and in the absence of framing of a specific charge in this regard, serious prejudice is caused and thus, the trial itself is vitiated and the appellant-A-2 is entitled for an acquittal on this ground alone. The learned counsel also would contend that even otherwise the ingredients u/s 364 IPC are not satisfied. The learned counsel would submit that, the evidence of P.W.1 -- son of the deceased, the alleged eye witness was disbelieved, and that the

learned Judge having recorded an acquittal in relation to the charges under Sections 147, 302 read with , Section 149 IPC, definitely erred in convicting the appellant-- A-2 only u/s , 364 IPC. The learned Counsel had taken this Court through the evidence of P.Ws 1 to 9 and also Exs. P-1 to P-8 and also M.O-1 and would contend that an acquittal to be recorded even in the case of appellant-A-2. The learned counsel also placed strong reliance on Sohal Lal @ Sohan Singh and Others Vs. State of Punjab, .

3. Per contra, the learned Additional Public Prosecutor would contend that Section 364 IPC deals with kidnapping or abducting in order to murder and this cannot be said to be a distinct offence since it is related to murder, and on facts, the learned Judge came to the conclusion that the ingredients of Section 364 IPC are satisfied so far as it relates to the appellant-A-2 and had recorded conviction and had sentenced him accordingly, and that no prejudice is caused to the appellant-A-2. The learned Additional Public Prosecutor placed strong reliance on Banwari Lal Jhunjhunwala and Others Vs. Union of India (UOI) and Another, in this regard.

4. Heard the Counsel on record. Perused the oral and documentary evidence and also the findings recorded by the learned Judge.

5. This is an appeal preferred by the appellant-A-2 as against the judgment dated 13-2-1998 in Sessions case No. 101 of 1995 on the file of the learned Additional Sessions Judge, Khammam. It appears that A-5 died and charges under Sections 147 and 302 read with Section 149 IPC were framed as against A1 to A4. But ultimately, conviction was recorded as against the appellant-A-2 only.

6. Facts in brief :--

The version of the prosecution is that the wife of A-1 had died about a year prior to the incident and he believed that the death caused by the deceased by his sorcery and in this connection, a panchayat was also held in the village wherein he was fined a bull to be given to the villagers and a dinner was also given to the villagers in this connection in lieu of the said fine, A1 was not satisfied with the said fine in the panchayat and in view of the same, A-1 had bore grudge against the deceased and he was waiting for a chance to take revenge. On 2-3-1994 evening A-1 to A-5 formed themselves into an unlawful assembly and while taking toddy, they planned and decided to do away with the life of the deceased. At mid night of 2/3-3-1994, A-2 and A-5 went to the house of the deceased and woke him up while he was sleeping and asked him to come with them by saying that they got small work with him. Upon which, P.Ws 1 and 2 son and wife of the deceased intervened and stopped the deceased not to go with A-2 and A-5. But the deceased followed A-2 and A-5, as well as P.W. 1 to the out skirts where A-1, A-3 and A-4 were there under a tree waiting for them. In pursuance of the common object, A-1 to A-5 formed themselves into an unlawful assembly, way laid and A1 beat the deceased, and the deceased fell down, A-2 caught hold of

hands of the deceased, A-3 and A-4 caught hold of the legs and A-5 caught hold of the head of the deceased, A-1 killed the deceased by cutting his throat with geetakathi, which was witnessed by Kudiam Siramaiah, Kudiam Chinnaiah and Kudiam Ramaiah. A-1 to A-5 also threatened Kudiam Siramaiah with dire consequences and escaped from the scene. P.W. 1 with fear returned to the house and informed the same to his mother--P.W.2 Kudiam Chinnaiah and Kudiam Ramaiah, who had witnessed the incident kept quiet out of fear. On 3-3-1994 Kudiam Siramaiah and Kudiam Muthamma went to the scene and found the dead body under a tree. At 10.00 a.m. Kudiam Siramaiah came to Chinthur Police Station and lodged a written complaint. Based on the same a case in Crime No. 8 of 1994 was registered by Chinthur Police.

7. To prove the case of the prosecution, P.Ws 1 to 9 were examined and Exs. P-1 to P.8 and M.O.1 were marked. The learned Judge after recording reasons, recorded acquittal of all the accused under Sections 147 and 302 read with Section 149 IPC, but however, convicted the appellant-A-2 only u/s 364 IPC.

8. P.W. 1 who is the son of the deceased deposed about the incident that the accused had taken his father to Vippra tree, beat his father and A-1 cut the throat of his father with a knife and killed and that he returned home and informed the same. This witness also deposed about the panchayat held prior to the incident and the other aspects.

9. P.W. 2 is the mother of P.W. 1 and the wife of the deceased, and she deposed about P.W. 1 coming and informing her about the incident. She also deposed that on the next day morning, she went to the dead body and then P.W.1 to the Police Station and presented the report.

10. P.W. 3 is the brother of the deceased. He also deposed in detail about the post incident events. P.W. 4 deposed about the panchayat and the imposition of penalty.

11. P.W, 5 deposed relating to the inquest over the dead body of the deceased at Vippra tree and this witness also deposed that they noticed the throat of the deceased was cut with a sharp weapon. Ex. P-2 is the panchnama.

12. P.W. 6 deposed that they found A-1 to A4 in the police custody and at the request of the police, he interrogated the A-1 and A-1 disclosed his name and particulars and about the commission of the offence and thereby a panchnama (Ex. P-3) was drafted, disclosing that A-1 used a knife as weapon of offence. He deposed that A-1 had taken them to his house and brought M.O.-1 knife from his house.

13. P.W. 7 who is the Assistant Sub-Inspector of Police, Chintur, received Ex. P.1 complaint at about 10.00 a.m. on 3-3-1994 and registered the same as a case in Crime No. 8 of 1994.

14. P.W. 8 Circle Inspector of Police had deposed about all the details of investigation, preparation of Ex. P-6 rough sketch, examination of witnesses,

arrest of the accused, preparation of the panchnamas and the seizure of M.O.-1 knife. This witness was cross-examined at length.

15. P.W. 9, who is the Medical Officer, Government Hospital, Bhadrachalam, had conducted autopsy over the dead body of the deceased on 4-3-1994, and had explained the injuries on the dead body and also deposed that injury No. 1 is sufficient to cause the death in ordinary course. Ex. P-7 is the Post-mortem examination report with opinion and forensic science Laboratory report shown to him is Ex. P-8.

16. Ex. P1-complaint reads as hereunder :--

"We live on agriculture. One Karam Bujji held panchayat because of his wife by name Muthamma died due to witch craft used by my father. In the panchayat Madivi Muthaiah and some elders have decided as they are having suspicion on my father for that panchayat we gave one ox towards penalty that people has cut the said ox, and eaten away by them then onwards we are living peacefully. On 2-3-1994 we are all taken dinner and slept in our house. At about midnight Gaddala Sangaiah, Karaka Doolaiiah entered into my house, woke-up my father saying that "there is some work with you" and taken away to the outside. Then, I and my mother objected them to take my father. They said there is little work with my father and Doolaiiah taken away my father. I also accompanied with them with suspicion up to Vippa Tree. There is moon time. At that tree Karam Bujji and Karam Ramaiah are present and Karam Bujji abused my father in filthy language saying that "how many people you are going to kill" and caught hold of my father's hairs, Gaddala Sessaiah caught hold of my father's hands, Gaddala Ramaiah caught hold of my father's legs. Karam Bujji cut the throat of my father with the knife (which is used for a toddy tapping). I used hues and cries. They are also threatened me and I ran away from that place and reached to my house, and told to my mother. If I all went there they shall kill us also. Next day morning on 3-3-1994 I went there and witnessed the dead body of my father. I came to police station to report the matter to the police to take appropriate action on them."

17. As the specific case of the prosecution is that all the accused are concerned with the commission of the offences with which they had been charged with, the learned Judge after recording certain findings, recorded an acquittal of all the charges with which they had been charged with. But however, convicted the appellant-A2 only, u/s 364, IPC. Section 364, IPC dealing with kidnapping or abducting in order to murder reads as follows :

"Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

18. Submissions at length were made by both the counsel relating to the fact that whether this offence is a substantive offence, independent offence, distinct

offence and whether a separate charge need to be framed and whether prejudice is caused for non-framing of the separate charge in this regard. In Banwarilal Jhunjhunwala case (supra), the Apex Court while dealing with the aspect of every distinct offence observed at paragraphs 13 and 14 as follows (at page 533, of Cri LJ) :

Section 233. Cr. P.C. reads :

"For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239."

The expression "every distinct offence" must have a different content from the expressions "every offence" or "each offence". A separate charge is required for every distinct offence and not necessarily for each separate offence.

The question is, what is meant by "every distinct offence? "Distinct" means "not identical". It stresses characteristics that, distinguish while the word "separate" would stress the "two things not being the same". Two offences would be distinct if they be not in any way inter-related. If there be some inter-relation there would be no distinctness and it would depend on the circumstances of the case in which the offences were committed, whether there be separate charges for those offences or not."

19. The learned counsel representing the appellant-A-2 would submit that though Section 364, IPC deals with kidnapping or abducting in order to murder, this has nothing to do with Section 302, IPC as such and hence, unless a specific charge is framed, appellant-A-2 cannot be convicted u/s 364, IPC.

20. In view of the fact that Section 364, IPC deals with kidnapping or abducting in order to murder and in the light of the tests laid down by the Apex Court, it cannot be said that it can be laid as broad proposition under no circumstances, if the facts otherwise warrant conviction cannot be recorded at all. It is totally a different aspect whether prejudice had been caused in this regard or not. In Sohan Lal alias Sohan Singh case (supra), the Apex Court held that :

"Abetment is a substantive offence and failure to frame charge u/s 109, IPC in a bride burning case would cause prejudice to the accused-husband was changed only u/s 304-B and hence his conviction Under Sections 300, 109, IPC are liable to be set aside."

21. A careful reading of the evidence of P.Ws. 1 to 3 would go to show that the specific case of the prosecution is that all these accused in fact had committed murder of the deceased on the fateful day. But the version was totally disbelieved. However, in view of the fact that A-2 also participated just in taking the deceased away from the house on the fateful day, the learned Judge arrived at a conclusion that the ingredients u/s 364, IPC are satisfied. Both in Ex. P-1-complainant and also the evidence of P.W. 1, when the specific factual foundation had been disbelieved, the prosecution cannot try to sustain conviction on a

slightly different version, especially deviating the facts. In that view of the matter, whether the offence u/s 364, IPC is a separate distinct offence or not, it may not be material for the reason that definitely serious prejudice is caused to the appellant-A-2 and apart from it, when the prosecution version was disbelieved in relation to the other accused similarly placed, it would be futile exercise on the part of the prosecution to sustain the conviction as against the appellant-A2 only.

22. Viewed from any angle, the factual foundation and the evidence available on record definitely do not warrant conviction of appellant-A-2 u/s 363, IPC. Hence, the accused-A-2 is entitled for acquittal.

23. In the result, the appellant-A-2 is hereby acquitted and the criminal appeal is allowed. Bail bonds of the appellant-accused No. 2 shall stand cancelled.