
(2003) 08 AP CK 0055

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1400 of 2001

Ganesh Nagaraju

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 28-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 2 ALD(Cri) 470 : (2004) 2 ALT(Cri) 154

Hon'ble Judges : K.C. Bhanu, J; Bilal Nazki, J

Bench : Division Bench

Advocate : V. Raghu, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—The sole accused in Sessions Case No. 155/2000 on the file of the Sessions Judge, Khammam, filed this statutory appeal u/s 374(2) Cr.P.C, challenging the legality and correctness of the judgment, dated 15.3.2001, whereby he was convicted u/s 302 IPC and sentenced to undergo imprisonment for life.

2. The charge against the accused was that he caused the death of his wife, Parameshwari (for short, "D1"), and Pattimjayari Jayamma (for short, "D2") on 18.10.1999 by beating them with an iron rod.

3. The facts that are necessary for the disposal of this appeal in brief are that for about six months from before the incident in question, the accused started suspecting the character of his wife. D2 used to advise the accused not to entertain such doubts in his mind. On 18.10.1999 both deceased persons, the accused, P.W. 1, and his brother, Vinod Kumar, went to Bhadrachalam on a pilgrim. They took a room on rent at 1 pm in Vemulavada Choultry. After having a dip in the river Godavari and having "Darshan" in the temple, they went to bazaar. The accused purchased an iron rod of about 2 ft length in the bazaar.

Later they returned to the choultry. They slept in the verandah. In the midnight, P.W. 2 heard the sound of iron rod. He woke up. He saw the accused beating D2 with the iron rod on her head and late D1 on her head. On 19.10.1999 he woke up P.W. 1, who was an Endowment Inspector and who was staying in the opposite room on the date of incident, about the incident. P.W. 1 immediately lodged a report-Ex.P1 with the police, on the basis of which P.W. 15 registered a case. P.W. 16 took up investigation. He held inquest over the dead bodies, sent the dead bodies for conducting post-mortem examination, and examined witnesses. On learning that the accused voluntarily gave a confession-Ex.P17 before P.W. 13, he filed a requisition before the learned Executive Magistrate for grant of police custody. In pursuance of a confessional statement made by the accused before the police, the iron rod was seized. Material objects were sent for chemical examination. After completion of investigation, P.W. 16 filed a charge sheet. The accused pleaded not guilty. Prosecution examined 16 witnesses and marked Exs.P1 to P23 besides M.Os. 1 to 11. Defence marked Exs.D1 and D2. The trial Court after considering the evidence on record came to the conclusion that the accused was guilty of murder and accordingly convicted and sentenced the accused as aforesaid by the impugned judgment, aggrieved by which the accused filed the present appeal.

4. Learned counsel for the appellant contended that if really the incident as alleged by the Prosecution had taken place, P.W. 1 would have woke up in the midnight and raised hue and cry, that it is highly unsafe to place reliance upon the evidence of the child witness-P.W. 2, that as P.W. 2 had seen the accused in the police station when he went there along with P.W. 1 to lodge the F.I.R. and the question of giving confession by the accused before P.W. 13 does not arise, that even assuming that Ex.P17 was given by the accused, since P.W. 13 did not follow the procedure for recording a confessional statement, Ex.P17 cannot be relied upon, that there were so many contradictions as regards the room number, and that the recovery of M.O.1 cannot be relied upon inasmuch as it was recovered from an open place, and so he prays to set aside the impugned judgment. On the other hand, learned Public Prosecutor contended that P.W. 1 had no grouse against the accused and so his evidence can be relied upon, that P.W. 2 had no reason to implicate the accused falsely, leaving the real assailants, that the admission made by P.W. 2 that they had seen the accused in the police station cannot be taken to infer that the accused was arrested on 19.10.1999, because the accused himself voluntarily made the confessional statement for P.W. 13 who had no reason to accommodate the police and give false evidence, that the conduct of the accused immediately after the incident points guilt towards him alone coupled with the fact that he had purchased the iron rod before the incident, that though Ex.P17 was not recorded in accordance with law, it can still be used to lend corroboration to the evidence of P.W. 2, and that there was no explanation by the accused for the homicidal death of the deceased persons, and hence the appeal should be dismissed.

5. P.W. 16 conducted inquest over the dead bodies in the presence of P.W. 9. Exs.

P12 and P13 are inquest reports. P.W. 14 conducted post-mortem examination over the dead body of D1 and found a compound depressed fracture over left parietal region, a laceration with fracture on left frontal bone and a laceration over right eyebrow. He opined that the cause of death was due to shock on account of intracranial hemorrhage and laceration of left cerebral hemisphere. Ex.P20 is the post-mortem certificate. P.W. 12 conducted post-mortem examination over the dead body of D2 and found a laceration over left ear pinna, a punctured wound on left temporal region and a depressed fracture over left parietal bone and temporal bone which could be caused by a weapon like M.O.1. He issued Ex.P16 post-mortem certificate and opined that the death was due to shock on account of intracranial haemorrhage and external hemorrhage. The evidence of the Doctors, P.Ws. 16 and 9 and the recitals in Exs.P12, P13, P16 and P20 remain unchallenged in the cross-examination. Therefore, we hold that the death of the deceased persons was homicidal.

6. D1 is the wife of the accused. P.W. 4 is the husband of D2. Accused is the son of brother of D2. The case mainly rests upon the evidence of P.W. 2 and Ex.P17-retracted confessional statement of the accused. P.W. 2 stated that after they soused in the river Godavari, they had "Darshan" in the temple, and proceeded to Bazar. On the way to their return to choultry, the accused purchased an iron rod. P.W. 8 stated that the accused purchased the iron rod for Rs. 30/- from him on 18.10.1999. P.W. 2 further stated that after returning to the choultry, he, both the deceased persons, and Vinod Kumar, slept in the verandah opposite room No. 9, whereas the accused slept opposite room No. 10. About half an hour after he went to sleep, he perceived the sound of the iron rod. He woke up and saw the accused coming near D2. He stated that the accused beat D2 with the iron rod on her head thrice and later D1 thrice on her head, and then darted from the scene of occurrence.

7. Learned counsel for the accused contended that it is not safe to place reliance upon the evidence of this witness because he was a child and might not have witnessed the incident during midnight.

8. No doubt the statement of a child witness is admissible, but before accepting his evidence, it must be seen by the court that he understands the questions put to him and gives rational answers thereto. The learned Sessions Judge after satisfying himself of such ability of P.W. 2 recorded his evidence. At this juncture, it is pertinent to refer to a decision of the Apex Court in Bhagwan Singh and Others Vs. State of M.P., wherein the Supreme Court has held as follows with regard to the appreciation of the evidence of a child witness.

"The law recognizes the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity or understanding, is not considered by the court to be a witness whose sole testimony can be relied upon without other corroborative evidence. The evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the court

looks for adequate corroboration from other evidence to his testimony."

9. Keeping the above principle in view, we will see whether P.W. 2 was tutored in this case. There is evidence on record that the accused and the deceased are residents of Renigunta in Chittoor District. The incident took place at Bhadrachalam in Khamma District. Except Vinod Kumar, elder brother of P.W. 2, no other relative of the deceased persons, was along with them on the date of incident which took place in the midnight on 18.10.1999. On 19.10.1999 morning P.W. 2 informed P.W. 1 about the incident. P.W. 1 was working in the Endowment Department and is a disinterested witness. He along with P.W. 2 went to the police station and lodged report on 19.10.1999 at about 7.30 am. Therefore, there was absolutely no possibility for P.W. 1 being tutored.

10. P.W. 13 recorded the statement of P.W. 2 u/s 164 Cr.P.C. on 20.10.1994 which was marked as Ex.P19. Ex.P19 corroborates the evidence of P.W. 1 in all respects including the attack made by the accused on the deceased persons. His evidence also corroborates that of P.W. 2. P.W. 1 stated that there were lights burning in the verandah on the date of incident and therefore there was no possibility of mistaken or false identity of the assailant of the deceased persons. There is no reason for P.W. 1 to speak false against the accused. Except the suggestion that the police tutored him to depose as he did, nothing has been elicited in his cross-examination so as to discredit his testimony. After going through the evidence of P.W. 2, we are of the opinion that he was a natural witness to be present at the time of incident and he spoke what he witnessed.

11. We will now see whether the accused had any motive to do away with the lives of the deceased persons. P.W. 4 is the husband of D2. He deposed that some misunderstandings began to creep in between the accused and D1 on account of the suspicion of the accused that D1 had immoral character for six months from before the incident. He stated that there were no complaints from any other quarter about the bad character of D1. Therefore, it is clear that there were serious misunderstandings between the accused and D1.

12. Motive is not an integral part of crime. It is only an aid in the assessment of criminality. When there is acceptable evidence regarding the incident itself, proof of motive loses its significance. It is apposite to refer to a decision of the Apex Court on this aspect in Thaman Kumar v. State of Union Territory of Chandigarh 2003 AIR SCW 2837. It is held by the Apex Court that there is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused, and where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved. Therefore, absence of motive need not necessarily result in acquittal. However, in the present case, though the witnesses have not spoken to about the motive for the accused to commit the crime, they did state that there were misunderstandings between the accused and D1.

13. Coming to the confession made by the accused, P.W. 13 stated that the accused voluntarily came to him and stated that the accused suspected the character of his wife. Expecting that a pilgrim would bring change in her attitude, they undertook the pilgrim tour. But even during the tour, D1 was continuing her immoral acts by making gestures to unknown persons and D2 was encouraging her. Therefore, he decided to kill them and accordingly put an end to their lives. Ex.P17 runs into four pages. The accused retracted the confession and stated that his signature was obtained on a blank paper and with the help of P.W. 13 the police fabricated the confession. Before recording a confession, certain precautions have to be taken to ascertain that there had been no third-degree methods used by police and as far as practicable the confession must be recorded in question-and-answer form and see that there was no extraneous influence preceding the recording of the confession. The person making the confession must be asked the reason for making confession and should be warned that if it is given it would be used against him. In Bhagwan Singh's case (1 supra), the Apex Court has held as follows:

"The first precaution that a Judicial Magistrate is required to take is to prevent forcible extraction of confession by the prosecuting agency (See State of Uttar Pradesh Vs. Singhara Singh and Others,). It was also held by this court in the case of Shivappa Vs. State of Karnataka, that the provisions of Section 164 CrPC must be complied with not only in form, but in essence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution."

14. In the instant case, P.W. 13 did not take any of the above precautions. But, the accused was not produced by the police before the learned Magistrate. The accused himself voluntarily went to P.W. 13 and made the confession. Learned counsel for the appellant submitted that though the confession shows that the accused himself went to P.W. 13 and made the confession, P.W. 2 stated that by the time he along with P.W. 1 went to the police station for lodging the F.I.R., accused had already been in the police station. Therefore, it is clear that only on being tortured by the police the accused made the confession. P.Ws. 1 and 2 went to the police station on 19.10.1999 at about 7 am. According to P.W. 13, the accused came to him at 1 pm on 20.10.1999. Therefore, which of the two versions is correct is to be seen now.

15. Generally, the testimony of a witness should not be discarded merely on a stray sentence appearing in his cross-examination, as held by the Supreme Court in Karamjit Singh Vs. State (Delhi Administration), . P.W. 2 was examined after a lapse of about two years of the incident due to which he might have stated that by the time he and P.W. 1 went to the police station, the accused had been there. But, P.W. 1 did not say so and there was not even a suggestion to him on this

aspect. P.W. 13 categorically stated that the accused came to him on 20.10.1999 at 1 pm and gave the confessional statement. There was no suggestion in this respect. Nothing has been elicited from this witness to disbelieve his evidence. P.W. 16 stated that he made a requisition before the learned Magistrate for grant of police custody of the accused on 21.10.1999 and accordingly the accused was given in police custody on 22.10.1999. There was not even a contra-suggestion to this witness too. There is absolutely no material to conclude that the accused was taken into custody on 19.10.1999 itself. However, since the learned Magistrate did not follow the mandatory requirements of law in recording the confession, we are not inclined to place reliance upon Ex.P17 to base conviction, but are of the opinion that it can be used to corroborate the evidence of the other witnesses brought on record.

16. We would now see the conduct of the accused. Had the deceased persons been done to death by anybody else, the accused would have certainly raised hue and cry. P.W. 7 stated that he did not hear any such hue and cry or some "Galata". The accused did not lodge a report with the police. There is evidence on record that immediately after the incident he absconded. Accused stated in his statement u/s 313 Cr.P.C., that he had gone to a late-show movie and when he returned to the choultry, he found the dead bodies. This shows that he pleaded alibi. He did not produce the cinema ticket. He did not prove his plea of alibi. This false explanation of alibi is yet another circumstance that he was the assailant of the deceased persons.

17. P.W. 8 stated that the accused purchased an iron rod on 18.10.1999 from his shop. He identified M.O.1 as the iron rod which the accused purchased. Nothing has been elicited from his cross-examination. The evidence of P.W. 2 supports the evidence of P.W. 8 in this respect. Therefore, it is established that the accused purchased the iron rod which is another circumstance against the accused.

18. Learned counsel for the appellant submits that P.W. 7 stated in one breath that he lodged the report and in another breath P.W. 1 lodged the report, and therefore, he submits, the report lodged by P.W. 7 was suppressed and Ex.P1 was brought into existence after due deliberations. P.W. 15 was not cross-examined on this point at all. P.W. 7 stated that he also gave a report to the police and it was P.W. 1 who lodged the report initially with the police. Thus it is clear that it was Ex.P1 which was the F.I.R. in this case lodged by P.W. 1. Therefore, even if P.W. 7 too had lodged a report, it would not become F.I.R. as it would be a statement made to the police during the course of examination and is hit by Section 161 Cr.P.C. Neither P.W. 15 nor P.W. 16 was cross-examined on this aspect. Therefore, undue importance cannot be given to this part of the evidence of P.W. 7.

19. The learned counsel for the appellant pointed another discrepancy i.e., with regard to the room number. The oral evidence and Ex.P11-payment register-reveal that the accused was allotted room No. 8 whereas Ex.P10-accommodation

register-shows that room No. 2493 was allotted to the accused. True that Ex.P10 shows that room No. 2493 was allotted and Ex.P11 shows that room No. 8 was allotted to the accused. It is pertinent to note that this is not the case with the accused alone. All the other entries made in Ex. P10 in respect of the other visitors to Choultry on 18.10.1999 also show room numbers of four digits whereas the corresponding entries for receipt of payment made by those visitors show room numbers such as I3, I2, II2 etc. It can, therefore, be presumed that a room has two numbers and is identified by either a four digit number or by a single digit with the number of the floor in which it is situated prefixed to such single digit. None of the witnesses was cross-examined as regards the room number which was allotted to the accused. Be it "2493" or "8", we are unable to understand as to how it would help the Prosecution or the accused, when the Investigating Officer found blood on the walls in the verandah of room No. 8 and when photographs were also taken the dead bodies were lying at the same place.

20. Learned counsel for the appellant also contended that when the accused had admittedly taken a room on rent, there was no need for the accused and others to sleep in the verandah. The reasons cannot be guessed. P.W. 2 was the best person to explain it. He was not cross-examined on this aspect. But, the fact remains that they slept in the verandah as spoken to by the Investigating Officer and P.W. 1. P.W. 2 stated that on perceiving the sound of iron rod, he woke up. This supports the case of the Prosecution that the accused and others slept in the verandah, because probably the accused went into the room from the verandah to bring the iron rod and while coming out of the room the iron rod must have touched the door or wall causing sound which made P.W. 2 wake up.

21. In view of the above discussion, the variations as pointed out by the learned counsel for the appellant are inconsequential and cannot be given too much importance to when the other evidence on record inspires the confidence of the court.

22. Another contention of the learned counsel for the appellant was that there was no documentary evidence to show that P.W. 1 occupied a room in the choultry on the date of incident. P.W. 1 was working as Endowments Inspector. P.W. 7 stated that since P.W. 1 was an official of the Endowments Department, no entry was made in the register. That was done probably to avoid charges being levied on the official. But, for that simple reason, the evidence of P.W. 1 cannot be disbelieved.

23. We are not inclined to believe the recovery of M.O.1, because it was seized from an open public place. The trial Court too has rightly not placed reliance upon the recovery.

24. In view of the above discussion, we have no hesitation to hold that the accused slew both the deceased persons by beating them with the iron rod and the trial Court rightly convicted and sentenced the accused. There are absolutely no grounds to interfere with the conviction and sentence.

25. In the result, the appeal is dismissed, confirming the conviction and sentence recorded by the trial Court.