
(2004) 09 AP CK 0076

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 139 of 2001

Isukapalli Surya Rao

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 13-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2005) 1 ALD 194 : (2005) 1 ALD(Cri) 194

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

Bench : Single Bench

Advocate : T.S.N. Murthy, for the Appellant; Additional Public Prosecutor, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri T.S.N.Murthy, the Counsel representing the appellant/accused provided by way of legal aid and the learned Additional Public Prosecutor.

2. Isukapalli Surya Rao, accused in S.C.No.131 of 1999 on the file of the Sessions Judge, East Godavari, Rajahmundry aggrieved by the judgment dated 04-12-2000 convicting and sentencing him to undergo rigorous imprisonment for a period of five years for an offence u/s 304 Part-II I.P.C., had preferred the present appeal.

3. Sri T.S.N.Murthy, learned Counsel representing the appellant/accused would submit that except the evidence of P.W.1, there is no other evidence available on record and P.W.1 is none other than the wife of the appellant/accused and in view of certain misunderstandings between the husband and wife, the wife unnecessarily had implicated the husband in the present false case. The learned Counsel also further elaborately argued relating to the findings recorded by the learned Judge on the aspect of recovery of M.O.1-stick and would contend that the learned Judge having observed that he was not inclined to accept the version of the prosecution that M.O.1 was recovered in pursuance of the disclosure statement of the accused, definitely erred in convicting the accused on the sole

uncorroborated testimony of P.W.1, especially, in the light of the enmity or misunderstandings between the wife and husband.

4. Per contra, learned Additional Public Prosecutor would contend that except some vague statements relating to some misunderstandings, there is no clear evidence on record so as to disbelieve the evidence of P.W.1 on that ground. Learned Counsel also would submit that it is no doubt true that the learned Judge disbelieved the recovery of M.O.1-stick in pursuance of the disclosure statement of the accused, but by that itself, the direct evidence of P.W.1 cannot be disbelieved. Hence, the conviction and sentence imposed are well justified in the light of the evidence of P.Ws.1 to 11 and Exs.P.1 to P.12 and also M.O.1.

5. Heard the Counsel.

6. The facts in nutshell are as follows:

7. The Inspector of Police, Jaggampeta Circle laid charge sheet against the appellant/accused in Crime No.31 of 1998 of Prathipadu P.S., for an offence u/s 302 I.P.C. The case of the prosecution is that the accused is the husband of P.W.1, Isukapalli Satyavathi and son-in-law of the deceased Buddapalli Venkatarao aged 60 years. The deceased used to visit the house of the accused very frequently to see his daughter-P.W.1, Satyavathi. The accused did not like the deceased visiting his house and his wife (P.W.1) providing food to him. It is also the case of the prosecution that on 31-03-1998 at about 10 p.m., the deceased came to the house of the accused and his daughter served him dinner. A quarrel ensued between the accused and his wife-P.W.1(Satyavathi) over the visit of the deceased to their house and when the deceased intervened, the accused beat him with a stick on his head. As a result, the deceased sustained bleeding injury and fell at the threshold. It is the further case of the prosecution that P.W.1 raised shouts and applied coffee powder to arrest bleeding from the injury and on 01-04-1998 at 2 p.m., the deceased succumbed to his injury. Relatives of the deceased arrived the house on 01-04-1998 and they reported the matter to the Village Administrative Officer, Prathipadu (P.W.7-Maddali Bhimarao). The V.A.O. sent the report to Prathipadu P.S. on 02-04-1998 at 9-30 a.m. The Sub-Inspector of Police, Prathipadu, received the report of the V.A.O. and registered a case in Crime No.31 of 1998 u/s 302 I.P.C. and issued F.I.R. The Circle Inspector of Police, Jaggampet Circle took up investigation. He visited the scene of offence, conducted panchanama and held inquest over the dead body of the deceased. The Sub-Inspector of Police, Prathipadu, arrested the accused on 07-04-1998 and recovered M.O.1-stick used in the commission of offence in pursuance of his disclosure statement. After completing investigation, P.W.1 11-K.Siva Prasad, Inspector of Police, laid charge sheet in the Court of Judicial Magistrate of First Class, Prathipadu.

8. The said case was registered as P.R.C.No.26 of 1998 and the same was committed to the Court of Session, East Godavari District, Rajahmundry, which was taken on file as S.C.No.131 of 1999. In view of the fact that the accused had

pleaded not guilty, the learned Judge recorded the evidence of P.Ws.1 to 11 and got marked Exs.P.1 to P.12 and M.O.1. The learned Judge ultimately after recording the findings had arrived at a conclusion that a case u/s 302 I.P.C. had not been made out, but however, the offence committed by the accused would fall within the ambit of Section 304 Part-II I.P.C. and accordingly convicted and sentenced him to undergo rigorous imprisonment for a period of five years and aggrieved by the same, the present appeal is preferred.

9. P.W.1 is the second wife of the accused and the daughter of the deceased. She married the accused seven months prior to the date of incident. The deceased was residing in Routhulapalem in Prathipadu Mandal and he used to visit the house of the accused once in two days and P.W.1 used to provide food to him. Two days prior to the date of incident, the deceased came to their house and was living with them. On the night of the incident at about 10 p.m., the accused entered into altercation with P.W.1 on the ground that she was providing food to the deceased. In the said altercation, the accused caught P.W.1 by neck, then, the deceased intervened and questioned the accused and thereupon, the accused beat the deceased with M.O.1-stick on the head. As a result of which, the deceased received a bleeding injury on the head. P.W.1 applied coffee powder to arrest bleeding. P.W.2 and P.W.3 reached the house of the accused on hearing the shouts of P.W.1, and they witnessed the incident. The deceased succumbed to the injury on the next day at 12 noon. P.W.3, Manikyam, L.W.4, Venkatrao, went to the Village Administrative Officer and informed him about the incident. P.W.7, Maddali Bhimarao, Village Administrative Officer of Peddipalem and Kithampuripeta, along with P.W.6, Jagannadham and P.W.5, Dharmaraju came to the house of the accused and saw the dead body of the deceased. Statements of P.W.3 Manikyam, L.W.4, Venkatrao had been recorded and Ex.P.2 report was sent to Prathipadu P.S., and a copy of the same was also marked to the Mandal Revenue Officer, Prathipadu. P.W.6 had taken Ex.P.2 report to the S.H.O. Prathipadu. P.W.10, Allu Satyanarayana, Sub-Inspector of Police, Prathipadu received Ex.P.2 report on 02-04-1998 at about 9.30 A.M. and registered a case in Crime No.31 of 1998 u/s 302 I.P.C. and issued Ex.P.11 F.I.R. and the Circle Inspector of Police had taken up the investigation.

10. Ex.P.1 is the inquest report; Ex.P.2 is the original report given by Village Administrative Officer, Peddapuram; Ex.P.3 is the observation report relating to place of scene of offence; Ex.P.4 is the admissible portion in confessional statement of the accused; Ex.P.5 is the Mediators report relating to seizure of M.O.1 stick; Exs.P.6 and P.7 are the two positive prints; Exs.P.8 and P.9 are the corresponding negatives of Exs.P.6 and P.7 Photos; Ex.P.10 is the Post Mortem Certificate; Ex.P.11 is the F.I.R. and Ex.P.12 is the rough sketch prepared by the Inspector of Police, Jaggampeta Circle.

11. The evidence of P.W.1 is clear and categorical, what had actually transpired on the fateful day. This witness was cross-examined at length and an attempt was made to discredit the testimony of the witness on the ground that there are

some misunderstandings between the husband and wife. P.W.2 had deposed that on the night of the incident, he heard shouts and on hearing the same, this witness along with L.W.3, Mamikyam, went to the house of the accused and the accused dealt a blow with a stick on the head of the deceased Venkatrao. As a result of which, the deceased Venkatrao received bleeding injury on his head and on seeing the blood, this witness got frightened and ran away and this witness also deposed that she can identify the stick with which the accused Suryarao dealt a blow on the head of the deceased Venkatrao and she identified M.O.1-stick.

12. P.W.3 also had deposed to the same effect corroborating the evidence of P.Ws.1 and 2 in all material particulars. P.W.4, no doubt, deposed that PW.1 told him that the accused beat her and when her father Venkatarao (deceased) intervened, he also beat with a stick on the head of the deceased. The evidence of this witness is no doubt in the nature of hearsay.

13. P.W.5 deposed that while he was at the house of L.W.9, P.W.3 and L.W.4 Venkatrao came and informed that the accused beat the deceased-Venkatarao, with a stick at his house and he had narrated the details what had been narrated to him.

14. P.W.6 is the witness, who acted as panch witness for the observation of scene of offence and held inquest over the dead body of the deceased, Venkatrao. Ex.P.1 is the inquest report. This witness had deposed about the details relating to the same.

15. P.W.7 is the Village Administrative Officer, who had deposed about going to the house of the accused along with others and seeing the dead body of the deceased- Venkatarao and also injury on his head, recorded the statement of P.W.3, Manikyam and L.W.4, Venkatrao and sent his report to Prathipadu Police Station. Ex.P.2 is the report sent by him to Station House Officer, Prathipadu, through PW.6, Jagannadham, which was handed over to him at 8.30 P.M. on 01-04-1998. This witness also deposed about Ex.P.3, scene of offence, panchanama and the details of the inquest and the Circle Inspector of Police taking up further investigation. This witness also deposed about the confession alleged to have been made by the accused to the effect that he will show the weapon/stick used by him in the commission of offence. Ex.P.4 is the admissible portion of the confession panchanama dated 07-04-1998.

16. P.W.8 had deposed about the photos and negatives.

17. P.W.9 is the Doctor, who had conducted postmortem examination over the dead body of the deceased, and this witness deposed that the injury found on the dead body is ante mortem in nature and the injury can be caused by a single blow with a stick like M.O.1.

18. P.Ws.10 and 11 are the Sub-Inspector of Police and Circle Inspector of Police, respectively, who deposed about the details of the investigation.

19. The evidence of P.Ws.2 and 3 up to some extent would corroborate the evidence of P.W.1. It is pertinent to note that the relationship of the deceased is that the deceased was the father of P.W.1 and father-in-law of the accused. Except some suggestions, nothing serious had been elicited relating to the misunderstandings or any other particulars, which might have prompted P.W.1 to depose in such a fashion, as against the accused. It is no doubt true that the learned Judge recorded reasons at para 12 of the judgment disbelieving the version of the prosecution relating to the recovery of M.O1 in pursuance of the disclosure statement of the accused. Even if, this portion of the evidence of the prosecution has to be disbelieved, there is other evidence available on record to sustain the conviction imposed u/s 304 Part-II I.P.C. as against the appellant/accused. In the light of the evidence of P.W.1, well supported by the evidence of P.Ws.2 and 3 and also the medical evidence of P.W.9 and for the reasons recorded above, the conviction u/s 304 Part-II I.P.C. imposed as against the appellant/accused is hereby confirmed. But, taking the peculiar facts and circumstances into consideration and also the fact that the appellant/accused had already suffered the imprisonment for a period of three and half years and also keeping in view that the accused is having a minor son, who is deaf and dumb, and in view of the relationship between the parties, it would be just if the sentence is imposed as against the accused for the period which he had already undergone and accordingly except modifying the sentence to the sentence which already had been undergone by the accused in this case, in all other respects, the findings recorded by the learned Judge are hereby confirmed.

20. The Criminal Appeal shall stand dismissed subject to the above modification.