
(2012) 04 AP CK 0013
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 665 of 2008

K. Yadagiri

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 10-04-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 1 ALT(Cri) 1

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

Bench : Division Bench

Advocate : A. Gyatri Reddy, for the Appellant;

Final Decision : Allowed

Judgement

N.V. Ramana, J.—This appeal is directed against the conviction and sentence passed in S.C. No. 521 of 2007 by the IV Additional Metropolitan Sessions Judge, Hyderabad on 25-3-2007. The appellant herein, who is the accused, was prosecuted for the offence u/s 302 IPC.

2. According to the prosecution the deceased Chintala Chandra Mouli is a native of Kalwakurthy of Mahboob Nagar District and he is having a wife, two sons and two daughters. Due to differences with his eldest son eh came to Hyderabad and started begging in and around Moghalpura Limits and daily taking shelter on the footpath near Moghalpura water tank, opposite to Salah Uddin Mosque along with the other beggars P.Ws. 2 and 3 and others. As usual on 25-4-2007 at about 8.30 p.m. after begging the deceased along with other beggars came to water tank footpath, opposite to Salah Uddin Mosque and on the same night at about 9.30 to 10.00 p.m. the accused came to the deceased in a drunken state and quarreled with him on the issue of his wife. While all the other beggars are in sleep near footpath along with deceased in the midnight on 25/26-4-2007, accused again came to the spot and woke up the deceased and picked up quarrel with him. Both of them exchanged heated arguments, meanwhile the accused stabbed the deceased with a knife on his chest and stomach and fled away from

the scene. On 26-4-2007 at about 5.45 a.m. P.W. 1 went to Fager Namaz in Salah Uddin Mosque in Moghalpura. After Namaz P.W. 1 found the deceased lying on the footpath in a pool of blood near the Mosque, later he went to the police station and gave Ex. P-1 report, basing on which a case in Crime No. 55 of 2007 was registered u/s 302 IPC. Ex. P-8 is the FIR P.W. 10, C.I. of police visited the scene of offence on 26-4-2007 at 10.00 a.m. and found the dead body on the footpath of the water tank near Moghalpura and examined the P.W. 1 and recorded his statement. P.W. 10 conducted inquest over the dead body of the deceased on the presence of P.W. 5 and also examined the P.Ws. 2 to 4 and recorded their statements. On 9-5-2007, P.W. 10 apprehended the accused at 11.30 a.m. at Nagulachinta cross roads and recorded his confessional statement in the presence of P.Ws. 5 and 9 and recovered M.O. 1 knife from the accused under Ex. P-7. P.W. 7, Assistant Professor in Forensic Medicines, Osmania Medical College, Conducted autopsy over the dead body of the deceased on 26-4-2007 and opined that the cause of death is due to stab injury to the chest involving in the left lung. After completion of investigation, Police filed the charge sheet against the accused.

3. The learned Sessions Judge has framed the charge u/s 302 IPC against the accused and he pleaded not guilty for the said charge.

4. In order to establish the said charge, the prosecution examined P.Ws. 1 to 10 and got marked Exs. P-1 to P-8 and M.Os. 1 to 5. No oral or documentary evidence was adduced on behalf of the accused.

5. The learned Sessions Judge by taking into consideration of the said oral and documentary evidence found the accused guilty for the offence u/s 302 IPC and convicted and sentenced to undergo imprisonment for life and also to pay fine of ` 1,000/- in default to undergo simple imprisonment for 3 months.

6. Aggrieved by the said conviction and sentence, the present appeal is filed by the accused.

7. Now, the point that arises for consideration is:

8. Whether the prosecution could able to establish the charge u/s 302 IPC against the accused beyond reasonable doubt?

POINT:

9. The appellant's counsel has pleaded that there is no evidence to show that the accused is the real culprit and the prosecution manipulated and forced the witnesses to give evidence and the same was supported by the evidence of P.Ws. 2 and 3, as such their evidence cannot be believed. The appellant's counsel has further pleaded that the extra judicial confession given by the accused to P.W. 4 is a weak piece of evidence; as such the same cannot be relied upon. Therefore, the prosecution has failed to establish the charge u/s 302 IPC against the accused.

10. The Additional Public Prosecutor on the other hand has pleaded that the evidence of P.Ws. 1 to 3 can be relied and their evidence is sufficient to convict the accused u/s 302 IPC, as such the trial Court has rightly convicted the accused and the said conviction does not warrant any interference by this Court in the appeal.

11. The case of the prosecution is that the deceased Chitala Chandra Mouli is a native of Kalwakurthy of Mahboob Nagar District and he is having a wife, two sons and two daughters. Due to differences with his eldest son he came to Hyderabad and started begging in and around Moghalpura limits and daily taking shelter on the footpath near Moghalpura water tank, opposite to Salah Uddin Mosque along with the other Beggars P.Ws. 2 and 3 and others. As usual on 25-4-2007 at about 8.30 p.m. after begging the deceased along with other beggars came to water tank footpath, opposite to Salah Uddin Mosque and on the same night at about 9.30 to 10.00 p.m. the accused came to the deceased in a drunken state and quarreled with him on the issue of his wife. While all the other beggars are in sleep near footpath along with deceased in the midnight of 25/26-4-2007, accused again came to the spot and woke up the deceased and picked up quarrel with him. Both of them exchanged heated arguments, meanwhile the accused stabbed the deceased with a knife on his chest and stomach and fled away from the scene. The deceased died due to stab injuries sustained by him.

12. P.W. 1 stated that on 26-4-2007 at about 5.45 a.m. he went to Fager Namaz in Salahuddin Mosque in Moghalpura and after Namaz he found a beggar, aged about 60 years lying on the footpath in the pool of blood near the said Mosque. By the time, he saw him, he was dead.

13. P.Ws. 2 and 3 Stated that about 9 months back at about 8.30 p.m. the accused and deceased were quarrelling at Mosque near to Water Tank. On the same night while they were sleeping on a pial near the water tank of Moghalpura, at about 3.00 or 3.30 a.m. the accused beat the deceased, as a result of which the deceased fell down and they came to know that the deceased died on the next day of the incident.

14. P.W. 4 stated that she know the accused as he was working in a hotel situated at Moghalpura and she used to go to that hotel to bring tea. She also know the deceased, who is a beggar in their area. After three days of the incident, accused came to her and informed her that he killed the deceased and he also told her that he quarreled with the deceased and killed him near Water tank of Moghalpura.

15. P.W. 5, who is panch witness for inquest, stated that the police held inquest over the dead body of the deceased in his presence. Ex. P-2 is the inquest report.

16. P.W. 6, Photographer, took the photos of the dead body at the scene of offence. Ex. P-3 is the bunch of photos (7 in No.)

17. P.W. 7, Assistant Professor, conducted the autopsy over the dead body of the deceased and opined that the cause of death is due to stab injury to the chest involving in the left lung. Ex. P-4 is the postmortem report.

18. P.W. 8, Assist Director, F.S.L. who examined the material objects opined that the blood is detected on M.Os. 1 to 4, but the blood group of blood stains on the abovesaid items could not be determined, Ex. P-5 is the F.S.L. report.

19. P.W. 9, mediator, stated that the police arrested the accused in his presence. He further stated that the accused confessed before the police that he killed the deceased and the accused led them to the grave yard near water tank at Moghalpura and shown a knife and the same was seized by the police under a cover of mahazar, Ex. P-7, M.O. 1 is the said knife.

20. P.W. 10, investigating officer, stated that on 26-4-2007 in between 9.30 to 10.00 a.m. he received information on a telephone that a dead body lying at Moghalpura water tank, on that he reached the spot at 10.00 a.m. and found the dead body of a male person on the footpath of the water tank near Moghalpura. He examined and recorded the statement of P.W. 1 and obtained his signature, Ex. P-1 is the said statement, basing on which he registered a case in Crime No. 55 of 2007 u/s 302 IPC. Ex. P-8 is the FIR. He again visited the scene of offence and got the scene of offence photographed and conducted the inquest over the dead body of the deceased in the presence of P.W. 5 and another. He examined P.Ws. 2 to 4 and recorded their statements. On 9-5-2007 on credible information he apprehended the accused at 11.30 a.m. at Nagulachinta cross roads in the presence of P.Ws. 9 and another and recorded his confessional statement and the accused led them to burial ground, Moghalpura, where they recovered a knife, M.O. 1. Ex. P-6 is the confessional statement of the accused. In the cross-examination, he stated that P.Ws. 2 and 3 voluntarily came to him and gave statements and he prepared rough statements at water tank and prepared fair statements in the police station, and P.W. 4 also approached him voluntarily and gave statement.

21. Contrary to the evidence of P.W. 10, investigating officer, P.W. 2 stated in his cross-examination that police kept him and his wife (P.W. 3) in the police station for 3 days and he has no acquaintance with the accused and he do not know the name of the accused and the police called him to the police station and made him to identify the accused and as he has seen the accused the police station, he identified him and he has not given the descriptive particulars to the police and he did not state before the police that the incident took place at 3.00 or 3.30 a.m. and that the accused stabbed with a knife on chest and abdomen. P.W. 3 also stated in her cross-examination that police kept them in the police station for 3 days and when they were in the police station, police brought the accused and got identified by them and after identifying the accused in the police station, they asked them to identify in the Court also. She further admitted that she did not state before policy knowing about the accused for 6 to 7 years. It is evident from the above that P.Ws. 2 and 3 gave the evidence as forced by the police; as

such their evidence cannot be relied upon.

22. The other evidence available is that of P.W. 4, to whom the accused has made extra judicial confession, she admitted in her cross-examination that before the incident there was fight in between her and accused, thereafter accused stopped coming to her house prior one month of the incident and she did not disclose to anybody about the alleged confession made by the accused till the police examined her after 8 days of the incident. She further admitted that she was taken by the police by 7.00 a.m. and kept her in the police station till evening 5.00 p.m. Investigating Officer, P.W. 10, admitted in his cross-examination that P.W. 4 did not state before him that there was a quarrel between the accused and the deceased. In view of the above, the alleged extra judicial confession said to have been made by the accused to P.W. 4 is not trustworthy and the same is not corroborated by any other evidence. Thus, the extra judicial confession made by the accused to P.W. 4 is of no avail to the prosecution case. Moreover, the prosecution failed to prove the motive for the accused to cause the death of the deceased. Therefore, the prosecution has failed to establish the charge u/s 302 IPC against the accused beyond reasonable doubt. In the result, the criminal appeal is allowed. The conviction and sentence passed in S.C.No. 521 of 2007 on 25-3-2008 by the IV Additional Metropolitan Sessions Judge, Hyderabad, against the accused, is hereby set aside. He shall be released forthwith, if he is not required in any other case.