

(1995) 10 AP CK 0035

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1105 of 1992

Kadapagunta Swaminatha Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-10-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 321, 323

Citation : (1996) 1 ALT(Cri) 228 : (1996) CriLJ 1387

Hon'ble Judges : Maithli Sharan, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This appeal is directed against the judgment of conviction and sentence dated 4-11-1995 passed by the I Additional District and Sessions Judge, Chittoor in Sessions Case No. 119 of 1992, convicting the accused-appellant for the offence u/s 304, Part II of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for a period of ten years and also to pay a fine of Rs. 500/- in default to suffer simple imprisonment for a period of two months.

2. The prosecution case in brief may be summarised thus :

The deceased Mohan Reddy was the nephew of Sri. G. Krishna Reddi (P.W. 1) who was a resident of Nadimooru village. The accused Swaminatha Reddi is the resident of Mitta Indlu. P.W. 1 was running a Fair Price Shop in the village, and in regard to the alleged irregularities committed by him, the accused had given a news item in some newspapers some time back before the occurrence of the incident in question. Thus, there was some enmity between these two, and as the deceased was the nephew of P.W. 1, he was also not having good terms with the accused. On the date of the incident i.e. on 27-3-1991 at about 3 p.m. P.W. 1 was waiting for a bus at the bus stop, the other prosecution witnesses were also present over there sitting on the pial of one Damodar Reddy and they were

talking. The deceased Mohan Reddy came over there with a value tube of the cycle in his hand declaring that he had taken it from the cycle of the accused and then he threw it on the ground. Meanwhile, the accused reached over there, caught of the deceased and dashed his head with the wall of the house. Damodar Reddy, pushed him down on the ground, sat over his chest and gave him fist blows. When the deceased raised cries, other witnesses reached over there and they saw the incident in question. According to the prosecution, the deceased had received injury on the left side of the temple bone and died on the spot. The accused started running away from the scene of occurrence and then P.Ws. 3 and 4 chased him and caught hold of him. Thereafter a report was lodged with the police whereupon a case in Cr. No. 25/89 u/s 302, I.P.C. was registered against the accused and investigation was done, the inquest report was prepared, the autopsy was done on the dead body of the deceased, accused was arrested and after completing the investigation in the case, the chargesheet was filed in the Court.

3. A charge for the offence punishable u/s 302, I.P.C. was framed against the accused who pleaded not guilty and claimed to be tried.

4. In his statement u/s 313, Cr.P.C. the accused denied his complicity with the offence in question. The prosecution has examined eight witnesses P.Ws. 1 to 8 and marked Exs.P. 1 to 13. Material Objections M.Os. 1 to 6 were marked. No evidence either oral or documentary was adduced on behalf of the accused. On the basis of the evidence on record, the trial Court came to the conclusion that the offence u/s 302, I.P.C. was not made out, and, instead, the offence punishable u/s 304 Part-II of the I.P.C. was made out against the accused as he had been proved to have inflicted the injuries on the person of the deceased with the knowledge that they were likely to cause his death. Thus, he convicted him for the said offence and sentenced him as aforesaid.

5. Aggrieved by the orders of conviction and sentence passed by the trial Court, the accused has preferred this appeal.

6. Looking to the material available on record, I find that the statements of P.Ws. 1 to 4 are the only material statements to be considered in this case P.Ws. 2, 3 and 4 were got declared hostile by the prosecution on the point that they had stated that they had not seen P.W. 1 at the scene of occurrence, while P.W. 1 had categorically narrated the incident in question in detail. Since these three prosecution witnesses are strangers, not related with the deceased or the accused, I am of the view that their evidence stands on a greater footing as compared to P.W. 1 who was the uncle of the deceased and further he had an axe to grind against the accused because previous to the incident in question they had developed bitter all-feelings between them. In this view of the matter, the presence of P.W. 1 obviously appears to be doubtful. But, so far as the evidence of P.Ws. 2 to 4 is concerned, I do not find anything to discredit their testimony on the point that they had seen the accused sitting over the chest of the deceased and inflicting fist blows over his person. That apart, P.W. 2 has

further deposed that he had seen that the accused had caught hold of the deceased and hit his head to the wall of the house of Damodar Reddy. Thus, apparently enough, the evidence of these three witnesses does go to point out that the accused had voluntarily caused hurt to the deceased. The learned counsel for the accused-appellant has also conceded this point, though hesitatingly. The medical evidence also goes to point out that the deceased had died of the injuries inflicted on his person. Thus, it precipitates that the deceased Mohan Reddy had died because of the said injuries inflicted by the accused on his person.

7. Now, the important legal point that fails to be analysed in this case is, as to whether the accused had inflicted the alleged injuries on the person of the deceased with the knowledge they were likely to cause his death. The evidence available on record does not point out to any such injury which was so grievous as to constitute knowledge in the mind of the accused that by infliction of such injuries, he was likely, to cause the death of the deceased. In other words, there is nothing on record in regard to the injuries found on the person of the deceased pointedly to show that the act of the accused was done with the knowledge that he was likely to cause his death. True, death was the resultant, but this resultant could not be attributed to the knowledge of the accused because of the obvious fact that the alleged injuries found on the person of the deceased were not such so as to constitute knowledge on the part of the accused. In an offence punishable u/s 304, Part-II, I.P.C. "knowledge" is an important element, but I find, that this is missing in the instant case, and hence, it remains simplicitor an offence of "voluntarily causing hurt" as defined u/s 321 of the Indian Penal Code and punishable u/s 323 of the I.P.C. Thus, I am of the opinion, that in the instant case, only an offence punishable u/s 323 of the I.P.C. is made out against the accused-appellant.

8. In the result, therefore, this appeal is partly allowed. The orders of conviction and sentence of the accused-appellant for an offence u/s 304, Part-II of the Indian Penal Code passed by the learned I Additional District and Sessions Judge, Chittoor are set aside and, instead, he is convicted for the offence punishable u/s 323, I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of six months and also to pay a fine of Rs. 1000/- in default to undergo simple imprisonment for a period of two months.

9. Appeal partly allowed.