
(2017) 01 AP CK 0009
In the Andhra Pradesh High Court
Case No : 1601 of 2010

KALE MARIYANNA

APPELLANT

Vs

STATE OF A P REP BY PUBLIC PROSECUTOR

RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused

[Indian Penal Code, 1860](#), [Section 302](#) - Punishment for murder

Citation : (2017) 01 AP CK 0009

Hon'ble Judges : Suresh Kumar Kait, U Durga Prasad Rao

Bench : DIVISON BENCH

Advocate : K Suresh Reddy

Final Decision : Dismissed

Judgement

1. This Criminal Appeal is preferred against the judgment dated 08.10.2010 delivered in S.C.No. 395 of 2007 by I Additional District and Sessions Judge, Eluru, West Godavari District whereby the accused was found guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.500/-, in default of payment of fine, he shall undergo Simple Imprisonment for a period of six months.

2. The accused has filed the present appeal on the ground that the learned Additional Sessions Judge erred in convicting him by relying upon the testimony of PWs.2 and 3 treating them as eye-witnesses to the occurrence of the offence. The learned Judge also failed to notice the conduct of PWs.2 and 3 that they did not inform anybody in the village much more to PW1, husband of the deceased - Meramma, till the next day which would throw any amount of suspicion on the truth of their evidence. The place of occurrence and the surroundings were fully covered by thorny bushes and it was improbable that PWs.2 and 3 would have

taken their buffaloes to that area for grazing. The trial Court should have noted that PW2 was not generally taking buffaloes for grazing but her son alone was taking them daily and to explain this fact she invented a story that her son had gone for collie work on that day.

3. Sri K. Suresh Reddy, learned counsel for the appellant accused, submits that PWs.2 and 3 are relatives to PW1, thus they are interested and planted witnesses. The trial Court failed to see that the testimony of PWs.2 and 3 has not been corroborated by the medical evidence which reveals that all the injuries except one which was a lacerated injury, could not have been caused by a blunt weapon. The learned Judge has not given any importance to the alleged recovery of knife (penaka katti / curved knife) from the leaves of the hut of the appellant which circumstance was created by the investigation officer PW12 with the aid of PW1, a stock witness of the prosecution.

4. The learned counsel also submits that the learned Judge held that the deceased was having illicit intimacy with number of persons in the village but only attributed motive to the appellant who had illegal connection with the deceased since one year prior to the occurrence of offence.

5. The learned counsel further submits that the incident took place on 21.04.2005, however PW1 lodged complaint Ex.P1 on 22.04.2005. As per the statement of PW1 - informant of F.I.R., PWs. 1 and 6 went on searching the deceased on the next day of the incident at 06:00 a.m. and came to know through PWs.2 and 3 that the appellant had killed the deceased. In the complaint Ex.P1, the aforesaid fact was narrated. However, PW1 deposed in his evidence that PWs.2 and 3 informed him about the incident at mid-night on 21.04.2005. The learned counsel further submits that there was no need of searching at 06:00 a.m. if the incident had already been informed to PW1 at mid-night on 21.04.2005.

6. The learned counsel further submits that the distance between the police station and the scene of offence is two furlongs. If PW1 informed the police about the incident at mid-night itself against the appellant, what prevented PW1 from approaching the police station and getting the F.I.R. registered. He also submits that the evidence of PWs.2 and 3 does not inspire confidence for the reason that both the witnesses are related to the deceased and PW1. Initially, PWs.2 and 3 stated that they ran away from the incident due to fear, and thereafter, they stated that after seeing the incident they ran away, however did not mention due to what reason they ran away. If they had seen the incident they were supposed to inform any villager including PW1 about the incident, however they failed to do so. PWs.4 and 5, who are daughters of the deceased, admitted that the appellant had illicit relation with the deceased. So is the stand of PW1 on this aspect.

7. The learned counsel for the appellant further submits that PW6 went along with PW1 to search for the deceased on the next day of occurrence at 06:00 a.m.

however this witness did not support the prosecution case and was declared hostile.

8. The learned counsel further submits that PW1 has admitted illicit relation of the deceased with one Ananda Rao with whom she lived for around one year and had also illicit relation with another person namely Gyaneswar. In addition to the above two persons, the deceased had also illicit relation with other villagers, therefore, she might have been killed by anyone, but the appellant, who is innocent, was falsely implicated in the present case.

9. On the other hand, the learned Public Prosecutor appearing on behalf of the respondent-State, submits that PWs.2 and 3 are eye-witnesses and both are ladies, uneducated and not related to the deceased and PW1. It is not the case of the appellant that the said ladies had enemical relations with the appellant who had seen the crime. Since those ladies had seen the accused hacking the neck of the deceased by the knife, it was obvious for them to have fear in their mind. However, after some breathing time, they informed PW1 about the incident, who thereafter, got registered the F.I.R. He further submits that PW2 was not on talking terms with the deceased, and therefore, there was no occasion for her to depose against the appellant. He further submits that the incident had taken place in the year 2005 and the witnesses were examined in 2010 after a gap of six years, and therefore, minor discrepancies and contradictions in the depositions are obvious which rightly have not been taken into consideration by the trial Court, and thus, there is no merit in the present appeal and the same is liable to be dismissed.

10. Heard the learned counsel for both the parties and perused the material placed on record. The brief case of the prosecution against the sole accused appellant is that the accused and the deceased Kollabathina Meramma were having illicit relation for about 5 or 6 years prior to 21.04.2005 and it was within the knowledge of PW1, the husband of the deceased. PW1 advised his wife to put an end to extra marital affair with the accused since the children were grown up. Then, the deceased stopped meeting the accused. However, the appellant tried to continue illicit intimacy with the deceased. Refusing to have such further intimacy with the accused the deceased scolded him. On one or two occasions, the accused also beat the deceased and insisted on her to continue illicit intimacy with him. Finally, the accused made plans and killed the deceased - Meramma as she did not agree to revive illicit intimacy with him.

11. After F.I.R. was lodged, the police arrested the accused on 02.04.2005 at 03:00 p.m. at Denduluru Railway Station in the presence of panchayatdars PW8 and LW13. The accused confessed the offence and in pursuance of such confession, the knife used in the commission of offence, was recovered from the house of the accused situated at Door No. 15-46, New Colony, Peda Harijanwada, Denduluru in the presence of the panchayatdars under cover of seizure report. PW12, on completion of investigation, filed charge sheet against the accused for the offence punishable under Section 302 IPC. To bring home the guilt of the

accused, the prosecution examined as many as twelve witnesses and got marked Exs.P1 to P12 and M.Os.1 to 6.

12. PWs.2 and 3 are the eye-witnesses. PW2 deposed that as her youngest son went for coolie work in the fields on 22.04.2005, she undertook the job of grazing her buffaloes on the date of incident. She also deposed that she took the she- buffaloes for grazing to Gunderu Vagu on 21.04.2005. She further deposed that PW3 - Josephine also came there for the purpose of grazing her buffaloes. The deceased and one person namely, Tambi came there for the purpose of grazing goats. Herself, PW3 and the deceased Meramma were sitting under a neem tree. The accused came there even before the deceased reached the place. The accused went and slept under a different tree. After Meramma came there, the deceased - Meeramma went along with her goats to the place where the accused was sleeping. After sometime, at about 01:00 P.M., they heard cries of the deceased. PW2 further deposed that on hearing the cries of Meramma, herself, Josephine and Tambi went to the bund of Vagu and saw the accused hacking the deceased with the knife. On seeing it, they ran away out of fear from the said place. The accused also ran away holding the knife in his hand. She further deposed that in the midnight itself they informed PW1 that the accused hacked Meramma with the knife and killed her. It is further deposed that due to fear of the accused, she did not inform about the incident to anybody till she informed to PW1. M.O.1 is Penaka Katti with which the accused hacked Meramma. PW3 deposed on the same lines as adduced by PW2. PWs.4 and 5, who are daughters of the deceased, deposed that their mother was having illicit intimacy with the appellant and their father knew about it. They deposed that PW1 found fault with their mother about her indecent behaviour, however their mother discontinued illicit intimacy with the appellant since one year prior to her death. They also deposed that their mother told them that the appellant is still after her. On 21.04.2005, their mother went for grazing goats but did not return home.

PW6 deposed that the deceased used to graze goats. About five years ago, at the request made by PW1, he accompanied PW1 in search of missing goats. However, PW6 has not supported the prosecution case and is declared hostile.

PW8 is the panch witness who deposed that on 22.04.2005 at 09:00 a.m., the Sub-Inspector of Police visited the scene of offence. They noticed the dead body of the deceased in Vagu and also noticed M.O.2 knife headed with stick, one pair of hawai chappals, pieces of bangles i.e. M.Os.3 and 4 at the scene of offence. The police seized bloodstained earth and control earth which are marked as M.Os. 5 and 6. The police seized M.Os.2 to 6 under cover of scene of offence panchanama which is marked as Ex.P3. He also deposed that himself and Jakaraiah also signed on Ex.P3. On 22.04.2005 between 10:30 a.m and 01:30 p.m., he prepared Ex.P4 inquest report. He further deposed that on 27.04.2005, the police interrogated the accused in his presence and the accused stated that he had secreted the knife in the eves of his house. The admissible portion in the

confession panchanama is marked as Ex.P5. He further deposed that on the same day at about 04:00 or 05:00 p.m. the police seized M.O.1 knife from the house of the accused and at his instance under Ex.P6 seizure panchanam. The thumb impression of the accused was obtained on Exs.P5 and P6. Panch slips were affixed on M.O.1.

PW9 is a photographer, who deposed that on 22.04.2005, at the request of the police, he took photographs of the dead body of the deceased in the Vagu. The eight photos along with negatives are marked as Ex.P7. PW10 Dr.A.V.R.Mohan deposed that on 22.04.2005 from 03:15 p.m. to 05:15 p.m., he conducted postmortem examination on the dead body of the deceased and found the following ante-mortem injuries:

- 1) 2 x cut injury present across the nasal bridge transacting the nose. The cut edges are stained with blood clots.
- 2) 3 x 2 lacerated injury below and behind left ear.
- 3) 3 x lacerated injury present across the right elbow.
- 4) 2 x lacerated injury over middle of the right forearm on the anterior aspect.
- 5) 4 x lacerated injury over right forearm 2 cms. below the injury No.4.
- 6) Near total transaction of the left distal forearm 3 cms. above left wrist.
- 7) 3 x lacerated injury over dorsum of left hand. Wound edges stained with clotted blood. Internal Injuries:-

Head : Skull vault intact, membrane intact. Brain Matter solid. C/s. normal. Base of the skull normal.

Neck : Hyoid intact. Neck structure normal.

Chest : No rib fracture. Both lungs normal in size. C/w. normal.

Heart : Normal in size. C/s. chamber empty.

Abdomen : Symmetrical, no free fluid in peritoneal cavity Viscera normal in size. C/s. pale.

Stomach empty : pelvis intact. Bladder empty. Uterus absent. Vaginal lips swollen. No external injuries patulus allowing four fingers. No stains found in the surrounding area.

Spine : No fractures.

PW10 further deposed that he collected specimen of vaginal and Cervical Swabs, Nail Clippings and pubic hair for analysis and issued Ex.P8 postmortem report. He deposed that based on Exs.P8 and P9, he gave his final opinion stating that the deceased would appear to have died of shock and hemorrhage due to multiple injuries. The approximate time of death is 24 to 36 hours prior to the

commencement of postmortem examination. The injuries noted in Ex.P8 are possible with M.O.1. There was a struggle to avoid injuries caused on vital parts. Generally, any person would raise his hands toward the blows and in such course there is possibility of sustaining injuries on the hands.

PW11, the Sub-Inspector of Police registered F.I.R. Ex.P11.

PW12 is the Investigation Officer of the case who deposed that he received telephone message at 08:10 a.m. on 22.04.2005 from PW11 about the registration of this case. He observed the scene of offence in the presence of panchayatdars PW8 and P. Jakaraiah on 22.04.2005 at 09:00 a.m. and got prepared Ex.P3 scene of offence panchanama. He also seized M.Os. 2 to 6 from the scene of offence. He got the scene of offence photographed through PW9. Ex.P7 are the bunch of photographs of scene of offence with dead body. He prepared Ex.P12 - rough sketch of the scene of offence. He arrested the accused, interrogated him and seized M.O.1 knife from the leaves of the house of the appellant under cover of Ex.P6. After completion of investigation, PW12 filed charge sheet for the offence punishable under Section 302 IPC.

13. After closure of the prosecution evidence, the appellant accused was examined under Section 313 Cr.P.C. regarding incriminating material found in the evidence of the prosecution witnesses. The accused denied the offence. No defence evidence was adduced except marking of Ex.D1.

14. The point for consideration before the trial Court was whether the prosecution is able to prove the guilt of the accused beyond all reasonable doubts for the offence punishable under Section 302 IPC.

15. In the present case, as per the prosecution, there was motive on the part of the accused to kill the deceased. In order to substantiate the same, the prosecution placed reliance on the evidence of PWs.1 to 5 who consistently deposed that there was illicit intimacy between the accused and the deceased. PWs.1, 4 and 5 deposed that PW1 found fault with the deceased for having illicit relation with the appellant, thereby, the deceased stopped having such relation with the appellant about one year prior to the date of incident. Their evidence further shows that the appellant insisted on the deceased and threatened her to continue illicit intimacy with him.

16. In case of *Sonelal v. State of M.P.*, it is held that merely because eye-witnesses are family members, their evidence cannot per se be discarded. Relationship is not a factor to affect the credibility of the witness. In the above decision, the Supreme Court has held that over insistence on witnesses having no relation with the victims often results in criminal justice going away. It is further held that merely because eye-witnesses are family members, their evidence cannot per se be discarded.

17. The settled law is that the evidence of witnesses cannot be discarded on the ground of interestedness alone. PWs.2 and 3 are having same surname as that

of PW1. However, PWs.2 and 3 are not close relatives to PW1 or the deceased. Merely because PWs.2 and 3 are distant relatives of PW1, their evidence need not be eschewed from consideration. But, as a rule of caution, the evidence of PWs.2 and 3 has to be carefully scrutinized by the trial Court. There is no rule that the evidence of PWs.2 and 3 shall be corroborated by independent witness. The evidence of PWs.2 and 3 in the case certainly inspires much confidence for the reason that none of the witnesses were related either to the deceased or to PW1. Initially, when they say the crime they had fear in mind, however, after mustering enough courage, they first of all informed PW1 about the incident. Their deposition is consistent throughout. Both the above-mentioned witnesses had seen the crime from the bushes and babul trees around the Vagu.

18. In cross-examination, PW1 deposed that it is not possible to enter into the Vagu, as such, the appellant could not get into it. The incident had taken place in the year 2004 and PWs.2 and 3, who are the eye-witnesses, were examined in the year 2010, therefore, it was obvious to have some contradictions and discrepancies in their evidence. They are illiterate and ladies and it was also obvious that being ladies, on seeing such a brutal crime, they might, out of fear, did not tell anybody including the villagers. But, only after mustering enough courage they had disclosed to PW1, the husband of the deceased, about the incident. Moreover, the weapon used in the crime was recovered at the instance of the appellant from his house.

19. In view of the clinching evidence of the prosecution witnesses, we find no illegality or perversity in the findings recorded by the trial Court. The judgment under appeal is perfectly justified and does not warrant any interference by this Court. The arguments raised on behalf of the appellant do not shatter the credibility of the prosecution case. Hence, the Criminal Appeal is devoid of merit and the same is accordingly dismissed. As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.