
(1998) 03 AP CK 0016

In the Andhra Pradesh High Court

Case No : Criminal A. No"s. 272 and 534 of 1997

Kamalesh Kumar Tewari

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 84

Citation : (1998) 3 ALD 582 : (1998) 1 ALT(Cri) 527

Hon'ble Judges : V. Bhaskara Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. C. Praveen Kumar, for the Appellant; Public Prosecutor and Mohd. Tapudduri Ghori, for the Respondent

Judgement

Motilal B. Naik, J.—These two appeals are filed by sole accused in S.C. No.268 of 1996. who has been found guilty of committing an offence u/s 302 of the Indian Penal Code and has been sentenced to suffer rigorous imprisonment for life.

2. Criminal Appeal No.272/1997 is preferred through Advocate Sri C. Praveen Kumar, whereas Criminal Appeal No.534 of 1997 is preferred by the accused himself through jail. Though on record there are two appeals, but for all practical purposes, we take it that the accused has preferred only one appeal questioning the decision of the trial Court and we decide these appeals as one in the following manner by a common Judgment.

3. The accused was charged alleging that on 15-5-1995 around 3 PM at Pavan Talkies, Nizamabad town, he committed murder of Thota Maruthi, intentionally and knowingly, causing his death by inflicting injuries on the chest and thus committed an offence punishable u/s 302 of the Indian Penal Code.

4. The prosecution case in brief is a under:

The accused and the material prosecution witnesses are residents of Nizamabad town. The deceased was also a resident of Nizamabad town. The deceased is

closely related to PW. 1 through his mother. On 15-5-1995 around 3 p.m. when PW3 was going to take tea, he noticed the accused and the deceased dashing each other near the northern side gate of the cinema theatre. The accused questioned the deceased stating that he should see while walking. Thereupon the accused abused the deceased. The deceased also retaliated by hurling accusations against the accused. The accused at that stage stabbed the deceased with a knife on the left side of the chest of the deceased and also on his left shoulder and on the left thigh. As a result of these injuries, the deceased fell on the ground. The accused ran away from the scene of the offence. PW.5 and others chased the accused and caught hold of him.

5. On the same day viz., 15-5-1995 around 4 p.m.? PW.6 the Head Constable received Ex.PI complaint from PW1 PW.6 registered the same as crime No.150/1995 u/s 302 IPC and issued Ex.P3 FIR which was sent to all concerned. On 15-5-1995 around 4.30 p.m., PW7, the Inspector of Police, visited the scene of offence and prepared a rough sketch in Ex. P5. PW7 also drafted Observation Report Ex.P4. PW7 examined PWs.1 and 4 and recorded their statements. PW7 also questioned the accused and recorded his confessional statement and pursuant thereto, recovered MO.3 from the possession of the accused in the presence of the mediators. The report of mediators is Ex. P6.

6. On the next day i.e., on 16-5-1995 PW7 held inquest over the dead body of the deceased in the presence of PW.5 and others, Ex.P2 is the inquest report. On a requisition, PW8, the Civil Assistant Surgeon, District Headquarters Hospital, Nizamabad, conducted autopsy over the dead body of the deceased on 16-5-95 around 10.35 AM to 12 noon and issued Ex. P10 the post-mortem certificate. According to the Post-Mortem Certificate, the Doctor opined the cause of death is due to shock and internal haemorrhage due to stab injuries. PW7 arrested the accused on 15-5-1995 around 5.30 p.m. and was sent to judicial remand on the next day. The successor of PW.7 filed the charge sheet after completing the investigation.

7. The prosecution examined as many as 8 witnesses on its behalf including the Doctor who conducted post-mortem examination, as PW8. The prosecution also got Exs, PI to P10 and MOs. 1 to 3 marked. On behalf of defence, neither any witness was examined nor any documents were marked.

8. On the basis of the incriminating evidence found against the accused, particularly the oral evidence, the accused was examined u/s 313 of Code of Criminal Procedure. The accused, however, pleaded not guilty.

9. Notwithstanding the pleading of not guilty by the accused, the learned Sessions Judge, Nizamabad found the accused guilty of committing the offence u/s 302 IPC and sentenced him to undergo imprisonment for life for the same. While ordering sentence, the trial Court also set off the period of detention already undergone by the accused as under trial prisoner. This is the decision which is assailed before us on various grounds.

10. Sri. C. Padmanabha Reddy, learned senior Counsel representing Sri. C. Praveen Kumar firstly contended that the accused has been suffering from Schizophrenia from 1993 and therefore, the mental condition of the accused should have been weighed with the Court below while imposing sentence on the accused. Learned Counsel further contended that the alleged incident taken place around 3 p.m. on 15-5-1995 is due to sudden provocation and therefore, the accused could not have been sentenced u/s 302 of I.P.C., be utmost the punishment could have been u/s 304 Part II of I.P.C. Counsel further contended that the evidence of PW1, who is no other than a close relative of the deceased and proprietor of the cinema theatre, has his own reasons to implicate the accused and contended that the evidence of PW1 ought not to have been believed. That apart, learned Counsel further stated that the evidence of PWs.2 and 3 who are none else than the employees of PW1 working in the cinema theatre in different capacities, has reasons to support the version of PW1, who being a proprietor of cinema theatre and therefore, the evidence of PWs.1, 2 and 3 could be treated as interested one and thus, pleaded the lower Court is not justified in finding the accused guilty of the offence. It is lastly contended that as per the evidence of the Doctor, injury No. 1 is fatal which resulted in the death of the deceased and if that is the case, the accused has no intention to cause such injury and the lower Court could have given, in the circumstances, a probable benefit and impose a lesser sentence.

11. The learned Public Prosecutor has, however, pleaded before us that the prosecution witnesses have spoken to the incident truthfully and there is nothing elicited in the cross-examination on behalf of the accused to throw aspersions on the prosecution witnesses and pleaded that the trial Court is justified in finding the accused guilty u/s 302 of Indian Penal Code and sentencing him to undergo imprisonment for life. That apart the learned Public Prosecutor also pleaded before us that the plea of the accused that he is suffering from Schizophrenia cannot be accepted at this point of time as there is no evidence before the lower Court or before this Court to show that at the time of commissioning the offence, the accused was suffering from the said disease; as a result he was not in a fit state of mind to understand the implications of his acts. The learned Counsel, therefore, pleaded that the new story placed before this Court cannot be accepted and the decision rendered by the trial Court cannot be interfered with.

12. On an elaborate hearing of both the Counsel, we shall now examine the fresh plea put forth by the Counsel for the accused. Counsel stated that the accused has been suffering from Schizophrenia from 1993 and pleaded that when he is not in a fit state of mind, it is likely that the acts done by him are not known by him. We do not think this plea could be accepted. Section 84 of I.P.C. no doubt requires that when such a plea is made before the Courts, they are called upon to examine whether the plea could be entertained and if the Court finds substance in the said plea, the accused is entitled for certain benefits intended in Section 84 of I.P.C.

13. The law laid down by various Courts insofar as granting benefit to the accused u/s 84 of I.P.C., the burden heavily rests on the accused not only to plead but also to prove that as on the date of commissioning the offence, he was not in a fit state of mind. Recently in Criminal Appeal No.994/1996, dated 4-2-1998, myself and brother V. Bhaskara Rao, J., while examining the implication of Section 84 IPC., held that the accused could take such a plea at the very first opportunity which he gets, that is to say had the accused pleaded before the Court below at the time of framing of charges, or when he was questioned u/s 313 of Criminal Procedure Code or had the accused been examined immediately after commission of the offence by an appropriate medical authority and such authority had opined that the state of mind of the accused at the time of commission of offence was fluid, in other words when the accused took the plea of insanity, there shall be corroborating medical evidence. In the absence of such corroborating medical evidence, the plea of insanity cannot be accepted. In these circumstances, of course, the Courts are called upon to examine whether the accused is entitled for the relief available u/s 84 of I.P.C. In this case the plea now set forth on behalf of the accused is not urged before the trial Court nor any medical evidence is placed before the trial Court to examine the intricacies. A belated plea is now taken before us appealing to our conscience about the relief the accused is entitled u/s 84 of I.P.C. In the absence of any material much less medical opinion before us, we are unable to endorse the plea set forth by the accused and grant concession u/s 84 of IPC. The plea is, therefore, rejected.

14. Coming to the submission that the evidence of PWs.1, 2 and 3 being interested witnesses and their evidence cannot be believed, we are afraid this plea would also not ensure to the benefit of the accused. It is no doubt true that PW. 1 is related to the deceased and he is the proprietor of the cinema theatre. PW. 1 has deposed that the deceased died due to stab injuries caused by the accused near out gate of the theatre. He also stated that the incident took place at 3 PM in the premises of the theatre. He further deposed that the deceased was taken to Hospital by one B.J. Philips. He was informed by B.J. Philips about the death of the deceased. He went to the hospital and saw the dead body. He deposed that he found stab injuries on the chest, thigh and left hand and thereafter he makes a complaint in Ex.P1 to the competent police authority. PW.2 who is the Manager of the theatre deposed that the incident took place around 3 PM. There was a quarrel between the accused and the deceased. On seeing the quarrel, he went to the place of the incident which is near the gate of the theatre. He noticed the accused stabbing the deceased with a knife on the left side below the chest and on his left upper arm and on the left thigh. As a result of the said injuries, the deceased fell on the ground in the theatre premises. PW2 also mentions the name of PW3 and others and he mentions the fact of injured being taken to Government Hospital, Nizamabad in a rickshaw. In the cross-examination of PW.2, the defence is unable to shatter the testimony of his evidence.

15. PW.3 who is Gate Keeper working in the cinema theatre deposed that the incident took place around 3 p.m. on that day. He also deposed that when he was going out to take tea, the deceased and the accused dashed against each other near the northern side of the gate. The accused questioned and asked the deceased to see and walk. The accused stabbed the deceased with knife on the left side of the chest of the deceased and on his left shoulder and on the left thigh. As a result of these injuries, the deceased fell down. The accused left that place running after stabbing. According to PW.3, two police constables chased the accused and caught hold of the accused. In the cross-examination of PW.3, no discrepancies are elicited by the defence. PW4, a police constable working in I Town Nizamabad Police Station stated that he was on duty till 12 noon on the day of incident. He came to Bodhan bus stage which is near Pavan theatre to receive his wife who was to come from Kuntam village, PW4 deposed that himself and another constable Narsiah, PC., 1120, while waiting near the bus stand near Pavan theatre, Nizamabad, around 2.30p.m., they noticed the accused and the deceased quarrelling. PW4 further deposed that the accused stabbed the deceased with Chaku three times on his left side chest, left arm and left thigh and after stabbing the deceased, he ran away. According to PW4, himself and P.C. Narsiah chased the accused and caught hold of him and they took him to I Town Nizamabad Police Station. The evidence of PWs. 2, 3 and 4 is to the fact of the incident and the accused stabbing the deceased. PW1 though not a witness to the incident, but he deposed that the incident was reported to him by PW2, who is the Manager of the theatre.

16. The submission that the evidence of PWs.1 and 3, who are interested witnesses and hence their testimony cannot be believed, is not acceptable for the reason that PW.1 is no doubt related to the deceased, but PWs.2 and 3 are not related, whereas PW.4 is a constable not related to anybody and who was waiting to receive his wife near the bus stage in the vicinity of the cinema theatre. PW.4 further deposed that he along with another constable Narsiah was waiting at the bus stage and had witnessed the incident. That being the position, we do not think the submission that the evidence let in by the prosecution is only through the interested witnesses and such evidence cannot be accepted has no substance.

17. Coming to the medical evidence, the Doctor who is examined as PW.8 has found the following three injuries:

1. Elliptical wound 1/2" long 1 inch to the left of left nipple.
2. Elliptical wound 1/2" inch long, posterior aspect of left elbow.
3. Elliptical wound one inch long, lateral aspect of left thigh.

18. The injury No.1 extended through the left chest while in between 4th and 5th rib into the left ventricle. According to the Doctor, injury No.1 i.e. elliptical 1/2" long x 1" to the left nipple is fatal and that injury is sufficient to cause the death in ordinary course of nature. According to the Doctor, the cause of death is due to shock and internal hemorrhage.

19. The prosecution witnesses particularly PWs. 2, 3 and 4 have spoken to the fact that the accused inflicting three injuries. The medical evidence confirms these three injuries on the body of the deceased. When there is direct evidence which is supported by medical opinion, we do not think the prosecution case could be rejected on some flimsy grounds. Though the learned Counsel for the accused pleaded that as there was a sudden provocation and it was not intended to cause death, at best the offence could be brought u/s 302 Part II of I.P.C. We do not think this submission could be accepted so as to presume that there was sudden provocation. The defence would have made efforts to lay foundation to create a doubt in the minds of the Court that there was sudden provocation which resulted in the accused unknowingly inflicting the injuries. In the absence of any such foundation being laid on behalf of the defence, we are not prepared to accede to such submissions.

20. In view of the discussion, we find that the learned Sessions Judge is justified in finding the accused guilty of committing an offence u/s 302 of I.P.C. and sentencing him to undergo imprisonment for life.

21. During the course of rendering the judgment, learned Counsel appearing on behalf of the appellant made yet another effort before us contending that the accused being 20 years old and hence he is entitled to be sent to Borstal School. The benefits which are available to the accused is no doubt could be extended, but unfortunately on behalf of the accused no such plea was taken before the trial Court nor the age of the accused was subjected to scrutiny before the trial Court. As on the date of the offence, the age of the accused was described as 20 years, the incident having taken place on 15-5-1995. By the time the trial completed and decision rendered by trial Court, the accused had crossed 21 years. In the grounds of appeal, this plea has not even been taken by the accused, We are, therefore, of the view, this belated plea is not available to the accused.

22. Though the punishment u/s 302 of IPC requires imposition of fine also, the Court below has only imposed the sentence of life imprisonment. We, therefore, hold that apart from life imprisonment, the accused shah also be liable to pay fine of Rs.500/-, in default, to suffer one month rigorous imprisonment.

23. In the result, the Criminal Appeal No.272 of 1997 is dismissed. The conviction and sentence imposed by the trial Court are confirmed. The accused is directed to pay a fine of Rs.500/- also, in default, to suffer one month rigorous imprisonment.

24. Since Criminal Appeal No.272 of 1997 is dismissed, Criminal Appeal No.534 of 1997 shall also stand dismissed.