
(1985) 01 AP CK 0011
In the Andhra Pradesh High Court

Kanuru Yanadi Changaiah and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 29-01-1985

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302, 395, 396, 397

Citation : (1985) CriLJ 1822

Hon'ble Judges : Ramanujulu Naidu, J;Anjaneyulu, J

Bench : Division Bench

Judgement

Ramanujulu Naidu, J.—On the intervening night of 17/18th Nov. 1979 one Sivanafayana Reddy, a resident of Venkatarajupally, while he was sleeping in his house on a cot, was attacked with an iron rod, when he woke up on hearing cries of his wife, who was roused from slumber when a gold chain was snatched away from her neck while she was sleeping on a separate cot nearby that of her husband. P.W. 6, the wife of Sivanarayana Reddy was also injured by the culprits after snatching away the gold chain from her neck. Sivanarayana Reddy succumbed to the injuries inflicted on him. As many as six accused were tried in that behalf on charges punishable under Sections 457, 396, 302 read with Section 149 of the Penal Code and u/s 397 of the Penal Code by the learned Additional Sessions Judge, Cuddapah in Sessions Case No. 32/81. The learned Sessions Judge acquitted the accused of the offences punishable under Sections 396, 397 and 302 read with Section 149 of the Penal Code. A 6 was acquitted of all the charges. He however convicted A 1 to A5 under Sections 457 and 395 of the Penal Code and sentenced each of them to suffer rigorous imprisonment for a term of five years. Both the sentences were directed to run concurrently.

2. Criminal Appeal No. 159 was preferred by A2 to A4 assailing the convictions and the sentences. A1 died after the judgment was delivered by the learned Sessions Judge. A5 did not prefer any appeal assailing his conviction. Criminal Appeal No. 623 of 1983 was preferred by the State assailing that part of the judgment of the learned Sessions Judge acquitting the accused under Sections

396, 397 and 302 read with Section 149 of the Penal Code.

3. The case of the prosecution briefly stated is as follows : The deceased Sivanarayana Reddy was sleeping on a cot laid on the verandah in front of his house. On the night of 17-11-1979 his wife, P.W. 6, was sleeping nearby on another cot. P.W. 6 had a gold chain on her neck. After past mid-night the gold chain was snatched away from her neck by some unknown offenders. She woke up and raised cries while it was being snatched away. On hearing her cries the deceased also woke up. About 6 or 7 offenders armed with sticks and torch lights in their hands were noticed by them. A6 dealt two or three blows on the head of the deceased with an iron rod. On receipt of the blows the deceased fell down. When P.W. 6 cried aloud she was also beaten on her head with a stick and she became unconscious. P.Ws. 2 to 4, the neighbours of the deceased, attracted by their cries rushed to the house of the deceased and noticed the culprits running away from the house of the deceased. The deceased and P.W. 1 were brought to the police station, Chitvel, at 6.00 a.m. on 18-11-1979 in a double bullock cart. A statement, Ex. P.I, setting out the occurrence was recorded from P.W. 1, by P.W. 17, Head Constable of the police station, Chitvel, and the same was registered as Crime No. 65/79 of Chitvel police station. The deceased and P.W. 6 were referred to S.V.R.R. Hospital Tirupati for examination and treatment. The deceased however passed away in the hospital at 10.35 a.m. on 18-11-1979. After completion of investigation into the case the Inspector of Police, Rajampet, P.W. 19 filed the charge-sheet.

4. The convictions of A1 to A5 were based upon the alleged recoveries of M.Os. 3 and 7 at their instance and on their being identified as the culprits by P.Ws. 1 to 4 and 6 at the identification parades held by the Munsif Magistrate, Rayachoty, P.W. 10, in the premises of Sub-Jail, Rajampet, on 21-5-1980 and 23-8-1980.

5. P.W. 18, the Sub-Inspector of Police, Chitvel, would have it that he arrested A1 in the presence of P.W. 16, village munsif of Kampasamudram, that A1 when questioned by him made statements Exs. P.12 and P.13 that A1 led him and the mediator to the field of Gundalareddi and pointed out the hut of A2, that A2 to A5 were found sleeping in the hut, that A2 to A5 were also arrested by him, that when questioned by him A1 to A5 made a joint statement, Ex.P 14, leading to recovery of M. Os, 3 and 7 pledged with P. W. 12 and that M.Os. 3 to 7 were identified by P.W. 1 and 6 as their stolen property. No separate statements were recorded from A1 to A5 by P.W. 18 and Ex.P. 14 purports to be a joint statement recorded from them. Such a statement is wholly inadmissible and no reliance can be placed upon any recoveries alleged to have been made in pursuance of Ex. P14. We must also observe that in the first information lodged by P.W. 1 no particulars of the stolen property were either furnished. All that is complained of in Ex.P 1 is that a gold chain was snatched away from the neck of P.W. 6 M.O. 3 is only a piece of gold chain. Identification of M.O. 3 by P.Ws. 1 and 6 is therefore inconclusive. In any event, as already stated, no weight can be attached to the alleged recoveries of M.Os. 3 to 7 at the instance of A1 to A5.

6. P.W. 10, the Munsif Magistrate, Rayachoti, no doubt deposed that at the identification parade held by him in the premises of Rajampet Sub-Jail on 21-5-1980 and 23-8-1980 P.W. 1 identified A-5, that P.W. 2 identified A-3, that P.W. 3 identified A-4 and A-5, that P.W. 4 identified A-3 and that P.W. 6 identified A-1 and A-2 as the culprits. It may be recalled that the occurrence took place in the small hours of 18-11-1979. A-1 to A-5 were not known to P.Ws. 1 to 4 and 6 before. They were absolute strangers to them. P.Ws. 1 to 4 and 6 would have it that in the light shed by two burning bulbs, one bulb of zero watt and another of 100 watts, the culprits were seen by them. The learned Additional Sessions Judge disbelieved their version that an electric bulb of 100 Watts was burning in the verandah on the fateful night. He however accepted the other part of their version that a bulb of zero watt was burning in the verandah. Even accepting that portion of their version we very much doubt whether P.Ws. 1 to 4 and 6 could have distinctly identified the culprits. We must also observe that no descriptive particulars of the culprits were either furnished in Ex.p-1 or given out before P.W. 10. A-1 to A-5 also complained before P. W. 10 that they were shown to the witnesses two or three days before the first identification parade was held and the same was incorporated in Ex.P-8, the proceedings drawn up by P.W. 10, relating to the first identification parade held by him. We do not therefore consider it safe to act upon the testimony of P.Ws. 1 to 4 and 6 relating to the identification of the culprits. There being no reliable evidence connecting the accused to the crime, A-2 to A-5 are entitled to be acquitted of all the charges. Though no appeal was preferred by A-5 this Court is empowered to set aside the convictions of A-5 and the sentence inflicted on him exercising its inherent powers to prevent miscarriage of justice. We therefore set aside the conviction of A-2 to A-5 and the sentences inflicted on them.

7. Criminal -Appeal No. 159 of 1982 is accordingly allowed, while Criminal Appeal No. 623 of 1983 is dismissed, A-2 to A-5 represented to be in jail shall be set at liberty forthwith, if not required in any other case.