
(2000) 02 AP CK 0070

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1041 of 1998

Koduri Manohar and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2000) 1 ALD(Cri) 502 : (2000) 1 ALT(Cri) 427 : (2000) CriLJ 4845

Hon'ble Judges : Ramesh Madhav Bapat, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : B. Jaga Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Madhav Bapat, J.—Accused Nos. 1 and 2 who are tried by the learned Sessions Judge, Karimnagar in Sessions Case No. 872/96 are the appellants herein. Originally, 56 accused were charged for an offence punishable under Sections 147, 148 and 307 read with 149 IPC. But the learned Sessions Judge acquitted Accused Nos. 3 to 5 of all the charges and the appellants herein were convicted for the offence punishable u/s 302 IPC and sentenced them to undergo life imprisonment.

2. The gravamen of the charge against the accused-appellants was that on 24-10-1995 at about 7.45 pm the appellants along with the other accused had attacked one Sriramulu Jagan Mohan (deceased) near the post office, Ramnagar, of the Karimnagar town. It is further alleged that the appellants stabbed the above person with knives causing bleeding injuries. Accused Nos. 3 to 5 are alleged to have caught hold of the deceased. It is further alleged that due to the injuries caused, the victim died on 25-10-1995 in the MGM Hospital, Warangal while undergoing treatment. The prosecution story can be briefly narrated as under :

3. That the accused and the material witnesses are the residents of Karimnagar town. The deceased Sriramulu Jagan Mohan was also a resident of Karimnagar town, but in different locality. He was employed in M/s. Sripriya Real Estates. PW. 1 happened to be the father and PW. 2 happened to be the friend of the deceased. That about 8 months prior to the incident, A-1 and his friends alleged to have bet one Ramesh and Sathyam. In that case, the deceased was cited as a witness and the accused have threatened him not to give evidence in Satyam's case in Cr. No. 58 of 1995. Further, one month prior to the incident, PW. 2 brought one girl by name Madhavi from Hyderabad in order to marry her. In that issue the deceased and parents of PW. 2 were not agreed for the marriage of PW. 2 with that girl. Then also, A-1 to A-5 said to have advised PW.2 to marry the said girl. That in this regard, there was a quarrel between the accused and the deceased.

4. It is further stated by the prosecution that on 24-10-1995 at about 7.35 pm. PW. 2 was returning from Padmanagar to Ramnagar side on his cycle. The deceased was also going on the same road. When they reached near Ramnagar post office, A 1 to A 4 alleged to have attacked the deceased and threatened him that they would kill him if he gives evidence in the criminal case in which A1 and his friends are involved. That when the deceased refused to accept the demand of the said persons (A1 to A5), they beat the deceased with hands; A2 caught hold of the neck of the deceased and bent him; A1 stabbed the deceased with a knife on his back and when A2 tried to stab the deceased, he had escaped by receiving injuries to the left arm and left palm. After the incident, the deceased was taken to Karimnagar II town police station by PW. 2 and one Mohd. Fasiuddin, who watched the incident.

5. It is further stated by the prosecution that the Assistant Sub Inspector of Police (PW. 8) recorded the statement of the deceased and registered case in Cr. No. 315 of 1995 under Sections 148, 307 read with 149 IPC. He made arrangements to dispatch a copy of the FIR to all concerned. PW 8 seized M.Os. 1 and 3 under Panchanama and sent the deceased to Government Hospital, Karimnagar. That from the Government Hospital, the deceased was shifted to MGM Hospital, Warangal, where he succumbed to injuries.

6. It is further alleged by the prosecution that on receipt of death intimation of the deceased, the section of law was altered from 307 to 302 IPC. Inquest was conducted by PW. 8 over the dead body of the deceased and later the dead body was sent to Dr. P. Rajmohanlal of Kakatiya Medical College, Warangal (PW. 5) for conducting autopsy. PW. 5 conducted autopsy over the dead body of the deceased and submitted Post Mortem Report under Ex. P-3. He opined that the cause of death of the deceased was due to stab injuries on the chest.

7. It is further alleged by the prosecution that on 5-11-1995, on receipt of information, the Circle Inspector of Police (PW.10) went to the house of A-1 and apprehended A-1 to A-5 and when they were in police custody, they alleged to have expressed their willingness to discover certain articles. Pursuant to the said

confession, PW. 10 recovered M.Os. 4 to 5 from A-1 and A-2 under the cover of panchanama (E. 6) in the presence of panch witness-PW. 7. Thereafter, A-1 to A-5 were sent for judicial custody on 6-1-1995. After completion of the investigation, PW. 10 had filed the charge sheet.

8. In order to connect the accused with the crime, the prosecution led the evidence of PW. 1 to 10 and produced certain documents which were marked as Exs. P. 1 to P 14. PW. 1 happened to be the father of the deceased; PW. 2 happened to be the friend of the deceased and eyewitness; PW. 3 was the doctor who had treated the deceased at Karimnagar Hospital; PW. 5 is the panch witness for the seizure of M.Os. 1 to 3 and also happened to be the younger brother of PW. 7 and friend of the deceased belonging to the same group; PW. 5 is the doctor who had conducted autopsy over the dead body of the deceased; PW. 6 is the Punch witness for inquest and also known person to the deceased being the resident of the same locality; PW. 7 is the punch witness for confession statement of the accused and recovery of M.Os. 4 and 5. He is also happened to be a friend of the deceased. PW. 8 is the Assistant Sub Inspector of Police who had registered the case and issued FIR; PW, 9 is the duty doctor in the Karimnagar Hospital who had admitted the injured and referred to the concerned for treatment; and PW. 10 is the Circle Inspector of Police and the second Investigating Officer.

9. In order to prove that the deceased died a homicidal death, the prosecution led evidence of PWs. 10 and 6," PW. 10 conducted inquest over dead body of the deceased in the presence of PW. 6. The inquest report is produced on record as P-4 after the investigation was completed. Thereafter, the dead body of the deceased was sent to PW. 5 for conducting autopsy. PW. 5 happened to be the Assistant Professor, Forensic Medicine, Kakatiya Medical College, Warangal. On receipt of request, he conducted autopsy over the dead body of the deceased and noticed the following external injuries :

Hospital bandage with plasters stripe present over back of the chest; and one more hospital bandage present over right flank of the chest with drainage tube with surgical wound of 1 x 1 cm cavity deep for drainage tube.

Post mortem lividity present over the back. Cornea is hazy in the both eyes; Rigor mortis present all over the body.

On internal examination , the doctor noticed the following injuries :

1. One sutured stab wound measuring 2.5 cm x 0.75 cm cavity deep present over the back of the chest in its left side 2 cms away from the midline and 27 cms below the C7.

The wound is obliquely placed and directed upwards, forward medially and entered into the right chest cavity through intercostals space piercing the right lung in its lower region measuring 2x2x0. 5 cms chest cavity about 1.5 Ltr. Blood and clots.

2. One cut wound present over outer side of the Lt. hand 3 cms. away above from the base of the thumb; Msg. 2.5 x 0.25 cms. skin deep;
3. One deep abrasion over back of the left elbow msg. 3 x 0.5 cms.

According to the doctor, the cause of death of the deceased was due to stab injury to the chest. Ex. P-3 is the Post Mortem certificate issued by the doctor.

10. Considering the above facts, we hold that the prosecution did prove that the deceased died a homicidal death.

11. PW. 2 is the only eye witness to the incident and the second set of evidence which was led by the prosecution is in the form of dying declaration. As stated earlier, when the deceased was stabbed, he was taken to the police station. His statement was recorded and on the strength of the statement made by the deceased, PW. 8 registered a case in Crime No. 315 of 1995 under Sections 148 and 307 read with 149 IPC. But on receipt of the death intimation, the crime was changed from Section 307 to 302 IPC. Thus, we have the version of the eye witness as well as the evidence in the form of dying declaration.

12. Sri Jagal Reddy, appearing on behalf of the accused submitted at the Bar that the evidence of PW. 2 should not be accepted without corroboration, as he is the interested witness. We are not in agreement with the submission made by the learned Counsel. Though PW. 2 is interested in the deceased and also a friend of the deceased, but it does not mean that he would always tell lies. According to the evidence of PW. 2, he has seen the accused encircling the deceased near the Ramnagar post office; A-1 and A-2, the appellants herein, were carrying knives in their hands; A-1 had given a stab injury on the chest .of the deceased; A-2 also wanted to stab the deceased on the chest, but luckily the 2nd stab did not land on the chest as the deceased tried to escape from the clutches of the accused and the stab landed on the left hand and the left palm. Thus, it can be seen from the evidence of PW. 2 that A-1 and A-2 were carrying knives in their hands and the 1st stab itself was on the chest of the deceased which would indicate that the accused had intention to kill the deceased. Therefore, we have no hesitation in holding that the evidence of PW. 2 inspires confidence.

13. In order to get the corroboration to the version of PW. 2 we have to see the FIR lodged by the deceased himself, which achieved the importance of dying declaration after his death. As stated above, immediately after the incident, the injured (deceased) was taken to the hospital by PW. 2 and one Mr. Fasiuddin. The evidence of Mr. Fasiuddin was not recorded in the trial Court as he has gone abroad. The dying declaration cum FIR is at Ex. P 8 in which the deceased has categorically stated that Manohar and Satyanarayana (appellants herein) stabbed him with knives on his back and left hand causing bleeding injuries. He has also stated that the incident was noticed by one Fasiuddin and Kiran (PW. 2). Thus, we hold that the evidence of PW. 2 is perfectly corroborated by the dying declaration of the deceased.

14. We have one more set of evidence i.e., evidence of PW. 1 who happened to be the father of the deceased. When PW. 1 received the information regarding the assault of his own son i.e., the deceased, he rushed to the hospital and asked him as to who stabbed him. Thereupon, the deceased told his father that he was stabbed by A-1 and A-2 while A-3 to A-5 had caught hold of him.

15. Thus, the above evidence is more (than sufficient to hold the accused-appellants guilty of the offence punishable u/s 302 read with 149 IPC.

16. Therefore, we are of the view that there is no reason to interfere with the order of conviction and sentence recorded by the trial Court against the appellants and the same is confirmed. The appeal is dismissed.