
(2007) 12 AP CK 0028

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 1347 of 2004 and 1165 of 2005

Koona Ramakrishna Reddy and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 31-12-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2008) 1 ALD(Cri) 677 : (2008) 2 ALT(Cri) 4 : (2008) CriLJ 2918

Hon'ble Judges : L. Narasimha Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

L. Narasimha Reddy, J.—The appellant herein were tried by the Sessions Court, Anantapur, on the charges that they committed the murder of one Pedavannuru, on 16-03-1998 and caused injuries to some persons. They were committed for the offences under Sections 304 Part-II read with Section 149 I.P.C., and 148 IPC, in S.C. No. 15 of 2000. They were sentenced to undergo rigorous imprisonment for seven years each, for the offence u/s 304 Part-II, read with 149 IPC. For the offence u/s 148 IPC, sentence of rigorous imprisonment for two years each was imposed. In addition, appellants 3 and 8 were convicted, for the offence u/s 324 IPC, and were sentenced to undergo rigorous imprisonment for two years each. The sentences were directed to run concurrently.

2. While Criminal Appeal No. 1347 of 2004 is filed by the accused against the convictions and sentences imposed against them, Criminal Appeal No. 1165 of 2005 is filed by the State, challenging the acquittal of the appellants for the offence u/s 302 I.P.C., and the quantum of sentence awarded against them for the offence u/s 304-II I.P.C.

3. The case before the trial court was that there existed two factions in the Medimakulaapalli village of Pedda Vadugur Mandal, Anantapur District, one led by Venkata Ranga Reddy, and the other by Garuda Sekhar Reddy. The appellants

were said to be the followers of Venkata Ranga Reddy. On 16.3.1998, the appellants were alleged to have chased PWs-4 and 5, with a view to kill them, when the latter were waiting at the nearby bus stand. PWs-4 and 5 ran towards the village, entered the house of PW-4 from the southern entrance, and fled away through the western entrance. At that time, PW-1, the mother of PW-4, the deceased Pedavannuru, PW-7, the brother of the deceased, PW-2, wife of paternal uncle of the deceased, and PW-3, the daughter of the said witness, were said to be in the front yard of the house of PW-4. It was alleged that the deceased was unwell and PW-1 was giving a tablet to him, and in the meanwhile, on finding that PWs-4 and 5 have escaped, all the appellants have gathered, in front of the house of PW-4, and started attacking the deceased, one after the other, with the sickles in their hands. It was alleged that when PWs-1 and 2 tried to intervene, appellants 8 and 3 attacked the said witnesses and caused the injuries. It was also stated that appellant No. 9 had kicked the deceased on the chest, and thereafter, appellant No. 1 also kicked him and as a result, the deceased died.

4. On receiving intimation of the incident through telephone, the police visited the scene of occurrence and recorded the statement of PW-1. The same is marked as Ex.P-1, and on the basis of it, an FIR, marked as Ex.P-7, was issued, by registering Crime No. 10 of 1998. Subsequently, the inquest on dead body was conducted through Ex.P-2, and the post-mortem of the dead body was certified through Ex.P-3. Exs.P-4 to P6 are wound certificates. Charges under Sections 147, 148, 324, 323 and 302 read with 149 of IPC were framed. All the appellants pleaded not guilty.

5. The trial court acquitted the appellants, of the offence u/s 302 I.P.C., but convicted all of them for the offences under Sections 148, 304 part- II read with Section 149 of IPC and appellants 3 and 8, for the offence u/s 324 I.P.C. It punished them with the sentences referred to above. Sri C. Padmanabha Reddy, learned Senior Counsel appearing for the accused, submits that even according to the prosecution, the village is faction ridden, and the evidence on record discloses that the accused were implicated without any basis. He contends that the evidence of PW-1, the alleged eye witness, is not only at variance with the other evidence on record, but there are also several internal contradictions. He submits that neither the parents, nor the other kin of the deceased, filed any complaint, whereas an interested, premeditated and concocted version was put forwarded by PW-1, was treated as the basis for prosecution.

6. Learned Senior Counsel points out certain portions of the evidence of the independent witnesses, to buttress his contention about the contradictions. He further submits that there was no complaint in its strict sense, and even the so-called recording of statement was done, three hours after the occurrence, and this was sufficient for the factionists to carve out a plan, to implicate their rivals. He submits that there do not exist any ingredients of Section 148 or 149 of IPC, since even according to the prosecution, the object of the accused was to attack

PWs-4 and 5. He submits that the appeal filed by the State does not deserve any consideration.

7. Learned Public Prosecutor, on the other hand, submits that there were as many as four eye witnesses, viz; PWs-1 to 3 and 7, to the occurrence, and all of them have consistently spoken to the manner, in which the appellants have caused the death of the deceased and injuries to PWs-1 to 3. According to him, soon after receiving the information, the police swung into action, and in the process, the statement of PW-1 was recorded. It is also urged that though the object of the appellants was to attack PWs-4 and 5, suddenly they changed it, since PWs-4 and 5 escaped, and decided to attack the deceased. He submits that the evidence on record is sufficient to convict the appellants u/s 302 I.P.C., or at least, to enhance the sentence for the offence u/s 304-II I.P.C., to the maximum.

8. Medimakulapally is said to be a faction-ridden village: One group led by Mr. Venkata Ranga Reddy, and the other, Garuda Shankar Reddy. The appellants are said to be the followers of Venkata Ranga Reddy, and the people of Boya Caste, to which the deceased, PWs 1 to 7 and others belong; are said to be the followers of Garuda Shankar Reddy. On the fateful day, i.e. 16-03-1998, all the appellants were said to have chased PWs 4 and 5 from the Bus stand, and both of them have successfully escaped from the attack. The deceased, and PWs 1 to 3 and PW-7, were said to be sitting on a pial in front of the house of PW-1. It was alleged that since the appellants failed in their attempt to attack PWs 4 and 5, they have attacked the deceased, who was sitting on the pial, resulting in his death; and some injuries to PWs 1 to 3. From the arguments advanced on behalf of the accused and the prosecution, the following points arise for consideration, viz.,

- a) whether there was any delay in submission of the F.I.R., and if so, the effect thereof;
- b) whether the evidence on record is not sufficient to sustain the conviction and punishment awarded to the accused, and
- c) whether the prosecution made out a case for conviction of the accused u/s 302 I.P.C., or for enhancement of the sentence, already imposed by the Trial Court.

9. The deceased is said to have died at about 6:30 p.m., and four witnesses viz., PWs 1, 2, 3 and 7, were present, by the time of his death. The distance between the village and the Police Station is 8 Kms. No formal complaint was submitted. From a perusal of the F.I.R., marked as Ex.P-7, it is evident that a telephonic message was received, about the disturbance in the village, at 6:45 p.m. The S.I. of Police made a G.D. entry, and proceeded to the village. At 7:15 p.m., he found the dead body of the deceased. The statement recorded from PW-1 marked as Ex.P-1, constituted the basis for registering the F.I.R., and this was done at 9:30 p.m., on that day. This time of three hours, between the occurrence and recording of statement in a given case, is sufficient for deliberations and

discussions, particularly when the occurrence has the traces of faction rivalry. It is not as if that the incident in the present case has taken place late in the night, and the information could not reach the Police Station, due to lack of communication. Within 15 minutes, the Police received the information, and the first thing the Police ought to have done was, to receive a written complaint, or to record the statement of the kin of the deceased. PW-11, the S.I. of Police, who registered the F.I.R., failed to explain the delay in this regard. In his cross-examination, he admitted that he did not verify as to who gave the information on telephone, and as to why he did not record the statement, soon after his arrival. A clear suggestion was made to him to the effect that, initially he received a complaint, at the first instance, and by suppressing the same, he brought Ex.P-1, into existence.

10. In her evidence, PW-1 stated that within one hour from the occurrence, the Police came to her house, and she stated to them, as to what had happened. In her cross-examination, she stated that she has not only informed the names of the appellants herein, but also the persons, who have gathered, at the scene of offence, soon after the occurrence, to the Police. However, she changed the version and said that she did not furnish the names of the persons, who have gathered at the scene of offence.

11. At another place, she stated that she got drafted a complaint, and it was signed by herself, and PWs 2 and 3. She admitted that Ex.P-1 does not contain the signatures or L.T.Is of PWs 2 and 3.

12. The evidence of PW-7, the younger brother of the deceased, would throw some light, in this regard. In his cross-examination, he stated as under:

I narrated the incident to Pullamma (PW-1). PW-1 in turn informed the same to the Police. I specifically told the names of the persons to PW-1, who in turn conveyed the same to the Police. When I narrated the incident to PW-1 Police were not there. PW-1 did not inform to the Police that she was informed by myself about the details and occurrence of the incident. No signature was obtained by the Police from me. PW-1 remembered what I stated to her and retained what I stated to her and reproduced the same. I was present when PW-1 stated to Police, and that I satisfied myself what PW-1 stated to Police as she reproduced what I stated to her. Later on neither myself nor PW-1 discussed what I narrated to PW-1 and vice versa....

I narrated to PW-1 in the presence of Lakshamma (PW-2) and Vennuramma (PW-3)

13. This shows that what is stated by PW-1 to the Police and reduced into Ex.P-1, is a hear-say, and not an eye-witness account. This would be dealt with at a later stage. The mother of the deceased, PW-6, was not there, when the incident had occurred. She stated that she reached the place by 7:00 p.m. No explanation is forthcoming as to why any complaint was not received or statement recorded from her, or PW-7, the brother of the deceased, who was said to be an eye-

witness. From PW-3, it was elicited that there is a Village Administrative Officer, in the village, there are number of telephones; and neither herself, nor PW-1 tried to contact the Police. She admitted that they did not think of giving a written complaint to the Police Station, and that Garuda Sekhar Reddy, and his son, did not come to the scene of offence, till the Police arrived. In other words, the said individuals have come to the place of occurrence after the Police arrived, which is about 7:30 p.m., and the statement of Ex.P-1 was recorded at 9:30 p.m. These facts are sufficient to hold that there was avoidable delay in submission of Ex.P-1, or registering the F.I.R., Ex.P-7; and that this time was utilized for deliberations, not only among the witnesses, but also the others concerned. Coming to the second aspect, the prosecution pleaded that PWs-1 to 3 have received injuries and even wound certificates, marked as Exs.P-4 to P-6, were filed. Therefore, whatever be the care and caution, with which the evidence in a faction case needs to be appreciated, the extent of its credibility gets enhanced, if the witnesses have sustained injuries, provided, the same is proved.

14. Before undertaking the analysis of the evidence of the concerned witnesses, it is proposed to verify the truthfulness of the allegation of PWs-1 to 3 that they sustained injuries. In Ex.P-1, PW-1 informed the police that when herself, PWs- 2 and 3 tried to rescue the deceased. Appellant No. 8 beat her on the left thigh with an iron pipe and Appellant No. 3 beat PWs-2 and 3 with the reverse side of the hunting sickle; and caused injuries. In the earlier portion of the complaint, she stated that all the 9 appellants were armed with sickles and no reference is made to iron pipe. In her evidence, PW-1 did not state as to the object with which the 8th appellant is said to have beaten her. There was an improvement, when she said that she was beaten on the right buttock and right hand. For the first time, she made an accusation against the 9th appellant also, stating that he attacked PW-2. Third appellant is said to have hit PW-3 alone, on her right hand and left thigh. PW-2 stated in her chief-examination that the 8th appellant beat PW-1 with pipe on her "right leg", 3rd appellant beat PW-3 with the reverse portion of a sickle, on her left leg, and herself, on the right hand wrist, with the reverse portion of sickle. The evidence of PW-3 is somewhat different. It reads as under: "When PW-1 intervened, A-8 beat on her right thigh with reverse portion of hunting sickle. A-3 also beat PW-2 on her right wrist with reverse portion of sickle. A-3 also beat me with reverse portion of sickle on my left thigh." It needs to be observed that she did not speak anything against appellant No. 9, in this regard. No reference is made to pipe. When we come to the wound certificates, the following portion occurs in all of them in common:

Wound or injuries found on...,said to have been caused on...,and to be due to alleged to have identification and caste marks, been hit with "iron pipe".

15. Except the iron pipe, reference is not made to any object, with which, the injuries are said to have been caused. Therefore, the theory of PWs-1 to 3 being injured witnesses, gets substantially weakened.

16. Be that as it may, if the evidence of PWs-1 to 3 and 7 is consistent, there

should not be any difficulty, in sustaining the conviction against the appellants. Instead of scrutinizing each and every portion of evidence of the witnesses, it is proposed to examine the same on certain salient features. The first is as to the presence of the deceased in the house of PW-1 and his health condition. PW-6 is the mother of the deceased. Her evidence is brief, and much cannot be expected from her, since she is not an eye witness to the occurrence. However, she was the best person to state about the health condition, as well as the other particulars of the deceased. She did not utter a word to suggest that her son was ill, at the relevant point of time. She has stated that she left for her fields, early in the morning, and her sons, the deceased and PW-7, did not accompany her for the work. PW-1, however, said that the deceased had fallen ill, and therefore, he did not go to work. She stated that;

Pedavannuru (deceased) was suffering from fever for two days, but he was not referred to any doctor. He was unable to move.

17. In contrast, PW-2 stated that on the date of occurrence, the deceased went to agricultural work and returned at 4-30 P.M. and was sitting in front of the house of PW-1. PW-3, on the other hand, said in one stretch that the deceased did not accompany her to the agricultural work, and at another stretch, she said that he went to the coolie work of Garuda Sekhar Reddy. As a third somersault, she stated that she does not know, where the deceased had gone on that day. PW- 1 deposed that on 16.3.1998, she went to the coolie work of Garuda Sekhar Reddy. If the deceased were to have gone to the work of Garuda Sekhar Reddy, PW-1 would have noticed his presence. PW-7 said that his brother, the deceased, had gone to agricultural work. If the deceased was sick for two days and was not able to move, as stated by PW-1, there was no scope for him to have gone for agricultural work, as stated by PWs-2, 3 and 7.

18. The second aspect is the manner, in which the accused are said to have attacked the deceased. It is somewhat interesting to note what PW-1 said, in this regard.

All the accused came in a group and surrounded Pedavannuru(deceased). The pial and the walls of my house stained with blood. The width of the pial is of 2 ft. When he was sitting on pial, each accused came and gave one blow and went away accommodating other accused to hack and cause injuries to the deceased. Deceased was sitting on pial adjoining to him, myself, Laxmamma (PW- 2) and Vannuramma (PW-3) were sitting in a row, at the time of assault. Vannuru (PW-7) was sitting left side to me. The first blow was hacked on the right shoulder of PW-7 horizontally. The blood has not fallen on my cloths. Though blood spilled, the same has not fallen on my clothes. Each accused after giving one blow was going ahead and standing on the back. I never tried to catch hold of the accused and intervened, till each of the accused dealt one blow on PW-7.

19. According to PW-2, the accused were chasing PWs 4 and 5 and after the latter escaped,

the accused proclaimed to kill Pedavannuru (deceased) so saying A-1, hacked on the right hand of deceased with hunting sickle and A-2 hacked on the left wrist of deceased with hunting sickle and A-3 hacked on the right thigh of the deceased with sickle and A-4 hacked on the right leg below knee of deceased with sickle and A-5 hacked on the left shoulder i.e. upper arm of deceased with sickle and A-6 beat on the left leg of the deceased with reverse portion of sickle and A-7 who was armed with sickle hacked on the back of the deceased. Soon after receiving blow by A-7 deceased fell down. When PW-1 intervened by raising her hands, A-8 beat her with an iron pipe on her right leg. A-3 also beat Pedavannuramma with reverse portion of the sickle on her left leg.

20. The manner in which the accused are said to have attacked the deceased is described by PW-3, as below:

All the accused came to the house of PW-1. The accused stood in a line one after another nearer to Pedavannuru (deceased). But I cannot say the order of standing of accused and their names. The first man standing in the row went and beat the deceased and he allowed others to exercise their blows and the cycle continued till last accused gave the blow against the deceased. After receipt of first injury deceased did not raise any cry nor did he try to escape. Neither PW-1 nor PW-2 and myself tried to intervene to save the deceased.

21. It appears some-what unnatural that as many as 9 accused were standing in a line and started attacking the deceased, who was said to be suffering from illness and unable to move; one after the other, almost in a disciplined manner. Such a narration can be only the result of concoction and consultations. It is difficult to discern that an attack in its premeditated form or otherwise would take place in such a manner. It is also surprising to note that it was early in the evening when the locality is crowded, and still nothing is spoken to, about the gathering of persons. The witnesses have stated that the incident lasted for about half-an-hour. Even those, who were present, stood observing the occurrence, as though waiting for someone's instructions, to intervene. The person most concerned about the death of deceased would be his mother, PW-6. The incident is said to have occurred right in front of the house of PW-1. Therefore, this witness is expected to be having a clear idea about the incident as well as the manner in which PW-6 has arrived at the spot. According to PW-1, the mother of the deceased, PW-6, was not there in the village and soon after the occurrence a Jeep was sent to procure her. In the words of PW-1, "On the date of incident Pedavannur's (deceased) mother Lakshmakka (PW-6) went to Acksharaladinne Village to attend the marriage at his brother's village. After assault against Vannur, we sent a Jeep to Akshraladinne Village to bring PW-6 from that village. PW-6 and the father of the deceased were brought in a Jeep on the next day".

22. If this version accords with what PW-6 has stated, much credence can be added to the evidence of PW-1. However, the same is totally belied by PW-6, the mother of the deceased. In her chief-examination itself, she stated as under:

On that day of incident I attended agricultural work in my land. My husband went on business. I came to my house at 7:00 p.m. on that day from my land. PWs 1 to 3 and my son Chinna Vannuru (PW-7) informed that the accused murdered my son.

23. On behalf of the defence, the attention of PW-6 was drawn to the statement of PW-1, about the former, having been to a different village, and a Jeep been sent for her. She stated as under:

It is not true to say on the date of incident I had been to my native village Aksharaladinne and that on the next day I returned to the village by a Jeep sent by Garuda Sekhar Reddy.

24. The uniform case of PWs 1, 2 and 3 was that the deceased was an active participant in the faction of Garuda Sekhar Reddy, and thereby, the appellants have developed grudge against him. PW-6, however, said that neither herself, nor her sons have anything to do with the factions, and that they are eking-out their livelihood by doing coolie work. PW-1 admitted that two sons of Garuda Sekhar Reddy came to the Court along with their Partisans. Her attention was also drawn to the fact that a person from the faction of the said individual, was murdered and that the faction has resorted to looting and arson. In the resultant case of PW-4, son of PW-1, the deceased, and others were said to have figured as accused. Reference was also made to the allegation of theft of T.V., from the school in the village against the deceased and some others. In this case, something needs to be said about the application of Sections 148 and 149 of I.P.C. Even according to the prosecution, A-1 to A-9 entertained a common object of attacking PWs 4 and 5, and that there was a serious chase for them. It was not even alleged that the accused have hatched any plan to attack the deceased. The alleged attack on the deceased is said to be out of frustration of the accused, in not being able to attack PWs 4 and 5. In *Dani Singh and Others Vs. State of Bihar*, the Hon'ble Supreme Court had analyzed the law in this regard (See paragraphs 11, 12 and 13). If the said principles are applied, it is difficult to discern that there exists any common object for the accused, to attack, or much less to kill the deceased. In such an event, it is only the specific overt-acts, that become relevant. The medical evidence does not disclose that the death of the deceased was, on account of any specific act. It has already been pointed out that the evidence of the alleged eye-witnesses rests on a very shaky foundation. Contradictions of very serious nature were pointed out in the preceding paragraph. It is not at all safe to convict the accused on the basis of such evidence.

25. As a consequence, the third question also deserves to be answered in favour of the accused.

26. We, therefore, allow Criminal Appeal No. 1347 of 2004, and set aside the conviction and sentence ordered by the trial Court against the accused/appellants. The appellants are set at liberty forthwith, if they are not required in

any other case.

27. Criminal Appeal No. 1165 of 2005 is dismissed.