
(2012) 08 AP CK 0020

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1241 of 2008

Malichetla Suribabu

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 309

Citation : (2013) 1 ALD(Cri) 196 : (2013) 1 ALT(Cri) 222

Hon'ble Judges : P. Durga Prasad, J;N.V. Ramana, J

Bench : Division Bench

Advocate : A. Madhava Rao, for the Appellant;

Final Decision : Dismissed

Judgement

P. Durga Prasad

1. This appeal is directed against the conviction and sentence passed in S.C. No. 165 of 2007 by the IV Additional District and Sessions Judge, Visakhapatnam on 02.07.2008. The appellant is the sole accused and he was prosecuted for the offence under Sections 302 and 309 of the Indian Penal Code, 1860 (for short "IPC").

2. According to the prosecution, the accused is resident of Matchavanipalem village and husband of the deceased Mallichetla Eswaramma. The accused is a deaf person and he suspected fidelity of his wife and used to beat her. One time he tried to strangle the neck of his wife with her saree. On 06.04.2007 in the morning the accused and deceased left their village with adda leaves and went to the house of PW.1 and stayed there for two hours. Later they left the house of PW.1 at Kothakota at 11.00 hours. At about 11.30 hours PW.1 received a phone call from his sister PW.6 that the accused stabbed the deceased on her stomach with a knife and he himself stabbed on his stomach with the same knife. PW.1 and her husband rushed to the house of the deceased and shifted the deceased and accused to the Area Hospital, Narsipatnam for treatment. PW.11 has

recorded the statement of PW.1 and registered the case in Cr.No.8 of 2007 u/s 307 of IPC and took up the investigation and he visited the scene of offence and examined the same and prepared rough sketch and drafted the scene of offence panchanama. He examined and recorded the statements of PWs.1 to 4. During the course of investigation, PW.2 handed over the blood stained knife used by the accused in the commission of the offence. After receiving the death intimation of the deceased, PW.11 has altered the section of law to 302 of IPC and thereafter PW.12 took up the investigation and held inquest over the dead body of the deceased in the presence of PWs.7 and 8 and sent the dead body for post mortem examination and he arrested the accused on 25.04.2007, recorded his confession statement and sent him for judicial custody. The doctor, PW.10, who conducted autopsy over the dead body of the deceased, opined that the deceased died due to shock and heamorrhage due to stab injury to blood vessels of spleen mesenteric blood vessels, pancreas and stab injury to liver. PW.9, who examined the accused, issued the wound certificate opining that the injuries sustained by the accused are grievous in nature. PW.12 after completion of the investigation has filed the charge sheet against the accused.

3. The Sessions Judge has framed the charges under Sections 302 and 309 of IPC against the accused and the accused pleaded not guilty for the charge u/s 302 of IPC but admitted the charge u/s 309 of IPC. The trial Court by taking into consideration of the admission of the accused, convicted him for the offence u/s 309 of IPC and sentenced him to undergo simple imprisonment for a period of three months and proceeded with the trial for the offence u/s 302 of IPC.

4. The prosecution in order to establish the said charge examined P.Ws.1 to 12 and got marked Exs.P-1 to P-14 and MOs.1 to 4. No oral or documentary evidence was adduced on behalf of the accused in defence.

5. Taking into consideration of said oral and documentary evidence, the Sessions Judge found the accused guilty for the charge u/s 302 of IPC and convicted and sentenced him to suffer imprisonment for life and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for one month.

6. Aggrieved by the said conviction and sentence, the present appeal is filed.

7. Now the point that arises for consideration is whether the prosecution could able to establish the charge u/s 302 of IPC against the accused beyond reasonable doubt?

POINT:

8. The appellant's counsel has pleaded that there is no direct evidence to establish the commission of the offence by the accused and the prosecution has failed to establish the motive for the commission of the offence and the daughter, who gave information to PW.1, has turned hostile to the prosecution and the circumstantial evidence relied upon by the prosecution does not establish the commission of the offence by the accused and as such the accused is entitled to

be acquitted.

9. The Additional Public Prosecutor, on the other hand, has pleaded that PWs.1 and 5 have stated that the accused and the deceased went together to their house and 15 minutes thereafter they have received the information about sustaining stab injuries and the deceased was in the company of the accused prior to her sustaining injuries and PWs.2 and 3, who have gone to the scene of offence after hearing the cries of the deceased, found the deceased lying with stab injuries and the accused came out of the house and stabbed himself on his stomach and PW.4, who is the neighbour, also supported the version of the prosecution that the deceased rushed to her house with stab injuries on her stomach and the weapon used in the commission of the offence was recovered on production by PW.2, who kept the knife in the leaves of the house by snatching the same from the house of the accused and the circumstantial evidence clearly establishes the commission of the offence by the accused.

10. The entire case of the prosecution rests on circumstantial evidence as there are no direct eye witnesses to the incident. In order to convict the accused basing on the circumstantial evidence, there must be chain of evidence so complete, as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

11. The case of the prosecution is that the accused used to suspect the fidelity of his wife and used to beat her and also tried to strangle her neck with her saree once. On 06.04.2007 the accused and the deceased went to the house of PW.1 at Kothakota with adda leaves and stayed there for two hours, thereafter they left to their house after taking the keys of their house from PW.5 and after reaching the house there was a quarrel took place between the deceased and the accused and the accused stabbed the deceased on her stomach and he also stabbed himself on his stomach and on the information received by PW.1, she along with her husband rushed to the scene of offence i.e. the house of the accused and found both of them laying down with stab injuries and PW.1 and her husband shifted them to Government Hospital, Narsipatnam. It is the further case of the prosecution that PWs.2 and 3 rushed to the scene of offence after hearing the cries of the deceased and found the deceased and the accused with stab injuries.

12. To establish the commission of the offence by the accused, the prosecution relied upon the evidence of PWs.1 to 6. PW.1 is the daughter of the deceased. PWs.2, 3 and 4 are the neighbours of the accused. PW.5 is the brother of the deceased and PW.6 is another daughter of the deceased. There are no eye witnesses to the incident. The prosecution has relied upon the circumstantial evidence of PWs.1 to 6. PW.1 is the daughter of the deceased and the accused and according to her, on 06.04.2007, Friday, her parents came to her house and brought adda leaves. They stayed there for one and half hours, thereafter they left to Matchavanipalem. Half an hour after her parents reached their house, her

younger sister telephoned to her and informed that her father stabbed her mother and stabbed himself, then she along with her husband went to the house of her parents immediately and her mother was alive by that time and she was lying on a cot, she was applied with bondage by neighbourers. Her mother had one stab injury on the left side of abdomen and her father has two stab injuries on both sides of his abdomen. Her father was also lying on bed with bondages to his injuries. Herself, her husband and her maternal uncle took her parents to the Government Hospital, Narsipatnam and admitted there. The police came to the hospital on the information given by her maternal uncle and recorded her statement and obtained her signature and it is marked as Ex.P-1. In Ex.P-1, PW.1 has also narrated the same facts about the accused and the deceased coming to her house in the morning on 06.04.2007 at 9.00 a.m., leaving the place at 11.00 hours and at about 11.30 a.m. receiving the phone call from her sister that her father stabbed her mother and thereafter he stabbed himself and on received the said information herself and her husband and her uncle rushed to the house of the accused and shifting them to the hospital.

13. PW.5 is the brother of the deceased and according to him, on the date of incident Sujatha was along with him in his house as both of her parents went to the house of PW.1. The accused and his wife returned home at about 11.00 a.m. First they came to his house and thereafter they went to their house. Twenty minutes thereafter he came to know that his sister was stabbed by her husband and the accused stabbed himself. Then himself, Sujatha and his mother went to the house of the accused and found his sister in the house of PW.4 and the accused at his house. Somebody telephoned to PW.1. PW.1 and her husband came to her parents house and then himself, PW.1 and her husband took the deceased and the accused to Government Hospital, Narsipatnam, there first aid was given and the doctor advised them to shift both the injured to K.G.H., Visakhapatnam. Accordingly, they shifted them to K.G.H. by then his sister died and they got admitted the accused in K.G.H. for treatment. But, PW.6, who is the other daughter of the deceased and the accused, who was in the house of PW.5, has only stated about her parents reaching Matchavanipalem at 11.00 a.m. and came to the house of her maternal grand mother to collect the keys of her house. Thereafter, both her parents went to their house but she stayed with her grand mother. About 15 minutes later, she came to know that both her parents received injuries. Herself, PW.5 and her grand mother went to their house and found her mother in the house of PW.4 and her father in her house. She found an injury in the left side of the abdomen of her mother and found two injuries on either side of abdomen of her father. Then she telephoned to PW.1 and informed the same. PW.1 and her husband came to her house. PW.1, her husband and PW.5 took her parents to the Government Hospital, Narsipatnam. But she has stated that she was not examined by the police and not supported the case of the prosecution that the accused has stabbed the deceased and thereafter stabbed himself and also informed the same to PW.1. Therefore, from the evidence of PWs.1, 5 and 6, the prosecution could able to establish that both the

accused and the deceased went to Kothakota to the house of PW.1 and returned Matchavanipalem and secured the keys from the house of PW.5 and went to their house and within 15 minutes of their going to the house, PW.6 informed PW.1 about the deceased and the accused sustaining stab injuries.

14. PW.2, who is resident of Matchavanipalem village opposite to the house of the accused, has stated that on the date of incident at about 10.00 a.m., Friday, the accused and his wife quarreled. Ramunaidu, PW.3 called her stating that the deceased was crying in her house and asked her to go to the house of the accused and when they went to the house of the deceased, she fell on the feet of PW.3 outside the house with stab injury on her abdomen. The accused came out of his house along with a knife and stabbed himself with the same knife. She removed the knife from the hands of the accused and kept it in the eves of his house. Then the deceased went to the house of Malichetla family, which is nearer to their house and after passing information by PW.6 to PW.1 on telephone, PW.1 and her husband rushed to the spot and shifted them to the hospital. In the cross-examination also she has stated that she went there on hearing the cries of the deceased and according to her, PW.3 first went there and thereafter she went there. She further stated that she heard that "Ramunaidu Mama Chachipothunnanu Baboy" and PW.3, who is Ramunaidu, has also supported the version of PW.2 with regard to hearing the quarrel between the accused and the deceased on 06.04.2007, Good Friday, at about 11.00 a.m. from his house and he asking PW.2 to go to the house of the accused. He also stated that he heard the deceased saying "Mamayya, Nannu Champestunnadu Baboy". Then himself and PW.2 went to the house of the accused as the eves of the house of accused are low lying. He cannot bend as such he asked the accused and his wife as to what was happening. Then the deceased came out of the house and fell on his feet as she was not able to withstand with her injury and stated that her husband stabbed her. Then the accused came outside with a knife. The deceased again stated to him that the accused would stab her again and she left the place to the house of Malichetla Rajeswari. Then the accused threatened him to leave the place or he also stabs him, then he left the place due to fear. PW.2 has stated that the accused himself came out of the house with a knife and stabbed himself and whereas PW.3 stated that the accused threatened him and due to fear he left the place. In view of the admission made by the accused that the charge u/s 309 of IPC that he himself stabbed with the knife, no further proof is required with regard to the accused stabbing himself at that time.

15. The said Rajeswari, to whose house the deceased has gone, was examined as PW.4 and she has stated that about one year two months back, Eswaramma died. On that day she came to her house at 11.30 a.m. and she found her with stab injury on left side of her abdomen and the deceased informed her that she was stabbed by her husband and when she came out of the house she found the accused also with stab injuries. Therefore, the prosecution could able to establish after the deceased sustaining stab injuries rushed to the house of PW.4. From the evidence of PWs.1, 5 and 6, prosecution could establish that prior to

sustaining stab injuries by both the accused and the deceased, they were together in the house and thus, the deceased was last seen in the company of the accused prior to sustaining injuries.

16. In *State of U.P. v. Satish*, the Apex Court held as follows:

The principle of last seen comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

17. In the present case, as observed above, the deceased was in the company of the accused immediately prior to her sustaining injuries. Within half an hour of accused and deceased leaving the house of PW.1 and within 15 minutes of leaving the house of PW.5, they received the information about the accused stabbing the deceased. The defence counsel tried to put up defence that PW.3 has stabbed the accused and when the deceased came to his rescue, she sustained stab injuries in the hands of PW.3, by putting suggestion to PW.2 in the cross-examination. But no such suggestion was put to PW.3, Ramunaidu. Even otherwise in view of the admission made by the accused for the offence u/s 309 of IPC, that he himself stabbed to commit suicide, the said vague defence set up by the defence counsel cannot be accepted.

18. PW.10, the doctor, who conducted autopsy over the dead body of the deceased, has found four external injuries i.e. 1] an abrasion present on the left top of the left shoulder; 2] stab injury on the left side lower part of chest; 3] a stab injury on front middle of right thigh; and 4] a contusion present on front of right knee and he opined that the deceased died due to shock and haemorrhage due to stab injury to blood vessels of spleen, mesenteric blood vessels, pancreas and stab injury to liver and he further opined that the said stab injuries are possible with a sharp edged weapon like M.O.1. Therefore, the prosecution could be able to establish that the deceased died due to stab injuries sustained by her. Since the accused and the deceased were found together immediately prior to the occurrence of the incident and there is no possibility of any other person to enter into the house to cause the injuries to the deceased and the accused. The circumstances should clearly establish that the accused alone is responsible for causing the stab injuries to the deceased. Moreover the accused himself admitted about causing stab injuries to himself at the same time to commit suicide.

19. The appellant's counsel has pleaded that as the prosecution has failed to establish the motive for the commission of the offence by the accused, the prosecution story has to be thrown out.

20. In *Paramjeet Singh Alias Pamma v. State of Uttarakhand*, the Apex Court held that if the motive is proved, that would supply a link in chain of circumstantial evidence, but absence thereof cannot be a ground to reject the prosecution case. In *Manu Sao v. State of Bihar*, the Apex Court held that motive is not absolutely essential for securing conviction provided the prosecution has

been able to prove its case beyond reasonable doubt.

21. In view of the above observations, mere failure of proving the motive by the prosecution cannot demolish the case of the prosecution. Since the prosecution could establish the commission of the offence by the accused beyond reasonable doubt the motive is insignificant in the present case. Thus, the prosecution could able to establish the charge against the accused for the offence u/s 302 of IPC against the accused beyond reasonable doubt. In the result, the Criminal Appeal is dismissed and the conviction and sentence passed in S.C. No. 165 of 2007 by the IV Additional District and Sessions Judge, Visakhapatnam, is hereby confirmed.