
(1995) 04 AP CK 0025

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 727 of 1994

Malla Govindarajulu alias Govu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (1995) 2 ALT(Cri) 9 : (1995) CriLJ 3255

Hon'ble Judges : P. Ramakrishnam Raju, J; B.S. Raikote, J

Bench : Division Bench

Advocate : M. Viswanadham, for the Appellant; Public Prosecutor, for the Respondent

Judgement

B.S. Raikote, J.—This appeal is filed by the sole accused being aggrieved by the Judgment, dated 3-3-1994 in Sessions case No. 73 of 1991 on the file of Sessions Judge, Srikakulam, convicting the appellant for the offence punishable u/S. 302 of I.P.C. and sentencing him to suffer imprisonment for life.

2. The learned counsel for the appellant accused strenuously contended that on the basis of the evidence on record, this case does not warrant the conviction of the appellant and it cannot be said that the prosecution has proved the guilt beyond reasonable doubt. However, the learned Public Prosecutor strongly supported the Judgment of the trial Court.

3. In order to appreciate the rival contentions, it is necessary to note the brief facts of the case. the appellant will be referred to as arrayed in the trial Court.

4. In the charge framed against the appellant-accused, it is stated that on 9th April, 1991 at about 8.00 P.M. at Hayathinagaram in Srikakulam in front of the house of PWs. 1 and 3 viz., Korada Seshagiri and Korada Savitramma, caused the death of Korada Raghunadha Rao by stabbing him with a knife.

5. The prosecution case was that the accused is a resident of Gujarathipeta in Srikakulam. Korada Raghunadha Rao, hereinafter called "the deceased." PW-1

Korada Seshagiri and PW-3 Korada, Savitramma and residents of Hayathinagaram in the same town. PW-1 is the brother, PW-2 is the sister and PW-3 is the mother of the deceased. The accused is the brother-in-law of PW-2 Smt. Malla Prabhavathi, i.e., the brother of PW-2's husband by name Malla Ramana. PW-2 was harassed by the members of the accused family for not getting more dowry. However, PW-2 gave birth to a male child. The parents of PW-2, as per their family custom, were to present one tola of gold to the child but they presented 1/4 tola of gold ornament to the child. This was not appreciated by the members of the family of the accused. In those circumstances, the husband of PW-2 left his family along with his wife and lived in a rented house. On 9-4-1991, PW-2 and his wife were in the house of PW-1 and at about 7.00 P.M. the accused came to the house of PW-1, the younger brother of the deceased, and demanded from his brother Ramana to discharge the family debt of Rs. 3,000/-. For that, Mr. Ramana stated that he would pay only his share of the amount at Rs. 500/- in final settlement of the dispute, and later, the accused went away.

6. It is the further case of the prosecution that at about 8.00 P.M., the mother of the accused came and asked Ramana to discharge the entire debt. Meanwhile, the accused also came to the house of PW-1 and dragged his brother Ramana holding his hand and at that time, the deceased interfered and asked the accused not to quarrel near his house and they could settle their family dispute elsewhere. At that moment, the accused picked out the knife and stabbed the deceased thrice on his chest and abdomen. As a result, the deceased fell down and the accused ran away. Later, PW-1 shifted the deceased to the Government Hospital, Srikakulam in a taxi for treatment. The doctor, who examined the deceased, declared him dead. Thereafter, PW-1 went to the Police Station and gave Ex. P-1 report to PW-8 Sub-Inspector of Police. PW-8, on receipt of Ex. P-1, registered it as Crime No. 39/91 u/S. 302, I.P.C. and issued Ex. P-8 F.I.R. Thereafter, PW-9 Inspector of Police, on receiving information from PW-8, took up investigation. PW-9 proceeded to the scene of offence at 6 A.M. on 10-4-1991 and prepared an observation report, Ex. P-3 and seized M.Os. 4 to 7 from the scene of offence. He also prepared Ex. P-9 rough sketch of the scene of offence. PW-9 also examined PWs. 1 to 4 and others. He visited the Government Hospital and held inquest over the dead body of the deceased. Ex. P-4 is the inquest report. PW-7 is the inquest panchayatdar. During inquest, PW-9 seized M.Os. 2, 3, 8 and 10 from the dead body of the deceased in the presence of panchayatdars. Thereafter, PW-9 sent the dead body for post-mortem examination.

7. PW-6/Dr. B. Tulasibai, Civil Asst. Surgeon, Govt. Hospital, Srikakulam, conducted autopsy over the dead body of the deceased and found the following injuries :-

1. Incised wound 1" x 1/2" x 4" on the left chest below the left clavicle clotted blood seen at the edges of the wound;

2. Incised wound measuring 1" x 1/2" x 1/4" on the left chest 4" above the lateral to the left nipple.

3. Incised wound measuring 1" x 1/2" x 1/4" on the left hypocondrium.

She issued Ex. P-5 Postmortem Certificate. She opined that the cause of death was due to shock and haemorrhage due to multiple injuries.

8. After completing investigation, PW-9 laid charge sheet against the accused u/S. 302, I.P.C.

9. The prosecution in all examined PWs 1 to 9 and got marked Exs. P-1 to P-12. The defence of the accused was one of denial.

10. The learned Sessions Judge, having believed the evidence of PWs 1 to 3, who are eye-witnesses to the occurrence, convicted the accused u/S. 302, I.P.C. and sentenced him to imprisonment for life. Being aggrieved by the same the present appeal is preferred.

11. The learned counsel for the appellant accused took us through the evidence of PWs. 1 to 3 and also that of other witnesses and submitted that this is not a case for conviction u/S. 302, I.P.C. and the appellant is entitled for acquittal. Alternatively, he further submitted that it would be a case u/S. 304 Part-II of I.P.C., even if the evidence of the witnesses is believed.

12. PW-1/Korada Seshagiri stated, in his evidence, that the deceased Korada Raghunadha Rao was his brother and the accused is the brother of his sister's husband. Malla Ramana was the younger brother of the accused. The said Ramana had married his sister viz., PW-2. He stated that Ramana, the brother of the accused, was harassing his sister (PW-2) and other family members for more dowry. About seven months prior to the death of the deceased, PW-2 came to their house for delivery. After delivery, she was sent back to her in-laws' house and at that time, 1/4th tula of gold ornament was presented to the child of his sister, but the family of the accused was demanding one tula of gold. At that time, PW-2 and her husband Ramana came to their own house, as they were found fault by the accused and others in their house. PW-1 further stated that his sister (PW-2) and her husband Ramana took another house near their house and stayed there. About a month prior to the death of the deceased, he says that his sister and her husband came to the house to see his sick father. He further stated that on 9-4-1991 at about 7.00 P.M. the accused came to their house and demanded from his brother-in-law Ramana to pay Rs. 3,000/- incurred by Ramana as loan. There was an altercation between the accused and his brother Ramana. Later, the accused went away. At about 8.00 P.M., the mother of the accused came to their house and asked his brother-in-law Ramana to come out of the house. His brother-in-law came out of the house. At that time, the mother of the accused also insisted PW-2's husband Ramana to discharge the entire debt of Rs. 3,000/-. Meanwhile, the accused also came there and dragged his brother-in-law Ramana holding his hand. At that time, the deceased interfered

and asked the accused not to quarrel near their house and also asked him to settle the matter with the elders. At that point of time, the accused took out a knife concealed in his waist and stabbed the deceased thrice on his chest and abdomen. There was a profuse bleeding from the injuries. PW-1 further deposed that due to those injuries, the deceased fell down and thereafter, the accused ran away with his knife. He stated that M.O. 1 is the knife, with which the accused stabbed his deceased brother. PW-1 further deposed that he took the injured in the taxi to the Government Hospital, Srikakulam, for treatment, where he was declared dead by the doctor, who examined. He also stated that he went to the Police Station and gave Ex. P-1 report. He further stated that he was present at the time of inquest and also was examined by the police. He stated that his sister PW-2, his brother-in-law Ramana, PW-3, his father Narasimhulu, Kasireddy Syamkumar, and PW/4 B. Gunnayya were present and they also witnessed the incident. He stated that there was an electric pole with burning light in front of their house.

13. In his cross-examination, number of suggestions were made that there are other houses nearby and there was no electric pole as stated by him and his vision was defective. PW-1 denied all such suggestions. He further stated that he does not remember with what hand the accused has picked up the knife and stabbed the deceased.

14. PW-2/Malla Prabhavathi, the sister of the deceased and wife of the elder brother of the accused, and PW-3, the mother of the deceased, stated what PW-1 has stated in his evidence corroborating the entire version. From the cross-examination of these witnesses, nothing material has been brought out except some contradictions in the evidence of PW-2 that the accused threatened his brother when he visited his house at 7 P.M. which PW-2 has denied. The other contradiction, Ex. D-2, to the effect that she made a statement before the police that her father-in-law had come along with her mother-in-law and the accused came from the back side, is also denied by her. From these Exs. D-1 and D-2, nothing much transpires.

15. Another eye-witness PW-4 B. Gunnayya was examined to speak to the incident, but he was treated as hostile.

16. On the basis of the evidence of PWs 1 to 3, the trial Court found that the offence u/s 302, I.P.C. against the accused stood proved. The learned counsel for the appellant accused contended that the testimony of PWs 1 to 3 is interested and it is not safe to convict the accused u/S. 302 I.P.C. on such testimony. He further submitted that from the version given by the prosecution witnesses, it would be a case of accused assaulting the deceased under grave and sudden provocation, and at the most, it would be an offence under Section 304, Part-II of I.P.C. He also contended that absolutely, there is no motive for the accused to assault the deceased, but for the intervention of the deceased.

17. The first limb of the argument of the learned counsel for the appellant was

that the material witnesses PWs 1 to 3 were related to the deceased and their evidence thus being highly interested, the conviction cannot be based on such evidence. When the evidence of PWs 1 to 3 is such that one corroborates the other regarding all the material aspects of the case, their evidence cannot be rejected on the ground of interestedness. It is not the Law of this Country that the evidence of a person, who is related to the deceased, should be rejected. Therefore, we are of the opinion that the evidence of PWs. 1 to 3 cannot be rejected.

18. The other limb of the argument of learned counsel for the appellant is that at the most, the accused has committed an offence punishable u/s 304; Part-II of I.P.C., in the sense, that he never intended to murder the deceased and the accused must have lost control and as a result of grave and sudden provocation, caused by the intervention of the deceased, between the accused and his brother Ramana, the accused might have assaulted the deceased. He also brought to my notice the evidence of PWs. 1 to 3, particularly, in this behalf. He further submitted that what ultimately the accused wanted even from his brother Ramana was Rs. 3,000/- incurred by him as a loan, and the accused also did not want to assault his brother Ramana, provided he paid Rs. 3,000/-. He further submitted that, at the most, the accused might have come to give a threat, so that Ramana could pay Rs. 3,000/-.

19. There is substance in this argument of the learned counsel for the appellant-accused. Infact, PW-1 stated that :-

"On 9-4-1991 at 7.00 P.M., the accused came to our house and demanded my brother-in-law Ramana to pay Rs. 3,000/- incurred by them as loan. There was altercation between the accused and his brother Ramana. Later, the accused went away."

PW-1 further states that the mother of the accused came to their house and asked Ramana to pay the entire debt of Rs. 3,000/-. In the meanwhile, the accused came and dragged his brother-in-law Ramana holding his hand. Then, he (PW-1) stated as under :-

"My brother Raghunadharao interfered and asked the accused not to quarrel near our house, and asked them to settle the matter with the elders. Then, the accused took out a knife concealing in his waist and stabbed my deceased brother Raghunadharao thrice on his chest and abdomen. There was profuse bleeding from the injuries. My brother fell down. Accused ran away with his knife."

To the same effect is the evidence of PW-2, who is the wife of said Ramana, who states that :-

"In the meanwhile the accused came to our house, caught hold of the hand of my husband and dragged him. My brother Raghundharao questioned the conduct of the accused. The accused picked out a knife from his waist and stabbed my

brother on his chest and abdomen thrice saying that he was creating troubles in their family. My brother fell down with injuries. The accused ran away with the knife"

20. PW-3, the mother of the deceased, also stated to the same effect. From this evidence, it cannot be said that the accused intended to murder Ramana, his brother. Both the mother of the accused, and the accused might have come to collect the said debt of Rs. 3,000/-. Though the accused had a knife concealed in his waist, it may be only to defend himself or to give a threat to Ramana. One thing is certain that the accused had not come to assault the deceased. From the evidence on record, it is clear that when the deceased intervened, he assaulted the deceased saying that he is unnecessarily creating trouble. If the deceased were not to intervene, in all probability, the accused would not have assaulted the deceased at all and it was unfortunate on the part of the deceased to have intervened between the accused and his brother Ramana. Such an act of the accused, no doubt, amounts to committing culpable homicide but does not amount to murder. What at the most appears to be is that the accused never intended to inflict a particular injury in the particular part of the body of the deceased. He must have assaulted the deceased being found himself alone as against PWs 1 to 3. Though the nature of the injuries caused by the accused, according to the doctor (PW-6), in the natural course, would have caused the death of the deceased, but from the evidence, it is not established that the accused intended to murder the deceased. As we have stated above, but for the intervention of the deceased between the accused and his brother, he would not have been assaulted by the accused, in all probability. In similar circumstances in a case decided by the Supreme Court in Harjinder Singh alias Jinda Vs. Delhi Administration, , where a deceased was also attacked when he intervened during the fight between the accused and the brother of the deceased, the Supreme Court held that the accused did not commit an offence u/S. 302 I.P.C., but only u/S. 304, Part-I, of I.P.C. The relevant portion of the Judgment of the Supreme Court is extracted as under :-

"The evidence indicates that while the appellant was trying to assault Dalip Kumar and the deceased intervened, the appellant finding himself one against two took out the knife and stabbed the deceased. It also indicates that the deceased at that stage was in a crouching position presumably to intervene and separate the two. It cannot, therefore, be said with any definiteness that the appellant aimed the blow at this particular part of the thigh knowing that it would cut the artery. It may be observed that the appellant had not used the knife while he was engaged in the fight with Dalip Kumar. It was only when he felt that the deceased also came up against him that he whipped out the knife. In these circumstances, it cannot be said that it has been proved that it was the intention of the appellant to inflict this particular injury on this particular place. It is, therefore, not possible to apply Clause 3 of Section 300 to the act of the accused."

"Nevertheless, the deceased was in a crouching position when the appellant struck him with the knife. Though the knife was 5" to 6" in length including the handle it was nonetheless a dangerous weapon. When the appellant struck the deceased with the knife, he must have known that the deceased then being in a bent position the blow would land in the abdomen or near it - a vulnerable part of the human body and that such a blow was likely to result in his death. In these circumstances, it would be quite legitimate to hold that he struck the deceased with the knife with the intention to cause an injury likely to cause death. We are, therefore, of the opinion that the offence falls u/s 304, Part-I"

"The appeal is allowed and the conviction is altered from one u/s 302 to Section 304, Part-I and the appellant is sentenced to seven years rigorous imprisonment."

21. Following the same principle, the High Court of Patna in Ram Udgar Jha and Others Vs. State of Bihar, converted the conviction one made u/S. 302, I.P.C. by the trial Court into one u/S. 304, Part-I of I.P.C. There also, the deceased became the victim, because he intervened.

22. From the above principle of Law enunciated by the Hon"ble Supreme Court and the High Court of Patna, it is clear that in the present case also, the accused could be held to be guilty only u/s 304, Part-I of I.P.C.

23. In the result, the appeal is partly allowed. The conviction and the sentence passed against the appellant-accused by the trial Court are set aside and instead, the appellant accused is convicted u/S. 304, Part-I of I.P.C. and sentenced to undergo rigorous imprisonment for five years.

24. Appeal Partly allowed.