

(2003) 10 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 418 of 1997 and Criminal Revision Case No. 1066 of 1997

Malreddy Ramesh Reddy and Malreddy Udaysekhar Reddy @ Babu APPELLANT

Vs

State of A.P. RESPONDENT

Date of Decision : 28-10-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2004) 2 ALD 23 : (2004) 2 ALT(Cri) 204

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—This Criminal Appeal is filed against the judgment dated 25-4-1997 in Sessions case No. 66 of 1996 on the file of the Court of II Additional Sessions Judge, Chittoor at Madanapalle convicting the accused Nos.1 and 2 for the offence committed by them and punishable u/s 304 part II of Indian Penal Code and sentenced to undergo Rigorous Imprisonment for five years and to pay Rs.3,000/- each and in default to suffer Rigorous Imprisonment for two years. Against the said judgment, A-1 and A-2 filed the Criminal Appeal and defacto-complainant PW.1 filed Crl.R.C.1066 of 1997. As they are connected, they are being disposed of by this common order.

2. Heard the counsel appearing for the appellants/accused, and learned counsel for defacto-complainant/petitioner in Criminal Revision Case and the Learned Public Prosecutor appearing for State.

3. Both the accused were charged u/s 302 I.P.C. for causing death of the deceased on 22-9-1995 but the learned Judge convicted them u/s 304 part II I.P.C.

4. The substance of the charge is that on 22-9-1995, at about 9.30 A.M., in the field of the deceased Narayana Reddy in Malenatham village Malreddy Ramesh Reddy, resident of Malenatham village and his cousin Malreddy Udaysekhar Reddy, resident of Uppanelli village i.e., A-1 and A-2 herein, with a common intention armed with sticks beat and killed the deceased Narayana Reddy, who was aged about 65 years old. The deceased Narayana Reddy is native of Malenatham village. Father of A-1 and wife of the deceased Narayana Reddy are own brother and sister. A-1 and PWs.1 to 3 are residents of Malenatham village. A-2, PWs.6 and 7 are residents of Uppanelli village. PWs.4 and 5 are residents of Punganur village. PW.1 is the grand son i.e., daughter's son of the deceased. PW.4 is the son of the deceased and also a practicing advocate in Punganur village. Both accused are cousins. Sister of A-1's father was given in marriage to the deceased Narayana Reddy. There was a land dispute between Malreddy Ramachandra Reddy i.e., father of A-1 and deceased Narayana Reddy since fifteen years. In the year 1980, the deceased filed O.S.No.280 of 1980 on the file of Prl. District Munsif, Punganur and a criminal case in the Court of the Judicial First class Magistrate, Punganur against father of A-1, and the said criminal case ended in acquittal. Father of A-1 filed O.S. No. 131 of 1981 on the file of Sub-Ordinate Judge, Madanapalle and got transferred O.S. No. 280 of 1980 on the file of the Prl. District Munsif, Punganur to Sub-Ordinate Judge's Court, Madanapalle. A-1, his brother Raja Reddy and their father Ramachandra Reddy used to threaten the deceased. During 1994, PW.4 and the deceased gave a petition to the Sub-Divisional Police Officer, Palamaner seeking protection against high handedness of A-1 and his family members. Ex.P.2 is the petition dated 3-6-1994. The S.D.P.O, Palamaner forwarded the petition to the Inspector of Police, Punganur for investigation. The Inspector of Police forwarded the petition to the Sub-Inspector of Ramasamudram Police Station. Then the Sub-Inspector called A-1, his brother Raja Reddy and their father Ramachandra Reddy, enquired them and recorded their statements.

5. On 22-9-1995 at about 9-45 A.M., the deceased called PW.2 to the fields from Malenatham village. Then the deceased took PW.2 to Venkatappa's well. On the way, they met Harijan Gurappa and they talked with him. They also met one Krishnam Raju (LW.5). When PW.2 and the deceased were in the fields, both the accused came there. A-1 was armed with stick. They beat the deceased. When PW.2, tried to rescue the deceased, A-1 pushed PW.2 aside. Then PW.2 started running towards the village. PW.2 found PW.1 at a distance of 20 or 30 feet from the scene. PW.1 saw A-1 and A-2 beating the deceased on the head, right ear and on the hands. On seeing PW.1, both the accused ran away. The deceased fell down facing upwards. Then PW.1 went near the deceased and found him unconscious. In the mean while, PW.3, LW.3 and LW.5 came along with PW.2. Then all of them took the deceased in a bullock cart upto Vanaganipalle and there shifted the deceased into a car and took him to the Government Hospital, Punganur at about 11.00 A.M. The deceased died at about 12.00 or 12.15 P.M. Then PW.1 telephoned to the Punganur police station. PW.9, the Sub-Inspector of

Police, Ramasamudram Police Station received a phone message from the Government Hospital Punganur at 11.00 A.M. Then he proceeded to the Government Hospital, Punganur and found the deceased Narayana Reddy dead. Then he received report from PW.1 at the hospital. Ex.P1 is the report. PW.9/S.I of police took Ex.P.1 to Ramasamudram Police Station and registered it as Crime No.44 of 1995 and issued express FIR. Ex.P6 is the FIR sent to the Court. PW.10 the Inspector of Police, Punganur received the copy of FIR and proceeded to the hospital at 2.25 P.M. On the same day, he held inquest over the dead body in the presence of PW.6 between 2.30 P.M. and 5.00 P.M. Ex.P.3 is the inquest report. Thereafter, the dead body was sent for post-mortem examination. On the next day, i.e., on 23-9-1995, PW. 10 - C.I of Police, Badvel visited the scene of offence and prepared an observation report which is marked as Ex.P.4 in the presence of PW.7 - Village Administrative Officer, Uppanahalli. PW.10 also seized MOs.7 to 10. Then he prepared Ex.P-12 the rough sketch of the scene of offence. On 22-9-1995 at 5.00 P.M., PW.8 the Women Assistant Surgeon, Government Hospital, Punganur conducted autopsy over the dead body of the deceased and found eight external injuries. According to the Doctor, the death was due to shock and hemorrhage due to multiple injuries. Ex.P.5 is the Postmortem certificate. After completing investigation, PW.10 filed the charge sheet.

6. In support of its case, the prosecution examined 10 witnesses and marked Exs.P1 to P.16 and MOs.1 to 10.

7. The plea of the accused is one of denial.

8. Sri C.Padmanabha Reddy, Learned Senior Counsel appearing for the accused submits that PW.1 who is daughter's son of the deceased said to be the eye witness drafted Ex.P1 report after the death of the deceased in the hospital, did not choose to inform the same till 1.00 P.M. to PW.4 who is none other than the son of the deceased and also a practicing Advocate at Punganur, appears to be an unnatural one. Had PW.1 really witnessed the incident, he would have immediately informed the same through telephone message to PW.4., either from Malenathan village or from Punganur village immediately after reaching there. It is further submitted that on careful perusal of Ex.P1 report shows that it was dictated by PW.4 to PW.1 and there are certain discrepancies with regard to the presence of PW.4 in the Hospital at Punganur. PW.2 in his deposition stated that PW.4 and the wife of the deceased reached the hospital before the death of the deceased. Whereas PW.1 stated that they reached only after he intimated about the death of the deceased. It is further submitted that PW.1 in his deposition stated that while accused were beating the deceased, A-2 pushed PW.2 aside when he intervened and PW.2 immediately rushed to the village to bring the villagers. But whereas PW.2 in his deposition stated that A-1 pushed him aside. Thus, there are discrepancies and contradictions in the depositions of PWs.1 and 2 and therefore, the learned Judge ought to have been convicted even u/s 304 part II I.P.C.

9. On the other hand, the learned Public Prosecutor submits that PW.1 is

independent witness and his evidence is trust worthy. PW.2 is the tenant of the lands of the deceased and he is also truthful witness. In the FIR itself, the names of both the accused are disclosed and the presence of accused in the scene of offence is not disputed. It is also contended that the minor discrepancies are not material ones and the overt acts caused by the accused are with deadly weapons. The evidence of PWs.1 and 2 coupled with the circumstantial evidence goes to prove beyond all reasonable doubts that both the accused with intention to kill the deceased, caused grievous injuries and the learned Sessions Judge took a lenient view in convicting them for the offence u/s 304 part II instead of section 302 of IPC. He further submits that both the accused armed with deadly weapons with intention to kill the deceased attacked him in the field and caused grievous injuries which was witnessed by PWs.1 and 2. Therefore, the intention of both the accused is common, but the Court below did not frame the charge for the offence u/s 302 read with section 34 IPC, as the common intention of the accused is evident on the face of the record.

10. The Learned Senior Counsel Sri C.Padmanabha Reddy submits that the incident said to have been taken place in the paddy field of the deceased but according to the evidence, PW.1 it was in the sugarcane field and the age of the sugarcane field was about five months and the height of the sugarcane was five feet and therefore, PW.1 could not have witnessed the incident from the sugarcane field. But the said suggestion put forth by the defence counsel was denied by PWs.1 and 2 and stated that PW.1 was near the well. On perusal of Ex.P.12 rough sketch of the scene of offence, it shows that the well is on the northern side and from the well to the scene of offence, there are only paddy fields but not the sugar cane field and the sugarcane field was towards the western side and therefore, it is incorrect to state that PW.1 could not have seen the incident when the accused attacked the deceased as the paddy fields will be of the height of 1-1/2 to 2 feet. PWs.1 to 3 and another person at first took the injured Narayana Reddy from the place of incident to Malenatham village which is at a distance of 3/4th kilometer and from there to Punganur which is at a distance of 7-1/2 kilometers. Admittedly there is no telephone facility available except in the post office which is situated in the house of A-1 and therefore, they could not have called either police or PW.4 and accompanied the injured Narayana Reddy to Punganur. Initially, all of them have travelled from the scene of offence half a kilometer to Malenatham village and from there about 4 to 4-1/2 kilometers to Vanaganipalle cross road where they have shifted Narayana Reddy from the bullock cart into a car. From Malenatham village after travelling 2 kilometers, there is a mud road with pits here and there. From that point to Vanaganipalle cross road, there is a tar road and they took about one hour or 1-1/2 hour to reach Vanaganipalle cross road from Malenatham village. The distance between Vanaganipalle cross road to Punganur is about 5 kilometers. Thus it appears that the traveling time itself took about 1-1/2 hour in taking the injured person from the scene of offence to Punganur. The incident occurred at about 9.30 A.M., and by the time they reached Punganur it was around 11 or

11.30 A.M. Immediately the deceased was examined by the Doctor and found the deceased was in an unconscious stage and he died at about 12.10 P.M. Thus it is stated by PW.1 that immediately after the death of the deceased, he intimated the same to PW.4, son of the deceased and the wife of the deceased. Then both of them came over there.

11. Even accepting the argument of the Senior Counsel Sri C.Padmanabha Reddy about the presence of PW.4 before the death of the deceased and just before the written complaint was given by PW.1 to the Sub-Inspector of Police, I am of the view that the non-mentioning of the name of PW.4 in the inquest report and Ex.P1 will not effect the case of the prosecution. Even assuming PW.4 might have assisted in drafting Ex.P1, the truth or otherwise of the eye witnesses will not change. PWs.1 and 2 witnessed the incident and PW.2 is the tenant of the lands of the deceased. PW.1 who was near the well witnessed the incident and overt acts caused by the accused with dangerous weapons i.e., sticks which are grievous in nature. The small discrepancies in the depositions of PWs.1 and 2 are not fatal to the case. PW.1 stated that the accused came in opposite direction to deceased Narayana Reddy and PW.2 and attacked the deceased with sticks and beat him on head, right ear and on both the hands. But whereas PW.2 stated that both the accused came there and A-1 was armed with stick and they dealt blows on the deceased. The small discrepancy in the deposition of PW.2 will not give rise any doubt as regards the attack made by the accused 1 and 2 on the deceased person. As regards such small discrepancies, the Apex Court in the case of, "" State of U.P. Vs. M.K. Anthony, held at Para 10 which is extracted below:

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies drawbacks and infirmities pointed out in the evidence, as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier, evaluation of the evidence. is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, Attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as hole. It the Court before whom the witness gives evidence had the opportunity to form the opinion About the general tenor of evidence given by the witness, the appellate Court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proof to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an

unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made-by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial Court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible."

12. In view of the aforesaid facts and circumstances, I am of the opinion that the trial court rightly accepted the evidence of the prosecution witnesses, which is free from material infirmities and discrepancies. Even though there are some minor discrepancies it does not effect the prosecution case. The Court below having regard to the nature of the weapons i.e., sticks, and the blows dealt on the deceased though grievous in nature had taken a lenient view and held that the nature of offence falls u/s 304 part II IPC.

13. In the facts and circumstances of the case, I am of the opinion that the prosecution has proved the guilt of the accused for the offence u/s 304 part II beyond all reasonable doubts and I do not see any merits in the Criminal Appeal and the Criminal Appeal is accordingly dismissed.

14. Now coming to the Criminal Revision Case, Sri M.N. Narasimha Reddy, Learned Counsel appearing for the defacto-complainant stated that the nature of the injuries sustained by the deceased are grievous in nature and the accused with common intention caused severe injuries on the head of the deceased which caused his death and therefore, the accused ought to have been convicted for the offence u/s 302 IPC.

15. In so far as the Criminal Revision Case filed by the defacto-complainant for the enhancement of the sentence is concerned, the scope of this Court is limited and unless there is procedural illegality or manifest error of law in the order passed by the Learned Sessions Judge, this Court cannot interfere with the same under the revisional jurisdiction.

16. Therefore, in the above circumstances and for the reasons stated in the Criminal Appeal, I am not inclined to interfere with the Judgment of the trial Court. The Criminal Revision Case is accordingly dismissed.

17. In the result, both the Criminal Appeal and Criminal Revision Case are dismissed.