
(2017) 02 AP CK 0058

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 66 Of 2011

Meenuga Yadaiah

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

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

Citation : (2017) 1 ALTCrI 356 : (2017) 1 HLT(CrI) 495

Hon'ble Judges : Sri Suresh Kumar Kait and Sri U. Durga Prasad Rao, JJ.

Bench : Division Bench

Advocate : Smt. A. Gayatri Reddy, Counsel, for the Appellants; Public Prosecutor (TG), for the Respondent

Final Decision : Disposed Off

Judgement

Sri U. Durga Prasad Rao, J.—This appeal is filed by A1 to A3 against the judgment dated 08.12.2010 in S.C. No. 220 of 2010 on the file of Sessions Judge, Mahabubnagar whereby they were convicted for the offences punishable under Section 302 r/w 34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- each in default to suffer SI for two months.

2. The case of prosecution in brief is as under:

(a) On 07.04.2009, Meenuga Gunna (PW5) lodged a complaint before the Sub-Inspector of Police, Jedcherla (PW6) stating that on 06.04.2009 she along with her husband-Anjaneyulu (deceased) went to Gouri Shanker Colony at Badepalli village to attend 3rd day ceremony of her sister-Ranemma. The accused 1 to 3 also attended the said ceremony. While so, A3 took the complainant by the side of huts and started chitchatting. On seeing the same, the deceased suspected her and abused A3 that "Aha Kanthri Lanjakodukula tho yemi Matladuchunnavu" (why you are talking with that kantri bastards). On hearing the same, A3 asked the other accused to beat the deceased. Immediately A1 caught hold of deceased and started beating him with hands. In the meantime,

A2 lifted the deceased and threw on the ground causing head injury. At the same time, A3 also intervened and gave fist blows to him and pressed his testicles and murdered on the spot. The complainant informed about the incident to her brothers-in-law (PWs.1 and 2) at first and then gave complaint.

(b) The police registered a case in Crime No.153 of 2009 and after investigation filed the charge sheet against the accused before the Judicial First Class Magistrate, Jedcherla. The learned Magistrate after following the procedure committed the case to Court of Sessions. Learned Sessions Judge, Mahabubnagar conducted trial. A1 to A3 were charged for the offence under Section 302 r/w 34 IPC.

(c) On behalf of the prosecution, PWs.1 to 7 were examined and Exs.P1 to P6 were marked. No witness was examined and no document was marked on defence side.

(d) The trial Court after full-fledged trial found A1 to A3 guilty of the offence under Sections 302 r/w 34 IPC and accordingly convicted and sentenced them as aforesaid. Questioning the conviction and sentence A1 to A3 are before us in this appeal.

3. Heard arguments of Smt. A. Gayatri Reddy, learned counsel for appellants/A1 to A3 and learned Public Prosecutor (Telangana).

4. Learned counsel for appellants submitted that appellant No.1/A1-Meenuga Yadaiah died pending appeal. Though the said intimation is not received from Central Prison, Cherlapally where A1 was lodged, the District Judge, Mahabubnagar vide his letter Dis. No.420 dated 30.01.2017, submitted that as per the information received from the Superintendent of Jail, Central Prison, Cherlapally, the convict prisoner-Meenuga Yadaiah (A1) expired at Gandhi General Hospital, Secunderabad on 28.06.2012 while undergoing treatment for HIV. In that view, the appeal so far as A1 is concerned is dismissed as abated.

5. (a) Challenging the conviction, learned counsel for appellants firstly; argued that accused were innocent and they were falsely implicated in the case which is evident from the fact that when the death of deceased took place on the night of 06.04.2009 at about 8.00 PM and the Jedcherla PS was only at a distance of 2 KMs. from the scene of offence i.e. Gouri Shanker Colony in Badepalli village, the FIR was lodged belatedly on the next day i.e. 07.04.2009 at about 10.00 AM which indicates that the complainant took inordinate time only to implicate the accused.

(b) Secondly, it was argued that the incident took place on the night of 3rd day function following the death of elder sister of PW5 and by custom the persons attending the said function would consume alcohol and admittedly the deceased was habituated to consume alcohol, accordingly consumed alcohol and in that situation he fell down and sustained injuries and died in an inebriated condition. However, the complainant and police have foisted a false case against the

accused due to some grudges.

(c) Thirdly, it is argued that except PW5 no other eye-witnesses were examined though there were huts in and around the scene of offence and inmates were there. PW5 was none other than the wife of the deceased and she was highly interested witness and hence, her sole testimony could not have been relied upon by the trial Court to convict the accused. Further, the testimony of PW5 is not trustworthy as she deposed as if, during the course of accused beating her husband, A3 squeezed the testicles of her husband but in Ex.P5-post-mortem report and in the evidence of PW4-post-mortem doctor, no injuries were identified on the testicles of the deceased which implies that PW5 gave false evidence to implicate the accused.

(d) Finally and alternatively, learned counsel would argue that even if the entire case of the prosecution is believed, still the offence would not fall under Section 302 IPC since the prosecution case would not show that there was any intention and knowledge on the part of accused to kill the deceased. She thus prayed to allow the appeal and acquit the accused.

6. (a) Per contra, while supporting the judgment, learned Public Prosecutor would argue that the offence took place in the night time in the tamarind tope by the side of huts in Gowri Shankar Colony and in that view there was no possibility of presence of independent eyewitnesses. As per deposition of PW5 is concerned, he would argue, her presence cannot be doubted because the entire galata took place in the backdrop of PW5 having illicit intimacy with A3 and when her talking with A3 and other accused in the night time at the scene of offence was seen and abused by the deceased, the accused attacked him and beat him indiscriminately and killed him. Therefore, the facts and evidence would manifest that PW5 was a definite eye-witness to the incident.

b) Regarding veracity of her evidence, learned Public Prosecutor argued that merely because PW5 gave report on the next day, by that count her evidence and prosecution case need not be doubted for the reason that the incident took place not in the native village of the deceased i.e Kaverammabet but in the neighbouring village of sister of PW5 i.e. Badepalli and therefore, PW5 after giving intimation to her brothers-in-law (PWs.1 and 2) had to wait till their arrival and thereafter she gave report to the police on the next day morning. Regarding her evidence that A3 squeezed the testicles of her husband, learned Public Prosecutor argued that since no specific external injury was caused to the testicles, the post-mortem doctor might not have noticed any injuries and on that count her evidence cannot be disbelieved. He argued that the accused failed to bring-forth any enmity for the prosecution side to implicate them in the case. While praying to dismiss the appeal he fairly conceded that the offence would not fall under Section 302 IPC.

7. The points for determination in this appeal are:

1. Whether the deceased-Meenuga Anjaneyulu met with homicidal death on the

night of 06.04.2009 near the tamarind trees in Gowri Shankar Colony of Badepalli village?

2. If point No.1 is held in affirmative, whether the accused are responsible for his death and whether prosecution could able to establish their guilt beyond reasonable doubt?

8. POINT NO.1: That the death of deceased-Meenuga Anjaneyulu occurred on the night of 06.04.2009 at the scene of offence i.e. near tamarind trees in Gowri Shankar Colony of Badepalli village was not in dispute. The nature of death is concerned, in Ex.P4-post-mortem report it is mentioned that the following external injuries were found.

1. A laceration 2 x ? cm. scalp deep on left side of occipital region.
2. Abrasion 1 x 1 cm. on the left shoulder.

In Ex.P4 it is further mentioned that the cause of death was due to multiple injuries including injury to vital organ i.e. brain leading to haemorrhage and shock. PW4-Post-mortem doctor was testified to prove Ex.P4. He too deposed in similar lines and further stated that the two external injuries found by him were antemortem in nature and might have been caused by blunt object. He stated that during the time of external examination he found fracture of occipital bone on the left side. In the cross-examination he stated that he did not find any other injuries except the injuries mentioned in port-mortem report. He admitted that the injuries found in Ex.P4 are possible due to fall of a person from a tree or from a considerable height over a stone or any hard surface. This is the evidence relating to cause of death of the deceased.

9. The contention of accused, as already stated supra, was that the death might not be homicidal one and the deceased in a drunken state might have fallen either from a tree or from a considerable height and got injured and died. At the out set, this argument does not carry any conviction. There is no positive evidence to hold that the deceased was under the influence of alcohol before his death. In Ex.P4 under the head Abdomen, it was clearly mentioned that abdominal wall, peritoneal cavity, stomach and contents were "intact and empty". Thus, no alcohol contents were found in the stomach of the deceased so as to infer that he was in a drunken state before his death. It is true that PW1 admitted in his cross-examination that the deceased was in habit of consuming arrack in the evenings and on the day when he attended the funeral of sister of PW5 also he consumed arrack. However, his knowledge about the deceased consuming arrack on the night of incident is highly doubtful because this witness is a resident of Kaverammamet and only after the intimation of PW5 he came to Badepalli long after the incident. Hence, his evidence in this regard cannot be given due weight that too when the post-mortem report militates against his statement. Further, the very same witness denied the suggestion that the deceased received injuries when he fell down in a drunken condition and died. Therefore, his evidence cannot be taken advantage by the accused. Similar

suggestion was given to PW2 who is another brother of the deceased and who is also resident of neighbouring village Kaverammamet. His version was that deceased was having the habit of consuming arrack and he did not know whether deceased consumed arrack on the date of incident or not. He denied the suggestion that his elder brother died on account of falling down in a drunken condition. Similar suggestion was given to PW5 also. Her answer was that on the date of incident her husband did not take alcohol. She denied that her husband took alcohol and died on account of falling down accidentally in a drunken condition. So, from the oral and documentary evidence available on record, there is no possibility to conclude that deceased was under the influence of alcohol before the incident and hence the possibility of his falling accidentally and getting injured in such condition can be safely overruled. So far as the possibility of his falling from a tree is concerned, it should be noted, incident occurred in the night time at about 7.00 PM. It would be highly improbable to conclude that during such night time one would climb tree only to fall down. Thus, ruling out the remote possibilities of deceased getting injured due to accidentally falling from a tree or in a drunken state, the obvious conclusion would be that he met with homicidal death.

This point is answered accordingly.

It has now to be seen whether the accused were responsible for such homicidal death in point No.2 infra.

10. POINT No.2: Prosecution case precisely is that PW5 had illicit intimacy with A3 and on the night of incident when she was talking with A3 and other accused at the scene of offence, the deceased saw them and abused and thereby all the accused beat him indiscriminately and caused his death. Prosecution projected lone eye-witness i.e. PW5. As rightly argued by learned Public Prosecutor, there can be no demur that PW5 was the eye-witness since the entire episode leading to the death of the deceased was occurred on account of her. Hence, the question is whether her evidence is trustworthy to establish the guilt of the accused.

11. In her evidence PW5 deposed that about one year ago she went to the house of her elder sister who passed away and all the three accused came there and they were talking with each other and she also went there and talked with A3. At that time her husband came and called her and questioned as to why she was talking with A3. Meantime, all the accused attacked her husband; A1 beat him and A2 lifted her husband and threw to the ground due to which he sustained injuries on the back and head and after his falling A3 sat on him and squeezed his testicles. She stated that she gave Ex.P5-complaint to the police. This is her version with regard to incident. She was extensively cross-examined but nothing useful could be extracted to impeach credibility of her evidence. It was simply suggested that with regard to incident she was speaking falsehood which she denied. It was not even suggested that accused did not come to scene of offence at the relevant time. It was also not extracted in the cross-examination about

the existence of any enmity between the accused and the deceased so as to speak falsehood about the accused.

12. Accordingly, as rightly observed by the trial Court, there is no reason to discard the evidence of PW5. Her evidence was sought to be discredited firstly on the argument that as per PW5, A3 squeezed the testicles of the deceased but however, neither in the evidence of PW4 nor in Ex.P4-port-mortem report any injuries were mentioned on the testicles of the deceased and therefore, she was speaking falsehood. It is true that PW4 admitted except two injuries mentioned in Ex.P4, he did not find any other injuries. However, we will find in Ex.P3-inquest report that the inquest witnesses found some abrasions on the testicles and they were swollen. Probably PW4 either might have missed this aspect during post-mortem or by the time he conducted autopsy the swelling might not be prominent to attract his attention. Be that it may, the testimony of PW5 cannot be held as false as it gets corroboration from Ex.P3.

13. The next argument to impeach her credibility is on the ground of delay in lodging FIR. The incident was admittedly occurred between 7 and 8.00 PM on 06.04.2009 and FIR was lodged at 10.00 AM on 07.04.2009 with Jedcherla PS. The distance between Jedcherla PS and scene of offence is about 2 kms. Thus, the delay is writ large but the explanation of PW5 is also worth mentioning. She stated that after the incident she telephoned to her elder sister-Narasamma, the wife of PW1 who are residents of neighbouring village Kaverammamet; on her information PW1 and others came to Badepalli at night. After all of them saw the dead body, PW5 went to her village-Kaverammamet and met the Sarpanch of her village and got drafted Ex.P5 through him and then went to Jedcherla PS which is at a distance of 5 kms. from Kaverammamet and presented the report to police at 10.00 AM on 07.04.2009. As observed by the trial Court, PW5 is an illiterate and belonging to pig rearing community and she was in a bereaved condition due to death of her husband that too in a neighbouring village. In those circumstances, she waited till the relations of her husband came to Badepalli from Kaverammamet and after consoling themselves, it appears, she again went to Kaverammamet and contacted their Sarpanch and got prepared Ex.P5 and approached Jedcherla PS and presented report. Hence, the delay is inevitable in those circumstances. It must be noted that delay in lodging FIR will not always be fatal to the case of the prosecution. If delay is properly explained and Court is satisfied that if the complainant has not purposefully delayed in lodging of FIR and prosecution has not taken undue advantage out of it, such delay can be excused. The present case was not a political murder so as to gain time by prosecution party to implicate innocents in the opposite party. Hence, the argument advanced in our considered view, would not mitigate the credibility of PW5. The injuries spoken by her were corroborated by PW4 and Ex.P3. Thus, her testimony clearly establishes the guilt of the accused in causing death of the deceased.

14. Now, coming to the nature of the offence, the facts and evidence would

depict there was no previous enmity between accused and deceased. It was not a case of pre-meditated and pre-planned murder. In a spur of moment, when the deceased abused PW5 and accused, they attacked the deceased and indiscriminately beat him and caused his death. Admittedly, no weapon was used for causing the injuries. Further, the injuries are concerned, there was only one vital injury on the left side of occipital region. No injury on testicle was mentioned in Ex.P4. From all these, it can be inferred that the accused had no intention to cause the death of the deceased. Therefore, first clause in Section 300 IPC which speaks of intention, can be said to be absent in the instant case. Clauses 2 to 4 mentioned in Section 300 IPC are concerned, no doubt there was an intention on the part of accused to cause bodily injury to the deceased but it cannot be inferred that they had requisite knowledge that their act would cause the death of the deceased. PW4-post-mortem doctor did not specifically state that injuries found by him were sufficient in the ordinary course of nature to cause death. For all these reasons, in our considered opinion, the act committed by the accused is a culpable homicide not amounting to murder and hence they are liable to be punished under Section 304 Part-II IPC.

This point is answered accordingly. Consequently, the impugned judgment dated 08.12.2010 is hereby modified.

15. In the result, accused Nos.2 and 3 are found guilty of the charge Culpable Homicide not amounting to murder and each of them is sentenced under Section 304 Part-II IPC to undergo R.I for a term of Seven(7) years and pay fine of Rs.1,000/- and in default of payment of fine to suffer S.I for two(2) months. The remand period, if any, shall be given set off.

16. As A1 is concerned, the appeal is dismissed as abated.

17. This Criminal Appeal is partly allowed to the extent mentioned above.

18. As a sequel, miscellaneous petitions, pending if any, shall stand closed.