
(2004) 08 AP CK 0120
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 1532 of 1998

Mohd. Azhar Hussain

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 19-08-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 304I, 84

Citation : (2004) 08 AP CK 0120

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : N. Parameswara Reddy, for the Appellant; Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Sri N. Parameswara Reddy, Counsel appearing for the appellant and the learned Additional Public Prosecutor.

2. This criminal appeal is filed by the sole accused in Sessions Case No. 322 of 1997 on the file of the learned Metropolitan Sessions Judge, Hyderabad.

3. Sri. N. Parameswara Reddy, the learned Counsel representing the appellant-accused would submit that the learned Sessions Judge had totally erred in placing reliance on the evidence of P.Ws 1 to 3, since this evidence is highly interested and also discrepant. The learned Counsel also would submit that the possibility of P.W.2 involving in the incident on the fateful day and throwing the blame on the accused also cannot be ruled out. The learned Counsel would further submit that the seizure of the weapon also had not been proved. P.W.3 is only a child witness, who had been tutored to support the evidence of P.Ws 1 and 2. The learned Counsel ultimately would conclude saying that specifically the plea of insanity or unsoundness of mind of the accused as such had not been raised, and from the facts, the same can be inferred and on the said ground also, the accused is entitled for an acquittal.

4. On the contrary, the learned Additional Public Prosecutor would contend that Ex. P1-complaint is clear and categorical and P.W.1 had well supported the same and that P.W.2 is none other than the sister of the accused and there is no enmity or animosity for this witness to speak as against the accused, and as such, this evidence of P.W.3 also well corroborates with the evidence of P.W.2. What actually had happened immediately by raising cries, the same had been made public, and hence, these aspects form part of the same transaction and would fall under *res gestae* and in a matter of this nature, the prosecution can place evidence only to this extent and hence, on the strength of the evidence of P.Ws 2 and 3, the conviction definitely is sustainable. The learned Additional Public Prosecutor also would contend that the possibility of P.W.2 involving in the incident and throwing the blame on the accused cannot be definitely countenanced since there are no suggestions even to that effect and that is not the defence version. The learned Additional Public Prosecutor also would contend that the plea of insanity or unsoundness of mind on the part of the accused was not raised as a defence at all and hence, the same cannot be raised and even otherwise, the burden is on the defence to establish the same in view of Section 84 of the Indian Penal Code and hence, the said defence also is not available to the appellant-accused.

5. Perused the oral and documentary evidence available on record.

6. The appellant-accused was found guilty for the offence u/s 304 Part I IPC and was sentenced to undergo Rigorous Imprisonment for a period of seven (7) years.

7. The brief facts of the case are as hereunder:

On 29.09.1996 at about 8.30 A.M., P.W.1 came to the police station, P.S. Chatrinaka, Hyderabad, and gave a report stating that at about 6.00 a.m. while he was in his house, his neighbour P.W.2 came to his house and informed that her brother Mohd. Azhar Hussain-accused, who resides in the same house along with her, has beaten her mother-in-law Fatima Bibi, W/o. Late Shaik Peer Bakshi, aged 80 years, on the head with a pestle and due to which, she had died. P.W.1 further stated that he went there and found Fastima Bibi lying in a pool of blood and accordingly, a case in Crime No. 243 of 1996 u/s 302 IPC had been registered. Ex. P.1 reads as hereunder:

"I, M.A. Basith S/o. M.A. Qayyumkham, age 32 years, R/o. H. No. 18.2.635/23, Opp: M.C.H., quarters, Jangammet, Hyderabad submits that today at about 6.00 A.M., while I was in my house, our neighbour Smt. Roshan Ara Parveen W/o Shaik Lateefur Rahaman, came to my house and informed me that her brother by name Md. Azhar Hussain, who resides in the same house along with his sister has been beaten her mother-in-law namely Fatima Bibi W/o. Shaik Peer Baksh, age about 80 years R/o. Same house, to death on the head with pestle, on that immediately I rushed to the spot and found died Fathima Bibi in pool of blood.

Hence you are requested to take necessary action against the accused Md. Azhar Hussain."

8 .P.W.1 deposed about his going to the Chatrinaka Police Station and giving a complaint-Ex. P1. This witness also deposed that police conducted inquest panchanama (Ex. P-2) and scene of offence panchanama (Ex. P-3), and he signed in both Exs. P2 and P3. He deposed that the panchas opined that the deceased died due to head injury. This witness was cross-examined and no doubt, he has deposed that he does not know whether accused, Roshanara Parveen and the deceased had any disputes and he denied the suggestion that at the instance of Roshan Ara Parveen, he was deposing false and that no such incident had taken place.

9. P.W.2 the sister of appellant-accused is the crucial witness who had deposed that in the morning, her son went for drinking water and then, came back shouting "uncle has killed, grandmother" at about 6.00 a.m. She further deposed that the accused was standing in the hall, told her that her mother-in-law had got done black magic on him and he killed and that due to her black magic people, who were paying money, are not paying money, and she was also not getting any job due to black magic. This witness also deposed that her mother-in-law was having injury on her head and bleeding. She deposed that she ran away and informed to P.W.1 and when she went to P.W.1, the accused ran away from the house. P.W.2 further deposed that her husband was outside India when this incident happened. She deposed that M.O1 is the pestle and two photos shown to her are of her mother-in-law. This witness was cross-examined relating to certain typographical features of the house and when certain suggestions were put, this witness specifically deposed that it is not true to say that she is not deposing falsely merely on suspicion that the accused had killed her mother-in-law and it is not true to suggest that at her instance, P.W.1 deposed falsely. It is pertinent to note that no suggestions were put to this witness that she could have been a party to the said incident and hence, the defence version in this direction cannot be accepted.

10. P.W.3 is yet another witness, aged 14 years, who had well deposed as to what had happened and the evidence of P.W.3 is so natural and convincing. It would corroborate the evidence of P.W.2 in all material particulars.

11.P.W.4 is the panch witness in relation to Ex. P4. No doubt, he was declared hostile and this witness was cross-examined.

12. P.W.5 who is another panch witness deposed that the accused brought out pestle-M.O.1 and Ex. P.4-panchanama was drafted and he signed in it. This witness was also cross-examined.

13. P.W.6 deposed about Ex. P5 negative and Ex. P6 positive and likewise Exs. P7 to P.18 the negatives and positives. He deposed that all these are the photos of the dead body of the deceased, who was an old lady and who sustained injury on her head.

14. P.W.7 -Assistant Professor of Forensic Medicine, had deposed that on 30.09.1996 at 1.30 P.M., he received a requisition from the Inspector of Police,

P.S. Chatrinaka for conducting the post-mortem examination over the dead body of Fatima Bee. He further deposed that at 1.30 P.M. he conducted the post-mortem examination and concluded at 2.30 p.m. on the same day and the body was brought by Head Constable No. 3195 of Police station Chatrinaka and he found the following ante mortem injuries on the body:

1. A lacerated wound 3 x 2 x 1 cm., over right eye brow.
2. A lacerated wound 3 x 2 x 1 cm., over left eye brow.
3. A lacerated wound 6 x 2 x 1 cm., over left temporal region.
4. A lacerated wound 3 x 2 x 1 cm., over left occipitol region.
5. Communitated fracture on the vault of skull into pieces involving all the bones.
6. Comminuted on the base of skull into pieces involving all the bones.
7. Brain is having sub-dural haemorrhage on the surface.

He deposed that the cause of death is head-injury, Ex. P.19 is the post-mortem examination report issued by him. P.W.7 further deposed that the injuries caused by heavy blunt object and such injuries are caused by M.O.1.

15 .P.W.8 -Inspector of police had deposed about his registering the case in Crime No. 243 of 1996 u/s 302 IPC and issuing the First Information Report, and taking up of investigation and visiting the scene of offence and conducting observation panchanama of scene of offence and finding the dead body of female aged about 80 years lying in a pool of blood. He deposed that after conducting inquest panchanama, he got the deceased body photographed. He deposed that Ex. P.3 is the scene of offence panchanama conducted in the presence of P.W.1 and Syed Hussain and that he conducted inquest panchanama (Ex. P-2) in the presence of the same persons. He further deposed that Exs. P5 to P.18 are negatives and positives of the photos. He further deposed that he had sent the dead body for post-mortem examination to O.G.H. Hyderabad and he had also examined P.Ws 1 to 3 , Mohd. Ismail, Mohd. Abdul Shakur and recorded their statements. This witness also deposed that on 01.10.1996 he arrested the accused and recorded his confession statement. The admissible portion alone had been marked and had recovered MO1-pestle at his instance in the presence of P.Ws 4 and 5. No doubt, one of the witnesses turned hostile. But the other witness had supported the prosecution. This witness also deposed that he produced the accused before the Metropolitan Magistrate and got him remanded for judicial custody. He deposed that he had sent M.O1 for chemical examination and after completion of investigation and after receipt of post-mortem examination report, he had filed charge sheet. Certain suggestions were put to him that Ex. P4 is manipulated and there was no recovery relating to MO.1 and regarding two other aspects relating to investigation, and all these aspects had been specifically denied by the Investigating officer.

16. It is pertinent to note that immediate after coming to know the incident,

P.W.2 had rushed to P.W.1 and P.W.1 had reported the matter under Ex. P1. The conduct of P.W.2, if carefully scrutinized, the version of the defence put forth that she could have involved in the incident and would have thrown the blame on her brother, definitely cannot be accepted and there are no suggestions to this fact at least and hence, the said defence version definitely is not convincing.

17. The next aspect which had been urged is one of ground of insanity and unsoundness of mind. No doubt, even before the learned Judge, an appeal was made at the time of making submissions and certain findings had also been recorded in this direction, and there is no specific plea taken in this regard. Section 84 of the Indian Penal Code dealing with Act of a person of unsound mind reads as follows:

84 IPC: Act of a person of unsound mind:

"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the Act, or that he is doing what is either wrong or contrary to law."

Section 84 falls under Chapter 4 general exceptions and it is needless to say that the burden of proving such a plea of insanity, is on the accused and merely because that is raised as a ground, the same cannot be taken into consideration in the absence of specific plea by the defence in this regard during the trial. Hence, this ground is also not available.

18. This Court had also carefully scrutinized the findings recorded by the learned Judge and this Court is of the considered opinion that the said findings are well considered findings and deserve no disturbance at the hands of this Court and the said findings are hereby confirmed. Taking into the consideration the close relationship between the parties and also certain findings recorded, relating to the mental state of the accused though no specific defence was taken in this direction, the conviction awarded by the learned Sessions Judge, no doubt is hereby confirmed but sentence is modified as infra.

19. In the result, the conviction imposed by the learned Metropolitan Sessions Judge, Hyderabad in Sessions Case No. 322 of 1997 against the appellant-accused on 01.05.1998 is confirmed, but the sentence of imprisonment awarded against him for the offence u/s 304 Part I IPC is modified and reduced to four years from seven years.

20. The bail bonds of the appellant-accused shall stand cancelled. The accused shall surrender to serve the rest of the sentence. The accused is entitled to set off of the period of imprisonment, if any undergone by him, in accordance with law.

21. Accordingly, the Criminal Appeal is dismissed subject to the above modification.