

**(2009) 02 AP CK 0024**

**In the Andhra Pradesh High Court**

**Case No :** Criminal Appeal No's. 1144 and 1148 of 2003

Munavath Redia

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

**Date of Decision :** 26-02-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 162  
Penal Code, 1860 (IPC) — Section 302, 304, 324

**Citation :** (2009) 2 ALT(Cri) 64 : (2009) 1 APLJ 362

**Hon'ble Judges :** R. Kantha Rao, J

**Bench :** Single Bench

**Advocate :** K.S. Mahender Reddy, in Criminal Appeal No. 1144 of 2003 and P. Rana Praveer, Criminal Appeal No. 1148 of 2003, for the Appellant; Public Prosecutor, for the Respondent

**Final Decision :** Allowed

## Judgement

R. Kantha Rao, J.—These two appeals are filed by different advocates against the judgment, dated 25.09.2003 in S.C. No. 68 of 1998 rendered by the II Additional Sessions Judge (Fast Track Court), at Mahboobabad.

2. The appellant/sole accused in the sessions case was tried by the learned Additional Sessions Judge for the charges under Sections 302 and 324 of IPC and was ultimately convicted for the offence u/s 304 Part-II of IPC and was sentenced to undergo rigorous imprisonment for a period of six years.

3. Challenging the said order of conviction and sentence, these two appeals have been preferred.

4. Since these two appeals are preferred against the one and the same judgment passed by the learned Additional Sessions Judge in the said sessions case, they are being disposed of by the following judgment.

5. It was the case of the prosecution that the deceased, the appellant, PWs.2 and 5 (Munavath Thourya and Bhadrur respectively) are natural brothers. PW-3

(Munavath Rukali) is their mother and PW-4 (Peekly) is the wife of the deceased. In the afternoon of 11.04.1997 the deceased cut the branches of the neem tree belonging to the appellant. On the same day at about 11.00 p.m. when the deceased came out of the house, the appellant picked up a quarrel with him on the ground that he had cut the branches of the neem tree and in the course of the said quarrel, he stabbed the deceased with a knife on the abdomen as well as on the left thigh and caused his death. PWs.2 to 5 witnessed the incident and when PW-2 intervened at the time of the appellant inflicting stab injuries on the deceased, he also received injuries on his left hand and left forearm. On the next day at about 10.00 a.m. the police visited the place of occurrence situated in Thanda and basing on a written report presented by PW-1 (V.B.R.Ranga Rao), the Assistant Secretary of Raikal Gram Panchayat, PW-9 (Laxmipathi), the Assistant Sub- Inspector of Police, Pebbair Police Station registered the case in Crime No. 68 of 1998 for the offences under Sections 302 and 324 of IPC. Part of the investigation was conducted by PW-9 and the remaining investigation was conducted by PW-10 (Chennaiah), the Inspector of Police who filed the charge sheet after completing the investigation.

6. In the course of the trial before the learned Additional Sessions Judge, the prosecution in order to establish the guilt of the appellant examined PWs.1 to 10, marked Exs.P-1 to P-14 and M.O.1 knife. The learned Additional Sessions Judge at the conclusion of the trial on hearing either side and upon considering the entire evidence on record found the appellant guilty for the offence u/s 304 Part-II of IPC, convicted him for the said offence and sentenced him to punishment as mentioned above.

7. PW-2, the injured eyewitness who is one of the brothers of the deceased did not support the prosecution version and he deposed before the trial Court that on the date of the incident he was suffering from fever, remained in the house itself and he heard the shouts that thieves entered the village, thereafter he came out of the house and saw the deceased lying on the ground. PW-3, the mother of the deceased also did not support the prosecution version and she stated in her evidence that the appellant and the deceased were living amicably and she did not witness the incident. PW-5, another brother of the deceased also did not support the prosecution story and according to him he did not witness the incident at all. However, PW-4 the wife of the deceased who is said to be another witness to the occurrence supported the prosecution story. Mainly placing reliance on her evidence, the learned trial Court recorded conviction against the appellant as mentioned above. PW-7 (M.Kishan), the mediator who was present, according to the prosecution at the time of recovery of M.O.1 knife in pursuance of the disclosure statement made by the appellant to PW-10, the Inspector of Police, did not support the prosecution case and he stated in his deposition that nothing transpired in his presence. However, PW- 10, the investigating officer deposed before the trial Court that in pursuance of the disclosure statement made by the appellant, he and the mediators were led by the appellant to his house from where the appellant brought M.O.1 knife and produced before him.

8. The learned trial Court relying on the evidence of PW-4, the wife of the deceased relating to the incident proper and on the evidence of PW-10, the investigating officer relating to the recovery of the weapon of offence, convicted the appellant and sentenced him to punishment as mentioned above.

9. Now the point for determination in these two appeals is whether the order of conviction and sentence passed by the learned trial Court can be sustained.

10. At the hearing of the appeal, the learned Counsel appearing for the appellant would submit that the trial Court grievously erred in arriving at the conclusion that PW-4 is an eyewitness and also committed a mistake in considering the evidence of PW-10, the investigating officer in regard to the recovery of weapon of offence as sufficient despite PW-7 the mediator not supporting the said version and the order of conviction passed by the trial Court resting on the evidence of the said two witnesses is unsustainable and is liable to be set aside in these appeals.

11. On the other hand, the learned Public Prosecutor appearing for the State would submit that though PW-4, the wife of the deceased is an interested witness, her evidence inspires confidence and the learned trial Court also rightly placed reliance on the evidence of PW-10, the investigating officer in relation to the recovery of weapon of offence in pursuance of the disclosure statement made by the appellant and the finding arrived at by the trial Court requires no interference in this appeal.

12. PW-8 (Dr.N.Ramulu), the Autopsy Surgeon found the following ante mortem injuries on the body of the deceased:

i) Stab wound present on the left side of thigh (femoral triangular) 11 x 4 cms in size.

ii) Stab wound present on the left side of lower abdomen 6 x 4 cms in size.

iii) Incised wound present over the epigastriac region, 7 x 4 cms in size.

iv) Stab wound present on the midline of abdomen, 10 x 8 cms in size and intestines came out.

v) Laceration over the large intestines and perforation over the large intestine present.

vi) Incised wound present on the right lobe of liver 4 x 4 cms in size.

vii) Blood clots present in peritoneal cavity at about 400 to 500 drops.

viii) Perforation of stomach.

ix) Laceration of 4 x 2 cms over upper lobe of right lung.

x) Perforation of blood vessels of femoral triangle present on left side.

13. In the opinion of PW-8, the doctor who conducted post mortem examination,

the above injuries are likely to cause death and the death of the deceased was due to shock and haemorrhage which might have occurred 12 to 24 hours prior to post mortem examination, as a result of the above mentioned injuries and the injuries are possible by a weapon like M.O.1 knife. Incorporating these findings, he issued Ex.P-9 post mortem report. Thus, from the evidence of PW-8, the death of the deceased was undisputedly homicidal.

14. PW-8 further deposed that on the same day, he examined PW-2 and found the following injuries:

i) Laceration over the left hand, 2 x 1 cms in size.

ii) Laceration left forearm, 6 x 4 cms in size.

In the opinion of PW-8, the injuries are simple in nature and might have been caused by a blunt weapon. Incorporating the said injuries and his opinion, he issued Ex.P-10 injury certificate.

15. The prosecution version is that while the appellant was stabbing the deceased with M.O.1 knife, which is a sharp edged weapon, PW-2 interfered and in that process he sustained the above injuries noticed by PW-8, the doctor who examined him. If really PW-2 interfered while the appellant was attacking the deceased with a sharp edged weapon, he would not have received the kind of the injuries noticed by PW-8, the doctor, which according to him were only possible by a blunt object. Therefore, it is very much in doubt as to whether really PW-2 received injuries in the process of rescuing the deceased from being attacked by the appellant with knife. Further PW-2 himself stated in his evidence that he did not witness the incident at all. The learned trial Court also rightly acquitted the appellant of the charge u/s 324 IPC for causing injuries to PW-2 since PW-2 himself did not state about his witnessing the incident or interfering while the deceased was being attacked by the appellant. Thus, the finding of the trial Court that it is not possible to hold the appellant guilty for the offence u/s 324 IPC solely basing on the medical evidence is wholly justified and no other view can be taken on this aspect.

16. The crucial aspects, however, require determination in these appeals are whether PW-4, the wife of the deceased actually witnessed the occurrence and whether it is safe to place reliance on the evidence of PW-10, the investigating officer with regard to the recovery of weapon of offence in pursuance of the confession said to have been made by the appellant to him when PW-7 did not support the prosecution version.

17. As per the prosecution story, the incident took place at about 11.00 p.m. on 11.04.1999. PW-4, the wife of the deceased stated in her evidence before the trial Court that the police arrived at the village where the offence took place at about 10.00 p.m. i.e. on the same night itself and they examined her at her house after their arrival. But, it is the prosecution version and also the evidence of PW-1, the Assistant Secretary of Raikal Gram Panchayat that on the next day

of the incident, the police came to the village and thereafter, he presented Ex.P-1 written report to the police. Therefore, in this case obviously the investigation commenced long prior to lodging of Ex.P-1 by PW-1. 18. If really the F.I.R. was not registered soon after the police received information about the murder of the deceased after arriving at the village on the same night itself, it certainly raises a serious doubt about the truthfulness of the prosecution version. Before examining the authenticity of the F.I.R. in the instant case, it is relevant to take note of the principles laid down by the Apex Court on this aspect in the following decisions:

i) In *Marudanal Augusti Vs. State of Kerala*, wherein the Apex Court held that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence.

ii) In *Sevi and Another Vs. State of Tamil Nadu and Another*, in which case, it was alleged by the accused that the original F.I.R. was suppressed by the police officer and it was substituted by another. Despite the said fact, the police officer failed to produce the F.I.R. and general diary into the Court. In such a situation, the Apex Court held that an inference can be drawn that original F.I.R. was suppressed on account of which the prosecution case becomes suspicious.

iii) In *Mohar Singh Vs. The State of Rajasthan and Others*, in which the F.I.R. was taken down after the Inspector of Police visited the site and witnesses were taken to the police station. Having regard to these circumstances, the Apex Court held that the F.I.R. is not reliable.

iv) In *State of Andhra Pradesh Vs. Punati Ramulu and others*, in which case the investigating officer deliberately not recorded the F.I.R. after receipt of information of cognizable offence. The Apex Court held that registering the complaint as F.I.R. after reaching the spot and after due deliberations, consultations and discussion, the complaint could not be treated as F.I.R., but it would be a statement made during the investigation and hit by Section 162 Cr.P.C.

19. If we examine the facts of the case on hand and analyse the evidence of the witnesses, there is positive evidence of PW-4, the wife of the deceased to the effect that the police arrived at the village on the date of the offence at 10.00 p.m. and examined her at her house after their arrival. If at all PW-4 is an eyewitness to the occurrence, she would have stated about her witnessing the incident to the police and basing on such information the police should have registered the F.I.R. But, curiously the prosecution version is that on the next day of the incident, the police came to the village and after receiving a written report from PW-1, the Assistant Secretary of Raikal Gram Panchayat who is not a direct witness to the occurrence registered the F.I.R. The said fact is also testified by PW-1 in his evidence before the trial Court. From the contradictory versions of

PWs.1 and 4, it is therefore obvious that the investigating officer deliberately abstained from recording the F.I.R. soon after receipt of information regarding commission of the cognizable offence. The situation, therefore, leads to a conclusion that the investigating officer when he first visited the scene of offence on the night of incident was not in fact aware as to who were the direct witnesses to the occurrence. If really PW-4 and the brothers of the deceased informed PW-9, the Assistant Sub-Inspector of Police, Pembri Police Station, he would have registered the F.I.R. without any amount of delay incorporating the names of PWs.2, 4 and others as eyewitnesses. The inordinate delay in registering the F.I.R. in this case creates any amount of doubt in the mind of the Court that the eyewitnesses were introduced only as an afterthought. The F.I.R. in this case thus loses its authenticity and in the strict sense it is only a statement made during the course of investigation and is hit by Section 162 Cr.P.C. Further, the manner in which the F.I.R. was brought into existence raises any amount of suspicion about the introducing eyewitnesses after due consultations and deliberations.

20. More so, if we carefully examine the evidence of PW-4, the wife of the deceased, she did not specifically state in her chief examination that she witnessed the actual occurrence. She only stated in the chief examination that on account of the dispute regarding the cutting of neem tree belonging to the appellant by the deceased, there occurred a quarrel between both of them at 4.00 p.m. where at the appellant stated that he would take away the life of the deceased and subsequently the appellant killed the deceased by stabbing him with knife. According to her version, after hearing the shouts she and PW-1 came out and saw the deceased lying on the ground with intestines coming out of the abdomen. There were also injuries on the hips and stomach of the deceased and that subsequently, the appellant ran away along with his wife. If we go through the cross-examination of PW-4, she specifically admitted that by the time she came out of the house, she found her husband lying on the ground with injuries and PW-3 was by his side. Thus, from a careful examination of the entire evidence of PW-4, it is obvious that she never claimed to be a direct witness to the occurrence. However, the learned trial Court interpreted the evidence of PW-4 as if she actually witnessed the entire incident. A perusal of the evidence of PW-8, the autopsy surgeon clearly indicates that out of 8 injuries, one injury was on the thigh and the remaining 7 injuries were on the abdomen of the deceased. If really PW-4 was present at the time of actual occurrence and witnessed the incident, she would have spoken to the fact of the appellant stabbing the deceased indiscriminately with knife. But, she did not testify the said fact. She only stated that by the time she came out of the house, she found her husband lying on the ground with injuries.

21. As such, a careful analysis of the evidence of PW-4, the wife of the deceased in the light of medical evidence forthcoming in this case clearly indicates that she is not a direct witness to the occurrence but was wrongly considered as an eyewitness by the learned trial Court. This being a case based on direct

evidence, when once it is held that PW-4 was not at all a direct witness, it is not possible to base a conviction even if the testimony of PW-10, the investigating officer is believed with regard to the recovery of weapon of offence in pursuance of the disclosure statement made by the appellant. The reason being the recovery evidence is only a subsidiary evidence and a conviction cannot be rested solely on such evidence, in the absence of any other incriminating evidence indicating involvement of the appellant in commission of the offence.

22. As such in my considered view, the trial Court wrongly considered PW-4, the wife of the deceased to be a direct witness to the occurrence and also wrongly placed reliance on the evidence of PW-10, the investigating officer with regard to recovery of weapon of offence despite the fact that PW-7, the mediator who is an independent witness did not support the prosecution version on the said aspect. It would appear that the learned trial Court recorded a finding of conviction against the appellant for the offence u/s 304 Part-II of IPC on account of grave suspicion against the appellant, the conviction is based on surmises and conjectures, but not on any legal evidence which is liable to be set aside in this appeal.

23. For the reasons stated hereinabove, the order of conviction and sentence passed against the appellant by the trial Court is set aside and the appeals are allowed.