
(2014) 02 AP CK 0125

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1191 of 2009

Nakka Trimurthulu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 1 ALD(Cri) 756

Hon'ble Judges : M.S.K. Jaiswal, J; L.N. Reddy, J

Bench : Division Bench

Advocate : M.V. Hanumantha Rao, Advocate for the Appellant

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The appellant was alleged to have killed one M. Dhanraj at 2120 hours on 15.04.2006 at Chikkadapally area of Hyderabad. He was put to trial in S.C. No. 179 of 2008 in the Court of III- Additional Metropolitan Sessions Judge, Hyderabad as the sole accused. Through judgment dated 11.08.2009, the trial Court convicted him and imposed the sentence of rigorous imprisonment for life and fine of Rs. 500/-. Hence the appeal. The case of the prosecution was that on 15.04.2006, PW-1, a retired employee, was sitting in front of his house and was smoking a cigarette, and on hearing a loud sound in the street he came out and found that a pushcart of coconuts and another pushcart of soda were proceeding, and nearby them one person was attacking another with a sickle indiscriminately to such an extent that the intestines of the attacked person have come out. With a view to escape from the further attack, the injured person is said to have ran up to some distance but fell down, and on seeing the gathering of the people, the person, who caused injuries, has fled away. Police is said to have arrived the spot and thereafter PW-1 submitted a complaint, Ex.P1. He stated inter alia that through the persons, who gathered there, he came to know that the name of the injured is Dhanraj and the person, who attacked him, is Nakka Trimurthulu, the accused.

2. On receiving the information about the occurrence, PW-9, the Station House Officer, Chikkadapally, Hyderabad, registered Crime No. 186 of 2006 and started the investigation. He caused the scene of offence panchanama, inquest prepared and arranged for postmortem of the deceased. After completing the investigation, the Investigating Officer filed charge sheet alleging the offence of murder against the accused.

3. Before the trial Court, PWs.1 to 12 were examined and Exs.P-1 to P-15 were filed. A contradiction elicited through PW-12 was marked as Ex.D-1. Material Object Nos. 1 to 14 were taken on record. The trial Court convicted the accused and imposed the punishment.

4. Sri M.V. Hanumantha Rao, learned counsel for the appellant submits that the very contents of Ex.P.1 do not command any acceptability, since the complaint was submitted after the police arrived the spot and the persons were identified by somebody else. He submits that while according to PW-1, the first information about the occurrence was passed through telephone; PW-9 stated that he received the information through VHF set. Learned counsel submits that no reference was made to the entry in the General Diary (GD). It is also submitted that PW-1 did not name B. Gangadar Rao (PW-2) and B. Pandu (PW-5) in Ex.P.1 though his only source of information to know the names of the accused and the deceased was said to be those two persons. He further submits that PW-12 has sprung from somewhere and though his name was not mentioned in Ex.P.1, nor he was examined at the initial stage, he was cited as a witness, and that several inconsistencies have been elicited from him. Learned counsel contends that the prosecution did not suggest anything with regard to the motive of the appellant to be the cause enough, for killing of the deceased.

5. The learned Public Prosecutor, on the other hand, submits that PWs. 1, 2, 5 and 12 are totally disinterested witnesses and there is no reason why they should make any attempt to implicate the accused. She submits that PW-1 has graphically stated whatever has occurred in front of his house and the trial Court has arrived at a proper conclusion as to the cause of the death of the deceased. She contends that when the occurrence is proved to the satisfaction of the Court, motive virtually becomes secondary.

6. The charge framed by the trial Court against the appellant reads as under:

That you accused on or about 15.4.2006 at about 21.20 hours near Sai Seetarama Apartments, Ashoknagar, Chikkadapally, Hyderabad did commit murder intentionally causing the death of the deceased Moturi Dhanraj by attacking him with a coconut cutting knife (sickle) and caused severe injuries on the vital parts of his body and thereby committed an offence punishable u/s 302 IPC and within my cognizance.

7. Nowhere in the oral or documentary evidence, the relationship between the accused and the deceased, or for that matter the probable motive, which may have prompted the accused to attack the deceased were suggested. We take

note of the fact that in case the occurrence of an incident, resulting in commission of a crime, is proved to the satisfaction of the Court, any lapse in establishing the motive may not, by itself weaken the case of the prosecution. The motive, in a criminal case is a phenomenon, which, for the most part of it, is helpful to the prosecution in elimination process to connect the crime with an individual. If a person is proved to be having a motive vis-?-vis the victim of a crime, the prosecution gets an opportunity to take the occurrence close to the door of the person who was found to be having a motive. With the help of other oral and documentary evidence, the needle of suspicion can be made to stop, with its point towards the person nurturing such motive. Notwithstanding the importance, which the motive plays in a criminal case, it cannot be an exclusive factor to connect an accused with the crime. Many a time, it would be difficult for the prosecution or for anyone to discern the motive on account of which the accused may have committed the crime. This is particularly so in a system where the accused is extended the facility of absolute silence. Further, what can be treated as an inconsequential matter for one, may be serious enough for another to react.

8. There is any amount of doubt as to the starting point for conducting the investigation. While, according to PW-1, he gave the information about the occurrence to the police through phone, the Investigating Officer, PW-9 stated that he rushed to the spot on receiving information through VHF set. The very purpose of maintaining General Diary in a police station is to enable the police to establish the various steps taken by them from time to time. In case any phone call was received from PW-1, an entry to that effect was expected to be made in the GD maintained in the police station. The very fact that PW-9 stated that he proceeded to the spot on receiving the information through VHF set virtually belies the version of PW-1.

9. It is not as if the quarrel, leading to the death of the deceased, has taken place between the persons that are known to PW-1. Even according to him, both the persons involved in the quarrel are unknown to him. In Ex.P.1, he named the persons, but the source of information is not mentioned. It is only in his deposition before the Court, he stated that the names of the accused and the deceased were furnished to him by PW-2 and his son PW-5, who are said to be the vendors of coconut and soda respectively. Absence of this aspect in Ex.P.1 weakens the case of the prosecution to a large extent.

10. The identification of the accused by PW-1 in the Court is highly improbable. The reason is that the incident is said to have taken place at 9.00 p.m., and one just cannot remember the face of a person, who is seen for the first time. Further, it was not as if the PW-1 had a fair idea about the features of those two persons. Even according to him, the accused was running away. Therefore, the identification of the accused by PW-1 as the person who has caused the death of the deceased is highly improbable for the reason that, admittedly, PW-1 and the accused were utter strangers and PW-1 has seen the accused for the first and

last time only at the time of the incident, which took place at about 9.00 p.m., i.e. in the night. When such a person comes to the court and identifies the person standing in the dock as the one, who has committed the crime, it creates suspicion.

11. PW-2, though cited as an eye-witness, was declared hostile. Nothing serious was elicited from his cross-examination. PW-5 another person, cited as an eye-witness, was also declared hostile. The only other witness on whom the prosecution rested its case was PW-12. However, his presence was not spoken to by PWs. 1, 2 or 5. He failed to explain the probability of his being present at the scene of offence. At any rate, in case he has witnessed the offence, any person in his place could have deposed before the police. It was only on the next day morning that he was said to have been called by the police. The record does not disclose as to how the police came to know about the alleged presence of PW-12. There is hardly any consistency in the version of the prosecution and all the material witnesses either have turned hostile or failed to be consistent with the other part of the evidence. We do not find any basis to sustain the conviction ordered against the accused. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 179 of 2008 on the file of Ill-Additional Metropolitan Sessions Judge, Hyderabad, dated 11-08-2009, against the appellant-accused are set aside. The appellant-accused shall be set at liberty forthwith unless his detention is needed in any other case. The fine amount, if any, paid by the appellant-accused shall be refunded to him.