
(2004) 10 AP CK 0031

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1680 of 1998

Narava Siva Prasad @ Siva

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 324

Citation : (2005) 1 ALT(Cri) 38

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

Bench : Single Bench

Advocate : N. Anjana Devi Satyanarayana, for the Appellant; Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Narava Siva Prasad @ Siva preferred the present criminal appeal, aggrieved by the judgment made by the Metropolitan Sessions Judge, Visakhapatnam, dated 13-11-1998 in Sessions Case No.24 of 1998, finding him guilty for an offence u/s 324 of the Indian Penal Code (for brevity "IPC") and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- in default to suffer simple imprisonment for fifteen days.

2. Smt. N.Anjana Devi Satyanarayana, the counsel representing the appellant would submit that there is absolutely no corroboration to the evidence of P.W.1 and P.W.6 is a chance witness. It is highly doubtful whether P.W.6 was present at all especially in the light of the admissions made by P.W.1 and hence, the whole evidence available on record is shaky, unbelievable and hence, the accused is entitled for an acquittal. The learned counsel also would submit that the learned Judge having convicted the accused u/s 324 IPC had imposed a sentence of rigorous imprisonment for a period of three years and to pay a fine of Rs.500/- in default to suffer simple imprisonment for fifteen days, which is definitely highly excessive. Learned counsel also would contend that in view of the enmity, the possibility of foisting the case against the accused, also cannot be totally ruled

out and on that ground also the accused is entitled for benefit of doubt. In the alternative, the learned counsel would submit that even otherwise it is a fit matter, where the benefit of the probation of offenders Act could have been given to the appellant-accused. The learned counsel placed reliance on certain decisions to substantiate her contention.

3. Per contra, the learned Additional Public Prosecutor would contend that the evidence available on record is clear and convincing and there can be no doubt about the happening of the incident. The learned Additional Public Prosecutor also had taken this Court through the evidence available on record and the findings recorded and would contend that in the facts and circumstances, the conviction and sentence are well justified.

4. Heard both the counsel.

5. The episode of the prosecution in brief is as hereunder:

P.W.4 is the sister of P.W.1 and she was given in marriage to the accused about two years prior to the incident. It is also the case of the prosecution that during the stay at Burma camp, the accused developed illicit intimacy with L.W.9 P.Ammalu and ill treated and neglected P.W.4 and on knowing about the ill treatment meted out to his sister, P.W.1 brought both husband and wife to Kirlampudimettu where they resided for a period of one month. It is also the version of the prosecution that thereafter the accused without informing anybody again went away to Burma camp and started living with his concubine-L.W.9. On knowing about this, P.W.1 brought his sister (P.W.4) to his house. On 11-05-1997, P.W.1 went to Burma camp and made enquiries about the accused. The accused was not there and P.W.1 came to know that he was residing at Tennetinagar with L.W.9, he went there and was waiting for the accused. At about 11.45 a.m. the accused came along with his friend (P.W.6) to his house. On seeing him, P.W.1 caught hold of his fift and asked him to come to his father at Narasimpatnam or to P.W.2 (an elder) to settle the dispute. The accused and his friend (P.W.6) stated to P.W.1 that they would come along with him to Burma camp. They were proceeding to Burma camp and when they reached the lane on the rear side of Nookalamma temple the accused and his friend (P.W.6) stopped at a shop to have soda water. While they were taking soda water P.W.1 was proceeding by foot taking his cycle. The accused came from behind and stabbed on the back of P.W.1 with a knife and ran away. The knife was struck on the back of P.W.1. He went to the house of P.W.2 who sent him along with a person to V Town Police Station, Visakhapatnam. The Police took P.W.1 to King George hospital, Visakhapatnam, where an operation was performed on him and the knife was removed. On the strength of the statement given by P.W.1, the A.S.I. of Police (D.Ramayya) (L.W.18) registered a case in Cr.No.111/97 u/s 307 IPC and conducted investigation initially. P.W.9 who took up further investigation completed the same and filed charge sheet against the accused in the Court of III Metropolitan Magistrate, Visakhapatnam.

6. Inasmuch as the case is exclusively triable by the Court of Session, the same was committed to the learned Metropolitan Sessions Judge, Visakhapatnam. The Metropolitan Sessions Judge recorded the evidence of P.Ws.1 to 9 and marked Exs.P-1 to P-6 and also M.Os.1 and 2 and arrived at a conclusion that the ingredients u/s 307 IPC are not satisfied, but, however, convicted him u/s 324 IPC. Hence, the present Criminal Appeal.

7. P.W.1 deposed about the episode in detail, the misunderstandings and the differences between the accused and his sister and about the illicit intimacy of the accused with another woman. This witness further deposed about the incident in detail.

8. P.W.1 deposed that he could trace out the house of the accused and concubine but both of them were not present and he was told by the neighbours that they would come at 12 noon and he was waiting for their arrival. The accused and his concubine came at 11.30 A.M. and he asked the accused to come to the elder by name Ravi or to the father of the accused so that the dispute between him and his sister could be settled. Accused refused to come along with him and he caught hold of his fult. This witness also deposed that a woman told him to leave the accused and he left him. The accused and his friend stated that they would come along with him and they were proceeded towards Burma camp when they reached Nookalamma temple near Burma camp, accused and his friend called him to have soda. But he did not go with them. Both of them went to have soda and he was proceeding along with his cycle. The accused came from behind and stabbed him with a knife on his back. He turned his head and saw the accused and his friend was standing at some distance. Subsequently, accused and his friend ran away. The knife was fixed on his back. He left his cycle and it fell down. He went to the house of Ravi. Ravi sent him to V Town police station, Visakhapatnam, along with a person. The police had taken him to K.G.Hospital, Visakhapatnam in auto. Police examined him and recorded his statement. Ex.P-1 is his statement recorded by the Assistant Sub Inspector of Police. M.O.1 is the knife with which the accused stabbed him. M.O.2 is his blood stained T-Shirt recovered by the police at the hospital. In cross-examination, this witness deposed that the accused was coming at a distance of 25" behind him and there is drainage in between him and the accused at the place of occurrence. It was 3" width and nobody was present at the time of incident and he had seen the friend of Siva on the date of incident for the first time. He further deposed that he cannot say whether the friend of accused-Siva witnessed the accused stabbing him or not. The accused and his friend were talking to each other while they were coming behind him but he does not know as to what was the conversation. While he called accused with him at Tenneti Nagar, he was not holding a knife. On the way, the accused and his friend had soda water. After the accused and his friend had soda water, they told him that they would come with him to Ravi. At that time, he did not see the knife in the hands of the accused. He saw the accused stabbing him. His friend was standing at a distance. M.O.2 T-Shirt has corresponding tear of the stab injury. This witness denied the suggestions.

9. P.W.6 is a welder who says that he knows the accused and they left at Burma camp at some time and the incident took place on 11-05-1997 and he went to the house of the accused at about 8 A.M. and he was at his house up to 12 noon. By 12 noon, Ammalu came after attending coolly work. Ammalu gave him some amount and told him to bring eggs and he took the money and proceeded to get the eggs. The accused also followed him. P.W.1 met them at Tenneti Nagar. P.W.1 asked the accused to come to the elders to settle the dispute between him and his wife. This witness also deposed that he had witnessed the accused stabbing P.W.1 with knife on his back when he was about to cross the channel. Being afraid of, he ran away to the hillock. This is the evidence of P.W.6.

10. Except this evidence, no other direct evidence is available. Submissions, at length, were made in relation to the evidence of P.W.6. To the effect that reliance cannot be placed on the evidence of P.W.6. This witness in fact was examined by police and his statement was recorded at a belated stage and also in the light of the evidence of P.W.1 in cross examination, it is clear that nobody was present at the time of incident.

11. P.W.7 is the doctor who had examined P.W.1 and found the following injuries:

"A stab injury on the back of chest just 2 cm. Right to the spinal column, at the level of 6th and 7th ribs with knife in position.

The wound was of 2 1/2 cm. x 1 1/4 cm. x depth not known parallel to the spinal column.

Wound fresh bleeding present; M.L.C.X-ray No.1469 dated 11-05-1997, reported by Dr.C.M.G.Kesari, Assistant Radiologist showed that there is opacity, Radio opaque, shadow (knife) seen in the chest posterior aspect. No bony injury. Ward opinion by Dr.G.Santha Rao, Assistant C.T.Surgeon. The injury is simple in nature."

The doctor opined that the above injury is of simple in nature and Ex.P-3 is the wound certificate issued by him.

12. P.W.8 is the Assistant Thoracic Surgeon, Thoracic Surgery Department, K.G.H.,Visakhapatnam, who had examined P.W.1 and found the following injuries:

"The patient was conscious and coherent. There was a stab with knife in position on the back of the chest at the level of 6th and 7th ribs on the right side of the spine, with a knife in the wound. There was minimal oozing of blood from the wound. There was no clinical evidence of Intra thoracic injury. After the initial treatment with administration of anti-biatics, we shifted the patient for surgery. We did thoracotomy and the knife was removed from the wound. There was no blood in the plural cavity."

M.O.1 is the knife, which he removed from the wound of the P.W.1. This witness also identified the weapon on seeing the signature of this witness. This is the medical evidence available on record.

13. P.W.5 was examined who had deposed that on 11-05-1997 at about 12.30 or 1 p.m. P.W.1 was calling Ravi, Ravi from near the Nookalamma temple and he was at the premises at that time. He went near P.W.1, a knife was struck in his back and blood was oozing from the injury and the knife was still in his back and P.W.1 asked him to call Ravi and he went and called Ravi. This witness and Ravi came to P.W.1 and P.W.1 told Ravi that his brother-in-law stabbed him. P.W.2 instructed him to take P.W.1 to V Town Police Station, Visakhapatnam and he had taken P.W.1 to the police station on his cycle. P.W.2 is Ravi who had deposed about all these details. P.W.3 deposed about signing the observation report Ex.P-2. P.W.4 is the wife of the accused. No doubt who had deposed about the harassment and the episode in relation to the dispute with her husband.

14. P.W.9 is the Investigating Officer-cum-Sub Inspector of Police who had deposed about all the details of investigation and also filing the charge sheet.

15. On the strength of this evidence, findings had been recorded and ultimately the accused was found guilty u/s 324 of IPC.

16. The learned counsel for the appellant placed reliance on SURAJ MAL v. STATE (DELHI ADMN.)¹ wherein the Apex Court while dealing with appreciation of evidence and two inconsistent statements by witness at one or two stages held that:

"Where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses."

17. Reliance also was placed in NACHHETTAR SINGH AND v. THE STATE OF PUNJAB² wherein the Apex Court at page - 954 observed that:

" This Court is generally loathe to interfere with the concurrent findings of fact recorded by the courts below, re-appraise the evidence for itself and then take a view different from the one taken by them. But in a gross case where there, appears to have been a mis-carriage of justice by the wrong application of the well settled principles of law, then this Court is obliged to enter into facts and take its own view of the matter. This is one such case. We are fully alive to the fact that the guilty persons should not be permitted to escape lightly and for reasons which are not very weighty and sufficient. But at the same time we are unable to sustain the convictions of persons whose guilt has not been proved beyond reasonable doubt and when we find that the whole prosecution case is very shaky and doubtful because of some inherent defects and improbabilities running through its entire story."

18. Reliance was also placed in NRIPENDRA v. JAI RAM VERMA³ and also in MERUVA SATYANARAYANA v. STATE OF A.P.⁴

19. Contentions, at length, had been advanced by the learned counsel for the appellant that it is a fit case where the appellant to be released by invoking the

benefit of the Probation of Offenders Act, 1958, in the facts and circumstances. No doubt learned counsel made clear that this submission is being made by her in alternative, if in case, the Court arrives at a conclusion that the appellant-accused is not entitled for an acquittal.

20. On over all appreciation of the facts and circumstances, even as per the episode of the prosecution, the accused and P.W.1 are close relatives and the sister of P.W.1 was given in marriage to the accused. It appears that the accused had developed some illicit intimacy with another woman and there was some controversy in relation thereto, the prosecution no doubt would contend that in the light of this problem, definitely accused would have resorted to the perpetration of the crime and the counsel for the appellant on the other hand contended that this case is foisted due to enmity.

21. P.W.6 had not specifically deposed that he was the friend of the accused and had accompanied or followed the accused on the fateful day. It is not clear even from the evidence of P.W.1 whether it is at another person or P.W.6 who had followed the accused. In cross-examination, P.W.1 deposed that nobody was present at the time of incident. There is also some delay on the part of investigating agency in recording the statement of P.W.6.

22. In the light of the stand taken by P.W.1, at one stage deposing about the incident proper that the accused was followed by a friend of him and, at another stage, in cross-examination, deposing that nobody was present, in the facts and circumstances, it is doubtful whether P.W.6 had witnessed the incident at all. Now the Court is left with the evidence of P.W.1 alone no doubt corroborated by the medical evidence. Even in Ex.P-1-statement of P.W.1, it was stated that while so, his brother-in-law Siva stabbed with a knife on his back from behind and ran away and no doubt he had referred to the fact that his brother-in-law Siva was along with another person coming behind him, but in the light of the doubt expressed that whether the said person is P.W.6 or not and in view of clear admission in cross examination made by P.W.1 that nobody was present, this Court is of the considered opinion, taking the over all facts and circumstances into consideration, that the appellant-accused is entitled to the benefit of doubt and accordingly acquittal is hereby recorded.

23. Accordingly, criminal appeal is allowed. Bail bonds of the accused shall stand cancelled. It is needless to say that the appellant-accused is entitled for refund of the fine amount, if paid.

1 Suraj Mal Vs. State (Delhi Administration),

2 Nachhattar Singh and Others Vs. The State of Punjab,

3 Kunwar Nripendra Bahadur Singh Vs. Jai Ram Verma and Others,

4 1996 (1) ALD (CRL.) 394 (A.P.)