
(2014) 04 AP CK 0124

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 440 of 2010

Nindugonda Sreenu

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2014) 04 AP CK 0124

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

Bench : Division Bench

Advocate : A. Gayatri Reddy, Advocate for the Appellant

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—A.1 to A.6 in S.C. No. 82 of 2009 were tried by the Court of VIII Additional Sessions Judge (Fast Track Court), Visakhapatnam. Through its judgment dated 29.01.2010, the trial Court acquitted A.3 to A.6 and convicted A. 1 of committing the offence punishable u/s 302 r/w 34 I.P.C. namely, causing the death of Nindugonda Brahman and his wife Nindugonda Satyavathi of Gunupudi Village, Nathavaram Mandal, Visakhapatnam District, on 03.12.2006. A.2 was convicted of the offence punishable u/s 302 I.P.C. Both of them were sentenced to undergo imprisonment for life and to pay fine of Rs. 100/- each, in default to undergo simple imprisonment for one month. Hence, this appeal by A.1 and A.2.

2. The case of the prosecution was that P.W. 1, the elder daughter of Nindugonda Brahman (hereinafter referred to as "D.1") and Nindugonda Satyavathi (hereinafter referred to as "D.2") submitted a complaint, Ex. P.1 before the P.S. Nathavaram on 03.12.2006 stating that her father on one hand and A.4, by name, Nindugonda Venkanna had almost equal shares of Ac. 0.40 cents of land in Survey No. 50/3, and that dispute in this behalf was also resolved by the Mandal Revenue Officer in the year 2005. A.4 is said to have gone to the Court

raising dispute.

3. On 03.12.2006, P.W. 1 is said to have come to her parents house at 4 O'clock and on her arrival, her younger sister-P.W. 2 and younger brother-P.W. 3 informed her that A.1, A.2 and A.6 have beat their parents with sticks, hacked them with a knife and killed them. P.W. 1 is said to have immediately gone to the fields and found her parents there in a pool of blood with injuries. She has also mentioned that A.4 engaged five farm labourers from Rajahmundry and four from Gunupudi and when those coolies were harvesting crops from the land that was put to their share, her parents objected and thereupon, the accused killed them. The Station House Officer proceeded to the scene of occurrence and completed the legal formalities, such as, preparation of scene of offence panchanama, conducting of inquest, and sending the dead bodies for post mortem. After conducting detailed investigation, the Inspector of Police filed a charge sheet alleging offences against all the accused. The result of the case is already indicated.

4. Smt. A. Gayatri Reddy, learned counsel for the appellant submits that P.W. 1 is not an eyewitness and she filed Ex. P. 1, only on the basis of the information said to have been furnished to her by her younger brother and younger sister, P.Ws. 2 and 3. She contends that the trial Court itself found that the various allegations made by P.Ws. 1 to 3 are not correct and accordingly acquitted A.3 to 6 that included A.4, who was said to be having a dispute with D.1 and D.2. She contends that though nearly nine agricultural labourers were said to have been engaged for harvesting the crop and present when the incident took place, only one of them namely, P.W. 4 was examined and even that witness was declared hostile. Learned counsel further submits that except the self-serving statements of P.Ws. 1 to 3, there is no evidence worth the name and the trial Court ought not to have convicted A.1 and A.2. She has also urged that P.Ws. 2 and 3 were said to be at a fish tank when the incident took place and the prosecution did not establish that a person, who stands at fish tank would be in a position to notice the events at the scene of offence.

5. The learned Additional Public Prosecutor, on the other hand, submits that the evidence of P.Ws. 1 and 2 is natural and bereft of any contradictions or improvements and the trial Court was so objective that it perfectly analyzed the evidence and convicted A.1 and A.2, who were found to have committed the offence even while it acquitted A.3 to A.6. She submits that the presence of P.Ws. 2 and 3 at the scene of occurrence was not at all disputed and it was not even suggested to those witnesses that a person standing at the fish tank, nearby the scene of offence would not be able to observe what is happening there. She contends that the non-examination of the agricultural labourers was on account of the fact that they were engaged by A. 4 and would naturally speak in his favour and that the same is clear from the evidence of P.W. 4.

6. A.1 to A.6 were charged with the offence, punishable u/s 302 r/w 34 I.P.C. On the accused pleading not guilty, the trial was conducted, wherein P.Ws. 1 to 11

were examined, Exs. P.1 to P.21 were filed and MOs. 1 to 6 were taken on record on behalf of the prosecution. On behalf of the defence, Exs. D. 1 to D.9, some statements, mostly portions of the statements recorded from P.W. 2, u/s 161 Cr.P.C. were marked.

7. In a way, it can be said that the volume of evidence adduced in this case is relatively small. The crucial witnesses, P.Ws. 1 and 2 are the siblings of the deceased. P.W. 4 is one of the labourers engaged by A.4 and he did not support the case of the prosecution. P.W. 5 is an Ex-Sarpanch, who figured as a witness for inquest. P.Ws. 6 and 9 are the doctors, who conducted post mortem on D.1 and D.2 respectively. P.W. 10 is the Investigating Officer.

8. The trial Court acquitted A.3 to A.6 and the same is not challenged by the State or the complainant.

9. The only point that arises for consideration in this appeal is as to whether the conviction and sentence ordered by the trial Court against A. 1 and A.2 can be sustained in law.

10. P.W. 1, no doubt, is not an eyewitness. She, however, is the person who submitted the complaint-Ex. P. 1. Brief account of the nature of dispute that existed between the deceased and A.4 was furnished. On the date of occurrence, she is said to have come to the house of her parents and her younger sister and younger brother - P.Ws. 2 and 3 are said to have given information about the incident to her. The evidence of P.W. 1 is not of much help, about the occurrence of the incident.

11. P.W. 2 is another daughter of D.1 and D.2. In the chief-examination, she gave a detailed account of the disputes that were existing between her parents and A.4. The gist of her evidence is that her father used to cultivate 90 cents of land, originally owned by one Nindugonda Appanna, the paternal uncle of D.1, and that since D.1 looked after Appanna when he was bed ridden, the land was given to D.1. In relation to the dispute that was raised regarding the said land, D.1 and D.2 were said to have gone to the Court on several occasions.

12. The incident is said to have taken place on Sunday. P.W. 2 stated that she accompanied her parents to their land and remained near a fish tank where her senior paternal aunt's son was catching fish. She said to have heard the cries at the field and when her father questioned as to why the persons who gathered there have come to the field, A.2 is said to have hacked her father on the head and above the ear lobe with a knife and stabbed him in the abdomen. It was also stated that when her mother went to the rescue of her father, A.3 hit her i.e., D.2 with the stems of palm oil leaves, whereupon she fell down and immediately, A. 1 hacked D.2 with a knife over the head and killed her. A.4 to A.6 were said to have shouted and encouraged A.1 to A.3 to kill D.1 and D.2.

13. Though this witness was extensively cross-examined, nothing substantial was elicited to doubt her presence at the scene of occurrence. A strange suggestion

was made to her to the effect that the complaint was submitted and she is deposing as a witness in order to grab the disputed land with a view to discharge the loan that was obtained on other land situated at Gunupudi. When a suggestion was made to the effect that her mother i.e., D.2 went to her parents' house on Sunday, she stated that she came back on Sunday itself. She was further cross-examined on being recalled at a later point of time. Certain omissions and improvements compared to her statement recorded u/s 161 Cr.P.C. were pointed out.

14. P.W. 3 is the nephew of the deceased couple and cousin of P.Ws. 1 and 2. He was aged 16 years as on the date he was being examined. He stated that he was staying with D.1 and D.2 since his parents expired. His evidence is almost on par with that of P.W. 2. On the nature of attack on D.1 and D.2, he too stated that after the verbal exchange took place, A.2 attacked D.1 with a knife and when D.2 tried to save her husband-D.1, A.1, hacked her also to death on the instigation of A.3 to A.6. The only difference which is pointed out by the learned counsel for the appellant is that P.W. 3 did not make any mention of A.3 hitting D.2, with the stem of palm oil leaves and according to that witness, A.1 to A.3 beat both the deceased with such stems. Though the witness was juvenile, he withstood the serious cross-examination and no serious contradictions were elicited from him. One of the suggestions made to this witness was that no quarrel was taken place at all, between the accused and the deceased.

15. As observed earlier, P.W. 4 is an agricultural coolie engaged by A.4 and he did not support the case of the prosecution.

16. P.W. 3 can certainly be branded as a interested witness in the ordinary parlance. However, if he has witnessed the occurrence and his evidence, is otherwise trustworthy, the mere fact that he is closely related to the deceased, does not make much of difference. The difference, if at all, would be that the evidence of such witness must be examined with a bit of caution.

17. That there existed serious disputes between A.4 and the deceased, is evident from the purport of the evidence. Proceedings are said to have-, been initiated before the Courts and the authorities of the Revenue Department in relation to the entitlement to the land in Survey No. 50/3. P.W. 4 has been engaged as an agricultural labourer on the day of occurrence. He did not support the case of the prosecution. Except making some half-hearted suggestions doubting the presence of P.Ws. 2 and 3 at the scene of occurrence, the defence did not take any serious steps to prove that they were not present at the scene. The age of P.W. 3 was about 12 to 13 years at the time of occurrence. The evidence of a juvenile witness can be broadly compared to a double-edged weapon. There is every likelihood of such witness being tutored and repeat the same in the Court. If such facts are proved, the evidence can be discarded in its entirety. If on the other hand, no such element exists, the persons of tender age are prone to be relatively truthful compared to adolescent witnesses. They do not nurture enmity with others nor do they have any plans to implicate the otherwise innocent

persons. When the evidence of a juvenile witness is not found to be tainted, the Court should not hesitate to accept the same as true subject to of course, what may be elicited from the witnesses by the defence.

18. There is nothing unnatural in the evidence of P.W. 3 or for that matter, in that of P.W. 2, in their accompanying D.1 and D.2 to their field and their being at a pond catching the fish nearby the field. Though it is argued across the Bar that the prosecution did not establish that a person standing at the pond would be able to see what was happening at the scene of offence, the effort in this behalf ought to have been from the defence, by putting relevant suggestions. That not having been done, the defence cannot advance arguments on those lines.

19. The medical evidence of P.Ws. 6 and 9, as reflected in the post mortem report, is in total conformity with the evidence of P.Ws. 2 and 3. The trial Court analyzed all these aspects and found A. 1 and A.2 guilty of the offence alleged against them. The objectivity on the part of the trial Court is evident from the fact that though the prosecution bundled A. 1 to A.6, it found that the allegations against A.3 to A.6 are not proved and acquitted them. It may be true that the actual dispute was between the deceased on the one hand and A.4 on the other. At the same time, when D.1 and D.2 did not indulge in any violent acts against A. 1 and A.2, there is no reason for the latter to cause the death of the former. The fact that A. 1 and A.2 came to the site with knives discloses that they had a premeditated plan to cause the death of D.1 and D.2. It is immaterial whether they did it for their own benefit or on being hired by A.4. We do not find any basis to interfere with the judgment of the trial Court.

20. The Criminal Appeal is accordingly dismissed.