
(1998) 02 AP CK 0046
In the Andhra Pradesh High Court
Case No : Criminal A. No. 994 of 1996

Otukure Ganesh

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304, 307, 84

Citation : (1998) 2 ALD 502 : (1998) 2 ALT(Cri) 306 : (1998) 1 APLJ 330

Hon'ble Judges : V. Bhaskara Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. C. Malla Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Motilal B. Naik, J.—Appellant herein is the sole accused in S.C.No.46 of 1996 on the file of the Additional Sessions Court of Adilabad. He was convicted for committing the offences under Sections 302 and 307 of IPC and sentenced to undergo life imprisonment for the offence u/s 302 of IPC, besides a fine of Rs.500/-, in default to undergo rigorous imprisonment for six months. He was further sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.300/- in default, to undergo rigorous imprisonment for three months for the offence u/s 307 of IPC and both the sentences were directed to run concurrently.

2. The appellant-accused was charged that on 19-2-1995 around 5.30 p.m. in Gandhari Khilla forest near Ramakrishnapur during Mysamma Jathara, committed murder intentionally causing the death of Bheemi @ Bheemakka, aged 45 years, resident of Pulimadugu by means of attacking her with axe by inflicting injuries on her neck and body, thereby committed the offence punishable u/s 302 of IPC, and that on the said date, time and place mentioned in charge one, he attacked PW2 Mukinepalli Tirupati, S/o Venkati, aged 25 years, resident of Pulimadugu, with axe, with the intention and knowledge to cause death of said Tirupati, on

account of which said Tirupati sustained bleeding injury and thereby committed the offence punishable u/s 307 of IPC.

3. The case of the prosecution in a nut-shell is that on 19-2-1995, around 5,30 p.m. at Gandhari Khilla, hamlet of Bokkalagutta whereby Mysamma Jathara was going on, the deceased Bheemi @ Bheemakka was preparing food. All of a sudden, the accused armed with an axe hacked the deceased on her neck as a result of which she fell down and the accused continuously hacked her, on account of which she succumbed to her injuries. When PW2 tried to apprehend the accused, the accused hacked him also and caused injury. PW1 followed the accused to some distance and with boulder he hit on the hand of the accused, as a result of which the axe in the hands of the accused fell on the ground and at that time PW1 apprehended the accused and handed over him to Assistant Sub-Inspector of Ramakrishnapur (PW6) who was camping there for bandobust duty. PW6 took the accused and PW1 to the police station" Ramakrishnapur and produced the accused before the Sub-Inspector of Police (PW9). On the basis of the statement given by PW1, a case in crime No.29 of 1995 was registered under Sections 302 and 307 IPC and was investigated into. PW9 held inquest over the deadbody of the deceased in the presence of panch witnesses and the dead body was sent for post-mortem examination by PW7. The statements of PWs.1 to 4 were recorded during investigation. The accused was arrested on 19-2-1995 and was remanded to judicial custody. Hence, the charge-sheet.

4. On behalf of the prosecution, PWs. 1 to 9 are examined. PWs.1 to 4 are the eye-witnesses to the occurrence, PWS is the inquest panch, PW6 is the Assistant Sub-Inspector, Ramakrishnapur, PW7 is the autopsy surgeon, PWS is the Medical Officer, who examined the accused and PW9 is the Circle Inspector of Police who investigated the case. The prosecution also marked the axe as MO1.

5. On the basis of the prosecution evidence, the accused was examined u/s 313 of Cr.P.C. and he denied the same and pleaded not guilty. At that stage, a petition in CrI.MP.No. 1215 of 1996 was filed to call for the medical papers from the Central Prison, Warangal which related to the treatment of the accused by Dr. Gopal Sharma, Psychiatrist, as it was pleaded that the accused at the lime of committing the offence was insane.

6. The trial Court on the basis of the evidence adduced by the prosecution and in the facts and circumstances of the case, found the accused guilty of committing the offences under Sections 302 and 307 of IPC, and sentenced him as indicated supra, against which the accused has filed this appeal.

7. Sri C. Malla Reddy, learned senior Counsel appearing on behalf of the appellant-accused contended before us that at the time of commission of the offences, the accused was insane. In a fit of insanity, he hacked the deceased without realising the consequences of his act. It is stated that neither the deceased was related to the accused nor he knew her and therefore, it can be safely inferred that the accused while in an insane condition, committed die

offence. Counsel submitted that when CrI.MP.No.1215 of 1996 was filed before the trial Court at the time of examining the accused u/s 313 of Cr.P.C, the lower Court ought to have recorded the opinion of Dr. Gopal Sharma, Psychiatrist who treated the accused, regarding the insanity of the accused. Learned Counsel contended that as required u/s 84 of IPC, when a plea is taken that the accused was insane at the time of committing the offence, the prosecution, in all probability, should have examined Dr. Gopal Sharma, to find out the state of mind of the accused. Counsel nextly contended that the axe which has been seized from the accused and marked as MO1 has not been referred to chemical examination to find out whether the blood stains found on it belonged to human being. In view of these deficiencies, Counsel vehemently contended that the case of the prosecution could be rejected. Alternatively, learned senior Counsel contended that the accused being totally unaware of the consequences that would follow on account of his act, has hacked the deceased with the axe without any intention to cause death and therefore, the offence committed by the accused could at best be treated as one falling u/s 304 Part n of IPC.

8. The learned Public Prosecutor on " the contrary submits that the evidence of PWs.1, 2, 3 and 4 is quite clear to the fact that the accused has hacked the deceased with axe. While referring to the evidence of PWS, the learned Public Prosecutor contended that though PW8 has stated in his evidence that the accused was in a confusing mind but no symptoms of insanity were found by him It is, therefore, contended that the accused being insane at the time of committing the offence was only an after thought and invented for escaping the punishment. Learned Public Prosecutor," sought to sustain the order of conviction and sentence imposed on the accused by the trial Court

9. In the light of the submissions made on behalf of the appellant that the appellant was insane at the time of committing the offence, whether such submissions could be accepted and whether the conviction and sentence imposed by the trial Court on the appellant-accused could be interfered with?

10. Insofar as the submission of the learned Counsel for the appellant that the accused was insane at the time of committing the offence, we are not inclined to accept such submission in the absence of any convincing evidence before us. PW6, the Assistant Sub-Inspector of Police who was on bandobust duty on 19-2-1995 took the appellant-accused into custody on being handed over to him by PW1. In the cross-examination, it was suggested to PW6 that the accused behaved irrationally, for which PW6 replied thus:

" "The accused did not behave as mentally unsound person when he was brought to him by PW1."

That apart, PW8, the doctor who examined the accused on the requisition from Police, Ramakrishnapur, on the next day on 20-2-95, has found two injuries on the body of the accused, viz., (1) Braise 2" x 2" on left flank, and; (2) Abrasion 1/2" x 1/4" on left foot. PW8 opined that the two injuries are caused by blunt

weapon and were simple in nature and issued Ex.P5 wound certificate. He further deposed that the accused was taken to him by-the police for examination of his injuries. In his cross-examination PW8 has slated thus:

"The accused when he was brought before me was in a confusing mind but not as insane person.""

When it was suggested to PW8 that the accused was not in a sound state of mind, he clarified it by saying thus:

"Not true to suggest that the accused was not in a sound state of mind when he was brought before me for examination by police."

11. After the completion of the evidence of the prosecution, the trial Court having found incriminating evidence against the accused, examined the accused u/s 313 of Cr.P.C. The lower Court has recorded at para 10 of its judgment that immediately after recording the statement of the accused u/s 313 of Cr.P.C., a petition in CrI.MP.No 1215 of 1996 was filed before the Court to call for the medical report from the Central Prison, Warangal which related to the treatment of the accused by Dr. Gopal Sharma, Psychiatrist during the period of confinement of the accused in the Central Jail. The lower Court has further recorded at para 10 of its judgment that the copy of the report was called for by the Court and the Court did not find any observation by the Medical Officer about the insane nature or unsound mind of the accused even in the month of May, 1995. The Medical Officer in the report seems to have mentioned that the accused never complained of any problem excepting his complaint that he is not keeping well.

12. Section 84 of IPC contemplates that 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. The burden of proving that the accused was unsound at the time of committing the offence lies heavily on the accused. In this case, as discussed above, there was no effort whatsoever made on behalf of the accused to prove that he was in unsound mind at the time of committing the offence excepting a belated attempt to call for the report of the Doctor who had examined the accused during his confinement in Central Jail, by filing CrI.MP.No. 1215/96. This attempt, we may say, is too late in the day. If really the accused was insane at the time of committing the offence, a sincere attempt should have been made on 20-2-95 at the time of the accused being taken to PW8 for treating the injuries found on his body. We are, therefore, of the view that a belated attempt to thwart the prosecution case is impermissible and law will not assist such a person who tries to take shelter to escape from the situation in which he is placed on one pretext or the other.

13. The evidence of the prosecution witnesses PWs. 1 to 4 who are eye-witnesses to the incident is quite clear that after the accused hacking the victim, made gestures saying that he has killed the victim and he started running away

from that spot. This gesture of the accused is also one of the factors for this Court to reach to a conclusion that the accused was not suffering from any insanity at the time of commission of the offence. Therefore, we are not inclined to accept that the accused was insane at the time of committing the offence and accordingly, we reject the said submission

14. Insofar as the alternative submission of the learned Counsel that the offence committed by the accused could at best be treated as the one falling u/s 304 Part-II of IPC, we are not inclined to accept the said submission. The evidence adduced by the prosecution through PWs.1 to 4 who are the eye-witnesses to the occurrence clearly establishes that the accused is guilty of the charges levelled against him. It is revealed from the prosecution case that the offence has taken place on 19-2-1995 around 5.30 p.m. at Gandhari Killa, hamlet of Bokkalagutta during Mysamma Jathra, The deceased Bheemi @ Bheetnakka was preparing food" at that time. The accused armed with axe hacked the deceased on her neck as a result of which she fell down. Thereafter, again the accused continuously hacked her as a result of which she succumbed to her injuries. Though PW2 tried to apprehend the accused, the accused also hacked him and caused injury. PW1 followed the accused and after some lime he threw boulder at the accused. It is also revealed from the evidence of the prosecution witnesses that the accused after causing the death of the victim, uttered the words that he killed the victim and started running away from the scene of the offence. The accused also attacked PW2 with MO1 when PW2 tried to apprehend him.

15. If an act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, it amounts to murder, as defined in "thirdly" to Section 300 of IPC. Applying the test, it has to be seen whether the offence committed by the appellant-accused falls u/s 302 or u/s 304 Part n of IPC ? As discussed above, the prosecution has established beyond reasonable doubt that the accused armed with M01 axe, came suddenly from the bushes and hacked the deceased Bheemi @ Bheemakka at the scene of offence at Mysamma Jathara, on account of which the victim died. The accused after hacking the deceased uttered that he has killed the deceased and started running away from the scene of offence. When PW2 tried to apprehend the accused, he also hacked PW2. It is, therefore, difficult for this Court to hold that the offence committed by the accused would fall within the scope of Section 304 Part-n IPC. In the circumstances, we are not inclined to accept the submission of the learned Counsel in this behalf.

16. The only reason, for such an act committed by the accused, it was pleaded, is insanity of the accused at the time of committing the offence. The plea of insanity advanced by the learned Counsel for the appellant has been discussed by us in the foregoing paragraphs and we have rejected the same. Therefore, we have no hesitation to hold that the prosecution has able to establish that the accused is guilty of committing the offence u/s 302 of IPC for causing the death

of Bheemi @ Bheemakka.

17. Coming to the second charge relating to the offence u/s 307 of IPC, through the evidence of PWs. 1 to 3, the prosecution is able to establish that the accused is guilty of the offence punishable u/s 307 of IPC. Though there is no supporting medical evidence with regard to the injuries sustained by PW2, in the cross-examination of PWs. 1 to 3, nothing has been elicited to discredit their testimony with regard to the injuries inflicted by the accused on PW2. In the absence of any effort being made by the defence to disprove the version of the prosecution that the accused also made attempt to do away with the life of PW2, we are inclined to hold that the accused is also guilty of attacking PW2 with MO1 thereby committing an offence falling u/s 307 of IPC.

18. Though on behalf of the accused -it is contended that MO1 - axe has not been referred to chemical examination for ascertaining the blood stains found on it are of human being, we are of the view that non-sending of MO1 to chemical examination is not fatal to the case of the prosecution as the recovery of MO1 and the guilt of the accused has been proved beyond reasonable doubt by the prosecution.

19. Having regard to the above discussion, we are of the considered view that the conviction and sentence imposed by the trial Court on the accused are proper and we do not find any reasons to interfere with the same.

20. In the result, the appeal fails and is, therefore, dismissed confirming the conviction and sentence imposed on the accused by the trial Court.