
(2011) 04 AP CK 0082

In the Andhra Pradesh High Court

Case No : Criminal Appeal. No. 1048 of 2004

Padmati Appala Narasimha Prasad

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2011) 04 AP CK 0082

Hon'ble Judges : B.N. Rao Nalla, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Rao Nalla, J.—The Appellant - A-1, who is found guilty and convicted and sentenced for the offence u/s 307 IPC in S.C. No. 5 of 2003 by the learned VIII Additional District & Sessions Judge, (FTC), Visakhapatnam vide judgment dated 21-05-2004, preferred this appeal assailing the said judgment of his conviction and sentence.

2. The facts of the case, in brief, are that on 01-09-2000, A-1 visited the Electrical Sub Station, Seethammadara, Visakhapatnam, to pay the bill and as he deviated the queue and reached the counter, some others also followed him and the same resulted in nuisance, as such, the Bill Collector - PW.1 admonished A-1 and advised him to follow the queue, for which A-1 felt insulted and developed grouse against PW.1 and waited for an opportunity to wreak vengeance against him. Hence, he conspired with A-2 to kill PW.1, acquired MO-1 knife and on 06-10-2000 at about 1-30 p.m., A-1 and A-2 reached Electrical Sub Station, Seethammadara, Visakapatnam and A-1 attacked PW.1 after picking up an altercation with him and stabbed him indiscriminately with an intention to kill him and on PW.1 raising crises, neighbours came there and PWs.2 and 5 apprehended A-1. However, sensing danger, A-2 sped away from there on his

two-wheeler. The injured - PW.1 was removed to NRI hospital, Visakhapatnam. Basing on the complaint given by PW.2, PW.10 - the Station House Officer, IV - Town Police Station, Visakhapatnam registered a case in Crime No. 224 of 2000 u/s 307 read with 34 IPC against the accused. A-1 was arrested on the same day at 5-30 PM and was sent for remand on the following day morning and A-2 was arrested on 10-10-2000 and sent for remand. Upon A-1 and A-2 pleading not guilty to the charge, they were put on trial.

3. In support of its case, the prosecution has got examined PWs.1 to 11 and got marked Exs.P-1 to P-18 and Nos. 1 to 7 on its behalf. On behalf of the accused, neither oral nor documentary evidence was adduced.

4. The trial court, taking the evidence of the prosecution witnesses and other material on record in to consideration, has found A-1 guilty of the offence u/s 307 IPC and accordingly convicted and sentenced him for the same to suffer rigorous imprisonment for a period of seven years and to pay a fine of Rs. 500/- and in default of payment of fine to suffer rigorous imprisonment for a period of one month while finding A-2 not guilty of the charge levelled against him and acquitting him for the same.

5. Aggrieved by the said impugned judgment of conviction and sentence against him, A-1 preferred this appeal as has already been stated in paragraph No. 1, inter alia, on the following grounds:

- a) that the trial Court failed to appreciate the evidence and other material on record in proper perspective;
- b) that the trial Court ought not to have relied on the evidence of interested witnesses PWs.1, 2, 4 and 5;
- c) that the trial Court ought to have seen that since no test identification parade was conducted, identification of A-1 by the witnesses in the Court is doubtful;
- d) that the trial Court ought to have seen that the reprimand alleged to have been given by PW.1 to A-1 was not so grave to develop intention to kill him;
- e) that the trial Court ought to have seen that the medical evidence is in consistence with the ocular evidence of PW.1 and that the trial Court ought not to have relied on the alleged confession of A1.

6. The learned Counsel for the Appellant - A-1 raised the self same grounds that are raised in the grounds of appeal. He further submits that it is PW.2, who preferred Ex.P-1 police complaint, and his evidence discloses that he along with his office colleagues Naiudu, Valli and Venkatalakshmi were returning back to the office after having lunch outside and while so they saw A-1 running towards them with a knife in his hands and PW.1 running behind him (A-1) holding his stomach and shouting that "catch that man, he stabbed me". The learned Counsel submits that though PW.2 was examined his other office colleagues, Naidu, Valli and Venkatalakshmi were not examined as prosecution witnesses

and their non-examination is fatal to the case of the prosecution stating that had they been examined, the veracity or truth of the evidence of PW.2 would have seen the light of the day. Therefore, the evidence of PW.2, which is hearsay, is not at all reliable, as such, it is inadmissible.

7. The injured as PW.1 has stated in his cross-examination that he sustained injuries in the hands of A-1 and they were caused with MO-1, a short edged knife, and no other weapon was used for causing such injuries. He further stated that on 01-09-2000, there was an oral altercation between him (PW.1) and A-1 as he reprimanded him for his having violated queue resulting in nuisance and such altercation has lasted for about two minutes. In this context, it is contended by the learned Counsel for A-1 that the oral altercation having lasted for about two minutes only, during the course of which PW.1 reprimanded A-1 for having violated the queue, it cannot be said that such reprimand is of such a grave nature so as to provoke A-1 to go to the extent of developing an intention to do away with the life of PW.1 on 06-10-2010 that too after a lapse of 35 days and after conspiring with A-2 and seeking his assistance. It is further contended that it is improbable that a reasonable and prudent man, in such circumstances, would go to the extent of developing an intention to do away with the life of PW.1 by acquiring a sharp edged weapon and after seeking assistance of a person like A-2. Therefore, it is doubtful as to the enactment of the incident on 06-10-2000.

8. So far as the evidence of PWs.2 to 5 is concerned, it is contended by the learned Counsel for A-1 that their evidence is hearsay as they have stated only as to their spotting A-1 running towards the main gate of A.P.S.E.B. and as to their closing the main gate and catching hold of A-1 and that PW.3 Sweeper removing the injured to hospital in an auto-rickshaw. Moreover, PW.4 has stated in his cross-examination that no weapon was seen in the hands of A-1 when he was caught hold of by them. In this context, it is contended that since PW.2, who has preferred Ex.P-1 complaint, has testified that A-1 was holding a knife while he was running, whereas PW.4, who was said to have apprehended A-1, has stated in his cross-examination that he did not see any weapon in the hands of A-1 at that time, presence of PWs.2 to 5 is doubtful at the scene of offence at the time of occurrence of the incident.

9. It is further contended that PW.6 is only a panch witness to the scene of offence panchanama - Ex.P-2, as such, his evidence is not of much help to the case of the prosecution, so also the evidence of PW.7 photographer, who has stated in his cross-examination that he did not notice bloodstains on MO-1 knife in Ex.P-4 photograph and MO-1 is a rusted folding knife. Whereas, in the evidence of cross-examination of PW.6 it is stated that a folding knife was lying at the place of occurrence in a folded condition, however, he has further stated that MO-1 is not a folding knife, though it was mentioned in Ex.P-2 seizure panchanama, under which MO-1 was seized, that it is a folding knife. Therefore, it is contended that MO-1, which was produced before the trial Court, is not a weapon alleged to have been used by A-1 and alleged to have been recovered

from the scene of offence. It is also contended in this context that though A-1 has alleged to have purchased Md-1 folding knife from LW.11 - Vijayraj, he was not examined to prove the same and the same is fatal to the case of the prosecution.

10. As per the evidence of PW.8 - medical witness, on 06-10-2000 at about 2-00 PM, PW.3 and one Gowramma, who are the employees of the A.P.S.E.B., brought the injured PW.1 and got him admitted into N.R.I. Hospital, Seethammadara, Visakhapatnam, with five injuries present on his person which are possible with a sharp edged weapon like MO-1. However, in the cross-examination, this witness has admitted that except the first injury, the other injuries could not have been caused by a sharp edged weapon like MO-1 and those injuries could not endanger life of the injured. In re-examination, the witness has admitted that MO-1 had the edges of sharp and blunt. With reference to the evidence of PW.8 - medical witness, it is contended that his evidence is to the effect that all the injuries except injury No. 1 are caused by a blunt weapon, whereas it is in the evidence of PW.1 that only MO-1 was used in causing the said injuries as he has clearly stated that he has sustained such injuries by the sharp edged weapon of MO-1 knife and no other weapon was used. Since he has specifically referred to sharp edged weapon of MO-1, the evidence of PW.8 - medical witness, in his re-examination, that MO-1 was having sharp and blunt edges is of no consequence to conclude that those injuries were caused by the blunt side of MO-1 knife. Moreover, the blunt side of a folding knife like MO-1 cannot be used to cause such injuries as it is not at all possible and thus the evidence of PW.8 medical witness goes to falsify the evidence of PW.1, who has stated that all the injuries except injury No. 1 are caused by a sharp edged weapon of MO-1.

11. PW.9 is examined as a panch witness for recovery of Exs.P-11, P-12 and P-13 electricity bills and also to prove that A-1 had purchased MO-1 knife from LW.11 Vijayraj. Thus, his evidence is not material to prove the case of the prosecution.

12. PW.10 is the Investigating Officer, who testified as to the way he has investigated the case and as to laying of charge sheet after examining the witnesses and recording their statements. His evidence does not prove the case of the prosecution in the absence of supporting or corroborating evidence by any of the prosecution witnesses.

13. PW.11 is the Assistant Director, Forensic Science Laboratory, Hyderabad. She has testified that though seven bloodstained items i.e. Mos. 1 to 7 were sent, human blood could not be detected on item No. 6 (MO-6 blanket). In her cross-examination, she has stated that she could not say whether the blood found on item No. 6 as to human origin. In this context, it is contended that in view of injury No. 1 being grievous in nature and since the blood stains on Mos. 1 to 5 and 7 are found to be of human origin, it should also have been detected on MO-6 blanket, however as per the evidence of PW.11, human blood could not be detected on item No. 6. Even in her cross-examination, she was not able to say whether the blood found on MO-6 was of human origin. It is the case of the

prosecution that the injured suffered stab injuries in the hands of A-1 and there was bleeding and oozing out blood from the injuries and as such Mos. 1 to 7 were sent to F.S.L. Hyderabad to detect the blood present on the said Mos. and determine the human origin of it. Further, finding the blood stains on Mos. 1 to 5 and 7 in the positive and MO. 6 negative amounts to unexplainable discrepancy about which the Court must entertain a doubt.

14. Having regard to the evidence of the prosecution witnesses, it is contended that there is any amount of discrepancy in the evidence of prosecution witnesses and that the motive is very remote since for the simple reprimand by the injured for violating queue in paying the electricity bill, A-1 could not have thought of taking revenge in such a fashion as to causing stab injuries to PW.1 with an intention to cause his death and that too after a gap of 35 days. It is also contended that the sentence imposed on A-1 is severe and the same is not warranted in the facts and circumstances of the case, as such, it may be appropriately altered or modified, if conviction and sentence is not set aside.

15. The learned Public Prosecutor contends that the evidence of PWs.2, 4 and 5, who were examined as eyewitnesses to the incident, is corroborated each other and the same goes to prove the case of the prosecution as stated by the injured (PW.1) that it is PWs.2, 4 and 5, who caught hold of the accused red-handed and handed over to the police. Therefore, holding test identification parade is not necessary and absence thereof cannot vitiate the trial. It is further contended that A-1 securing MO-1 and causing about 5 or 6 bleeding injuries with it on the person of PW.1 is indicative of his intention to kill him, in the circumstances, the impugned judgment of conviction and sentence whereby A-1 was awarded sentence as has been stated supra is quite appropriate and proportionate to his guilt and as such the same cannot be said to be disproportionate to the gravity of the offence. That the impugned judgment of conviction passed by the trial Court cannot be found fault and it cannot be said to be perverse, and therefore, it is not liable to be set aside.

16. I have given my earnest consideration to the respective submissions made by the learned Counsel on either side, perused the impugned judgment and other material made available on record.

17. Now the question that arises for consideration is whether there are any grounds for allowing this appeal?

18. There is no dispute that at the relevant time PW.1, injured, is working as L.D.C. - cum - Cashier in A.P. Transco, Visakhapatnam, which is situated at Seethammadhara, nearer to N.R.I. Hospital and PWs.2 to 6 are his office colleagues.

19. The case of the prosecution as deposed by PW.1 is that on 01-09-2000, A-1 came to his office to pay electricity bill and by deviating and violating the queue reached the payment counter and some others also followed him resulting in nuisance, then he (PW.1) reprimanded A-1 for violating the queue advising him

to follow the queue, due to which A-1 felt insulted and developed grouse against him and waited for an opportunity to wreak vengeance against him. It is further his evidence that in view of his reprimanding A-1, A-1 developed an intention to kill him and after conspiring with A-2 and securing MO-1 knife, he attempted to kill him on 06-10-2000 and stabbed him at 1-30 PM in his (PW.1) office premises. Further, as deposed by PW.1, PWs.2 to 5 are eyewitnesses to the incident and the same cannot be brushed away since PWs.2 to 5 are office colleagues of PW.1 and they are all working in the same office where the incident has taken place. It is also to be seen that PW.2 gave complaint to the police under Ex. P-1 immediately after the incident and the evidence of PWs.2 to 5 is corroborating with each other as they clearly deposed in their evidence that they are present at the scene of offence at the time of incident and they caught hold of A-1 on the spot and later handed over him to the police and shifted PW.1 to the hospital. The evidence of PWs.1 to 5 is supported by Ex.P-1 complaint, Exs.P-2 scene of observation report (mediators report), Ex.P-3 mediators report, Exs.P-4 to P-9 photographs with negatives, Ex. P-10 wound certificate, Ex.P-11 to P-13 electricity bills, Ex.P-14 seizure report, Exs.P-15 and P-16 mediators report.

20. In view of the direct evidence of the eyewitnesses - PWs.2 to 5 coupled with the evidence of PW.1 and documentary evidence produced in support of the prosecution case, it is clearly established that as PW.1 reprimanded A-1 on 01-09-2000 for violating the queue, he felt insulted and developed an intention to kill him to wreak vengeance against him and for the same he conspired with A-2, purchased Mo-1 knife from LW.11 Vijayraj, came to the office of PW.1 along with A-2 on his (A-2) bike on 06-10-2000 and at 1-30 PM, he pounced on PW.1 and stabbed him indiscriminately with an intention to kill him, but could not succeed in his attempt except stabbing and injuring him grievously. To disprove the same, there is no evidence on behalf of A-1 except bald denial.

21. In view of the above, the contention of the learned Counsel for the accused that non-examination of Naidu, Valli and Venkatalakshmi, who are office colleagues of PW.1 and along with PW.2 they have also seen A-1 running towards them with a knife in his hands after stabbing PW.1, as deposed by PW.2 who preferred Ex.P-1 complaint, is fatal to the case of the prosecution and that the evidence of PWs.2 to 5, who are also office colleagues of PW.1, is hearsay and doubtful, cannot be accepted since the de facto complainant - PW.2 is examined and PWs.3 to 5, who are also eyewitnesses to the incident, are examined and there is no need to examine each and every person, who are present at the scene of offence, and as nothing prevented A-1 to examine those persons on their behalf to rebut the evidence of the prosecution witnesses.

22. Coming to the contention of the learned Counsel for A-1 that the motive alleged by the prosecution is an insignificant one as the reprimand alleged to have been made by PW.1 is a negligible one and the same cannot provoke A-1 to wreak vengeance against him that too kill him after a gap of 35 days, also

cannot be accepted in view of catching hold of A-1 on the spot immediately after the incident along with MO-1 knife by PWs.2 to 5 etc., handing him over to the police, evidence of the eyewitnesses PWs.2 to 5 to that effect and as there is no motive for PWs.1 to 5 to implicate him in this case falsely.

23. Further, non-holding of test identification parade is also not fatal to the case of the prosecution, as rightly pointed out by the learned public prosecutor, since A-1 was caught red handed on the spot and handed over to the police immediately there is no need to conduct any test identification parade.

24. The next contention of the learned Counsel for A-1 is that the Assistant Director, Forensic Science Laboratory, Hyderabad as PW.11 has stated in her cross-examination that the blood stains found on Mos-1 to 5 and 7 are of human origin but human blood could not be detected on item No. 6 (MO-6 blanket) and she could not say as to whether the blood found on it is of human origin, as such, the case of the prosecution is doubtful. It is further his contention that since the bloodstains on Mos. 1 to 5 and 7 are found to be of human origin, MO-6 also should contain bloodstains of human origin and absence of the same creates a doubt as to truthfulness of the prosecution case. However, this Court is of the view that in the presence of Mos. 1 to 5 and 7 on which the bloodstains are found to be of human origin, non-detection of human blood on MO-6 cannot be of much importance and the same cannot create any doubt as to truthfulness or otherwise of the prosecution case in view of the direct evidence.

25. For the aforesaid reasons, this Court is of the view that PWs.1, 2, 4 and 5 are not at all interested witnesses and they have no motive to implicate A-1. In a case of this nature and the trial Court believing their evidence and taking the medical evidence, Exs.P-1 to P-11 and confessional statement of A-1 into consideration rightly found that prosecution has proved its case beyond reasonable doubt against A-1 and A-1 is guilty of the offence u/s 307 IPC and it does not suffer from any lacunae warranting interference of this Court.

26. Coming to the question of sentence, as the evidence of PW.8 shows that PW.1 has suffered as many as 5 - 6 injuries on his body and through injury No. 1 his intestines were seen and his evidence further shows that due to timely medication and surgery PW.1's life is saved, this Court is of the view that the sentence imposed on A-1 is proportionate to his guilt and there are no grounds to reduce the same. Further, no material is available about the history of A-1 as to whether he is involved in any other criminal cases.

27. In the circumstances, it can be said that the impugned judgment is not perverse and conviction and sentence of A-1 is proportionate to his guilt, as such, the impugned judgment is not liable to be interfered with. Thus, there are no grounds to allow this appeal and the same is liable to be dismissed.

28. In the result, the Criminal Appeal is dismissed and the impugned judgment and conviction and sentence of A-1 is confirmed in all respects.