

(2014) 03 AP CK 0151
In the Andhra Pradesh High Court
Case No : Crl. A. No. 1640 of 2009

Ponthati Siva Rami Reddy and 3 Others	APPELLANT
Vs	
The State of A.P.	RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2014) 03 AP CK 0151

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

Bench : Division Bench

Advocate : D. Kodanda Rami Reddy, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, J.—A-1 to A-4 in S.C. No. 330 of 2006 on the file of the II Additional Sessions Judge, Kadapa at Proddatur, filed this appeal, feeling aggrieved by the judgment, dated 04.11.2009, rendered by the trial Court.

2. The trial Court found the accused guilty of committing the offence punishable u/s 302 r/w 34 IPC. Sentence of imprisonment for life, and a fine of Rs. 5,000/- each, in default, to undergo Simple Imprisonment for three months each, was imposed.

3. The case as presented by the prosecution was that, the deceased, by name, Atla Siva Govinda Reddy @ Siva Reddy, the resident of J. Kottalapalli Village of Peddamudium Mandal, is an agriculturist, and there existed long standing disputes between himself, on the one hand, and his brothers, A1 and A2, and their supporters A3 and A4 on the other. One Atla Rama Pulla Reddy was said to have been murdered by the father of A1, and in that context, the deceased and six others are said to have attacked A1 and A2, wherein, A2 suffered grievous injuries, resulting in amputation of two fingers. One more attack is said to have taken place on A1, and several cases ensued therein. After furnishing the details of the differences between the two groups, the prosecution stated that in the

intervening night of 8th & 9th of March 2006, the deceased went to his fields along with PW.1 for watering crops, and when both of them were retuning, A1 to A4 attacked the deceased indiscriminately, near the Muslim burial ground. A1 and A2 were said to have been armed with sickles, whereas, A3 and A4, were said to have held iron rods.

4. PW.1 is said to have rushed to the house of the deceased, and informed the wife (PW.1) and brother (PW.3) of the deceased, both of them, were said to have came to the spot, and noticed A1 to A4 moving out of the scene of occurrence. The deceased, with serious injuries, was shifted to the Government hospital at Jammalamadugu, and on receiving intimation from the hospital, the A.S.I. (PW.10) of Jammalamadugu Police Station, recorded the statement of the deceased.

5. PW.8, the Doctor of the hospital, is said to have treated the deceased, and at about 7.30 a.m., the deceased breathed his last. On finding that, the place of occurrence, is in the limits of P.S. Peddamudium, the information was given to that P.S., and the requirements under law, such as, conducting of scene of offence, panchanama, and causing the inquest, and postmortem, were complied with.

6. After detailed investigation into the matter, the I.O., PW.17, filed the charge sheet. The trial Court framed necessary charges under the relevant provisions of law, against the accused. On behalf of the prosecution, PWs.1 to 17 were examined, and Exs.P1 to P20 were filed. MOs.1 to 13 were also taken on record. The evidence on behalf of the accused comprised of Exs.D1 to D4.

7. Sri T. Bali Reddy, learned Senior Counsel for the appellants submits that the version presented by the prosecution, is highly improbable, and the trial Court convicted the accused, though the evidence on record does not support the same. He contends that there was no eye witness to the incident, and the so called dying declaration (Ex.P10) was recorded by an official of the police department, that too, of an altogether different police station. He submits that if one takes into account, the fact that, the deceased died at 7.30 a.m., on 09.03.2006, it is just impossible to expect a person of that condition, to give a detailed statement contained in Ex.P10. Learned Senior Counsel submits that PW.1, the so called eye witness to the occurrence, did not support the case of the prosecution, and with that, the entire case of the prosecution, gets watered down. He further submits that PW.10 admitted that there are several corrections in Ex.P10, such as the time of recording, and such a declaration, cannot be relied upon. Learned counsel further submits that the prosecution has chosen to implicate A1 to A4, only because, there were serious differences between the two groups, but the fact that the differences were settled about three years prior to the incident, even according to the deceased; was ignored. He has urged other contentions also.

8. Learned Public Prosecutor, on the other hand, submits that though PW.1 did

not fully support the case of prosecution, there is evidence of PWs.3 and 4, who reached the spot immediately, and noticed the presence of A1 to A4. She contends that Ex.P10 satisfies all the requirements of a valid dying declaration, and the trial Court was justified in placing reliance upon it. She further contends that the deceased was inflicted with, as many as, 24 injuries, through sickles and iron rods, by A1 to A4, and the trial Court has taken a correct view of the matter.

9. The accused are alleged to have committed the offence of killing the deceased. The death of the deceased did not take place instantly. He died at 7.30 a.m. on 09.03.2006, while undergoing treatment. No written complaint, as such, was submitted, soon after the occurrence. The statement is said to have been recorded from PW.1, i.e., Ex.P10 constituted the basis for registration of the case, being Crime No. 13 of 2006. Certain steps, such as, the injured person being taken to the hospital, and recording of the statement of the injured by a police official, took place much before the crime was registered.

10. PW.1 is said to have given the information about the attack upon the deceased by A1 to A4, to the brother and wife (PWs.3 and 4) of the deceased, and those two persons, immediately rushed to the spot. They arranged for the transport of the injured person to the hospital at Jammalamadugu. On receiving intimation from the hospital, in the early hours, PW.10-the ASI of Jammalamadugu police station, recorded the statement of the deceased. It however, emerged that the offence took place within the limits of P.S. Peddamudium. Therefore, the crime was registered only by that police station, after recording the statement of the deceased.

11. In his chief examination itself, PW.1 did not make any mention about the accused attacking the deceased. He stated that he heard the voice of the deceased who cried loudly, immediately he has gone to the spot, and on finding that, the accused has fallen on the ground, carried him from the fields to the muslim grave yard, and laid him on a tomb, and on his shouting, PW.2 is said to have reached that place. No reference was made to the information being passed on to PWs.3 and 4. PW.2 did not support the case of the prosecution, and he was declared as hostile.

12. PWS.3 and 4 though stated that they have noticed A1 to A4, fleeing from the site, on the place of occurrence. Their evidence cannot be completely relied upon. The reason is that a serious doubt has arises, as to be very place of occurrence from the evidence of PW.1.

13. The prosecution derived much support from Ex.P10-the dying declaration, recorded from the deceased, by PW.10. A perusal of the same, discloses that when the deceased, and PW.1 were coming from the fields, after irrigating the crop, the accused attacked him at the Muslim grave yard. Though a dying declaration commands quite a considerable amount of acceptability, a different approach needs to be adopted, if the record contains any material, which does not support it. A reference to this context may be made to the judgment of the

Supreme Court reported in Ramawati Devi Vs. State of Bihar, .

14. Once PW.1 stated that he found the deceased lying, and did not refer to any injuries, and stated that he shifted to the deceased to muslim grave yard, and when PW.1 was not treated as hostile witness, the version that emerges from Ex.P10, warrants a close scrutiny. The plea of the learned Senior Counsel that, whether it would be possible for a person, who breathed his last at 7.30 a.m., to give such a long statement half an hour, before his death; cannot be brushed aside.

15. Notwithstanding the discrepancies, which we notice in the evidence on record, certain things stand proved. That there existed long feud, and faction disputes between the group of the accused, on the one hand, and the group of the deceased, on the other hand, is beyond any pale of doubt. Murders and counter attacks took place on both sides, and quite good number of cases came to be instituted or registered. Though the deceased stated in Ex.P10 that the disputes were settled three years prior to the incident, the calm appears to be the one before the storm. In the area, which the incident took place, one hardly needs any provocation worth its name, to resort to serious acts of killing. Once there existed serious faction disputes, what is needed is, just an occasion. Hardly there exist any eye witness account in such cases, and instances are not lacking where, witnesses, who attended the Courts, to give their evidence, were liquidated right in the Court premises, in the Districts of Anantapur, Kurnool and Kadapa.

16. Though no witness spoke on these lines, what appears to this Court is that, on the eventful night, the farmers went to the field for irrigating their crops, may be on account of shortage of power or water; and in a scuffle, the deceased received serious injuries in the hands of the accused. Had there been a clear intention, or plan for the accused to kill the deceased, there would not be an occasion for the deceased being shifted to the hospital, and is being in a position to speak. If four persons, armed with deadly weapons, attack an individual, with an objective of killing him, normally, they would leave the spot, only after confirming that the attacked person breathed his last.

17. We are of the view that it is a case which fits into part-2 of Section 304 IPC. The attackers i.e., A1 to A4 did know the result of the blows dealt with by them, but they did not entertain the idea of killing the accused. It is a different matter that the accused succumbed to the injuries. Therefore, the appeal deserves to be allowed partly, convicting the accused under that provision and punishing them, suitably.

18. In the result, the Criminal Appeal is allowed in part. The conviction ordered in S.C. No. 330 of 2006 on the file of the II Additional Sessions Judge, Kadapa at Proddatur, dated 04.11.2009, against the appellants-accused, is modified to be the one u/s 304 Part-II I.P.C. and the sentence is modified to be the one of Rigorous Imprisonment for six (06) years and fine of Rs. 5,000/- each, in default

to undergo simple imprisonment for a period of three months each.

19. The miscellaneous petition filed in this appeal shall also stand closed.