
(2004) 09 AP CK 0092

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 905 of 2002

Rachakonda Yadagiri @ Yadaiah

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 21-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302

Citation : (2005) 1 ALT(Cri) 221 : (2005) CriLJ 549

Hon'ble Judges : S.R.K. Prasad, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : G.M. Vijay Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—Sole accused in the appeal is the Appellant challenging the correctness of the judgment of the learned Principal Sessions Judge, Nalgonda in S.C.NO. 195 of 2003, dated: 30.1.2002.

2. Appellant-Accused was charged for the offences punishable u/s 302 IPC and he was convicted and sentence to suffer Imprisonment for Life.

3. The substance of the charge against the accused was that on 6.11.2000 he committed the murder of the deceased Sathaiah (father-in-law of the accused) by hacking him with an axe intentionally causing death of said Sathaiah thereby committed an offence punishable u/s 302 IPC.

4. The case of the prosecution is that the deceased is the father-in-law of the Appellant. P.W-1 is the wife of the deceased and mother-in-law of the accused, P.W-2 is the unmarried daughter of deceased, P.W-3 is the wife of the accused. The marriage was performed about 10 years prior to the date of the incident and out of wed lock three male children were borne. However, the relations between the accused and the wife were not cordial and they have been quarrelling. It is

stated that the accused has been ill-treating the P.W-3 quite often. The accused was addicted to excessive drinking and spending wayward life. The accused is the relation of P.W-1 i.e. nephew. The accused and the deceased were staying in Kothapally village of Kethepally Mandal and three months prior to the date of the incident, the accused ill-treated P.W-3 on account of which P.W-3 came to her parents' house and started staying with them. On 6.11.2000 P.Ws.1 and 2 went to cooli work and returned at about 4-30 p.m. the deceased informed P.W-1 that the accused abused him in the morning. Hearing these words, the accused came and questioned the audacity of the deceased. He grieve wild and brought an axe and beat the deceased on his neck on account of which the deceased died on the spot.

5. P.W-9 Sub-Inspector of Police on getting reliable information about the offence rushed to the Kothapet village of Kethepally Mandal and recorded the statement of P.W-1, who is the wife of the deceased and on the basis of the said report, a crime was registered in Crime No. 75 of 2000 of P.S. Kethepally u/s 302 I.P.C. by P.W-8 and issued F.I.R. Ex.P-9. P.W-11 took up the investigation from P.W-9. He recorded the statements of P.Ws-2 to 4, he arrested the accused and recorded the confessional statement in the presence of P.W-7 and another and photographs were taken by P.W-6. Ex.P-1 is the scene of offence panchanama and Ex.P-3 is the sketch of the scene, he conducted inquest over the dead body of the deceased in the presence of panchas. Thereafter, he sent the dead body for post-mortem examination. The autopsy was conducted on 7.11.2000. The doctor has opined that the deceased died due to shock and haemorrhage. After completing the investigation he filed the charge sheet in the Court of Judicial First Class Magistrate, Nakrekal, who registered the same as P.R.C.No. 18 of 2003. As the offence punishable u/s 302 I.P.C. is exclusively triable by the Court of Sessions, he committed the same to the Court of Sessions. The learned Principle Sessions Judge registered the same as S.C.No. 195 of 2003 and tried the case.

6. After hearing the prosecution and the accused, a charge was framed u/s 302 I.P.C. Accused pleaded not guilty and claimed to be tried. In support of the prosecution 11 witnesses were examined and Ex.P-1 to P-11 were marked and Ex.D-1 and D-2 are the contradictions in the 161 Cr.P.C. statement of P.W-2 and 3 respectively. M.O.-1 is the bloodstained cloth and M.O.-2 is the axe.

7. After the evidence was recorded, the incriminating circumstances appearing against the accused were brought to the notice of the accused u/s 313 Cr.P.C. and accused denied the same.

8. The learned trial Judge after considering the evidence available on record recorded a finding that the prosecution has been able to establish the guilt of the accused u/s 302 I.P.C. beyond reasonable doubt and accordingly convicted and sentenced the accused to suffer Life Imprisonment by a judgment dated 30.1.2002. The correctness of the said judgment is assailed in this appeal.

9. The learned counsel appearing for the Appellant-accused submits that the trial Court has gravely erred in recording the finding against the accused on the basis of the scanty and suspicious evidence. He submits that the evidence adduced by the prosecution is not sufficient to convict the accused. In fact there are no independent witnesses except P.Ws-1 to 3, who are the wife and daughters of the deceased respectively. When the incident had taken place in the evening about 5 p.m. it is natural that neighbours in the village would witness the incident, but no such witness was examined and therefore, the evidence of relations cannot be relied on to convict the accused. He further submits that there are any amount of inconsistencies in the evidence of P.Ws-1 to 3. He also submits that the investigation was conducted in a perfunctory manner. Even though P.W-9 has stated that he recorded the statement and obtained the signature of P.W-1, P.W-1 herself stated that her signature was taken by the police on the next day. Thus, the prosecution machinery was pressed into motion only on 7.11.2000 and not on 6.11.2000. The learned counsel also would submit that there are irreconcilable statement in the evidence of P.Ws.1 to 3. According to him, he submits that in the 161 Cr.P.C. statement recorded by the police, it was categorically stated that P.Ws-1 to 3 went to cooli in the morning and they came in the evening. But, according to the evidence of P.W-2, she was only a student and according to her she went to the school and came in the evening when the incident had happened. Thus, this discrepancy has not been explained at all. He also points out other discrepancies, which will be referred to hereinafter. It is also submitted that after recording the alleged statement of P.W-1, P.W-9, the Sub-Inspector of Police has sent the report for registering a crime, but in the endorsement he never signed it. Thus, it only shows that the entire process was commenced only on the next day, but not on 6.11.2000. It is also stated that the incident must have occurred even much earlier and the accused was tried to be implicated on the ground that he had been ill-treating his wife. He further submits that the Doctor himself has stated that the injuries must have been caused between 24 to 48 hours prior to the post-mortem examination. That itself shows that the offence must have been committed much prior to the evening of 6.11.2000. Thus, there is any amount of doubt as to the time of offence. He accordingly submits that the prosecution has not been able to establish the guilt beyond reasonable doubt and hence the benefit of doubt should go to the accused.

10. The learned Public Prosecutor, however, submits that even though the witnesses are relations, yet, their evidence is convincing the cogent and corroborative in all respects and therefore, their evidence cannot be discarded merely because they are relations. Further, the learned Public Prosecutor would submit that the alleged inconsistencies are very minor in nature and they cannot be said to vitiate the prosecution's case in its entirety. The learned Public Prosecutor further submits that the evidence adduced by the prosecution is quite consistent and reliable barring minor discrepancies and hence the judgment of the learned trial Court is quite legal and valid.

11. The point that arise for consideration is whether the judgment of the learned trial Court is sustainable on facts and in law? and whether the prosecution has been established the guilt of the accused beyond reasonable doubt?

12. The factual scenario is that the deceased is the father-in-law of the accused and the marriage of the accused was performed with the daughter of the deceased (P.W.3) about 10 years back and the accused is relation i.e. nephew of P.W-1. They were residing in Kothapet village. P.W-1 is the wife of the deceased. According to her, the Appellant was a lazy person. He was not doing any work and he was habituated to drinking. Since he was not maintaining his wife, there was some meeting with the elders. However, five months prior to the death of the deceased, P.W-3 came to their house and started living with them as the accused was not maintaining her. On the date of the incident, the deceased was in the house. P.W-1 and P.W-3 went to cooli work and returned at about 4 p.m. On their return the deceased complained that the accused abused him in the morning. On hearing this the accused who is residing in the nearby house questioned the deceased about his audacity, then the Appellant-accused threw a stone at the deceased. In the meantime, he went into his house and brought an axe. Apprehending danger P.W-1 and P.W-2 went inside the house and closed the door, but, however, the accused pulled out the door by hitting with an axe and thereafter dragged the deceased and caused a neck injury. Blood flown and the deceased died on the spot. Police came at about 9 p.m. and thumb impression was taken on the next day morning. She stated that P.W-3 and herself went to the cooli work and P.W-2 studying 6th Class. On the date of the incident, they went to paddy cutting work in the field of P. Shanker Reddy. In the cross examination, she stated that when P.W-3 caught hold of the deceased when he was falling down.

13. P.W-2 is the child witness. She was aged about 12 years when her deposition was recorded in August, 2001. She stated that about 10 years ago, the marriage between the accused and P.W-3 took place. The accused was a lazy and drunkard. On the date of the incident, she went to the school and returned back at 4-30 p.m. She stated that P.W-1 is her mother. At about 7-30 p.m. his father deceased was telling P.Ws.1 to 3 that the accused abused him. At that point of time, the accused came and began to abuse the deceased and the accused threw a stone at the deceased. Apprehending the danger, the deceased was pushed into the house and the door was closed. The accused came with an axe and broke open the doors and gave an axe blow, on the left side of the neck. He ran away immediately. In the cross examination, she stated that she was studying in a school at Ketheally, which is 3 kms away and denied the contents of Ex.D-1. P.W-3 is the wife of the accused and the daughter of the deceased. She corroborates the statement of P.W-1 to the effect that the accused has been ill-treating her and about 5 months prior to the incident, she came to her parents house. On the date of the incident, P.W-1 and herself went to cooli work and returned at about 4-30 p.m. The deceased was telling P.W-1 that the accused had abused him. At that point of time, the accused pelted a stone at his father

and he went inside the house and bolted the door and the accused brought an axe and dealt a blow on the left side of the neck. The deceased was profusely bleeding and he died immediately. She stated that she went to cooli work to the field of P. Chandra Reddy. She also stated that P.W-1 and P.W-2 did not catch the deceased and she has also not handed over the blood drenched clothes to the police and only the cloths of the deceased were seized by the police. P.W-5 is the panch for inquest and scene of offence. P.W-7 is the panch for recovery panchanama. P.W-9 is the Sub-Inspector of Police, who stated that having received an information that a person was going with an axe in the village. He immediately rushed to Kothapet village, went to the scene of offence and recorded the statement of P.W-1 and obtained the thumb impression on Ex.P-7 and he made an endorsement on Ex.P-8 to register a case. In the meanwhile, the Circle Inspector of Police came and took up the further investigation. He admitted that Ex.P-8 was not bearing his signature. P.W-10 is the Civil Asst. Surgeon, who conducted autopsy over the dead body of the deceased on 7.11.2000 between 12-30 and 2 p.m. and he found the following injuries:

"1. An incised wound about 7"x3" extending from below the left ear to above the left clavicle.

On dissection he found:

1. Left jugular vein on left carotid artery has been cut. Brachial pluzes also involved.
2. Fracture of C6, C7, C8 and T1 spine
3. Sterno deido moistoid muscles has been cut.

The injuries are ante mortem in nature should be caused by a sharp edged weapon like axe M.O.2.The injury would have been caused to 24 to 48 hours prior to post mortem examination."

He was of the opinion that the deceased died due to shock and haemorrhage. Ex.P-10 is the post-mortem certificate.

14. P.W-11 is the Investigation Officer. According t him, he has taken up the investigation from P.W-9. He arrested the accused and recorded a confessional statement of the accused in the presence of P.W-7. he recorded the statement of P.W-2, P.W-3 and P.W-4. He also seized the bloodstained earth and control earth. He conducted inquest over the dead body of the deceased and thereafter the dead body was sent for post-mortem examination and Ex.P-11 is the report of the Forensic Science Laboratory. After completing the investigation he filed the charge sheet. In the cross examination, he stated that there are number of houses, where the incident had happened. But, however, when he examined, no positive response was given by the neighbours.

15. Basing on the aforesaid evidence, it has to be considered whether the prosecution has been established the guilt of the accused beyond reasonable

doubt?

16. P.Ws.1 to 3 are the only eyewitnesses to state as to the occurrence of the incident namely the offence alleged to have been committed by the accused. It is well settled by the Supreme Court that the evidence of partisan, interested or relative witnesses cannot be altogether discarded, but it has to be scrutinised with care and caution so as to ensure that the witnesses are speaking truth and their evidence is natural. It is also in the evidence of the Investigation Officer that even though he tried to secure the statement of the neighbours, there was no response from them. One of the suggestions were also made to the prosecution witnesses that by the time, P.Ws.1 to 3 came from the fields from cooli work, the deceased was already dead and therefore, they have not seen the occurrence of the offence at all. But, however, if the evidence of the P.Ws.1 to 3 is consistent and dependable in material particulars, there is no reason why it should not be accepted. P.W.1 is the wife of the deceased, P.W.3 is the daughter of the deceased and wife of the accused. It is admitted by P.Ws.1 to 3 that P.W.3 has been staying with the deceased and P.W.1 for the last five months prior to the occurrence on the ground that the accused has been ill-treating her and not maintaining her properly. According to P.W.1, on the date of the incident she along with P.W.3 went for cooli work to the field of P. Shankar Reddy, but according to the evidence of P.W.3, she along with P.W.1 went to the cooli work in the field of P. Chandra Reddy. Even with regard to the presence of P.W.2, who was aged about 10 years at the relevant time, P.Ws.1 and 3 had categorically stated in their statement before the police u/s 161 Cr.P.C. on the day P.W.2 also accompanied P.Ws.1 and 3 for cooli work. But, however, before this Court P.W.1 has stated that she was a student studying 7th class. Even the statement of P.W.2 is appears to be unbelievable when she made certain statements, which are incompatible with her age. She stated that the marriage had taken place about ten years ago. But, as on the date of the marriage she was hardly about 11/2/2 years age. She also stated that the relations between the accused and the P.W.1 and P.W.2 was not cordial and P.W.3 has been ill treated by the accused is also to be swallowed with caution. Admittedly, she is a child witness. She prone for tutoring. Further her statement u/s 161 Cr.P.C. is quite different than the evidence before the Court while she stated before the police that she along with P.W.2 and P.W.3 went for cooli work and returned in the evening, but in her evidence, she stated that she is studying and she returned after school is over at 4 p.m. Thereafter, P.Ws.1 and 3 came to the house after cooli work. She further stated that at about 7-30 p.m. when the deceased was informing P.W.1 about the accused abusing the deceased in the morning at that point of time, the accused came and hit the deceased with an axe. But, according to P.Ws.1 to 3, the incident had taken place at about 5 p.m. Even according to P.W.1 statement though alleged to have been recorded on 6.11.2000, she had categorically stated in the evidence before the Court that she signed on the next day and even when the inquest was recorded, crime number was not mentioned. That itself shows that the crime was not even registered when the investigation had commenced.

It only indicates that the complaint appears to have been filed and taken on record on the next day. Another fact, which goes to discredit the testimony of P.Ws.1 to 3 is that the Investigation Officer when he went to the house of the deceased, he found that the clothes of P.Ws.1 to 3 were not stained with the blood. It is highly improbable that when the accused axed the deceased and the blood was profusely flowing the clothes of blood relations viz. wife and daughters of the deceased had no blood stains. P.W.3 had stated that she caught her father deceased when he was falling down due to axe injuries and yet she had no blood stain on her person as was stated by the Investigation Officer. Further when the Investigation Officer along with the panch witness went to the house of the accused, he was found sitting outside with an axe by his side. This is most unnatural. When the accused has committed the offence, no person of ordinary prudence would expect that the accused will be sitting on the cot with the weapon with which he was alleged to have committed the offence. Further, the report of the Forensic Science Laboratory reveals that no human blood was found on the weapon. Added to this, no other independent and neighbour witnesses were examined. Even it was stated by the Investigation Officer pw11 that when he examined the neighbours he did not get any positive replies from them. Thus, there are any amount of improbabilities and inconsistencies in the evidence adduced by the prosecution. It creates doubt as to whether the offence has taken place in the presence of P.Ws.1 to 3 at all or the offence could have been taken place much prior to their arrival. Under those circumstances, we feel it is most unsafe to rely on the alleged ocular testimony of P.Ws.1 to 3 and convict the accused for the offence punishable u/s 302 IPC. The analytical approach tested with intellect of ordinary person would not allow placing of any reliance on the ocular testimony. The doctrine of benefit of doubt is not a fetish nor is it an instrument to aid the accused at all times. But, when the evidence is scanned from all plausible angles, ways and means, and the doubt still persists, inevitably the benefit ought to go in favour of the accused. We find that the case of prosecution suffers from inherent improbabilities and the evidence is intrinsically incredible.

17. Under those circumstances, we find that the prosecution has not been able to bring home the guilt of the accused beyond reasonable doubt. Accordingly, we find that the judgment of the trial Court is not sustainable and it is set aside. The accused stands acquitted of the charge for the offence punishable u/s 302 IPC and he shall be set at liberty forthwith, if he is not required in any other case.

18. Accordingly, the Criminal Appeal is allowed.