

(2004) 04 AP CK 0120

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1379 of 2002

Sarasani Hanuma Reddy and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 300, 435

Citation : (2004) 2 ALD(Cri) 207 : (2004) 2 ALT(Cri) 558 : (2004) 2 APLJ 304 : (2004) CriLJ 3138

Hon'ble Judges : G. Bikshapathy, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : E. Ayyapu Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This Criminal Appeal is directed against the judgment dated 16-9-2002 passed in S.C. No. 199 of 2001 on the file of I Additional Sessions Judge, Nalgonda, whereby the learned Additional Sessions Judge found A1 Sarasani Hanuma Reddy, A2 Sarasani Laxma Reddy, A3 Bokka Srinivas Reddy, A4 Gundarapu Pullaiah, A5 Gunda rapu Venkanna, A6 Gunaganti Laxmaiah, A7 Gunaganti Ramulu and A8 Konatham Venkanna guilty for the offences under Sections 148, 302 and 435 r/w ,149, IPC and convicted them accordingly and sentenced each of them to suffer RI for one year for the offence u/s 148 IPC, imprisonment for life and fine of Rs 300/- in default to suffer SI for one month for the offence u/s 302, IPC and RI for one year and fine of Rs. 100/- in default to suffer SI for one month for the offence u/s 435 r/w 149, IPC. However, the learned Additional Sessions Judge found A9 Mattipally Guruvaiah not guilty for the offences under Sections 148, 302 and 435 r/w ,149, IPC and A10 Alugubelly Venkat Narsimha Reddy and All Kndhala Damodar Reddy not guilty for the offence u/s 120B, IPC and acquitted them accordingly.

2. The appellants herein are A1 to A8 in SIC. No. 199/2001. They along with

three other were acquitted and accused persons were put on trial before the 1st Additional Sessions Judge, Nalgonda for the offences under Sections 148, 302 and 435 r/w ,149and 120B, IPC.

3. The prosecution case in brief :--

P.W. 1 Sarasani Damodar Reddy and P.W. 7 Sarasani Venkat Reddy are elder brothers, P.W. 2 Sarasani Poolamma is mother, P.W. 3 Sarasani Padma is wife and P.W. 4 Sarasani Ranga Reddy is junior paternal uncle of Sarasani Sanjeeva Reddy (hereinafter referred to as deceased). P.W. 5 Sarasani Sugunamma is wife of P.W. 1 and P.W. 6 K. Narsimha Reddy is brother in law of the deceased. The deceased and the prosecution witnesses belong to OPDR party and the accused are supporters of CPI (ML) Janashakthi group. The prosecution party and the accused party belong to Namavaram village. Since twenty years prior to the date of occurrence, OPDR party candidates were being elected as Sarpanchas of Namavaram village. Therefore there existed serious rivalry between the prosecution party and the accused party.

4. On 29-6-1997 at about 7.30 a.m. the deceased. P.W. 1, P.W. 2 and P.W. 8 went to Appannagudem village by a tractor to attend the marriage of one S. Prabhakar Reddy, who is the son of senior paternal uncle of P.W. 1. After attending the marriage, P.W. 1 and the deceased went to Kdttapahad village by the tractor to see their ailing sister's son and after seeing they left Kottapahad village by the tractor for their village. When they reached the outskirts of Ravipahad village, all the accused armed with axes and knives emerged from bushes. The deceased was driving the tractor and P.W. 1 was sitting in the trailer. On seeing the accused persons, the deceased stopped the tractor and both of them (deceased and P.W. 1) got down from the tractor and took to heels. All the accused chased the deceased and dealt blows on him with the weapons they had. It is alleged that A1 to A9 and A11 axed the deceased and killed him. Thereafter they damaged the tractor and set it on fire. The scene of occurrence is situated 10 to 15 yards from the bus stage of Ravipahad. P.W. 5 and P.W. 8 who were waiting at the bus stop rushed to the scene and witnessed the incident. P.W. 14 Azeem Khan, SI of Police, Moti Police Station, received a phone call at 1700 hours regarding the incident. He rushed to the scene of offence and received Ex.P.1 report from P.W. 1. He sent Ex.P.1 report to SHO, Moti P.S, P.W. 13 S. Venkatayya received Ex.P.1 report through P.C. 2116, registered a case in Cr.No. 39 of 1997 under Sections 147, 148, 302 and 435 r/w ,149, IPC and issued Ex.P.6 FIR. He sent the entire case file along with CD to the SI of Police, Moti P.S.,who was camping at Ravipahad, P.W. 14 received the copy of FIR and took up the investigation. He examined P.Ws. 1 to 4 and recorded their statements. On the morning of the next day i.e. on 30-6-1997 he held inquest on the dead body of the deceased in the presence of P.W. 9 and P.W. 10. He also observed the scene in the presence of same panchas and seized blood stained earth (MO.1) and controlled earth (MO.2) and wearing apparels of the deceased under the cover of Ex.P.7 panchanama. After the inquest the dead body was sent

for post mortem examination, P.W. 12 Dr. Pattabhi conducted post mortem examination on the dead body and found six cut injuries and seven aberrations on the dead body and on dissection, he noticed fracture of skull bones. He opined that the deceased died of shock and haemorrhage due to multiple injuries. Ex.P.5 is the post mortem report issued by him P.W. 15 G.S. Karunakar, CI of Police, Suryapet (Rural) took up investigation, examined PWs.5 to 8 and recorded their statements. He effected the arrest of A3 and A9 on being produced before him by the special party on 12-8-97 at 1330 hours. He recovered MO. 4 axe in pursuance of the disclosure statement of A3 in the presence of P.W. 11 Marru Ramesh Rao under the cover of Ex.P8 panchanama. He also seized MO. 5 axe in pursuance of the disclosure statement of A9 in the presence of P.W. 11 under the cover of Ex.P.9 panchanama. He sent all the material objects to FSL. through Sub-Division Police Officer, Suryapet, Ex.P.10 is the FSL report. After completing investigation, he submitted the charge sheet before the JMFC, Suryapet. The learned Magistrate took the charge sheet on file as P.R.C. No. 151 of 1998 and committed the case of the Court of Session as the offence u/s 302, IPC is exclusively triable by the Court of Session. On committal, the learned Sessions Judge, Nalgonda, took the case on file as S.C. No. 199 of 2001 and made over the same to I Additional Sessions Judge for disposal according to law.

5. Charges :

On hearing the prosecution and the accused, the learned Additional Sessions Judge framed the following charges;

Charge No. 1 : Against A1 to A9 for the offence of noting armed with deadly weapons punishable u/s 148, IPC.

Charge No. 2 : Against A1 to A9 for the murder of deceased Sarani Sanjeeva Reddy punishable u/s 302, IPC.

Charge No. 3 : Against A1 to A9 for causing mischief by fire punishable u/s 435 r/w 149, IPC.

Charge No. 4 : Against A1 to A1 1 for the offence of criminal conspiracy punishable u/s 120B of IPC.

Plea of the accused :

6. The accused pleaded not guilty and claimed to be tried.

Evidence and Findings of Trial Court:

7. To bring home the guilt of the accused for the offences with which they stood charged, the prosecution examined P.Ws. 1 to 15 and marked Exs. P. 1 to P. 10 and MOs. 1 to 5. The defence of the accused was one of denial. The learned Additional Sessions Judge, on appreciation of the evidence brought on record, found A1 to A8 guilty for the offences under Sections 148, 302 and 435 r/w ,149, IPC and convicted them accordingly and sentenced them as detailed above. However, the learned Additional Sessions Judge found A9 to A1 1 not guilty for

any of the offences and acquitted them accordingly.

8. Assailing the judgment of conviction and sentence, A1 to A8 have filed this Criminal Appeal.

Submissions :

9. Learned senior counsel appearing for the accused/appellants submits that P.Ws. 1, 4 and 5 are interested witnesses and therefore no implicit reliance can be placed on their testimony. He further submits that the presence of P.W. 4 and P.W. 5 is highly doubtful at the Ravipahad Bus stop at the time of the incident and therefore they are planted witnesses. It is further submitted by him that P.W. 1 went to the extent of implicating A9 and A1 whose names did not find place in FIR or in his police statement and that itself is sufficient to discard his testimony and that once the evidence of P.Ws. 1, 4 and 5 is discarded, there is no other evidence to connect the accused/appellants with the death of the deceased. It is also submitted by him that the names of P.W. 4 and P.W. 5 do not find place in the report presented by P.W. 1 before P.W. 14, who rushed to the scene on receiving telephonic message. He took us to Ex.P3 inquest report to convince that P.Ws. 4 and 5 never claimed to be the eye-witnesses to the incident when the police examined them during the inquest. His last submission is that the medical evidence falsifies the testimony of P.Ws. 1, 4 and 5 and that the trial Court has not correctly appreciated the evidence brought on record and thereby erred in convicting the accused/appellants for the offences under Sections 148, 302 and 435 r/w ,149, IPC.

10. Per contra, learned Public Prosecutor submits that P.W. 1 is a natural witnesses in the circumstances of the case and his evidence is corroborated by the testimony of P.W. 4 and 5 and therefore the conviction and sentence of the accused/appellants for the offences under Sections 148, 302 and 435 r/w ,149, IPC is legal and proper and the same is not required to be interfered with in this appeal. She further submits that the evidence of P.Ws. 1, 4 and 5 cannot be discarded merely because they being related to the deceased. It is further submitted by her that when ocular and medical evidence are at variance undue primacy should not be accorded to the hypothetical answer of the medical witnesses to exclude eye-witnesses account which has to be tested independently and not treated as the "variable" keeping the medical evidence as the "constant" she placed reliance on the decision of the Supreme Court in Gangadhar Behera and Others Vs. State of Orissa, .

Considerations/conclusions :.

11. To bring home the guilt of the accused/appellants for the offences under Sections 148, 302 and 435 r/w ,149 IPC, the prosecution examined as many as 15 witnesses, marked ten documents and exhibited five material objects, P.Ws. 1 and 7 are brothers and P.W. 2 is mother of the deceased. P.W. 3 is wife of the deceased and P.W. 5 is wife of P.W. 1. P.W. 4 is the junior paternal uncle of the deceased, P.W. 1 and P.W. 7. P.W. 6 is the brother-in-law of the deceased, P.W.1

and P.W. 7, P.W. 8 is resident of Namavaram to which village the prosecution party and the accused party belong. P.W. 9 and P.W. 10 are the panch witnesses for the inquest held on the dead body of the deceased. P.W. 11 is the panch witness for the confession and recovery of MOs. 4 and 5 axes in pursuance of the disclosure statements of A3 and A9. P.W. 12 is the post-mortem Doctor. P.W. 13 is the police constable who received Ex.P. 1 report and registered a case in Cr. No. 39 of 1997 and issued Ex.P.6 FIR. P.Ws. 14 and 15 are the Investigating Officers. Of the witnesses examined P.Ws. 8, 9 and 11 did not support the prosecution and the prosecution declared them hostile and marked Section 161, Cr.P.C. statement of P.W. 8 as Ex.P.2.

12. The entire case rests on the evidence of P.Ws. 1, 4 and 5. It can be said without any controversy that they are interested witnesses. Therefore, the Court has to scrutinize their evidence with great care and caution. On the date of the incident P.Ws. 1, 2, 4, 5 and 8 went to Appanangudem in a tractor to attend the marriage of Sarasani Prabhakar Reddy, who is the son of senior paternal uncle of P.W. 1. After attending the marriage, according to P.W. 1, P.W. 1,2, sister of P.W. 1 (Padma) and the deceased went to Kottapahad village by a tractor to see ailing brother-in-law of P.W. 1, who is the husband of Padma. P.W. 6 is no other than the husband of Padma and he is brother-in-law of P.W.1, P.W. 7 and the deceased. It is the evidence of P.W. 6 that he came to Namavaram village a day prior to the incident and on the date of the incident he along with P.Ws. 1, 2 and the deceased and some others went by a tractor to Appanagudem village to attend the marriage and after having lunch in the marriage, he proceeded to Kottapahad village i.e. his village by a cycle. So, the version of P.W. 1 that he went to Kottapahad village to see his ailing brother-in-law i.e. P.W. 6 cannot be believed. We have to keep this fact in mind while evaluating the testimony of P.W. 1.

13. P.W. 1 presented Ex.P.1 report stating that A1 to A8 were the assailants of the deceased. He also stated the same before the police in his Section 161, Cr.P.C. statement. He did not mention the names of A9 to A11 either in Ex.P.1 report or in his police statement. It is admitted by him that he got Ex.P. 1 report drafted by one of his relations in a house situated by the side of the road near the place of occurrence. For better appreciation we may refer the evidence of P.W. 1 in his own words and it is thus :

"One of my relatives drafted Ex.P. 1 in a house which is situated by the side of the road near place of occurrence. I do not remember the name of its scribe. It is incorrect to suggest that after consultation with my party political leaders Ex.P. 1 was drafted in our party office. It is incorrect to suggest that one of my political party leaders drafted Ex.P. 1. It is not true to suggest that Ex.P. 11 was not drafted by one of my relatives. It is not true to suggest that for the above said reason only I am unable to say the name of scribe of Ex.P.1. It is true the names of A9 and A11 were not mentioned in Ex.P. 1. Even in my earlier statement I had not named the names of A9 and A11."

P.W. 1 for the first time implicated A9 and A11 as the assailants of the deceased. He even attributed specific overt acts to A9 and A11. It is his evidence before the Court that A11 axed twice and A9 axed thrice the deceased. For better appreciation we may refer the cross-examination of P.W. 1 in his own words and it is thus :

"Cross-examination by Defence : A11 axed the deceased. A11 axed twice on the person of the deceased. A9 axed thrice on the person of the deceased. I was one of the accused in the murder case of Aziz among other 41 accused. The deceased Sanjeeva Reddy was also one of the accused along with me in that case. By the date of this incident the above said murder case has not ripened for trial. It is true after this incident the murder of Aziz had taken up for trial and it was ended with an acquittal. I do not know whether the prosecution witnesses in murder case of Aziz supports its version or not. I know Pandiri Ram Reddy and Somireddy Venkat Reddy and they were murdered. The murders of Pandhiri Ram Reddy and Somireddy Venkat Reddy occurred on the same day subsequent to this incident. I came to know the said fact after seeing newspaper on the next day morning. Pandiri Ram Reddy was supporter of Telugu Desam Party, and Somireddy Venkat Reddy was supporter of Congress I Party. I came to know that Venna Satyanarayana Reddy, Keesara Venkat Reddy, Keesara Peda Ram Reddy sustained injuries in that case, and they are supporters of Congress. TDP and Janashakthi."

At this juncture, we deem it appropriate to refer the evidence of post mortem Doctor. P.W. 12 Dr. Pattabhi is post mortem Doctor. He noticed six cut injuries and eight abrasions on the dead body of the deceased. When cut injuries were attributed to A9 and A11, the left over injuries were only abrasions. It is to be noted here that the trial Court acquitted A9 and A11 and there is no appeal filed by the State assailing their acquittal. The trial Court having observed that injury Nos. 7 to 12 are only abrasions assumed that the accused must have dealt blows with the butt-end of the axes. The assumption of the trial Court is *ex facie* erroneous. When P.W. 1 categorically stated that A1 to A8 dealt blows with an axe it is not for the court to infer that they used the blunt side of the axes in giving blows on the deceased. It has been held by the Apex Court in *Hallu and Others Vs. State of Madhya Pradesh*, that normally when the witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp edged or a piercing instrument was used as a blunt weapon. When P.W. 1 has specifically stated that A1 to A8 axed the deceased, it cannot be inferred that they beat the deceased with blunt side of the axes. If that be the implication it is duty of the prosecution to obtain clarification from P.W. 1 that they used the blunt edge of the axes in giving blows to the deceased. In the absence any such clarification being obtained by the prosecution from P.W. 1, the trial Court is not justified to infer that A1 to A8 might have beat the deceased with blunt edge of the axes. When the major cut injuries were attributed, to A9

and A11, the left over are only the abrasions. It is in the evidence of post mortem Doctor that the abrasions, could be possible by weapons like sticks. It is not the case of the prosecution that A1 to A8 beat the deceased with sticks. The direct evidence of P.W. 1 is not supported by the medical evidence. In such a situation it can be said that the evidence is wanting in the most material part of the prosecution case. It is held by the Supreme Court in Ram Narain Singh Vs. State of Punjab, that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. If the evidence of witness is totally inconsistent with the medical evidence or the evidence of ballistic expert, it is the most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discard the entire case.

14. P.W. 1's evidence is not supported by the medical evidence and so his evidence is wanting in most material part of the prosecution case and therefore it is highly difficult to place implicit reliance on his testimony. P.Ws. 4 and 5 claim that they were at the bus stop of Ravipahad at about 3.30 or 4 P.M. and that they saw the accused/appellants assaulting the deceased. At the cost of repetition we may state that P.W. 5 is not other than the wife of P.W. 1 and P.W. 4 is the senior paternal uncle of P.W. 1. The names of P.W. 4 and P.W. 5 do not find place in the FIR. We are aware that non-mentioning of names in FIR is not a ground to reject their testimony if it is otherwise convincing. P.W. 1 claims that he got Ex.P. 1 report drafted by one of his relatives in a house situated by the side of the road near the place of occurrence and P.Ws. 4 and 5 were very much present when Ex.P. 1 report was being drafted. It is also to be noted that P.W. 4 was examined during the inquest. The inquest report does not indicate that P.Ws. 4 and 5 figured as eye-witnesses to the incident. It is admitted by P.W. 14 S.A. Azeem Khan, Investigating Officer, that P.W. 1 had not stated before him that P.Ws. 4 to 6 witnessed the incident. The circumstances narrated above creates serious doubts in the mind of the Court with regard to the very presence of P.Ws. 4 and 5 at the bus stop. When the testimony of P.W. 1 suffers from serious infirmities and incurable inconsistencies, the evidence of P.Ws. 4 and 5 does not in any way help the prosecution case. The trial Court having recorded acquittal of A9 and A11 whose specific overt acts are relatable to cut injuries found on the dead body erred in observing that the overt acts attributed to A1 to A8 are supported by the medical evidence. As observed by us supra, the major injuries found on the deceased were relatable to overt acts of A9 and A11. The left over injuries are only abrasions. Therefore, the observation of the trial Court that the evidence of P.W. 1 is corroborated with the medical evidence is contrary to the material available on record. In view of the above discussion, we find that the prosecution has not proved the guilt of the accused for the offences with which they stood charged beyond reasonable doubt and therefore the accused/appellants are entitled for acquittal.

Result:

15. In the result, this Criminal Appeal is allowed setting aside the conviction and sentence of accused/appellants for the offences under Sections 148, 302 and 435 r/w ,149, IPC and they are directed to be set at liberty forthwith, if they are not required in any other crime. The fine amount paid, if any , is ordered to be refunded to the appellants.