

(1994) 10 AP CK 0028

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 224 of 1994

Siddapuram Siva Reddy alias Pyreedy and Another

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-10-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 323, 323

Citation : (1995) 1 ALT(Cri) 71 : (1995) 1 APLJ 127

Hon'ble Judges : V. Bhaskara Rao, J;M.N. Rao, J

Bench : Division Bench

Advocate : T. Balireddy and K. Suresh Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

M.N. Rao, J.—The appellants herein are accused Nos. 1 and 2 in Sessions Case No. 17 of 1993 on the file of the II Additional Sessions Judge, Kurnool. In respect of an incident that happened on 17-3-1992 at about 3.20 p.m. in Sreeramnagar, Kurnool resulting in the death of one Srinivasa Reddy and injuries to PW-1, Nagalakshmi and one Venkataswamy Reddy, the two appellants herein, along with there others (A-3 to A-5) were tried by the learned Sessions Judge.

2. Charge No. 1 was against all the five accused u/s 148, IPC. Charge No. 2 was u/s 302, IPC against A-1 and A-2. Charge No. 3 was u/s 302 read with Section 149 IPC against A-3 to A-5. Charge No. 4 was u/s 324, IPC against A-2 for causing injuries to PW-1. The fifth charge was u/s 324, IPC against A-1 for causing injury to Venkataswamy Reddy who died due to natural causes before the case came up for trial. The sixth Charge was u/s 323, IPC against A-3 to A-5 for beating and fisting Venkataswamy Reddy. The learned Sessions Judge acquitted A-3 to A-5 since their identity was not established and none of the direct witnesses spoke about their presence. However, believing the evidence of the injured witnesses PW-1 and 2, widow of the deceased Srinivasa Reddy and the medical evidence, the learned judge convicted the appellants herein in respect of Charges Nos. (1), (2), (4), and (5). The sentence awarded under

charge No. (1) was one year imprisonment to each of the two appellants. Both were sentenced to life imprisonment under Charge No. (2) for the offence u/s 302 IPC. In respect of charge No. (4) u/s 324 IPC., A-2 was sentenced to imprisonment for one year. Under charge No. (5), A-1 was sentenced to one year imprisonment. All the sentences were directed to run concurrently.

3. The story of the prosecution, as placed before the trial Court is as follows :

A-1 is the father of A-2, PW-2 is the wife of the deceased; Srinivasa Reddy. PW-1 is the first cousin of the deceased. One Venkataswamy Reddy is the maternal uncle of the deceased. All of them are residents of Kurnool. On 23-1-1992 at about 9.00 a.m., PW-4, a forester in the forest department, Kurnool, inspected the house of A-1 and seized teak wood worth about Rs. 2,000/- in respect of which a case was registered in crime No. 189 of 1992. Suspecting that the deceased was responsible for giving the information to the forest officials, A-1 and A-2 went to his house on 17-3-1992 at about 3.20 p.m. and questioned him as to why he gave information about the storing of teak wood in his house. The deceased denied the allegation that he was responsible for informing the officials. A few minutes thereafter the deceased accompanied by PW-1 and Venkataswamy Reddy went to the house of A-1 and A-2 which is at a distance of 30 yards from his house. The deceased once again reiterated that he did not give information to the forest officials and a quarrel ensued. The accused brought pattudu sticks (hand sticks) and both of them inflicted one blow each on the head of the deceased as a result of which the deceased fell down unconscious. When PW-1 and Venkataswamy Reddy intervened, A-2 beat PW-1 with the stick on the forehead as a result of which PW-1 sustained bleeding injuries. A-1 hit Venkataswamy Reddy with the stick on the head as a result of which Venkataswamy Reddy fell down. Three other strangers also were with A-1 and A-2 and they fisted Venkataswamy Reddy on the face. Seeing this, Sulochanamma, PW-2 wife of the deceased, came weeping and the accused ran away. Laxmamma, mother of the deceased, also came there. The deceased, PW-1 and Venkataswamy Reddy were taken to the Government General Hospital in auto-rikshaw, where PW-5, Dr. Sreeramulu, examined the deceased at about 4.30 p.m. and found the following two injuries :

1) Lacerated injury over the head in the middle 5 x 0.5 x bone deep, red in colour, bleeding present.

2) Contusion over the back of the head right side 5 x 4 cms with laceration over it measuring 1 cm length red in colour, bleeding present.

4. Ex. P-5 is the wound certificate issued by the doctor. In the opinion of the doctor, the injuries are grievous and could possibly be caused by blunt weapon like stick. PW-11, Dr. Sitaram, performed operation on the deceased since it was suspected that brain was damaged. According to Dr. Sitaram, during surgery, the left temporal lobe of the deceased was found to be lacerated. The subdural blood clots found were removed. On the right side there was minimal subdural blood

collection. The patient did not improve after surgery and died at 12.50 a.m. on 18-3-1992. PW-1 was examined on 17-3-1992 by PW-5, Dr. Sri Ramulu, who found the following two injuries.

1. Lacerated injury over the head on the right parietal region 4 cm x .5 cm x .5 cm red in colour, bleeding present.

2. Lacerated injury on the frontal region of the head 2 cm x .3 cm x .3 cm red in colour bleeding present.

5. Ex P-6 is the wound certificate issued by the doctor who opined that the injuries were simple in nature. At about 5.00 p.m. on the same day, Venkataswamy Reddy was also examined by PW-7 and the following injuries were found on him.

1. Lacerated injury over the fore-head right side 5 x .5 x .5 cm red in colour bleeding present.

2. Contusion of right upper eye lid.

6. Ex. P-7 is the wound certificate relating to the injuries found on Venkataswamy Reddy. The opinion of the doctor is that the injuries were simple and could be caused by a blunt weapon like a stick. P.W. 5, the doctor, sent intimation, Ex. P-8, to the III town police station out-post, Kurnool which was received by the Assistant Sub-Inspector of Police, P.W. 7 at about 6.30 p.m. and immediately P.W. 7 went to the hospital and found the deceased in an unconscious state. Ex. P-1 is the statement recorded by the Assistant Sub-Inspector of Police from P.W. 1; Ex. P-16 is the first information report. He proceeded to the hospital after registering the crime number at the police station and recorded the statements of P.Ws. 1, 2 and Venkataswamy Reddy. He seized blood stained clothes at about 8.20 p.m. under panchnama, Ex. P-17. On the next day i.e., 18-3-1992, at about 2.30 a.m. the Sub-Inspector of Police, P.W. 8, received through Ex. P-18, the intimation about the death of Srinivasa Reddy. The Section of law was altered to one u/s 302, I.P.C.; Ex. P-19 is the altered first information report. On receiving information the Inspector of Police, P.W. 9, reached the III town police station and took up further investigation. Inquest was conducted over the dead body from 8.00 a.m. to 10.30 a.m. in the presence of P.W. 4, V.A.O. Ex. P-2 is the inquest report, P.Ws. 1, 2, Venkataswamy Reddy and Laxmamma, the mother of the deceased, were examined and their statements were recorded at the inquest. Autopsy, on the dead body of the deceased, was conducted at 10.50 a.m. on 18-3-1992 by P.W. 10, Dr. Ravinder Reddy, Professor of Forensic Medicine, Kurnool Medical College. He found the following ante-mortem injuries :

1. Sutured wound over the top and middle of the head. 6 cm long obliquely placed with contused abrasion surrounding the wound, with contusion haematoma of the scalp layer beneath the wound and surgical burr hole of the bone present.

2. Sutured wound of the back of right side head vertical on occipital region 0.15 cms long with contusion haematoma of deeper layer of the scalp burrhole present over the occipital bone beneath the wound.

3. Sutured wound of the right temporal parietal area above the right ear, vertical 4 cms in size with haematoma of the scalp burrhole present over the skull.

4. Sutured wound on left side temporal parietal area of the skull, vertical. 12 cms in size with surgical removal of the skull bone 7 x 4 cm in size.

5. Sutured haematoma present on left side, brain tissue on top diffused with contusion of brain tissue, fracture of the base of the skull on left side to length of 8 cms.

7. Injuries Nos. 3 and 4 relate to surgery as spoken to by P.W. II, Dr. Sitharam who performed the operation on the deceased on the previous day. Ex. P-20 is the post-mortem certificate issued by P.W. 10, who opined that the deceased appeared to have died due to head injuries and the injuries are sufficient to cause the death in the ordinary course. It was also his opinion that the injuries could be caused with sticks like M.Os. 7 to 11. He also stated that injury Nos. 3 and 4 are surgical incisions and injury No. 5 is the internal description of external injuries (1) and (2).

8. The accused were arrested on 24-3-1992 at about 7.00 a.m. near the railway bridge in the presence of P.W. 4. Pattudu sticks (hand sticks) M.Os. 7 to 11 were seized from the possession of the accused under panchnama, Ex. P-4.

9. The plea of the accused was one of total denial. The learned sessions judge, considering the evidence, of the eye-witnesses, supported by the medical evidence, found the accused guilty and convicted them as stated supra.

10. Charge No. 5 relates to causing of injuries to Venkataswamy Reddy by A-1. This Venkataswamy Reddy who, according to the prosecution, accompanied the deceased to the house of the accused and was beaten by A-1, died before the case came up for trial. Ex. P-7 is the wound certificate in respect of Venkataswamy Reddy, in our considered opinion, is not admissible in evidence. As Venkataswamy Reddy died long before the trial commenced, it was not open to the prosecution to bring on record Ex. P-7 said to be the wound certificate in respect of Venkataswamy Reddy. Unless the injured person is present in the court and identified by the doctor no document even the one said to be a wound certificate relating to the injuries found on that person when examined by the doctor could be brought on record. In the absence of the injured person figuring as a witness, it is impermissible to record conviction. We, therefore, acquit A-1 in respect of charge No. 5 framed u/s 324, I.P.C. for causing injuries to Venkataswamy Reddy.

11. The incident occurred at about 3.30 p.m. P.Ws. 1 and 2 are the eye witnesses to the occurrence. Their evidence clearly shows that first A-1 and A-2 came to the house of the deceased and questioned him as to why the deceased disclosed

to the forest authorities about storing of teak wood by A-1. They threatened the deceased and went away. Fifteen minutes thereafter the deceased, P.W. 1 and Venkataswamy Reddy went to the house of the accused. The deceased told the accused that he was not responsible for the seizure of teak wood by the forest officials and that he did not give any information in that regard. Even when he was saying so, A-1, A-2 and three others brought sticks. A-1 and A-2 dealt one blow each on the deceased as a result of which the deceased fell down unconscious. P.W. 1 was beaten with a stick by A-2. The incident was witnessed by P.W. 2, wife of the deceased, standing outside her house and she rushed there weeping. The comment made by the learned counsel for the appellants is that P.W. 2 could not have seen the incident since it happened at the house of the accused but not at the house of the deceased. We are not inclined to agree for reason that the distance between the houses of the accused and the deceased is only 30 yards as is clear from evidence of P.Ws. 1 and 2. It is the evidence of P.W. 2 that standing in front of her house she witnessed the incident. We, therefore, do not find any justifiable grounds to brush aside the testimony of P.Ws. 1 and 2. We must also mention in this context that the first information report, Ex. P-1, was recorded at about 6.30 p.m. on the same day at the Government general hospital, Kurnool. It is true that in Ex. P-1, the presence of P.W. 2 was not mentioned. But, this is not a circumstance in our considered view to eschew from consideration the evidence of P.W. 2. The emphasis on Ex. P-1 is only about the incident that happened. The presence of the mother of the deceased was mentioned because she had taken the injured people to the hospital.

12. One other contention advanced in this regard relates to the alleged discrepancy between the testimony of P.Ws. 1 and 2 in the court and the contents of Ex. P-1 in regard to the place where the incident occurred. Ex. P-1 says that the incident took place at the house of the deceased whereas the evidence of P.Ws. 1 and 2 is to the effect that it happened at the house of the accused. We do not find any discrepancy in this regard. Ex. P-1 does not say specifically that the occurrence happened at the house of the deceased, Srinivasa Reddy. It only says that near Srinivasa Reddy's house the quarrel ensued, resulting in the accused attacking the deceased, P.W. 1 and Venkataswamy Reddy with sticks. As already stated by us, it was elicited in the evidence of P.Ws. 1 and 2 that the distance between the houses of the accused and the deceased was only 30 yards. We, therefore, do not find any merit in the contention.

13. Ex. P-5, the wound certificate relating to the deceased, shows two injuries. It shows that X-ray of the skull revealed fracture of temporo parietal region. It was elicited from P.W. 5 that fracture noted in Ex-5 corresponds to injury No. (2). It is thus evident that it was injury No. (2) which proved fatal. There is no evidence as to who dealt this fatal blow - A-1 or A-2. The evidence of P.Ws. 1 and 2 is to the effect that A-1 and A-2 each dealt one blow with a stick on the head of the deceased. It is not possible to conclude precisely as to who caused the fatal

injury. From the evidence of P.Ws. 1 and 2 it is clear that with the same sticks P.W. 1 and Venkataswamy Reddy were also beaten. The injuries found on P.W. 1 are simple in nature and same was the case with regard to the injuries found on Venkataswamy Reddy. After the first accused came to the house of the deceased and after warning him they went back. Fifteen minutes thereafter the deceased accompanied by P.W. 1 and Venkataswamy Reddy went to the house of the accused and a quarrel ensued. During the course of talk which turned into a quarrel the injuries came to be inflicted. Judging from the fact that A-1 and A-2 dealt each one blow and that the blows inflicted by them with the same sticks on the other person did not prove fatal, we find it difficult to agree with the conclusion of the learned trial judge that the accused intended to cause the death of the deceased, nor can we attribute knowledge to the accused that they caused the injuries with the knowledge that the injuries are likely to cause the death. We are, therefore, of the view that the accused are liable for the offence u/s 325, read with Section 34, I.P.C. We are fortified in this view by the ruling of the Supreme Court in *Ninaji Raoji Boudha and Another Vs. State of Maharashtra*, . Accordingly, we set aside the conviction of A-1 and A-2 u/s 302 I.P.C. (charge No. 2) and instead convict them u/s 325, read with Section 34, I.P.C. and sentence each of them to three years" rigorous imprisonment. The conviction and sentences in respect of charge No. (1) u/s 148, I.P.C., in respect of charge No. (4) against A-2 u/s 324 I.P.C. are confirmed. The sentences shall run concurrently. The criminal appeal is accordingly partly allowed as indicated above.

14. Appeal allowed partly.