
(2011) 11 AP CK 0108

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 172 of 2008

Thallapalli Ramulu and another

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2012) 2 ALT(Cri) 62

Hon'ble Judges : R. Kantha Rao, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : Nazeerkhan, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This criminal appeal is filed against the judgment dated 19.12.2007 passed by the II Additional Sessions Judge, Karimnagar at Jagityal in Sessions Case No.365 of 2007.

2. The appellants 1 and 2 were tried by the learned Additional Sessions Judge for causing the death of Tallapalli Erra Narsaiah, deceased No.1 and Thonti Padda Gangaiah, deceased No.2 intentionally by beating them with deadly weapons viz. axe and iron rod and committing the offence punishable u/s 302 IPC. At the conclusion of the trial, the learned trial Court found both the accused guilty of the charge u/s 302 IPC, convicted them for the said charge and sentenced each of them to undergo imprisonment for life and to pay fine of Rs.2,000/-.

3. Challenging the said order of conviction and sentence, the appellants preferred this appeal.

4. We have heard Sri Nazeer Khan, Learned Counsel appearing for the appellants and the learned Additional Public Prosecutor representing the State.

5. Briefly stated, prosecution case is like this:

Thallapally Erra Narsaiah, the deceased No.1 used to live by his profession toddy

tapping and also doing agriculture. He has a brother i.e. Devaiah, who was adopted by Thallapalli Ramaiah. After his adoption, he never looked after the welfare of the parents, but after the death of his father, he started demanding share in the property of her father. The first deceased was not agreeing for the same on the ground that he was adopted by Ramaiah. In this connection, several panchayats were held. This apart, the appellants Tallapally Ramulu and Thallapalli Anjaiah who are the sons of Devaiah were also suspecting that the first deceased and the second deceased jointly practicing sorcery against their family members and whenever any of their family members fell sick they were thinking that both the deceased were responsible for the illness. The second deceased is a neighbour and friend of the first deceased. The second deceased was also supporting the cause of the first deceased in the property dispute with Devaiah. Thus, the appellants developed grouse against both the deceased and were contemplating to do away with the deceased.

6. On 28.08.2005 at about 06.00 AM the first deceased went for toddy tapping. An hour later PW.2-Thallapalli China Devaiah, who is the relative of the first deceased came and informed PW.1, the wife of the first deceased that the appellants 1 and 2 waylaid her husband near the agricultural land of one Vemula Mallaiah and killed him by hacking with an axe-MO.21 and beating with an iron rod-MO.22 and subsequently they proceeded towards the cotton fields of Thonti Pedda Gangaiah, the deceased No.2. PW.2 also informed PW.1 that the appellants were proceeding to kill Thonti Pedda Gangaiah, the deceased No.2 also. He also informed her that he and one Ram Gopal witnessed the incident and dead body of the first deceased was lying in the field of Vemula Mallaiah. Immediately, PW.1 rushed to the land of Vemula Mallaiah by weeping and found the dead body of her husband with bleeding injuries. Subsequently, she came to know that the appellants also killed Thonti Pedda Gangaiah, the deceased No.2 in his cotton field, she proceeded there and found Thonti Pedda Gangaiah also dead in his cotton field with bleeding injuries. She also found that PW.3-Rajavva, daughter of the deceased No.2 weeping at the dead body of her father. PW.3 informed PW.1 that the appellants 1 and 2 killed her father by hacking with axe and beating with iron rod.

7. After knowing about these incidents, PW.1 rushed to the Police Station, Kodimial and gave a statement-Ex. P.1 to PW.13-Sub-Inspector of Police. PW.13, basing on the statement of PW.1, registered a case in Crime No.77 of 2005 u/s 302 read with 34 IPC and he informed PW.14, the Inspector of Police about registering the crime over phone, on receiving the information, PW.14 rushed to the scene of offence, investigated into the offence and after investigation, he filed the charge sheet against the appellants 1 and 2.

8. Before the learned trial Court, the prosecution in order to establish the guilt of the appellants, examined PWs.1 to 14, marked Exs.P.1 to P.48 and MOs 1 to 22. On considering the entire material on record, the learned trial Court convicted both the appellants for the charge u/s 302 IPC and sentenced them to

punishment as mentioned above.

9. Now the point for determination in this appeal is as to whether the conviction and sentence passed by the learned trial Court against the appellants can be sustained.

10. Sri Nazeer Khan, the Learned Counsel appearing for the appellants contended that all the material witnesses turned hostile, the trial Court rested its decision mainly on the evidence of PW.2, who is no other than the daughter of the second deceased and her evidence being untrustworthy, the conviction and sentence recorded by the trial Court is liable to be set aside.

11. On the other hand, it was argued by the learned Additional Public Prosecutor that the evidence of PW.3, the sole eyewitness is natural, reliable and also corroborated by the other circumstances and that the learned trial Court rightly convicted the appellants for the offence u/s 302 IPC and the conviction and sentence passed by the trial Court needs no interference in this appeal.

12. Apart from the evidence of PW.3, the sole eyewitness, the prosecution relied on the motive which the appellants had to kill the deceased, the evidence relating to chemical analysis of the material objects by the Forensic Science Laboratory and also MOs. 21 and 22-axe and the iron rod in pursuance of the disclosure statement made by the appellants 1 and 2 to PW.14, the investigating officer.

13. According to the prosecution, PW.2-Chinna Devaiah and one Ram Gopal witnessed the killing of the first deceased by the appellants 1 and 2. The prosecution version is that they informed PW.1 about their witnessing the killing of the first deceased by the appellants. The prosecution did not examine Ram Gopal, although, the prosecution examined PW.2. PW.2 did not support the prosecution version. He only stated that he and Ram Gopal went for toddy tapping and while returning they found the dead body of the first deceased by the side of the path way. This witness is treated hostile by the prosecution. PW.1, wife of the first deceased, PW.4, daughter, PW.5 son, PW.6, the daughter-in-law, only spoke about the motive aspect. But they are not direct witnesses to the occurrence. The evidence of PW.1, in particular, discloses that there was enmity between the first deceased and the appellants because of the property dispute and also since the appellants suspecting the deceased 1 and 2 practicing sorcery against their family members. The evidence in regard to the motive is convincing and we see no reason to disbelieve the evidence of the above witnesses on this aspect. Therefore, we are of the view that the prosecution could be able to establish that the appellants had enough motive to kill the deceased 1 and 2.

14. PW.10, the autopsy surgeon stated in his evidence that on 28.08.2005 he conducted postmortem examination on the body of the deceased No.1 and found the following injuries.

1. Blood stain through nose present.

2. cut injury of right ear lable 2 x 2 cm
3. Two lacerated wounds over the right side of the head near occipital bone. 3 x 1/2 x bone depth, 3 x 1/2 x bone depth fracture skull bone brain matter left.
4. Injury over the right side head behind the right ear 1 x 1/2" x 1.
5. Sub aponeurotic hematoma left side parietal region 3 x 3 over the chest.
6. Injury over the chest below the left clavicle depth apex of leftlung 1" x 2" x 2".
7. Lacerated wound over the left shoulder 1" x 1" x 1".
8. Lacerated wound over the neck 1" x1/2" x 1/2".
9. cerebral hematoma seen 3" x 2".

He also found the following injuries on the body of the second deceased:

1. Blood stained face.
2. Injury left side of occipital region, occipital bone fracture brain matter seen 3" x 2" x 3".
3. Cut injury over the left ear 1" x 1".
4. Two lacerated wounds over the left side behind the ear 2"x2"x"cm 1"x1"x1"cm.

In the opinion of the doctor, the cause of death of the deceased 1 and 2 was due to haemorrhage and shock because of the multiple injuries which were ante mortem in nature.

15. PWs.11 and 12 are the mediators and according to the prosecution MO.21-axe was recovered in pursuance of the disclosure statement made by the first appellant to PW.14, the investigating officer and similarly MO.22-the iron rod was recovered in pursuance of the disclosure statement made by the second appellant before the investigating officer. Both these witnesses did not support the prosecution version and stated that the police did not recover any material objects in their presence. However, the evidence of PW.14, the investigating officer discloses that MO.21-axe and MO.22-iron rod were recovered in pursuance of the disclosure statements made by the appellants in the presence of PWs.11 and 12. Just like other witnesses, PWs.11 and 12 also being scared of the appellants might not have supported the prosecution version. Absolutely, there is no reason or any sufficient cause for PW.14, the investigating officer to give false evidence against the appellants 1 and 2. Therefore, in view of the peculiar circumstances of the case, we are inclined to believe the evidence of PW.14 on the factum of recovery of MOs.21 and 22 in pursuance of the disclosure statements made by the appellants 1 and 2.

16. The case further mainly rests on the evidence of PW.3, the daughter of the second deceased. There was no evidence in regard to the murder of the first deceased. PW.3 stated in her deposition before the trial Court that on 28.08.2005

at 06.30 AM she along with her father Pedda Gangaiah, the deceased No.2 went to their agricultural field. She and her father worked in the cotton field for 10 or 15 minutes. Then A1 and A2 came shouting towards them from the side of the field of Vemula Mallaiah and while the deceased was working in the field by bending forward, A1 axed on the back side of the head, A2 beat him with an iron rod on the head. Thereafter, her father fell down on the ground and again A1 axed on the head, by the time she came near her father, A1 and A2 ran away from the spot. While she was weeping near the dead body of her father, PW.2-Chinna Devaiah and Ramgopal came there and they stated to her that A1 and A2 proclaimed after killing of the 1st deceased, they would also kill the 2nd deceased.

17. The Learned Counsel appearing for the appellants would contend that PW.3 is a married woman residing with her husband in some other village, the prosecution introduced her as a witness, she in fact did not witness the incident and she being a related witness, it is quite unsafe to rely on her testimony to record conviction against the appellants. We absolutely see no force in the contention urged by the Learned Counsel, though, PW.3 is a married woman since she belongs to an agriculturist family, it is quite natural for her to proceed to the field along with her father. Even if she visited the house of her father, the way in which she deposed and the categorical account of the incident furnished by her inspires our confidence.

18. The law does not require corroboration as a rule for testimony of solitary eyewitness. The evidence of a sole eyewitness is found to be truthful, cogent and creditworthy, the same can be accepted to base a conviction even without corroboration from independent source. When there is a solitary eyewitness, the only requirement is that the Court has to thoroughly scrutinize her evidence to arrive at the truth of her version. The Supreme Court held in catena of decisions that even one witness is found to be trustworthy, his evidence is sufficient to convict the accused.

19. In the instant case, we consider the presence of PW.3 at the place of occurrence to be normal, her version in regard to killing of her father being cogent and free from infirmities, we see no reason to disbelieve her evidence.

20. Thus, in this case, the sole testimony of PW.3 being highly convincing and of reliable character. It receives corroboration from the evidence on the motive aspect and also the evidence relating to the recovery of the weapons of offence viz. MOs 21 and 22-axe and iron rod. The trial Court in our view convicted the appellants basing on proper appreciation of evidence. The conviction and sentence recorded by the trial Court do not call for any interference in this appeal.

21. For the foregoing reasons, the conviction and sentence passed by the trial Court against the appellants 1 and 2 are confirmed. The criminal appeal is dismissed.