

(2008) 03 AP CK 0026

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 107 of 2005

The State of A.P.

APPELLANT

Vs

Meegada Sudhakar Reddy and Others

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162
Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 436

Citation : (2008) 1 ALD(Cri) 835 : (2008) 2 ALT(Cri) 56

Hon'ble Judges : L. Narasimha Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Public Prosecutor, for the Appellant; C. Padmanabha Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—A gruesome and terrifying incident has taken place, at about 9-45 A.M. on 11.4.2000, in a village by name, Kanthamma Saatram, on the Mydukur-Proddatur road, in Kadapa District. 7 persons, by name Putha Chappal Reddy (deceased No. 1) and his two sons, Pulla Reddy (deceased No. 4) and Raghunatha Reddy (deceased No. 5); Putha Pedda Yella Reddy (deceased No. 3) and his two sons, Singa Reddy (deceased No. 6) and Chinna Yella Reddy (deceased No. 7); and one M.Ramakrishnaiah (deceased No. 2), all, residents of Sambaturu village of the same district, were killed in a faction feud, when they were traveling in an APSRTC bus. PW-1, the son of D-3 and brother of D-6 and D-7, submitted a complaint, marked as Ex.P-1, before the P.S. Proddatur Rural, narrating the history of faction in their village, and the manner in which the deceased were said to have been killed by the accused. A marathon trial in S.C. No. 276 of 2000 has taken place, in the Court of III Additional Sessions Judge (FTC), Kadapa, in respect of the same. The respondents herein were arrayed as A-1 to A-36. As many as 17 charges were framed. All the accused pleaded not guilty. The prosecution examined 27 witnesses and marked 49 documents. On

behalf of the defence, DWs-1 to 7 were examined and Exs.D-1 to D-16 were marked. At the instance of the Court, CW-1 was examined and Exs.X-1 to X-22A were marked. As many as 56 material objects were brought on record. The trial court framed 8 points for its consideration, including the one, of alibi, pleaded by A-1, A-5 and A-6. Through its judgment, dated 5.5.2004, the trial court held that the prosecution failed to prove its case, against the respondents, and accordingly, acquitted them. The State preferred this appeal, assailing the acquittal handed out by the trial court, to the accused.

2. The gist of Ex.P-1, and the case of the prosecution is that factions existed in Sambaturu village for the past few decades, on the line of loyalty of persons Congress party or Telugu Desham Party, as the case may be. Quarrels took place between the followers of the said parties, and cases ensued against each other. The factions become violent in the year 1994, when elections to the A.P. Legislative Assembly took place. Bombs were hurled against each other. S.C. No. 313 of 1998 was registered against all the deceased herein, PWs-1 and 4, one Chinna Yella Reddy and Chintha Veera Reddy, u/s 436 IPC and Sections 3 and 5 of Explosive Substances Act. On 20.7.1998, Meegada Prabhakar Reddy, the brother of A-1, is said to have been killed by Putha Chappal Reddy, D-1, and others, near V.Rajupalem village. The case in relation thereto was pending, in the Court of Sessions Judge, Kadapa. The ill-feelings got further deepened.

3. On 11.4.2000, D-1 to D-7 with their men, were traveling from V. Rajupalem to Proddatur, to appear in the Court of Additional Sessions Judge, at that place, in another case. A-11, A-16 and A-20 are said to have boarded that very bus, at different places. A-29 traveled on a motorcycle, to ascertain whether the deceased and their party have boarded the bus. When the bus reached Kanthamma Satram stage, it came to a sudden halt, and immediately one jeep in the front, and another at the back of the bus, were kept. From the jeep kept in the front side, A-1 is said to have come out and hurled a bomb at the bus. When the inmates were frightened and moving away, D-6 is said to have jumped from a window, and when he was running away, A-1 is said to have hurled a bomb at him, the explosion of which has caused fatal injuries resulting in death.

PW-1 and some other witnesses are said to have jumped from the windows of the bus, and witnessed the different accused attacking the various persons, including D-7, who was on the top of the bus. While D-1 to D-5 were found dead on the spot, D-6 and D-7 were shifted to the hospital, where they were declared dead. The names of A-1 to A-19 were mentioned in Ex.P-1. Police took up investigation and inquest on all the dead bodies was conducted. Thereafter, post-mortem was also caused. The respondents were arrested at different stages and material objects were seized. The prosecution alleged that the accused held a clear motive to kill the deceased, on account of the faction feud. The accused pleaded not guilty, and the trial court acquitted all of them.

4. Learned Public Prosecutor submits that the trial court totally disbelieved the very presence of PWs-1 to 5, at the scene of occurrence, and thereby, though

there existed ample evidence, held that the prosecution failed to prove its case. He submits that the presence of PW-1 and other witnesses is very natural, and the minor discrepancies in the evidence, ought not to have been treated as a factor, to disbelieve their very presence. He contends that the trial court rested its findings, in this regard, mostly on the circumstance relating to the shifting of D-6 and D-7 to the hospital, from the scene of occurrence. He submits that though CW-1, the then Head Constable, is said to have taken the two deceased to the hospital, his evidence did not support that fact, and consequently, the presence of PWs-1 to 4 cannot be doubted.

5. Learned Public Prosecutor further contends that though it was a mob attack, the evidence on record is clear, as to which of the accused attacked the individual deceased, and when the motive for the accused to resort to such a crime can be discerned from the attendant facts, the accused ought to have been convicted of the offences alleged against them.

6. Sri C. Padmanabha Reddy, learned Senior Counsel for the accused, on the other hand, submits that the trial court furnished cogent reasons for not believing the presence of PWs-1 to 5 at the scene of occurrence, and the same does not warrant interference. He submits that though the evidence of DW-1, in this regard, was somewhat wavering, PW-20 clearly admitted that it was CW-1, who gave a written requisition to her, to examine D-6 at 11 A.M. on 11.4.2000, and the same would falsify the version of PW-1 that he took D-6 and D-7 to the hospital. He contends that the driver and conductor of the bus have clearly stated that it is impossible for a person to jump from the window of the bus, and with that statement, the evidence of PW-1 that himself, D-6 and some other witnesses jumped from the windows, is totally falsified. Learned Senior Counsel submits that Ex.P-1 itself was submitted, after due deliberations, and even in that, the names of A-1 to A-19 alone were mentioned, and the rest of them were added, without any basis.

7. This appeal arises out of one of the ghastliest incidents: Deadly factions, which are prepared to go to any extent, were involved. The bus, in which the deceased were traveling, was so overloaded that some passengers, including D-6, were traveling on the top. The incident occurred in the morning and right in the presence of about 80 passengers in the bus. While D-1, D-2, D-3, D-4 and D-6 were said to have been hacked inside the bus, D-7 is said to have been killed, on the top of it. D-5 was attacked, when he was running, after coming out of the bus. In view of the deadly and horrifying manner in which the attack took place, it is but natural that no independent witness, would have witnessed the same with a proper mental composure. Even if any one had witnessed it, he would not be forthcoming to reveal it, either to the prosecution, or to depose before the Court. The only available material for the court would be the evidence of the persons, belonging to the faction, which is at the receiving end. Added to this, A-1, A-5 and A-6 took the plea of alibi. With this back ground, the trial court framed the following points for its consideration:

- i) Whether the prosecution established the motive for the commission of the offence?
- ii) Whether A-1, A-5 and A-6 established their plea of alibi in this case?
- iii) Whether the video cassette, M.O.56 is legally admissible in evidence and can be viewed by the court?
- iv) What is the probative value of the evidence of the Medical Officer (PW.20); H.C.1300 (C.W.1) and the crew of the RTC bus in this case?
- v) Whether the prosecution established that PW.1 to PW.5 travelled in the RTC bus on the fateful day on 11.4.2000, along with the victims and witnessed the occurrence?
- vi) Whether there is any delay in giving the complaint and the FIR reaching the Magistrate?
- vii) Whether the medical evidence corroborated the oral testimony in this case?
- viii) Whether the prosecution established the case against the accused beyond all reasonable doubt?

Of the 27 witnesses examined by the prosecution, PW-1 is the son of D-3 and brother of D-6 and D-7. PWs-2 to 5 are said to have traveled along with PW-1 and the deceased, in the bus. PW-6 is a Photographer. PWs-7 and 8 are driver and conductor of the bus, respectively. Both of them were declared hostile, at the instance of the prosecution. PW-9 was examined by the prosecution, to state that he used to manufacture hunting sickles. Since he did not support the case of the prosecution, he was declared hostile. PW-10 is a witness to the inquest conducted on D-1 to D-5, and he too was declared hostile. PWs-16 to 23 are the Doctors, who have either treated some of the witnesses, or conducted autopsy. PW-24 is the Village Secretary of Venkatapuram. He is one of the witnesses for inquest of the dead bodies of D-1 to D-5. PW-25 is the Inspector of Police, who conducted investigation. PW-26 is the Sub-Inspector of Police, who received the information about the incident and took necessary steps, at the initial stage. It is he, who deposed extensively both in the chief-examination and cross examination . PW-27 is the Junior Assistant from the office of the District Collector, through whom proceedings, according sanction to prosecute A-1 for the offence under Sections 3 and 5 of Explosive Substances Act, were marked. Dws-1 to 7 were examined by the defence, to substantiate the plea of alibi taken by A1, A-5 and A-6. CW-1 is the Head Constable, who is said to have shifted D-6 and D-7 to the hospital.

8. The "P" series of the documentary evidence comprised mostly of the statements recorded u/s 162 Cr.P.C., from different witnesses, Postmortem certificates, inquest panchanamas, B-forms, requisitions, etc. The "D" series documents consist of the portions of the statements recorded u/s 162 Cr.P.C. from different witnesses. The "X" series documents are the proceedings in the

offices, where A-1 and other accused are said to have been employed.

9. It was to A-1, that the principal role in the entire occurrence was attributed. He was said to have hurled one bomb at the bus, and another at D-5, when he was trying to escape. Subsequently, he is said to have led the entire accused to attack the deceased in the bus. Himself, A-5 and A-6 have taken the plea of alibi. Oral and documentary evidence was adduced, in relation thereto. After a thorough consideration of the same, the trial court negated the plea of alibi. We are not persuaded to take any different view, though this is an appeal filed by the State, against the acquittal of the accused.

10. The case of the prosecution rested upon the evidence of PWs-1 to 5. The main presentation of the entire event was done by PW-1. The evidence of PWs.2 to 5 is almost similar, except for small variations. PW.1 is the son of D-3 and brother of D-6 and D-7. Howsoever interested his evidence may be, his agony on account of such an enormous bereavement, can easily be imagined. If his presence at the scene of occurrence is probable and if the statement contained in Ex.P.1 and evidence are truthful, his being a blood relation of some of the deceased, cannot be treated as a factor, to discard, or doubt his evidence. Therefore, much would depend upon the first two factors, referred to above, viz; his presence at the scene of occurrence and the truthfulness of his version.

11. Ex.P-1 is a detailed statement that emanated from PW.1. He narrated the history of the faction in his village, summed up the instances that preceded the occurrence, and stated the manner in which the incident has taken place. Important among the revelations in Ex.P-1 are that he accompanied the deceased and others in the bus, to appear in a case at Proddatur, that he saw A-11, A-16 and A-20, in the bus, and traveling up to the point, where the incident took place, and that he has seen A-1 hurling one bomb at the bus initially, and another at D-5, and ultimately leading his men towards the bus. He further deposed that he jumped from the bus, along with PW-2 and PW-4 and ran away across the fields towards southern side. It was mentioned that when himself and others tried to get down the bus, they did not find the way, since all the passengers were getting through the doors, and then himself and PW-3 and 4 jumped through the window, on the southern side, and started running away. Though mention was made about PW-3 in the list of persons, who are said to have boarded the bus, nothing is stated about PW-5, Sathanna.

The evidence of PWs-1 to 5, on the aspect of their escaping from the bus, is that PWs-1, 2 and 4 have jumped from the window of the bus, on the southern side, PW-3 on the northern side and PW-5 from the top of the bus. It was elicited through driver and conductor of the bus, examined as PWs-7 and 8, respectively, that the windows of the bus are so narrow, that human beings cannot jump from it. The following information was elicited from PW-7 in the cross-examination, on behalf of the defence.

The window frames of the bus were made of Aluminium metal. The window

frames on account of passage of time became stuck and some of them were not moving. Some of the window frames of the said RTC bus were moving to and fro and some were not moving. In the said RTC bus, there were no rods to the window frames. The measurements of the window of the RTC bus would be 1 foot x 2 feet to 2 1/2 feet. The width of 1 foot consists of two window frames. One cannot jump from the bus through the window. The head of the individual can pass through the window.

None of PWs-1 to 4 spoke about the alleged jumping of PW-5 from the top of the bus. It becomes doubtful whether he was in a position to run, soon after jumping from the top of the bus, or that he could escape from the assailants. Though PW-7 was further cross-examined and it was suggested to him that the width of the window would be 2 feet and that an individual can jump from it, the prosecution did not choose to place any material before the trial court, in this regard, be it with reference to the bus, in which the incident took place, or any technical data relating to other similar buses.

12. Notwithstanding the facts referred to above, if there existed any other material to suggest the presence of at least PW-1, the case of the prosecution gets substantiated to a large extent. One fact mentioned by him in Ex.P-1 and deposed in his evidence, prompted the trial court to examine the possibility of his being present at the scene of occurrence. The witness stated that himself and PWs-3 and 4 ran up to certain distance, to escape from the attack, and when they saw thereafter, they noticed that the accused left the place in the jeeps. On coming to the scene of occurrence, they are said to have found D-1 to D-5 dead, and D-6 and D-7 struggling for life. The three witnesses are said to have engaged an auto and took D-6 and D-7, in an auto, to the Area Hospital at Proddatur. The evidence of PW-1, in this regard, reads as under:

...6th deceased (Singareddy) was found alive with injuries on the rear side in the bus. We carried him from the bus on to the road. The 7th deceased (P.Chinna Yellareddy) was found with injuries on the top of the bus alive with injuries. He was also brought down. While myself, D. Laxminarayana and C. Vijayabhasker Reddy were taking the deceased No. 6 and the deceased No. 7 in an auto to Proddatur, on the way, my brother, Singareddy (D-6) told me that A-1 and A-2 and some others caused injuries to him by attacking him with hunting sickles. We took them to the Govt. Hospital at Proddatur. The Lady Medical Officer declared them dead.

Similarly, PW.4 stated:

...We also found P. Singareddy with injuries alive at the rear side seats of the bus. We also found P. Chinna Yella Reddy (7th deceased) with injuries alive on the top of the bus. When we were taking P. Singareddy and P. Chinna Yellareddy (D-6 and D-7) in an auto to the hospital at Proddatur, on the way, Singareddy told that he was attacked with hunting sickles by A-1, A-2 and some others. When we took both these injured to the Government Hospital, Proddatur, the

lady doctor declared them dead. She advised us to keep the bodies in the postmortem room. Accordingly, we did.

PWs-3 and 5 were silent, on this aspect. It is noteworthy that PWs-1, 2 and 4 did not make any mention of any Police Constable, either accompanying them, or issuing any requisition, at the hospital. The presence of police was spoken to by PW-1, only when he is said to have returned to the scene of occurrence, from the hospital.

13. PW-20 is the doctor, who was at the Area Hospital, when D-6 and D-7 were taken there. It is somewhat curious to note that in her chief-examination, she spoke only about the treatment given by her to PW-2, and virtually nothing else. It is noteworthy that PW-2 did not state much about any injuries said to have been received by him. It was only in the cross-examination of PW-20 that the information relating to the bringing of D-6 and D-7 to the hospital, was elicited from her. This only shows the level, to which the factions have overreached, even the government machinery. In her cross-examination, PW-20 stated as under:

...H.C.1300 gave a written requisition to me to examine one Putha Singa Reddy (D-6) at 11.00 A.M. on 11.4.2000. He produced the injured Putha Singa Reddy (D-6) before me. I noted his injuries in the accident register. He was unconscious and grasping for breath. I gave treatment to him and it is noted in the accident register. The said patient was given Ringer lactate and 5% Dextrose. Decadron injections were given. I noted some of the injuries on his person in the accident register and by then, he died. Therefore, I did not note the remaining injuries on the said person. The patient died at 11.20 A.M. There were some other persons with the Head Constable. He brought another dead body, but I did not make a note of it because the body was brought dead. Number of patients would be treated in the Government Hospital at Proddatur. I did not note the presence of the other people in the accident register. Ex.X-2 is the requisition issued by H.C.1300 of Proddatur Rural P.S. to me on 11.4.2000. Ex.X-3 is the sheet in the accident register relating to P. Singa Reddy showing the entries made by me. Soon after the death of injured Singa Reddy, I informed the same to H.C.1300, who brought him. It is not true to say that no other people accompanied H.C.1300 on 11.4.2000 and that I am giving false evidence. I did not talk to the said persons.

PW-20 was very much acquainted with PW-2, as the person, whom she is said to have given treatment and issued the wound certificate, marked as Ex.P-16. Whatever may have been her acquaintance, or lack of it with PWs-1 and 4, if what is stated by these three witnesses about their taking D-6 and D-7 to the hospital is true, PW-20 must have referred at least to PW-2, in that context. However, she was clear to the effect that it was H.C. No. 1300, was examined as CW-1, that gave the written requisition, marked as Ex.X-3, for admission and treatment of D-6 and D-7. Another important aspect to be noted is that while according to PWs-1, 2 and 4, D-6 was declared dead, soon after they have taken him to the hospital, PW-20 stated that D-6 was grasping for breath, when he was

brought to the hospital and that she has given him treatment, by administering Ringer lactate and 5% Dextrose, apart from Decadron injections. It was only when she was noting the injuries in the register, that she found D-6 dead. Such an information is not forthcoming from PWS-1, 2 and 4. They did not mention the presence of CW-1, nor about the treatment given to D-6.

14. If one examines the evidence of CW-1, the doubt as to the grip over this witness, be it either by the accused party, or the defence, becomes clear. He stated that he took charge from the Sub-Inspector as SHO on 11.4.2000 at 10.40 A.M. and remained in charge, till 1.00 P.M. He did not speak anything in the chief-examination about his taking D-6 to the hospital. He stated that in the year 2002, when he went to PW-20, to issue a Medical Certificate, to enable him to go on medical leave, she insisted on giving a requisition, and to her dictation, he wrote the requisition, marked as Ex.X-2. In the cross-examination, it was elicited through him that he did not submit any application for issuance of Medical Certificate, and that it is not necessary for any police official, to submit Medical Certificate, before proceeding on leave. He admitted his writing on Ex.X-2. From this, it becomes clear that there is any amount of doubt, as to the manner in which D-6 and D-7 were taken to the hospital, and at any rate, PWs-1, 2 and 4 cannot be said to be the persons, who have taken the two deceased to the hospital. Their version is not supported by record and the documentary evidence. Further, the oral evidence of PW-20, totally contradicts their evidence.

15. Having regard to the dimensions of the case, we endeavoured a lot, at least to identify the principal assailant, so that the actual culprits would not go scat free. We were even prepared to exhibit latitude in the matter of appreciation of the evidence of the kin of the victims, since it is a faction case. The trial court has also taken note of the underlying principles, decided in various cases by the Hon"ble Supreme Court. However, in view of the fact that the very presence of PWs-1 to 5, at the scene of occurrence, is highly improbable, we are left with no alternative except to concur with the judgment of the trial court. Barring the evidence of PWs-1 to 5, there is no other material to connect as many as 39 accused to the occurrence, which itself is gruesome.

We are of the view that the facts of this case, if at all anything, reveal the helplessness of the system, to dig out the truth. Normally, we come across cases, where the private individuals examined as witnesses, tend to change their stand in such cases, and hardly there exists any instances, where witnesses, like the doctors and police officials, take sides. In this case, the version of PWs-1 to 5 is not consistent. Almost all the private individuals examined as witnesses, have turned hostile, and some of the official witnesses, such as PW20 and CW-1, were not consistent in their evidence. Howsoever anxious the courts may be, to ensure that the guilty are brought to book, they cannot overcome the helplessness, when the evidence is not reliable and clear. We find ourselves in such a situation and are left with no alternative, except to dismiss the appeal.

16. The Criminal Appeal is, accordingly, dismissed.