
(2010) 12 AP CK 0106

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1240 of 2008

Thirukkavaluri Srinivasa Suri and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 411, 428
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302, 307

Citation : (2012) 1 ALT(Cri) 251

Hon'ble Judges : N.R.L. Nageswara Rao, J;K.C. Bhanu, J

Bench : Division Bench

Advocate : A. Gayatri Reddy, for the Appellant;

Judgement

N.R.L. Nageswara Rao, J.—The first and second accused in Sessions Case Nos. 502 of 2006 and 289 of 2006 respectively, on the file of XI Additional District and Sessions Judge, (Fast Track Court), Guntur at Tenali, who were convicted of the offence u/s 302 of the Indian Penal Code, 1860 (for short, "IPC") and sentenced to undergo life imprisonment and to pay a fine of ` 500/- each, in default to undergo simple imprisonment for a period of one month each, are the appellants herein. A case was originally filed against seven accused persons and the case against A-1 and A-2 was separated and thereafter, A-3 to A-7 were tried by the learned Sessions Judge.

2. According to the case of the prosecution, the deceased Karamsetty Srinivasa Rao was the owner of Kanaka Durga Jewellers shop at Tenali and a leading gold merchant. A-1 to A-5, according to the charge sheet, are gold workers by profession and previously worked under the deceased. Some misunderstandings arose between them due to the humiliation of the deceased. The accused were vexed with the behaviour of the deceased and decided to do away with him. A-1 sought the help of his friend A-6 and all of them have conspired and planned to kill the deceased. In pursuance of their conspiracy, on the night of 5-7-2003, A-1 to A-4 stood at Azeezkhana Street, while A-6 stood in the same bazaar and A-5

and A-7 followed the deceased, along with his clerks, after closing the shop and carrying the gold ornaments, were returning the house of the deceased. At about 10.45 p.m., when the deceased, along with his clerks, reached Tulsiram Chowk, all of a sudden A-1 to A-4 attacked him and A-4 pushed away P.Ws. 4 and 5, who are the clerks of the deceased, and due to fear, they stood away. A-1 hacked the deceased with an axe on his face and head, while A-2 to A-4 stabbed him with knives due to which he fell down in a pool of blood. A-4 took away the bag containing the gold ornaments worth of ` 6 lakhs being carried by the deceased and all the accused escaped from the scene of offence and they left for Kollur to the house of A-6. Thereafter, A-5 and A-7 also joined them at the house of A-6. Thereafter, P.Ws. 4 and 5 rushed to the spot and found the deceased fell down in pool of blood and immediately informed about the incident to P.Ws. 6 and 7, who are the brother and wife of the deceased, and they came to the scene of offence. Thereafter, the deceased was shifted to Government Hospital, Tenali, for treatment where P.W. 14, who is the doctor, examined the injured and gave first aid. Then the injured was shifted from there to People's Trauma Hospital, Guntur, for better treatment. P.W. 10, who is the doctor in People's Trauma Hospital, Guntur, gave treatment to the injured and while undergoing treatment, he died on 6-7-2003 at about 8.00 a.m.

3. Initially, on Ex. P-2 Statement of P.W. 4, a case in Crime No. 61 of 2003 under Sections 307 and 397 IPC was registered by P.W. 17, who is the Sub-Inspector of Police, and investigated into and subsequently, on receipt of Ex. P-4-death intimation, P.W. 17 reregistered FIR altering Section of law to 302 and 397 IPC.

4. P.W. 20, who is the Circle Inspector of Police, Tenali, took up the investigation. During the course of investigation, the statements of the witnesses were recorded; panchanama of the scene of offence was conducted and after the death of the deceased, P.W. 20 also held inquest over the dead body of the deceased on 6-7-2003 from 1.00 p.m. to 3.00 p.m. and it was sent for post mortem examination; During the course of investigation. P.W. 20 arrested A-5 on 1-8-2003 at Kaviraja Park, Nandula Pet, Tenali, in the presence of P.W. 15-Mediator and another mediator under cover of Ex. P-11 Mediators Report. In pursuance of the confession made by A-5, P.W. 20 arrested A-1 to A-6 on the same day at 5.00 p.m. at Kolluru in the house of A-6 in the presence of P.W. 15 and another mediator under cover of Ex. P-12 Mediators Report. P.W. 20 seized item Nos. 1 to 61 which are the stolen properties were recovered i.e., item Nos. 1 to 20 were seized from the possession of A-1; Item Nos. 21 to 30 were seized from the possession of A-2; item Nos. 31 to 40 were seized from the possession of A-3; item Nos. 41 to 49 were seized from the possession of A-4; and Item Nos. 50 to 61 which are worth ` 5 lakhs were seized from the possession of A-6. Thereafter, the accused were sent for remand.

5. During the course of investigation, on 4-8-2003, the identification of the articles were conducted in which P.W. 4 identified as the property belonging to his father. On 16-8-2003, on the requisition of the police, the Judicial Magistrate

of the First Class, Tenali, P.W. 13, conducted Test Identification Proceedings of A-1 to A-4 and P.Ws. 4 and 5 have participated and identified the accused. Thereafter, on completion of the investigation, charge sheet was filed against A-1 to A-7 for an offence punishable under Sections 148, 302, 396 read with 149 and 412 IPC. The accused were committed to the Court of Sessions and thereafter, as some of the accused did not appear, the learned Sessions Judge proceeded with the trial of the case against A-3 to A-7.

6. Originally, the following charges were framed against the accused:

Firstly, that, A-1 to A-7, on and before one month 5-7-2003 at the house of A-6 of you at Kolluru agreed among yourselves to commit the murder of the deceased Karamsetti Srinivasarao S/o Rangarao and in pursuance of said agreement you A-1 to A-4 did commit the murder of the deceased Karamsetti Srinivasarao S/o Rangarao on 5-7-2003 at 10.45 p.m. near Tulasiram Chowk at Tenali which is punishable for the death or imprisonment for life and there by committed an offence punishable u/s. 120-B IPC and within my cognizance.

Secondly, That A-1 to A-4 of you on 5-7-2003 at 10.45 p.m. on the road near Tulasiram Chowk committed the murder by intentionally causing the death of Karamsetti Srinivasarao S/o Rangarao and there by committed an offence punishable u/s. 302 IPC and within my cognizance.

Thirdly, That, you A-1 to A-7 on 5-7-2003 at about 10.45 p.m. on the road near Tulasiram Chowk, Shara Bazzar, Tenali were a member of unlawful assembly and did in prosecution of the common object of that assembly viz., committing the murder of the deceased Karamsetti Srinivasarao S/o Rangarao committed offence of roit and at that time you were armed with a deadly weapons and you A-1 to A-7 there by committed an offence punishable u/s. 148 IPC and within my cognizance.

When the above charges were read over and explained to the accused, they pleaded not guilty and claimed to be tried.

7. Originally, the appellants were charged along with five other accused in Sessions Case No. 337 of 2004 and as these accused have not appeared, the cases against them were separated and accordingly, the case against Accused No. 1 is numbered as S.C. No. 502 of 2006 and the case against Accused No. 2 is numbered as S.C.No. 289 of 2006 and the learned Sessions Judge tried both the cases together.

8. On behalf of the prosecution, P. Ws. 1 to 18 were examined and Exs. P-1 to P-19, Ex. C-1 portion of deposition of P.W. 2 recorded in S.C. No. 337 of 2004, case properties M.Os. 1 to 69 and contrary statements Exs. D-1 to D-5 were marked.

9. After closure of the prosecution evidence, the accused were examined u/s 313 Cr.P.C. and they did not adduce any defence evidence.

10. After considering the evidence on record, the learned Sessions Judge found the accused guilty of the offence punishable u/s 302 IPC and accordingly, convicted and sentenced them. Aggrieved by the said judgment, both the accused preferred the appeal.

11. Heard Smt. A. Gayathri Reddy, Learned Counsel appearing for the accused and the learned Public Prosecutor representing the State.

12. The points that arise for consideration are:

(1) Whether the prosecution has proved that the accused have committed the murder of the deceased?

(2) Whether the conviction and sentence imposed by the learned Sessions Judge is legal and sustainable?

13. The Learned Counsel for the appellants contends that the case was considered on similar facts in CrI.A.No. 860 of 2007 and in that case also, the evidence of P.Ws. 3 and 4 who are the witnesses in that case as P.Ws. 4 and 5 was analysed and this Court has come to a conclusion that their evidence is not conclusive to prove the culpability of the accused therein and the Court itself has given benefit of doubt to A-4 to A-7 in that case and, therefore, the same benefit shall be extended to the appellants herein.

14. As can be seen from the evidence of P.Ws. 3 and 4 as rightly contended by the Learned Counsel for the appellants, their evidence is very vague about the identification of the present appellants herein in participation of the crime. They have not even spoken about the appellants being the persons who are present at the time of the attack and their evidence only shows one person attacked the deceased and snatched away the gold ornaments which is said to be the reason for the crime. We are entirely in agreement with the Learned Counsel for the appellants herein that the evidence of P.Ws. 3 and 4 cannot be relied upon and in fact, the lower Court, thus, has expressed its doubt about the reliability of the evidence of P.Ws. 3 and 4.

15. The lower Court has taken into consideration the factum of recovery of gold ornaments from the appellants relying on the evidence of P.Ws. 16 and though some objections were raised about the admissibility of such evidence and the factum of recovery is not seriously disputed nor disputable in view of the evidence of the Investigating Officer, in fact, the accused have come into possession of the stolen articles and there is no explanation on their part. Therefore, taking into consideration the reasoning given in CrI.A.No. 860 of 2007 to set aside the conviction for the appellant for an offence punishable u/s 302 IPC, we convict them for an offence punishable u/s 411 Cr.P.C.

16. In the result, the conviction and sentence recorded by the learned XI Additional District and Sessions Judge (Fast Track Court), Guntur at Tenali, in Sessions Case Nos. 502 of 2006 and 289 of 2006 respectively, dated 5-9-2008, against the Appellants/Accused Nos.1 and 2 of the offence punishable u/s 302 of

IPC is set aside, instead the appellant/Accused Nos. 1 and 2 are found guilty of the offence punishable u/s 411 IPC and accordingly, they are convicted and sentenced to undergo Rigorous Imprisonment for a period of three (3) years. The period of remand underwent by the Appellants/Accused Nos. 1 and 2 during the course of investigation, trial and after conviction shall be given set off u/s 428 Cr.P.C. Accordingly, the Criminal Appeal is partly allowed.