

---

**(1999) 09 AP CK 0100**  
**In the Andhra Pradesh High Court**  
**Case No : Criminal A.No. 1105 of 1998**

Vanka Siva Kumar @ Siva

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

---

**Date of Decision :** 22-09-1999

**Acts Referred:**

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 109, 148, 149, 302, 324

**Citation :** (1999) 5 ALD 757 : (1999) 2 ALD(Cri) 614 : (1999) 5 ALT 299 :  
(1999) 2 ALT(Cri) 246 : (2000) CriLJ 687

**Hon'ble Judges :** Ramesh Madhav Bapat, J; Ghulam Mohammed, J

**Bench :** Division Bench

**Advocate :** Mr. T. Niranjan Reddy, for the Appellant; Public Prosecutor, for the Respondent

---

## Judgement

Ramesh Madhav Bapat, J.—Accused No.1 in Sessions Case No. 110 of 1994, which was decided by the First Additional Metropolitan Sessions Judge, Visakhapatnam, is the appellant herein. The accused-appellant herein and six others were tried for the following charges. The first charge against A1 to A7 was u/s 148 IPC for committing the offence of rioting and causing the death of one Pallanti Siva Ramakrishna Prasad. The learned Judge acquitted all the accused of the said charge. The second charge against A1 to A7 was u/s 302 read with Section 149 IPC. The appellant was convicted for an offence punishable u/s 302 IPC simplicitor and was sentenced to suffer imprisonment for life and also to pay fine of Rs.5000/- in default to suffer rigorous imprisonment for two months. The third charge against A1 to A7 was u/s 324 read with Section 149 IPC for causing hurt to PWs.1 and 2. A2 A4 and A7 were convicted and sentenced to suffer rigorous imprisonment for three years 15 days and to pay a fine of Rs.500/- each in default to suffer imprisonment for 15 days. The 4th charge against A1 to A7 was u/s 109 read with section 149 IPC for abetting the commission of murder of the deceased and causing hurt to PWs. 1 and 2. The learned Judge acquitted the accused of the said charge. Initially A1 to A7 and one Ramakrishna Reddy (A8)

were shown as accused but A8 was discharged by the Sessions Court in Crl. M.P. No. 407 of 1997 dated 1-12-1997.

2. The prosecution story can briefly be narrated as follows: That A1 to A7 are the followers of one Mondiramakrishna Reddy. A2 and A3 are brothers. A4 is the maternal uncle of A2 and A3. PW1 is the father of the deceased and PW2 is the younger brother of the deceased.

3. It is further stated by the prosecution that A1 to A3 and A5 to A7 used to play cricket in Adarsh nagar playground for practice. 15 days prior to the incident, there was an altercation on the play ground. Five days thereafter A1, A2, A3, A5 and A7 beat the deceased in the presence of PW1. It is further stated that five days prior to the incident, A1, A3, A4, A5 and A7 informed PW1 that an altercation took place on the cricket playground and in that connection PW2 did not tender apology to them and they further informed that an amount of Rs.300/-, which was imposed by way of fine, was not paid by PW2 and therefore they, are threatened to beat PW2.

4. It is further stated by the prosecution that 20-2-1994 at about 8-00 p.m. PW1 was informed that some people came with an intention to beat PW2, who was watering the newly constructed house. PW1 and the deceased went to the newly constructed house. On seeing PW1 and the deceased, PW2 came nearer to them. It is further alleged that A1 to A5 and A7 attacked the deceased and PWs.1 and 2. One of the persons armed with a knife stabbed the deceased and the deceased fell down. Thereafter they alleged to have run away from the scene of offence.

5. It is the further case of the prosecution that PW13, Constable, attached to the III Town Police Station, Visakhapatnam was proceeding to Ravindranagar to serve summons in connection with some other case. On seeing PWs.1 and 2 and the deceased, he stopped the auto rickshaw and took all the three persons to K.G. Hospital. The deceased succumbed to the injuries in the hospital. PW13 informed about the incident from K. G. Hospital on phone to the Assistant Sub-Inspector of Police (PW9).

6. It is the further case of the prosecution that PW9, the Assistant Sub-Inspector of Police, attached to the III Town Police Station, Visakhapatnam, came to the hospital and recorded the statement of PW1, which is filed on record as Ex.P1. On the strength of Ex.P1, PW9 registered the same as Crime No.50 of 1994 against the accused. Ex.P9 is the copy of the FIR sent to the Magistrate and the higher authorities.

7. It is the further case of the prosecution that PW10, the Circle Inspector of Police, Circle III, Visakhapatnam, took up the investigation. Meanwhile PWs.1 and 2 were treated by the Doctors in K. G. Hospital. PW10 held inquest over the dead body of the deceased in the presence of PW5. Ex.P5 is the inquest report. He also recorded the statements of PWs.2, 3, 4 and 7 and 4 others. He prepared the panchanama of the scene of offence, which is filed on record as Ex.P12. He

also prepared the rough sketch of the scene of offence, which is filed on record as Ex.P10. Thereafter PW10 made arrangements to send the dead body of the deceased for post-mortem examination. PW8 the Professor and Head of the Department of Forensic Medicine, Andhra Medical College, Visakhapatnam, conducted autopsy over the dead body of the deceased on 21-2-1994 at about 9-30 a.m. Ex.P-8 is the post-mortem certificate.

8. The Inspector of Police collected the bloodstained clothes of the deceased and PWs.1 and 2. MO1 is the shirt of the deceased. MO2 is the shirt of PW1 MO3 is the shirt of PW2. Thereafter PW10 arrested A1, A2, A3, A5, A7 and A8 on 25-2-1994.

9. It is further alleged by the prosecution when A1 was in the police custody, he expressed his willingness to discover the knife. His statement was recorded by PW10 in the presence of PW11. In pursuance of the said, statement, A1 alleged to have discovered MO4.

10. PW12 is the photographer, who had taken the photographs of the deceased. Exs.P13 to P15 are the photographs. Ex.P16 is the wound certificate produced on record in respect of the injuries caused to PW1, Ex.P17 is the wound certificate produced on record in respect of the injuries caused to PW2. Thus, on completion of investigation, the charge sheet was filed.

11. Out of 14 witnesses examined, PWs.2, 3, 4, 6, 7 and 11 did not support the prosecution and they were declared hostile and the permission was granted to the learned Public Prosecutor to cross-examine the witnesses but nothing is elicited in the cross-examination to benefit the prosecution.

12. In order to prove that the deceased died homicidal death, the prosecution led the evidence of PW10 and PW5, PW10 had conducted the inquest over the dead body of the deceased in the presence of PW5. Ex.P5 is the inquest report. After the inquest panchanama was over, the dead body of the deceased was sent to PW8 for conducting the autopsy over the dead body of the deceased. PW8 happened to be the Professor and Head of the Department of Forensic Medicine attached to Andhra Medical College, Visakhapatnam. On receipt of requisition on 21-2-1994 at 9-30 a.m. he conducted the autopsy over the dead body of the deceased and noticed the following external injuries on the person of the deceased.

1. An obliquely placed shaped bone deep, incised cut injury of 1 x 5 cm. present right front top of frontal region of head 10 cm. behind the right brow 12 cm. above right ear.

2. An obliquely placed elliptically incised cut injury of 2 cm. 5 cm. present on right part of the chin 9 cm. in front of right angular mandible.

3. An obliquely placed incised cut injury of 1 cm. 5 cm. over the centre of chin. Trunk region.

4. An obliquely placed skin deep incised cut injury of 6 x 5. cm on right front upper chest 3 cm. below the right collar bone.
5. An obliquely placed elliptically shaped incised penetrating stab injury of 2 cm. long with 5 cm. wide into depth entering into the right chest cavity by 5 cm. is present on right front chest it is 18 cm. below.
6. An obliquely placed elliptically shipped incised penetrating stab injury on 2 cm. long on left chest cavity. Right upper limb left upper limb.
7. Abrasion of 1x1 cm. over the back of left elbow. An obliquely muscle deep cut injury on the back of left forearm.
8. Skin deep incised cut injury of 1x 1 1/2 cm. inner aspect of left ankle.
9. Abrasion of 1/2x1/2 cm. on outer aspect of left ankle.
13. On internal examination, he noticed the following internal injuries on the person of the deceased.
  1. Corresponding incised cut injuries 1x5 cm. present in all underlined tissues, skull incised cut injury of 5x0.5 cm. on right frontal bone.
  2. On dissection of an external injury No.5 i.e., on right front chest corresponding penetrating stab injuries are present, which are described in detail in my certificate.
  3. On dissection of external injury No.6 left part of chest corresponding incised penetrating stab injury are present in all underlined tissue layer.
  4. Type of weapon : sharp weapon Stomach is empty. Urinary bladder is empty. Handed over to PC 972 p.m. concluded on 21-2-1995.
14. As per the opinion of the Doctor, the deceased died because of shock and haemorrhage due to multiple stab injuries on the chest of the deceased. Ex. P8 is the post-mortem certificate.
15. Considering the evidence led by the prosecution on the point of homicidal death, we hold that the deceased died homicidal death.
16. Now the question arises for our consideration as to who are responsible for causing the death of the deceased.
17. The prosecution led the evidence of PW1, who alleged to be an eye witness to the incident. PW1 happened to be the father of the deceased. PW1 stated in his evidence that on the date of the incident i.e., 20-2-1994 his elder son died. On the date of the incident PW2, his second son, was watering their newly constructed house. At that time he received the information that six persons were trying to attack on his son, PW2. On getting the above said information, PW1 and the deceased went towards the newly constructed house. It is further stated by him that on seeing him and the deceased, the six accused attacked on

them. At the first instance PW1 stated that he can identify only six persons and at the second breadth he stated that A6 was not present at the time of the incident. He further stated that he was not acquainted with any of the accused. Further, he repeated that he got acquainted with A5, A7 and A3. According to his version that one of the accused was indiscriminately stabbed the deceased but he was not able to identify as to who stabbed the deceased.

18. The evidence of PW1 does not inspire confidence for the reason that when he has admitted that he was not acquainted with the accused prior to the incident, his identification for the first time in the Court identifying the accused as the assailants of his son would be doubtful. Therefore, we hold that the evidence of PW1 is of no use in establishing that the appellant herein was responsible for causing the death of the deceased. PW1 specifically stated that he will not be named the person who stabbed the deceased.

19. We have the evidence of PW2, who was also an eye-witness and the injured witness in this case. According to the version of PW2 that a group of 15 persons came and stabbed his brother but he was not able to identify and name the persons, who attacked the deceased. Moreover, the evidence of PW2 negatives the presence of PW1 at the scene of offence. PW2 categorically stated that when his younger brother was stabbed, PW1 was not there. This is all the evidence led by the prosecution. When the presence of PW1 was negated by PW2 and when PW1 himself is not able to identify the assailants, the benefit of doubt must be given to the accused.

20. The prosecution has made a feeble effort by leading the evidence in the form of discovery of a knife u/s 27 of the Evidence Act. However, the witness before whom the accused alleged to have expressed his willingness to discover the knife MO4 did not support the prosecution. Even for the sake of arguments, it is held that A1 to discover MO4, then we have to go back to the evidence of PW8 to ascertain whether the injuries noticed on the person of the deceased is possible by a weapon like MO4. The evidence of the Doctor negatives the evidence of the prosecution, which was led by the prosecution in the form of discovery u/s 27 of the Evidence Act.

21. Considering the entire evidence of the prosecution, we hold that the learned Judge erroneously convicted the accused-appellant herein.

22. Therefore, the Criminal Appeal is allowed. The order of conviction and sentence recorded against the accused-appellant herein in Sessions Case No. 110 of 1994 by the I Additional Metropolitan Sessions Judge, Visakhapatnam is hereby set aside. A1 is acquitted of all the charges levelled against him. A1 i.e., the appellant herein be released forthwith if not required in any other case. Fine amount, if any paid, be refunded to the accused No. 1.

23. At this stage the learned Counsel Mr. T. Niranjan Reddy appearing on behalf of the appellant herein (A1) submitted at the Bar that though A2 to A4 and 7 were convicted for an offence punishable u/s 324 read with Section 149 IPC,

they did not appeal. But this Court has held that the prosecution could not establish the presence of the so-called eye-witnesses at the scene of offence itself by giving detailed reasons in fore-going paragraphs of the judgment. Therefore, the order of conviction and sentence recorded against A2 to A4 and 7 be set aside. We agree with the submission made by the learned Counsel for the appellant herein.

24. Therefore, though A2 to A4 and 7 did not appeal but it has been brought to our notice that the order of conviction and sentence recorded against them is uncalled for. Therefore, we set aside the conviction and sentence recorded against them and direct that the fine amount if any paid be refunded to them.