
(2003) 07 AP CK 0116

In the Andhra Pradesh High Court

Case No : Criminal Appeal No's. 42 and 278 of 2000

Vempati Kanuka Rao and Another

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 300, 411

Citation : (2004) 2 ALD(Cri) 227 : (2004) 2 ALT(Cri) 513 : (2004) CriLJ 877

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : Kowturu Vinaya Kumar and K. Srinivasa Reddy, for the Appellant;
Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—The Criminal Appeal No. 42 of 2000 is directed against the Judgment rendered by the learned Sessions Judge, Krishna at Machilipatnam dated 14-12-1999 in Sessions Case No. 314 of 1996, convicting and sentencing the appellants-accused to undergo R.I. for a period of three years each and also to pay a fine of Rs. 5000/-each in default to suffer S.I. for six months for the offence u/s 411 of the Indian Penal Code.

2. The Criminal Revision Case is filed by the de facto complainant against the acquittal of the appellants-accused for the offence u/s 302 of the Indian Penal Code.

3. Since both the matters arise out of the same Sessions Case, they are disposed of together by this common judgment.

4. The Inspector of Police, Mylavaram Circle filed charge-sheet against both the appellants-accused alleging that on the mid night of 24-6-1996, while the deceased Juluru Appa Rao was proceeding to his home in Polisettipadu village after getting down at the village but stop, the accused waylaid and forcibly took

him away to a paddy field near tank bund in Polisettipaddu area and killed him brutally by cutting his throat with knife and committed theft of cash of Rs. 1,87,000/- and other articles from the deceased and thereby committed the offences punishable under Sections 302 and 379, IPC.

5. The case was taken on file by the learned Judicial Magistrate of First Class, Tiruvuru. As the offence u/s 302, IPC is exclusively by the Court of Session, the learned Magistrate committed the case to the Court of Session, Krishna at Machilipatnam.

6. On appearance of the accused before the Sessions Court, the learned Sessions Judge framed charges under Sections 302 and 392, IPC against both the accused to which they pleaded not guilty and claimed to be tied.

7. In support of its case, the prosecution examined PWs-1 to 19 and marked Ex.P1 to Ex.P25 and M.Os. 1 to 15. On behalf of the defence, no oral evidence was adduced, but Ex.D1 to Ex.D4 were marked.

8. The learned Sessions Judge upon considering the evidence on record, came to the conclusion that the prosecution had failed to prove the guilt the appellants-accused for the offence u/s 302, IPC beyond all reasonable doubt and accordingly acquitted them of the said offence. However, the learned Sessions Judge found that the appellants-accused were in possession of the stolen property belonging to the deceased and accordingly found them guilty of the offence u/s 411, IPC and convicted them for the said offence and sentenced each of them to undergo R.I. for a period of 3 years and to pay a fine of Rs. 5000/-, in default to suffer S.I. for 6 months. Aggrieved by the said conviction and sentence, the present criminal appeal is filed by the accused, while the Criminal Revision Case is filed by the de facto complainant against the acquittal of the appellants-accused for the offence u/s 302 of the Indian Penal Code.

9. The learned counsel for the appellants-accused contended that the recovery of amount from the accused appears to be very artificial and unnatural, as except the evidence PW-1, there is no other evidence on record to show that the amount was recovered from the possession of the accused and that the accused were falsely implicated in this case. The learned counsel therefore, submits that the conviction and sentence recorded by the trial Court against the appellants-accused for the offence u/s 411, IPC is liable to be set aside.

10. On the other hand, the learned Public Prosecutor contended that the said amount was given to the deceased by PW-8 on the date of incident and the same was found in possession of the accused within 12 days after the incident and that the accused have not given any explanation for possessing the said amount and hence, a presumption u/s 114 of the Evidence can be drawn. The learned Public Prosecutor also contended that the prosecution has been able to establish all the circumstances to show that they are the assailants of the deceased.

11. The prosecution relied upon the following circumstances :

i) The death of the deceased was homicidal in nature and on the date of the incident, the deceased was coming back to his home after collecting cash M.Os. 9, 10 and 14 from PW-8.

ii) the accused were found loitering near the bus stop during the previous night;

iii) recovery of cash belonging to the deceased from the custody of the accused; and

iv) Absconding of the accused after the incident.

12. Except proving that the death of the deceased was homicidal in nature and cash of Rs. 1,87,000/- was given to the deceased by PW-8 on the date of incident, the other circumstances which connect the accused to the murder of the deceased are not proved beyond all reasonable doubt by the prosecution. There cannot be any dispute that, when the prosecution wants to rely upon the circumstantial evidence all the circumstances must be firmly and cogently established. In a case, which rests upon the circumstantial evidence, it should point only to the guilt of the accused and the evidence should exclude all other hypothesis and such evidence must satisfy the following tests:

1) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;

2) Those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused;

3) The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else;

4) The circumstantial evidence should be sufficient to sustain conviction.

13. The presence of the accused at the bus stop on the date of offence as spoken by PW-7 and PW-9 also cannot be taken as incriminating circumstance against the accused, because they were not seen in the company of the deceased. Therefore, there is absolutely no evidence on record to show that the accused were the assailants of the deceased.

14. A presumption can be drawn, if it is shown that murder and robbery took place in the same transaction. But in the present case there is no evidence to show that the accused are the assailants of the deceased. Therefore, the trial Court rightly acquitted the appellants-accused of the offence u/s 302, IPC. There are absolutely no grounds to interfere with the order of acquittal learned Sessions Judge against the accused for the offence u/s 302, IPC. After perusing the record, this Court feels that it is not a case to refer the matter to the Division Bench, as it is a clear case where the prosecution has failed to establish even one single circumstance with regard to the causing of the death of the deceased by the accused.

15. Coming to the charge u/s 411, IPC, the evidence of PW-8 is relevant. He stated in his evidence that 3 years prior to the date of incident, the deceased sold 100 bags of red gram to him and he purchased each bag at the rate of Rs. 1,870/- and paid total amount of Rs. 1,87,205/- to the deceased on 24-6-1996 at 2 p.m. and on the same night the deceased died due to , multiple injuries. PW-8 specifically stated that after withdrawing the cash from the State Bank of India, Podili, he gave Rs. 50/- denomination notes in ten packets, Rs. 10/- denominations notes in 17 packets of 100 notes each and Rs. 1,20,000/- in 100 rupees denominations comprised in 12 packets each. Practically the evidence of PW-8 remained unchallenged, except giving a suggestion that he did not purchase the red gram from the deceased, nothing has been elicited from this witness to discredit his testimony. The cash in the denominations as spoken to by PW-8 was found in the possession of the accused. They have not even spent any amount from the amount of Rs. 1,87,205/-. The evidence of PW-17 is also relevant in this regard. He stated in his evidence that A1 gave confessional statements as in Ex.P17 wherein A1 offered to show the place where he had hidden the cash and so also A2 to offered show the place where he kept the cash which fell to his share. In pursuance of the confessional statements of the accused, the total amount of Rs. 1,87,205/- was recovered front the possession of accused Nos. 1 and 2 under Ex.P17 to Ex.P22 panchanamas. After perusing of the evidence of PW-17 and the recitals in the confessional statements of the accused and seizure panchanamas, there appears nothing unusual or artificial in scribing the reports as contended by the learned counsel for the appellants-accused M.O.13 the bag in which the cash was kept by the deceased was also seized from the possession of the accused, and that cash bag was identified by the wife of the deceased who is examined in the case as PW-2. The fact that M.O.2 bag was belonging to the deceased is not seriously disputed or denied in the cross-examination. In pursuance of the confession of A1, the amount was recovered from A1 from the paddy granary, whereas in pursuance of the confessional statement given by A2, the cash was recovered at Hayrick. Furthermore, at the time of seizure of the bundles of cash in pursuance of the confessional statement given by A1 and A2, those bundles contained the slips of State Bank of India Podili. This would corroborate the evidence of PW-8 to show that he had given the amount to the deceased on 24-6-1996 after withdrawing the amount from SBI, Podili. The accused did not claim that the cash recovered was belonging to them. The incident occurred on 24-6-1996 and the arrest of the accused and recovery of cash was taken place on 6-7-1996. If the prosecution shows that the accused were in possession of the stolen property, a presumption u/s 114(a) of the Evidence Act can be drawn. If it is so drawn the presumption is that the accused are either thieves or receivers of the stolen properties, unless the accused give a satisfactory explanation for possessing the said cash. The accused did not give any explanation at all for the possession of the cash. At the instance of the accused only, the cash was recovered from the place where the accused hid the amount. Therefore, taking into consideration these facts, the trial Court rightly drew the presumption u/s 114(a) of the Evidence Act so as to

arrive at a conclusion that the accused were the receivers of the stolen property and therefore, they were liable for punishment u/s 411, IPC. Absolutely there are no grounds to interfere with the finding recorded by the Court below that accused are guilty of the offence u/s 411, IPC.

16. Coming to the revision case filed by the de facto complainant against the acquittal of the accused for the offence u/s 302, IPC, I do not find any valid grounds to punish the accused for the offence u/s 302, IPC and the revision case is liable to be dismissed.

17. Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence imposed by the trial Court on the appellants-accused. The appellants-accused are directed to surrender before the trial Court to undergo the remaining sentence. The Criminal Revision case filed by the de facto complainant is also dismissed.