
(2014) 03 AP CK 0061

In the Andhra Pradesh High Court

Case No : Criminal Appeal Nos. 38 and 212 of 2010

Vemu Premkumar

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 2 ALT(Cri) 105

Hon'ble Judges : M.S.K. Jaiswal, J; L.N. Reddy, J

Bench : Division Bench

Advocate : T. Pradyumna Kumar Reddy and K. Suresh Reddy, Advocate for the Appellant

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Accused Nos. 1 to 4 in S.C. No. 574 of 2008 and S.C. No. 411 of 2009, were tried by the Court of 1-Additional Sessions Judge, Guntur for the offence of causing death of one Seelam Nageswara Rao of Nizampatnam village, Guntur district (hereinafter referred to as "deceased") on 05.04.2008 at 5.00 p.m., at Cherukupalli village. Through its common-judgment dt. 23.12.2009, the trial Court convicted all the four accused for the offence punishable under Sections 302 read with Sec. 34 IPC, and sentenced them to undergo imprisonment for life and to pay fine of Rs. 100/-, in default simple imprisonment for one week. The same is challenged in these two appeals. While Crl. A. No. 38 of 2010 is filed by Accused No. 4, Crl. A. No. 212 of 2010 is filed by Accused Nos. 1 to 3. As both the appeals arose out of a single offence and common Judgment of the trial Court, these two appeals are heard and disposed of together.

2. The information about the death of the deceased reached the police, Cherukupalli with the submission of Ex. P. 1 at 5.00 p.m., on 05.04.2008 by PW-1. The contents of Ex. P. 1 are to the effect that the complainant had two

sons and two daughters, including Mekala Krithu Rajakumari P.W. 3, and her husband died about eight years back. P.W. 3 is said to have four issues including Mekala Prem Kumar, A-1, and her second daughter - Mekala Krupa P.W. 2, who was working in a Xerox shop. A-1 is said to be a vagabond, used to suspect the character of P.W. 2, and was creating nuisance in the family. P.Ws. 1 to 3 and A-1 are said to be residing in the same house. On 04.04.2008 P.W. 1 is said to have gone to Nizampatnam to explain the matter to the deceased, who is the son of her sister and requested him to resolve the same. The deceased is said to have come to Cherukupalli on 05.04.2008 and when the discussion, in the presence of P.Ws.1 to 3, deceased and A-1, was in progress. It is stated that when the deceased asked A-1 about his conduct, the latter is said to have grown wild and asked the former as to what business he has got, to interfere in their family matters. Thereupon the deceased is said to have observed that the matter must be reported to the police. On that, A-1 and his friends-A-2 to A-4 are said to have indiscriminately attacked the deceased and killed him. Stating that herself, P.Ws. 2 and 3 witnessed the occurrence, PW-1 submitted the complaint.

3. On receipt of Ex. P. 1, the police registered Crime No. 20 of 2008 against A-1 to A-4 for the offence punishable u/s 302 read with Sec. 34 IPC. The formalities such as preparation of scene of occurrence report, conducting inquest and post mortem examination were completed by the authorities concerned. Further investigation was taken up by PW-9, and ultimately a charge sheet was filed by him.

4. The trial Court framed necessary charge against the accused, and on their pleading not guilty, conducted the trial. P.Ws. 1 to 9 were examined, Ex. P. 1 to P. 10 were filed, and M.Os. 1 to 13 were taken on record. The result of the case has already been indicated in the preceding paragraphs.

5. Sri T. Balreddy, learned senior counsel for A-1 to A-3 and Sri T. Pradyumna Kumar Reddy, learned counsel for A-4 submit that there is any amount of inconsistency and discrepancy between Ex. P. 1 and the deposition of P.W. 1. They submit that while in Ex. P. 1 an attempt was made to attribute specific overt acts to the individual accused, P.W. 1 did not mention any of them in her deposition, and made an omnibus allegation. They further submit that while P.W. 1 stated that Ex. P. 1 is a recorded statement by a person unknown to her; PW-2 stated that Ex. P. 1 was drafted by her in her house. Learned counsel further submit that the presence of PW-4 was not mentioned in Ex. P. 1, or in the statements of P.Ws. 1 to 3 recorded by the police under Sec. 161 Cr.P.C., and P.W. 4 made a surprise appearance in the trial. It is argued that the time at which the deceased reached Cherukupalli village is totally uncertain, and according to P.W. 4, himself, the deceased, Rajesh and Srinivasa Rao reached Cherukupalli at about 12.30 noon, in an auto-rickshaw. Learned Counsel further submit that the failure to examine Srinivasa Rao, who is none other than the brother of the deceased, and Rajesh, who is said to have accompanied the deceased to Cherukupalli, is fatal. It is also their case that the deceased was a

rowdy sheeter, facing several cases and the death caused to him by his rivals is sought to be projected as though it is the hand work of the accused.

6. Learned Additional Public Prosecutor, on the other hand, submits that this is a rare and typical case, in which a mother, P.W. 3, attributed criminal acts against her son-A. 1; and the other family members, such as P.Ws. 1 and 2, reiterated the same. She contends that the affinity or inclination on the part of P.Ws. 1 to 3, if at all would be towards A-1, and every effort is expected to be made by them to save him, and being truthful, all of them in one voice, stated that A-1 and the other accused killed the deceased, and thereby, the case of the prosecution is proved. She submits that the failure to mention in Ex. P. 1 the presence of P.W. 4 or other persons named by him is not at all fatal and the other discrepancies or inconsistencies pointed out by the learned counsel for the accused are not that important.

7. It is indeed painful for a mother to have named her son as an accused in relation to the murder of her cousin brother. The nature of relation in the family can easily be gauged by that very fact. The root cause for the crime appears to be the suspicion, which A-1 has developed or entertained about the character of his sister P.W. 2. P.W. 1, the grandmother of A-1, took upon herself, the task of bringing about some solution to the matter. Though she did not elaborate the nature of acts and omissions on the part of A-1, she has chosen to seek the help of the deceased, the son of her sister, living at Nizampatnam to resolve the dispute. The curious part of the matter is that even according to P.W. 1, A. 1 was suspecting illicit relationship between his sister P.W. 2 and the deceased. One just cannot expect the suspect to be the ultimate arbitrator in a dispute. Further, it is not as if the deceased was an elderly person, having experience to resolve the family disputes. Even according to the case of the prosecution, he was a boy of 20 years age, still studying and getting prepared to join military service.

8. Ex. P. 1 is totally silent about the persons, who accompanied the deceased to Cherukupalli on 05.04.2008. It proceeds as though the deceased came alone acceding to the request made to him by P.W. 1. Even in the detailed depositions of P.Ws. 1 to 3, the women in the family spread over three generations, no mention is made about P.W. 4. P.W. 9, the Investigating Officer stated -

The name of P.W. 4 and another was not disclosed in the F.I.R. or in the statements of P.Ws. 1 to 3.

He further stated that PW-4 came forward voluntarily while the investigation was in progress. However, it is interesting to take note of the evidence of P.W. 4. He stated that he was very much in the house of P.W. 1 when the entire incident occurred, since he accompanied the deceased. He made an attempt to attribute individual overt acts to all the accused. In his cross-examination he has stated as under:

On the date of incident myself and Rajesh and the deceased came to Cherukupalli from Nizampatnam. We came by an auto. It took one hour from

11.30 to 12.30. I informed about this incident on phone to my elder brother Seelam Kanakeswar Rao. I also informed Seelam Manivardhana Rao. I also informed the brother of the deceased Sreenivasa Rao. Sreenivasa Rao came at about 10.30 while the other two along with others came at about 5.30 p.m. I went to the house of P.W. 1 for the first time on that day. Rajesh also came to that house for the first time.

It has already been mentioned that the presence of P.W. 4, Rajesh and Srinivasa Rao was not spoken to by P.Ws. 1 to 3, though at one or two places, they stated that two more persons accompanied the deceased.

9. Whatever may be the justification for omitting to mention the names of PW-4 and Rajesh, there cannot be any justification for not mentioning about the presence of Sreenivasa Rao, the brother of the deceased, a constable in the A.P. Police. Extensive suggestions were made to PW-2 and other witnesses that Ex. P. 1 was prepared at the instance of Sreenivasa Rao and it is he, who prepared the case against the accused. It is important to note that Sreenivasa Rao, though figured as LW-7 in the list of witnesses, was given up, for the reasons best known to the prosecution. The omission of such an important witness is indeed fatal to the case of the prosecution.

10. One cannot simply brush aside the evidence of PW-3, wherein she has gone to the extent of deposing against her son, in the context of death of her cousin brother. At the same time, this Court cannot look into the reasons that prompted her to choose that course of action. The allegations and counter allegations evident from the record are to the effect that there was illegal intimacy between P.W. 2 and the deceased and that the deceased himself was a rowdy sheeter. What prompted PW-3 to accuse her son in the whole episode is difficult to imagine as the things stand now. However, if one takes into account the serious contradictions between the evidence of P.Ws. 1 and 2, the reason on account of which PW-3 has chosen to depose against her son, virtually become immaterial. The manner in which the incident occurred has been described differently by P.Ws. 1 and 2.

11. According to P.W. 1, the entire incident occurred hardly within one or two minutes and though it took place during day time in the midst of a big colony of 500 houses, no outsider has witnessed the occurrence. P.W. 2, on the other hand, stated that once there was attack on the deceased, she raised cries and large number of people in the locality had gathered. Similarly, the manner in which the complaint was submitted is somewhat contradictory. P.W. 1 stated that herself, her daughter PW-3, and granddaughter PW-2 went to the police station for submission of the complaint. However, according to her, Ex. P. 1 was recorded to her instructions and she expressed her inability to name the person, who prepared it. PW-2 categorically stated that she drafted the complaint at her house between 5.30 p.m. and 6.00 p.m. A suggestion was made to her that the complaint was submitted at 7.00 p.m. and prepared on the instructions of LW-7 and submitted at about 7.00 p.m. Endorsement on Ex. P. 1, however, discloses

that it was submitted at 5.00 p.m., and the crime was registered instantly. If the versions of both P.Ws. 1 and 2 cannot be correct, and once either of their versions is not true, it would have certainly its own impact upon the very genuineness of the case.

12. Whatever may have been the circumstances under which A-1 can be said to have resorted to any attack on the deceased, which itself is not proved to the satisfaction of the Court, there was absolutely no basis to implicate A. 1 to A. 4. Therefore, we allow the appeal. In the result, the Criminal Appeals are allowed. The conviction and sentence ordered in S.C. Nos. 574 of 2008 and 411 of 2009 on the file of 1-Additional Sessions Judge, Guntur, dated 23-12-2009, against the appellants - accused are set aside. The appellants - accused shall be set at liberty forthwith, unless their detention is needed in any other case. The fine amount, if any, paid by the appellants - accused shall be refunded to them. The material objects, if any, shall be destroyed after the appeal time is over.