
(2014) 03 AP CK 0189

In the Andhra Pradesh High Court

Case No : Criminal Appeal Nos. 138, 213, 266 and 865 of 2010

Vemula Veera Swamy

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2014) 03 AP CK 0189

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

Bench : Division Bench

Advocate : K. Sesharajyam, A. Gayatri Reddy and T. Pradyumna Kumar Reddy,
Advocate for the Appellant

Judgement

L. Narasimha Reddy, J.—This batch of four Criminal Appeals arises out of S.C. No. 99 of 2007 on the file of the I Additional District & Sessions Judge, Krishna at Machilipatnam. Through its judgment dated 15.12.2009, the trial Court convicted A. 1 and A. 2 for the offence punishable u/s 302 I.P.C., and sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 100/-, in default to undergo simple imprisonment for one month, A. 3 and A. 4 were convicted for the offence punishable u/s 302 r/w 34 I.P.C. and the same sentence as imposed against A. 1 and A. 2 was imposed against them also.

2. Criminal Appeal Nos. 138, 213, 865 and 266 of 2010 are filed by A. 1 to A. 4 respectively. All of them are accused of causing the death of Vemula Sankara Rao at Lakshmanaraopuram of Machilipatnam on 07.05.2006 at 9.00 p.m.

3. The case presented by the prosecution before the trial Court is as under:

Vemula Sankara Rao (hereinafter referred to as "the deceased") was a resident of Lakshmanaraopuram, Machilipatnam, and he was doing the business of giving cycle rickshaws on rent. A. 1 is the cousin and P.W. 1 is the wife of the deceased. P.W. 2 is the sister and P.W. 4 is the brother of P.W. 1. It is also stated that P.W. 1 and A. 1 are closely related cousins. A. 1 is said to be a notorious criminal of

Machilipatnam and he is said to have committed several crimes and that a rowdy sheet was also opened against him. He is said to have asked his relation, the deceased to arrange for bail for him in Crime No. 115 of 2004, in which he was figured as an accused. It is stated that the deceased did not take any steps in that behalf and thereby, A. 1 had a grudge against him.

4. The deceased is said to have gone out as usual on 07.05.2006 but did not turn up, even by night. P.W. 1 is said to have got anxious and when she was about to take steps for searching him, her sister-P.W. 2, came to her house. P.W. 1 said to have asked P.W. 2 to remain in house and gone out in search of her husband. At about 9.00 p.m., she is said to have come across her husband near the house of P.W. 6, coming on his motorcycle. On seeing P.W. 1, the deceased is said to have stopped the motorcycle and in the meanwhile, A. 1 and another person suddenly pounced upon the deceased and stabbed him indiscriminately. The deceased is said to have fell down in a pool of blood and the assailants have fled away. People are said to have gathered at the place of occurrence and in response to the information given by one of them, the police patrol van came within a short time. P.W. 2 is also said to have come to the spot in the meanwhile, and on the way, she has noticed four assailants including A. 1.

5. The deceased and P.Ws. 1 and 2 are said to have been taken to the Government Hospital, Machilipatnam, in the police van and there, the doctor declared the deceased as brought dead. P.W. 1 is said to have submitted a complaint-Ex. P. 1 at 10.30 in the night in Chilakalapudi Police Station and on that, Crime No. 55 of 2006 was registered. The Investigating Officer completed the formalities, such as, drawing of scene of offence panchanama, inquest and post mortem of the dead body. After concluding the investigation, P.W. 16 filed a charge sheet narrating the sequence of events that left to the commission of the crime.

6. The trial Court framed necessary charges and on the accused pleading not guilty, it conducted a detailed trial. On behalf of the prosecution, P.Ws. 1 to 16 were examined and Exs. P. 1 to P. 23 were filed. On behalf of the defence, though none was examined, contradictory statements noticed by the defence were marked as Exs. D. 1 to D. 6. M.Os. 1 to 11 were also taken on record. The manner in which the trial Court disposed of the case has already been indicated at the threshold.

7. Smt. Shesharajyam, learned counsel for A. 1, Sri T. Pradyumnakumar Reddy, learned counsel for A. 4 and Smt. A. Gayatri Reddy, learned counsel for A. 2 and A. 3, submit that the prosecution implicated all the accused on the basis of suspicion and hardly there is any direct evidence in the case. They submit that the very presence of P.W. 1 at the scene of occurrence is doubtful and the same is evident from other evidence on record. They further submit that in Ex. P. 1, P.W. 1 mentioned A. 1 with name and one more person but without indicating his name, but the prosecution added two more persons i.e., A. 3 and A. 4. It is their case that while according to P.W. 1, she was in the hospital throughout the night,

P.W. 16, the Investigating Officer stated that when he visited the hospital at 11.00 p.m. and remained there for half-an-hour, P.Ws. 1 and 2 were not available though he made an effort to procure their presence. It is also their case that not only the deceased had disputes with several persons in the context of business and property dealings, but also P.W. 1 was having illicit intimacy with a person, by name Brahmanandam, and there is every likelihood of the deceased being targeted by many such persons. Learned counsel further submit that the medical evidence in the form of Ex. P. 17 and deposition of P.W. 12-doctor would disclose that most of the injuries, particularly those attributed to A. 1, are only skin deep and the cause of death cannot be said to be those injuries. They submit that the version of P.W. 1 in Ex. P. 1 on the one hand and her evidence in the Court on the other hand are at variance as regards the alleged nature of attack and the participation of the persons.

8. The learned Public Prosecutor, on the other hand, submits that A. 1 had a specific grievance against the deceased and with a view to wreck vengeance against him, not only he indulged in criminal acts, but also has taken the assistance of his colleagues, A. 2 to A. 4. She contends that the version presented by P.W. 1 is natural and there is nothing that raised any doubt about her evidence. She contends that the evidence of P.W. 1 is supported by the deposition of P.W. 2 and other evidence on record and that the trial Court has arrived at correct conclusions. Learned Public Prosecutor submits that the criminal background of A. 1 is borne out by record and that he had a clear motive and grievance vis-a-vis the deceased for not arranging a bail for him in other cases.

9. The incident is said to have taken place at 9.00 p.m. on 07.05.2006. P.W. 1, the wife of the deceased, is said to have witnessed the attack on her husband, in front of the house of P.W. 6.

10. The deceased is said to have gone out on 07.05.2006 on the motorcycle at 4.00 p.m. and that P.W. 2 visited the house of P.W. 1 on that day. According to P.W. 1, the deceased used to return the house between 8.00 and 8.30 p.m. regularly and since he did not turn up by that time, she went out in search of the deceased, asking P.W. 2 to remain in the house. After she has gone upto the house of P.W. 6 i.e., the distance of about 100 feet, P.W. 1 is said to have noticed her husband coming in the opposite direction on his motorcycle and on seeing her, he stopped. At that time, the attack is said to have taken place. This is what P.W. 1 has stated;

At that time, my husband came towards me and on seeing me, he stopped. In the meanwhile, Vemula Veeraswamy and another person attacked my husband. Vemula Veeraswamy armed with a knife and hacked on the forehead, right side neck and on the right shoulder. The another person who came along with Veeraswamy armed with knife, hacked on the right side ear, on back of my husband. Then, my husband fell down. Due to fear, I raised cries for that neighbours came there and on seem them they fled away. Vemula Veeraswamy

and his followers bore grudge and by hacking with knives (kathulu) and killed my husband. Hence, praying for taking action against Vemula Veeraswamy and the followers, who killed my husband. I witnessed the incident in the street light lighting.

11. On hearing the cries of P.W. 1, several persons including her sister-P.W. 2 are said to have reached the place and within five minutes, the dead body was shifted to the hospital. It is important to note that P.W. 1 stated that A. 1 and another person attacked her husband. There was no mention about any other person. However, in the chief examination, P.W. 1 narrated the manner in which her husband was attacked;

Then A. 1 to A. 4 left the place stabbing and shouting that they would kill the wife and children of my husband in the same manner. Nagamani intimated that A. 1 to A. 4 were having knives in their hands.

She further stated that A. 1 to A. 4 went to the house of A. 1. In the chief-examination itself, she stated that she did not observe the weapons used by A. 3 and A. 4. In the cross examination, it was suggested to her that she is not acquainted with A. 1 and she did not name A. 3 and A. 4. Another suggestion was made to the effect that she had illicit intimacy with an R.M.P. doctor by name Bhrahmanandam and on account of the same, she got killed her husband through professional killers. Suggestion was that there was no mention in Ex. P. 1 to the arrival of P.W. 2 or any information said to have been given by her.

12. There is some uncertainty as to the manner in which Ex. P. 1 was submitted. As observed earlier, even before any complaint was submitted, the deceased and P.Ws. 1 and 2 were shifted from the place of occurrence to the hospital in a police jeep and at about 9.30 p.m., the doctor is said to have declared that the deceased was brought dead. In the chief-examination, P.W. 1 stated that she submitted a complaint by going to Chilakalapudi Police Station from the hospital at about 10.30 p.m. The complaint is said to have been got drafted in the Government Hospital, Machilipatnam itself. In the cross-examination, she stated that she cannot name the person, who drafted the complaint. She feigned ignorance about the existence of police outpost in the Government Hospital, Machilipatnam.

13. After the complaint was received, crime was registered and the investigation was taken up by the C.I. of Police-P.W. 16. He is said to have alerted all other police stations to nab the accused and has gone to the hospital at about 11 O'clock. Though P.W. 1 stated that she was there in the hospital throughout the night, except when she went to Chilakalapudi Police Station for giving complaint, P.W. 16 stated that after reaching the hospital, he searched and sent for P.Ws. 1 and 2, but they were not available though he waited for about half an hour.

14. One substantial improvement in the evidence of P.W. 1 over Ex. P. 1 is that A. 1 to A. 4 are said to have left the place by declaring that they would do the same thing to the wife and other members of family of the deceased. The relevant

portion reads as under:

Then A. 1 to A. 4 left that place stating and shouting that they would kill the wife and children of her husband in the same manner.

15. Whatever may be the acquaintance of A. 2 to A. 4 rather, the absence of it with the members of the family of the deceased, the question of not recognizing P.W. 1 his niece or not noticing her presence, if in fact she was there, does not arise. The very fact that no harm as such was caused to P.W. 1 discloses that there was no truth in the statement extracted above.

16. There are instances, wherein no names of the accused as such are mentioned in the F.I.R. or only few of them mentioned, but during the course of investigation, the details of the actual accused came to light. In such an event, the F.I.R. would be altered with the addition of the names of the accused and other details. In the instant case, though A. 1 and another unknown person were mentioned in Ex. P. 1, the manner in which A. 3 and A. 4 came to be included is not clearly evident. The Investigating Officer-P.W. 16 stated that after the crime was registered, he proceeded to Gudur Bus Stop and apprehended A. 3. The basis on which he suspected A. 3 is not at all mentioned. So is the case with A. 4.

17. P.W. 1 did not have even a remote idea about A. 2 and both of them are strangers to each other. It was suggested to P.W. 1 that her presence at the scene of offence is doubtful and that one would not be in a position to identify a stranger at 9.30 p.m. where the lighting is not that bright. The scene of offence panchanama does not disclose that there existed any bright lights that enable a person to know the features of an unknown person to such an extent that he would be able to identify him later. Added to that, no arms were said to have been recovered from A. 2 to A. 4.

18. The discussion undertaken thus far would lead to the conclusion that the names of A. 3 and A. 4 were included by the police at various stages, without any basis. The complaint was taken in the hospital itself. P.W. 1 did not name the person who drafted the complaint that was handed over to the police. Even in the complaint so prepared, there is no mention of any persons other than A. 1 and one more accompanying him. The accusation against A. 3 and A. 4 cannot be believed on account of the fact that as against two persons mentioned in Ex. P. 1 two more were included. The participation of A. 2 cannot be said to have been established because P.W. 1 did not furnish any particulars of such person nor was any motive suggested to him.

19. We, however, find that A. 1 stands on a different footing. He is not only acquainted with, but is also closely related to P.W. 1. Though the accused doubted the very presence of P.W. 1 at the scene of occurrence, we are of the view that there is nothing unnatural in P.W. 1 proceeding to some places in search of her husband. It is no doubt true that she admitted in the cross-examination that she did not make any phone call to her husband. However, failure to do that cannot lead to conclusion that P.W. 1 did not undertake any

search of her husband.

20. A. 1 had a specific grievance against the deceased in the context of not arranging for obtaining a bail for him in connection with Crime No. 115 of 2004. At the same time, it is difficult to conclude that his grievance was to such an extent, as to liquidate the deceased. This view of ours, gets strength from the fact that the three injuries attributed to A. 1, namely, injury Nos. 1, 4 and 5 were only skin deep and trivial in nature and none of them were found to be the causes of death. In addition to A. 1, there were some more assailants, whose identity, the prosecution was not able to establish. We are, therefore, of the view that A. 1 caused injuries to the deceased knowing fully well that they would lead to death but he did not have the intention to kill the deceased.

21. Section 304 Part I I.P.C. gets attracted to the situations of this nature.

22. In the result, Criminal Appeal Nos. 213, 266 and 865 of 2010 are allowed. The conviction and sentence ordered in S.C. No. 99 of 2007 on the file of the I Additional District & Sessions Judge, Krishna at Machilipatnam, dated 15.12.2009, against the appellants-A. 2 to A. 4, are set aside. The appellants-A. 2 to A. 4 shall be set at liberty forthwith, unless their detention is needed in any other case. The fine amount, if any, paid by the appellants-A.2 to A. 4 shall be refunded to them. CrI. A. No. 138 of 2010 is partly allowed, altering the conviction of A. 1 to be the one under Part I of Section 304 I.P.C. and altering the sentence to be the one of Rigorous Imprisonment for ten years. The sentence as to fine, ordered by the Court of I Additional District & Sessions Judge, Krishna at Machilipatnam in S.C. No. 99 of 2007 shall remain as it is.