
(2001) 06 AP CK 0065

In the Andhra Pradesh High Court

Case No : Criminal A. No. 1602 of 2000

Yelamanchili Mahesh Babu and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 14-06-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302

Citation : (2001) 2 ALD(Cri) 186 : (2001) 2 ALT(Cri) 116

Hon'ble Judges : Ramesh Madhav Bapat, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : C. Padmanabha Reddy, appearing on behalf of C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Madhav Bapat, J.—Accused Nos. 1, 3 and 4 in Sessions Case No. 36/1996 on the file of I Additional Sessions Judge, West Godavari District at Eluru, are the appellants herein. Originally there were twelve accused in this case. A2 died much before the framing of charges and the case against A10 was separated. Therefore, only A1, A3 to A9, A11 and A12 were tried in this case. The first charge against them was u/s 120(B) of the Indian Penal Code. On evidence, the learned judge acquitted them of that charge. The second charge against them was u/s 148 of the Indian Penal Code. On evidence, the learned Sessions Judge acquitted them of that charge also. The third charge against them was u/s 302 of the Indian Penal Code for causing the death of one Vadlapudi Pullarao (herein after to be referred to as "D1). On evidence, the learned Judge found A1, A3 and A4 guilty of the said charge and, therefore proceeded to convict and sentence them to suffer imprisonment for life and to pay a fine of Rs. 1000/- each, in default to suffer simple imprisonment for two months each. The learned Judge acquitted the other accused of the said charge. The fourth charge against the accused was u/s 302 read with Section 149 of the Indian Penal Code for causing the death of D1. The learned Judge found them

not guilty and, therefore, acquitted them of the said charge. The fifth charge against them was u/s 302 of the Indian Penal Code for causing the death of one Kothari Srinivasa rao (herein after to be referred to as "D2"). The learned Judge found A1, A3 and A4 guilty of the charge and, therefore, convicted and sentenced them to suffer imprisonment for life and to pay a fine of Rs. 100/- each, in default to suffer simple imprisonment for two months. The learned Judge acquitted the other accused of the said charge. The sixth charge against the accused was u/s 302 read with Section 149 of the Indian Penal Code for causing the death D2. The learned Judge found them not guilty and, therefore, acquitted them of that charge.

2. Aggrieved by the aforesaid order of conviction and sentence, A1, A3 and A4 have filed the present appeal.

3. The substance of the charge against the accused was that on 27-01-1993 at about 8.20 a.m., near K.P. Raju Makam on Kovvur-Bhimadole road, they alleged to have conspired to cause the death of D1 and D2 and caused their death.

4. The prosecution story can be briefly narrated as follows. The accused and the material witnesses are residents of Gopalapuram village. A1 to A3 are brothers. Originally A1 to A3 used to reside at Eluru. About 10 to 11 years prior to the incident, they came to Gopalapuram village along with their father who later died. It is alleged that A1 to A3 used to beat the villagers and A4 used to accompany them.

5. About two years prior to the incident, one day there was dispute between A2 and P.W. 13 when the latter refused to give cigarettes to the former. Later, on the same day when P.W. 13 went his in-law's house along with his wife, A1, A2 and another went there and beat P.W. 13 and his wife. In that connection, a Panchayat was convened in which A1 and A2 were fined to pay a sum of Rs. 5,000/- each. A1 and A2 also gave an undertaking that they would not assault the villagers. About 7 to 8 months thereafter, A1 and A2 lodged a report to the Police alleging that P.W.1 and 25 others assaulted their mother. A case was registered against P.W.1 and 25 others. Police filed charge sheet against them in the Court at Eluru. That case was posted on 27-01-1993, which was the date of incident in the present case.

6. It is further stated by prosecution that on the date of incident P.W. 1, D1 and D2 were proceeding on a scooter to attend the said case in the Court at Eluru. On the way, P.Ws.2 and 4 also joined them at Gopalapuram to go to the Court on a motorcycle. After going to a distance of 1km., from Gopalapuram, A1 to A4 overtook them by two scooters. Near the K.P. Raju Makam, a jeep was stationed facing towards Rajahmundry side. At that place, A1 and A2 stopped their scooters across the scooter of P.W.1, D1 and D2. D2 stopped the scooter at the margin of the road. A1 alleged to have stabbed D2 twice on his chest with a "barise". A2 alleged to have stabbed D2 on his chest with a "barise". A4 alleged to have stabbed D1 on his abdomen twice. The persons sitting in the jeep got

down from it. They also stabbed D1 and D2 with sticks and "barises". Afraid of the incident P.W.1 fled away from there to a nearby thatched shed. He informed the incident to two persons at the shed. He later went to Gopalapuram and got a report drafted through P.W. 11.

7. It is further stated by the Prosecution that on 21-07-1993 when P.W. 24, the Head Constable at Dwaraka Tirumala Police Station, received a report Ex. P1 from P.W.1 which was registered as Crime No. 4/1993 under Sections 147, 148, 302 read with Section 149 of the Indian Penal Code. He issued copies of the F.I.R., to all concerned.

8. It is further case of the prosecution that P.W. 26, Inspector of Police, took up further investigation. He proceeded to the scene of offence, prepared its observation report, which is marked as Ex. P19, and drew the rough sketch of the scene of offence, which is marked as Ex. P 39. He seized one scooter from the scene of offence. He got the scene of offence photographed through P.W. 12. Exs. P9 to P15 are the photographs. He held inquest over the dead bodies of D1 and D2 in the presence of P.W. 15. Exs. P20 and P21 are the inquest reports in respect of D1 and D2 respectively. Therefore, the dead bodies were sent for post-mortem examination through P.Ws. 22 and 23.

9. On 27-01-1993 P.W. 20, the Civil Assistant Surgeon, Government Hospital, Eluru, Examined P.W. 1 and issued wound certificate Ex. P31. on 28-01-1993 P.W. 19, the Civil Assistant Surgeon, Government Hospital, Eluru, conducted autopsy over the dead body of D1 and issued Ex. P29, post mortem certificate. One Dr. V. Panduranga Rao, who was working as Dy. Civil Assistant Surgeon in the same hospital, conducted autopsy over the dead body of D2 and issued Ex. P30, post mortem certificate. P.W. 19 identified the signature of Dr. Panduranga Rao on the post-mortem certificate issued by the latter. According to the Doctors, the cause of death of the deceased persons was due to multiple stab injuries.

10. On 11-04-1993 P.W. 26 arrested A6 to A9. It is further alleged by the prosecution that when they were in the Police custody, they expressed their willingness to discover certain articles. In pursuance of their statement-Ex.P26, M.Os. 1 to 4 were recovered under Ex. P26 Panchanama. On 26-04-1993 P.W. 26 arrested A2 and seized M.O. 5-scooter under Ex.P28 Panchanama. On 28-04-1993 P.W. 26 arrested A5. on 07-05-1993 he arrested A12 and seized M.O. 13 from his possession.

11. On the basis of the requisition filed by P.W. 26, P.W. 25-Magistrate conducted test identification parade of A5 to A9 and A12 on 26-06-1993. P.W. 1 identified A6, A9 and A12 as the suspects whereas P.W. 6 identified all the six suspects. Ex.P34 is the proceeding of the identification parade. Thus, on completion of investigation, P.W. 26 filed charge sheet.

12. The defence of the accused is of total denial. It has also been suggested that they have been falsely implicated in this case because of party politics.

13. In order to bring home the guilt of the accused, the prosecution led the evidence of P.Ws. 1 to 26. The documents filed by it were marked as Exs. D1 to D6. Out of the witnesses examined by the prosecution, P.Ws 3,4,6 to 11, 13 to 15, 17 and 21 did not support its case. They were treated hostile. Permission was granted to the learned Prosecutor to cross-examine them.

14. In order to prove that both the deceased died homicidal death, the prosecution relied upon the evidence of P.W. 26 who happened to be the Inspector of Police attached to Dwaraka Tirumala Police Station. On visiting the scene of offence, he conducted inquest over the two dead bodies in the presence of P.W. 15. Exs. P20 and P21 are the inquest report of D1 and D2 respectively. Unfortunately, P.W. 15 did not support the prosecution case.

15. After conducting inquest, P.W.26 sent the dead body of D1 to P.W. 19 for conducting post-mortem examination. P.W. 19 happened to be working as the Civil Assistant Surgeon, Government Hospital, Eluru. On receipt of the requisition from P.W.26, he conducted autopsy over the dead body of D1 and noticed the following external injuries.

(1) An incised wound 3x2x4 inches over the left side of the chest. Occupies 3,4 intercostal space muscle deep. Muscles exposed and seen through the wound.

(2) A stab injury of 1x1x3 inches over the left lower chest below the wound NO. 1.

(3) A stab injury 1/2 x1x3 inches over the left hypochondrium.

(4) A stab injury of 1x1x1 inches over the right side of the chest.

(5) A stab injury of 3x3x4 inches over right axilla muscle deep. Cut muscle seen through it.

(6) A stab injury of 1x1x2 inches over the right arm.

(7) A stab injury of 1x1x1 inches over the right elbow.

(8) A stab injury of 1x1x1 inches over the right forearm.

(9) A stab injury of 2x1x1 inches over the right scapula.

(10) A stab injury of 2x1x4 inches interscapular region.

(11) A stab injury of 1x1x1 inches over the interscapular region.

(12) A stab injury of 1x1x1 inches over the right side of interscapular region.

(13) A Stab injury of 1x1x1 inches over the lumbar spine.

(14) A Stab injury of 1x1x1 inches over the left side of the neck.

16. On internal examination of the dead body of D1, P.W. 19 noticed the following internal injuries.

"On opening of the chest:- No fracture ribs. Plural cavity contains 300 cc of clotted blood. A perforation incised would 1x1x1 inches over the left ventricle of the heart. Heart empty. An incised wound of 1/2 x 1/2 inches over the left corolid artillery. An incised wound of 3x1x1 inches over the posterior lateral aspect of the right lung. A lacerated wound of 1/2 x 1/2 x 1/2 inches over the inner aspect of eft lung. Hyoid intact.

Opening of the abdomen:- An incised wound of 1x1 inches over the anterior aspect of the stomach. An incised wound of 1/2 x 1/2 inches over the anterior aspect of the stomach 1/2 below the above wound. All the abdominal organs are pale. Bladder empty. NO fracture pelvis. No fracture skull bones. Brain pale. No fracture base of the skull.

17. The Doctor opined that the death of D1 might be due to haemorrhage and shock due to multiple stab injuries involving vital organs within 24 to 30 hours prior to the post-mortem examination. According to his observation, he issued Ex. P29 the post-mortem certificate.

18. P.W. 26 sent to the dead body of D2, after the inquest was over, to Dr. V. Pandurangarao, who happened to be working as the Dy. Civil Surgeon, Government Hospital, Eluru, for conducting post-mortem examination. The Doctor conducted the post-mortem examination over the dead body D2 and issued Ex. P 30-Post-mortem certificate. P.W. 19 was examined to identify the handwriting of Dr. Pandurangarao. P.W. 19 identified the handwriting.

19. Looking to the above evidence on the point of homicidal death, we have no hesitation in holding that the prosecution could prove that both the decease did die homicidal death.

20. We have already stated in the foregoing paragraphs of this judgment that most of the prosecution witnesses did not support its case. By scrutinising the evidence led by the prosecution, we have the evidence of P.W. 1 only who claims to be eyewitness to the incident. We proceed to examine his evidence so as to ascertain whether his evidence inspires confidence and on his solitary testimony the accused-appellants could be convicted for the offence punishable u/s 302 of the Indian Penal Code.

21. While commenting upon the evidence of P.W.1 who claims to be eyewitness to the incident, learned senior counsel Mr. Padmanabha Reddy has taken us through the entire evidence of P.W. 1. P.W. 1 stated that on the date of incident he along with D1 and D2 was proceeding to Eluru to attend a Court case in which was an accused. A1 and A2 filed that case. Our attention is also invited to that portion of the evidence of P.W.1 wherein he stated that there was enmity between him and the accused party. It is also brought to our notice by the learned senior counsel that A1 and A4 were accompanying A2 and A3 on a separate motorcycle. It is pointed out that A4 in the present case was also an accused in the other case filed by A1 and A2 against P.W. 1 and others. Therefore, it is very difficult to accept that A4 was travelling on the same

motorcycle along with A1 who belonged to the prosecution party in that case. With this evidence on record it is pointed out by the learned senior counsel that the evidence of P.W. 1 has to be weighed with caution.

22. The evidence of P.W. 1 discloses that when he along with the deceased persons reached K.P. Raju Makam, the accused came across them. D2 was riding the scooter. He stopped the scooter by the side of the road. Then D1 and D2 were attacked by the accused. It is stated by P.W.1 that A1 stabbed D2 with "barise" twice on his chest. A2 stabbed D1 with "barise" on his chest. This version does not appear in his statement recorded u/s 164 of the Code of Criminal Procedure. P.W. 1 has improved his case by saying that A3 stabbed D1 on his chest twice with "barise". This version also does not appear in his statement u/s 164 of the Code of Criminal Procedure. His evidence further shows that A4 stabbed D1 in his abdomen. His evidence also discloses that he was scared of the attack on the deceased, therefore, he ran away from the scene of offence to nearby thatched shed.

23. Learned senior counsel also invited our attention to the evidence of P.W. 1 in which he stated that he went to the hospital for taking treatment. He was examined by P.W. 20-the Civil Assistant Surgeon, Government Hospital, Eluru. He issued Ex. P31-wound certificate in respect of P.W.1. With this evidence on record, learned counsel for the defence contends that P.W.1 wants to project himself as an injured eyewitness in this case, whereas the evidence of P.W. 24, who was examined by the prosecution, specifically states that P.W. 24 never gave any requisition for the examination and treatment of P.W. 1.

24. The conduct of P.W.1 appears to us of a doubtful nature. While giving the first information report he never disclosed that he had sustained any injuries. He gave this version while giving evidence, but the other evidence led by the prosecution shows that P.W.1 was examined by the Doctor and the wound certificate Ex. P31 was issued.

25. It is further seen from the evidence of P.W.1 that he ran away from the scene of offence being afraid of the attack on the deceased persons. He thereafter informed the incident to two persons. The names of those persons do not appear on record. They were not examined by the prosecution. It is the evidence of P.W.1 that he went to P.W.11, got the first Information report-Ex.P1 drafted by him and it was submitted to police. On the strength of Ex. P1 police machinery was set in motion and investigation.

26. While commenting upon this part of the evidence, it is pointed out by the learned senior counsel that the evidence of P.W. 11 is otherwise. P.W. 11 stated in his evidence that he was going to Bhimadole on his cycle. On the way on seeing the dead bodies of the deceased persons at K.P. Raju Makam he stopped his cycle. On the instructions of the D.S.P., he drafted Ex. P1-F.I.R. He denied the suggestion that he drafted Ex.P1-report as per the instruction of P.W. 1.

27. From this evidence on record it can be inferred that it has been the specific

case of P.W, 11 that Ex. P1-F.I.R, was scribed by him on the instructions of the D.S.P., but not at the dictation of P.W. 1. Then a doubt arises regarding the evidence whose specific case is that he went to P.W.11., got Ex. P1-report drafted through him and it was thereafter submitted at the police station. These are the doubtful circumstances, which have been brought on record. Therefore, the presence of P.W.1, who claims to be eyewitness to the incident, becomes doubtful at the scene of offence.

28. There is no doubt that there were party factions in the village. P.W. 1 made certain improvements in his story. Therefore, a doubt arises in our mind whether he was an eyewitness to the incident at all. If his presence at the scene of offence is disbelieved, then there is no case for the prosecution. We are now inclined to disbelieve the evidence of P.W.1 for the reasons discussed above.

29. Considering the entire material placed on record, we are of the considered view that the order of conviction and sentence recorded against the accused-appellants is erroneous. The learned Judge ought to have given at least benefit of doubt to them and acquitted them

30. Before conclusion, we would like to observe that the charges framed by the learned Judge were not proper. As far as the third charge is concerned, the learned Judge framed it against A1, A3 to A9, A11 and A12 u/s 302 of the Indian Penal Code simpliciter for causing the death of D1. Under that charge, the accused-appellants were convicted and sentenced to suffer imprisonment for life whereas the other accused were acquitted of that charge. After framing the third charge, the learned Judge again Proceeded to frame the charge against the same accused for offence punishable u/s 302 read with Section 149 of the Indian Penal Code under which they were found not guilty. Framing of such charges is not correct. The learned Judge initially ought to have framed a charge against the accused u/s 302 read with Section 149 of the Indian Penal Code. That would have been the proper procedure. In respect of the charges No. 5 and 6 also, the same analogy would apply. Therefore, we observe that the learned Judge should be more careful in framing charges. A copy of this judgment is directed to be sent to the learned Judge by name.

31. In the result, we allow the appeal by setting aside the order of conviction and sentence recorded against the accused-appellants. We further direct that they be set at liberty forthwith, if not required in any other case. Fine amount if paid, be refunded to him.