

N. Uday Kumar @ Vs. State of A.P., Rep. by Its P.P.,high Cou

N. Uday Kumar @ Vs. State of A.P., Rep. by Its P.P.,high Cou

SooperKanoon Citation : sooperkanoon.com/1170284

Court : Andhra Pradesh

Decided On : Apr-04-2014

Judge : The Hon'Ble Srijustice L. Narasimha Reddy and the Hon'Ble Sr

Appellant : N. Uday Kumar @

Respondent : State of A.P., Rep. by Its P.P.,high Cou

Advocate for Def. : Smt. A. Gayatri Reddy. Counsel

Advocate for Pet/Ap. : Smt. A. Gayatri Reddy

Judgement :

THE HONBLE SRI JUSTICE L. NARASIMHA REDDY and THE HONBLE SRI JUSTICE M.S.K.JAISWAL Crl.Appeal No.267 of 2010 04-04-2014 N. Uday Kumar @ Uday Appellant-A1 State of A.P., rep. by its P.P.,High Court of A.P., Hyderabad ...Respondent Counsel for the Appellant: Smt. A. Gayatri Reddy. Counsel for respondent: Public Prosecutor HEAD NOTE: ?.CASES REFERRED : AIR 1976 SC2263HON'BLE SRI JUSTICE L. NARASIMHA REDDY AND HON'BLE SRI JUSTICE M.S.K.JAISWAL Criminal Appeal No.267 of 2010

JUDGMENT

: (Per Honble Sri Justice MSK Jaiswal) The appellant as A.1, and his brothers as A.2 to A.5, were tried in S.C.No.308 of 2009 on the file of the II-Additional Metropolitan Sessions Judge, Hyderabad for the offences punishable under Sections 302 and 307 I.P.C. Through its Judgment dt. 19.01.2010 the trial Court

acquitted A.2 to A.5 of all the charges. However, A.1 was convicted of the charges. For the one under Sec.302 IPC he was sentenced to undergo rigorous imprisonment for life, and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for one month. For the offence under Sec.307 IPC, punishment of rigorous imprisonment for three years and fine of Rs.1,000/-, in default to undergo simple imprisonment for one month was imposed. Hence, the appeal by A.1.

2. The facts in brief are as under: Laxman (hereinafter referred as deceased) was the husband of Smt. Geetha, PW.2, and son of brother of the de facto complainant Narsing Rao, PW.1. Venkata Ramana Murthy, PW.3 and Venkata Laxman are the sons of Smt. Sharada, PW.4. A.1 to A.5 are brothers. The witnesses referred to above and the accused were the residents of the same locality, known as B.S.Maktha, Begumpet, Hyderabad. There is a Hanuman Temple in the locality and the father of the deceased was the Chairman of the said Temple Committee. On 12.10.2008 there was a dispute between the accused and PWs.1 to 4 and others, with regard to the affairs of the temple Committee and both the groups approached the Police, Panjagutta P.S. The matter was compromised with the intervention of the elders in the locality. However, on the same day at about 11.00 p.m., in the night, there was a quarrel between both the groups, and it is alleged that the accused persons stabbed the deceased with knife on chest and caused injuries to PWs.1, 3 and 4. PW.1 lodged a complaint with the police, Panjagutta and a case in Crime No.913 of 2008 was registered. During the course of investigation, the statements of witnesses were recorded, scene of offence was visited, inquest over the dead body was held, injured witnesses were referred to Hospital, and post-mortem examination was conducted. After completion of the investigation, the charge sheet was filed.

3. In the F.I.R., in addition to A-1 to A.5, one Edukondalu, who was working as Police Constable in Panjagutta P.S., was also named as one of the assailants. However, in the charge sheet, his name was deleted, stating that there is no evidence against him. Cognizance of the case was taken by XIV Additional Chief Metropolitan Magistrate, Hyderabad and after complying with the requirements of the Cr.P.C., the case was committed to the Court of Sessions.

4. Charges under Sections 148, 302, 302 read with Sec.109 and 149; 307 read with Sec.109 and 149; 323 IPC were framed. On being questioned, the accused pleaded not guilty. The prosecution examined PWs.1 to 13, filed Ex.P.1 to Ex.P.17 and M.Os.1 to 4 were produced. On behalf of the accused, the Police Constable is examined as DW-1 and Exs.D.1 to D.7 were marked. The medical record of A.1 was obtained from Yashoda Hospital and the same has been filed as Ex.C.1.

5. Smt. A. Gayatri Reddy, learned counsel for the appellant/A.1 submits that when the evidence of the prosecution witnesses has been disbelieved insofar as A.2 to A.5 are concerned, the trial Court ought to have applied the same yardstick for A.1 also, but instead, found him guilty of the charges while acquitting A.2 to A.5. She further submits that there was absolutely no motive for the accused to kill the deceased, that the evidence on record discloses that the prosecution suppressed the genesis of the occurrence and has not presented the true version. She further submits that the witnesses that are examined on behalf of the prosecution are of the members of one family, and that, it was the specific case of the accused, that the deceased beat A.1. She also submits that there is no evidence to establish that the accused, committed the crime. According to her, the findings of the trial Court are based on improper appreciation of the evidence on record.

6. The learned Public Prosecutor, on the other hand, submits that the mere fact that the eye-witnesses to the incident are members of one family, cannot be a ground to discard their testimony, in its entirety. She further submits that if the evidence of the eye-witnesses proves the complicity of one of the assailants. The learned Public Prosecutor further submits that even if the defence can establish the injuries on the person of the accused, which the prosecution has failed to mention, that does not weaken the case. She further submits that the evidence of PWs.1 to 4 is cogent and consistent and the same is supported by the other circumstances as well as the medical evidence, on record. She further submits that the trial Court has taken into consideration, all the aspects and has rightly found A.1 alone guilty of causing the death of the deceased and attempting to kill PW.3.

7. The point for consideration is as to whether the prosecution proved its case against the accused beyond the reasonable doubt, so as to sustain the Judgment or it needs to be set aside, modified or varied.

8. The trivial incident involving the two families, residing in the neighbourhood, resulted in the unfortunate death of Laxman, a young man, aged about 35 years, due to a stab injury on the chest, allegedly caused by A.1.

9. A.1 to A.5 are brothers. The material evidence in the case comprises the depositions of PWs.1 to 5. Narsing Rao, the de facto complainant - PW.1, Narayana, and Sadanandam are brothers. PWs.3 and 4 are the son and wife of Sadanandam. Narayana had three sons, namely, the deceased Laxman, Anjaneyulu - PW.5, and one Govind. PW.2 is the wife of the deceased. Narayana was the Chairman of the Managing Committee of Anjaneyaswami Temple, in the locality of B.S.Maktha. There appears to be some differences between the family of Narayana and the accused, in the context of managing the affairs of the temple. A minor incident in relation to the renovation of the temple, took place in the morning of 12.10.2008. Both the groups landed in Panjagutta Police Station. Locality elders intervened and the matter was compromised. Unfortunately, this compromise proved to be counter productive inasmuch as, within eight to ten hours thereafter the incident in question took place, which cost the life of the deceased.

10. The immediate provocation for the incident proper is said to be the act of A.1, who, along with his friends was consuming alcohol in the street, passed urine in front of the house of Sadanandam, right in the presence of his wife - PW.4, who was sitting on the porch at about 1030 p.m. The record shows that PW-4 objected to this nuisance of the accused, particularly since few hours prior thereto another incident took place between the two families. A.1 is said to have replied in an objectionable manner. This altercation was heard by PW.3, who came there from inside the house. He picked up a quarrel with A.1 for having abused PW.4, his mother. There was manhandling between both of them. This attracted the other members of the family and they came out. It is alleged that the deceased, who entered into quarrel with A.1, beat A.1 with a stick on head, resulting in bleeding

injury. A.2 to A.5 came there and in the mean time, A.1 went inside the house, brought a knife and stabbed on the neck of PW.3, and when the deceased-Laxman intervened, A.1 attacked on him with the knife on chest, due to which the deceased fell down. He was rushed to NIMS Hospital, where he was declared dead.

11. Both the groups filed complaints with the Police the one resulting in the death was registered as Crime No.913 of 2008; whereas the other lodged by A.1 against the deceased was registered as Crime No.914 of 2008. It is in the evidence of Investigating Officer - PW.12 that the crime against the deceased pertaining to the injury sustained by A.1 was referred as action abated and a final report to that effect has been filed before the Court.

12. As already noticed, the incident of A.1 stabbing the deceased on chest is said to have been witnessed by PWs.1 to 5. PW.1 is the junior paternal uncle of the deceased, and he deposed that on the date of incident at about 1030 p.m., he has seen A.1 stabbing PW.3 and also the deceased on chest. PW.2 is the wife of the deceased. She deposed that at about 10.15 p.m., when herself and the deceased were returning home, they have seen the quarrel involving the accused and PW.4 in the matter of A.1 passing urine on the road. She further deposed that A.1 stabbed on the neck of PW.3 and on the chest of the deceased. PW.3 deposed that at about 10.30 p.m., when he was taking dinner, he heard loud sounds from the road, came out of the house, noticed A.1 scolding his mother-PW.4 and when he questioned about this, A.1 stabbed him with a knife and when the deceased intervened A.1 stabbed him also on the chest. PW.4, whose act of chiding A.1 for passing urine on the road lead to the incident, deposed that hearing the galata in between them and A.1, her son PW.3 came out of the house and questioned the accused. She further deposed that in the meantime A.1 brought a knife and cut the neck of her son PW.3. She stated that when the deceased-Laxman intervened, A.1 stabbed him on the left side of his chest and caused bleeding injury. PW.5 is the brother of the deceased. His evidence is to the effect that after hearing the galata he came out of the house and found A.1 armed with a knife and his brother Laxman lying with bleeding injury on the road. He enquired from others and came to know about the incident.

13. Even though PWs.1 to 5 are the members of one family, what is noticed from their evidence is that they are consistent insofar as the incident proper is concerned. All the eye-witnesses have categorically deposed that they have seen A.1 stabbing with knife, first on the neck of PW.3, and thereafter causing a stab injury on the chest of the deceased, which proved fatal. All these witnesses are subjected to elaborate cross-examination, touching upon different aspects. However, their testimony, insofar as the substantive part of their evidence is concerned, is not shaken. It was elicited from them in their cross-examination that A.1 also sustained a bleeding injury on the head in the hands of the deceased and he was also taken to Hospital. Though PW.2 denied the suggestion, she stated in her earlier version before the police recorded under Sec.161 Cr.P.C., the relevant portions of which are marked as Exs.D1 and D2, that her husband Laxman assaulted A.1 with a stick, and caused a head injury and immediately thereafter A.1 went into the house, brought out a knife and stabbed her husband. Similarly, Exs.D3 and Ex.D.4 are the portions of Sec.161 Cr.P.C., statement of PW.4, which are to the effect that the deceased beat A.1 with a stick, and A.1 went inside the house, brought a knife and caused injuries to PW.3 and the deceased. It is also in the evidence of DW-1, who is a police constable, examined on behalf of the accused, that A.1 having sustained injury was taken to Yashoda Hospital, and as per Ex.C-1 and Ex.D-7, A.1 was treated in the Yashoda Hospital for the injury sustained by him at the hands of the deceased. From this circumstance, it becomes clear that the incident in question did take place in the manner in which it is alleged. However, taking into consideration, the evidence on record, A.1 cannot be said to have acted in self-defence, for the simple reason that when the deceased is alleged to have beat A.1 with a stick on head, A.1 went inside the house, brought a sharp edged knife and first stabbed PW.3 and thereafter, the deceased on the vital part of his body, namely the chest.

14. The eye-witnesses account is amply corroborated by the medical evidence on record. PW-13 is the Doctor from Yashoda Hospital, who issued Ex.P.17 in respect of PW.3, which is to the effect that PW.3 sustained a simple injury and discharged after giving first-aid. P.W.9 is the Doctor, who conducted autopsy over the dead body of the deceased and found 2 x 1 cm., stab wound on the left side of the chest, which is pierced into the thoracic cavity through the 3rd inter postal

space, rupturing the left lung and the heart. Ex.P.7 is the post-mortem report issued by him and in his opinion, the injury could have been caused with a knife, such as M.O.1.

15. The incident is said to have taken place at about 10.30 to 11.00 p.m., in the night, and within half-an-hour thereafter the complaint-Ex.P.1 was lodged with the police; F.I.R. - Ex.P.11 was issued and was delivered to the jurisdictional Magistrate by 5.15 a.m. of 13.10.2008. The oral evidence on record is materially in conformity with what is mentioned in the complaint, Ex.P.1, which was lodged with utmost promptitude. The other evidence on record comprises of the panch and official witnesses, whose evidence is not seriously controverted.

16. The oral and documentary evidence on record clinchingly establishes the fact that at about 11.00 p.m., the trivial incident took place when A.1, who was hit on his head with a stick by the deceased, went inside the house, brought a knife and caused a simple injury to PW.3, and stabbed on the chest of the deceased, which resulted in his instantaneous death.

17. The learned counsel for the appellant/A.1 submits that the prosecution has suppressed the genesis of the occurrence by not placing on record the entire material and thereby the accused is entitled to an acquittal. Her contention is that even though A.1 sustained injury, which fact is born out from Exs.C1, D-7, and the evidence of DW-1, the prosecution is guilty of suppression. A perusal of the record does not support this contention of the learned counsel for the appellant. The prosecution has not suppressed the incident involving the deceased and A.1. As a matter of fact, the Investigating Officer PW.12 admits that the complaint lodged by A.1 against the deceased was registered as Crime No.914 of 2008 under Sec.324 IPC, but, however, since the assailant of A.1, namely the deceased died in the same transaction that crime was referred as having abated and a final report has been filed before the jurisdictional Court, after duly serving notice on the complainant therein, namely A.1. Therefore, we see no force in the submission of the learned counsel for the appellant that A.1 is entitled to an acquittal on the ground that the injuries on A.1 are not explained by the prosecution.

18. The learned counsel for the appellant relied upon a decision of the Honble Supreme Court in Lakshmi Singh v. State of Bihar wherein it is laid down as under: In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences: (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version; (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case. The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

19. However, in that very judgment, the Honble Supreme Court proceeded to observe that there may be cases where the non- explanation of the injuries by the prosecution may not affect its case. It was further held that the principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, independent, disinterested, probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

20. In the instant case, the injury said to have sustained by A.1, as noticed from Ex.C-1, is a simple laceration on the head region. He was discharged from the hospital after the first aid. The evidence of PWs.1 to 4, particularly that of PWs.2, 3 and 4 is clear, cogent, consistent and creditworthy, thereby neutralizing the effect of omission on the part of the prosecution to explain the injuries on A.1.

21. The learned counsel for the appellant further submits that when the same evidence was placed on record before the trial Court, the trial Court has disbelieved the evidence of the eye- witnesses insofar as it is in respect of A.2 to A.5, and acquitted them of all the charges, but whereas believed their evidence

and convicted the appellant/A.1. Having perused the evidence on record, we find that all the eye-witnesses have consistently spoken about one fact, namely, that A.1 brought out a knife and caused a simple injury to PW.3, and stabbed on the chest of the deceased. The participation of A.2 to A.5 is not consistently spoken to by the eye-witnesses. Therefore, the Judgment of the trial Court cannot be found fault with on the ground that it has acquitted A.2 to A.5 and convicted A.1. Since there was specific and direct evidence as to the involvement of A.1, has been found guilty of only two charges, referable to Sec.302 and 307 IPC, for having caused the death of the deceased and attempted to kill PW.3.

22. Learned counsel for the appellant submits that at best the offence that is said to have been committed by A.1 would attract Part-II of Sec.304 IPC, but not Sec.302 I.P.C. The learned counsel further submits that, admittedly, the incident has taken place at the spur of moment, and at that time A.1 is alleged to be on high- spirits.

23. The act of A.1 urinating in front of the house of PWs.3 and 4 developed into exchange of abuses. This attracted the family members; and deceased and PW.3 came out of the house and after indulging in verbal abuses, the deceased is said to have given a blow with a stick on the head of A.1, which resulted in A.1 becoming wild, going inside the house, bringing out a knife and giving one blow on the chest of the deceased, which unfortunately resulted in his instantaneous death; and except that one injury no other injuries were found on the person of the deceased. There was no pre-mediation, or planning in the mind of the accused to cause death of the deceased. Therefore, we are in agreement with the submission of the learned counsel for the appellant that the offence committed by A.1 does not attract Sec.302 IPC, but fits into Part-II of Sec.304 I.P.C. Subject to the above modification, the appeal is liable to be dismissed. However, the conviction of A.1 for the offence under Sec.307 IPC is liable to be maintained. The point is accordingly answered.

24. In the result, the Criminal Appeal is partly allowed, modifying the conviction of A.1 ordered by the trial Court under sec. 302 I.P.C., to be the one under Part-II of Sec.304 I.P.C. and sentencing him to undergo rigorous imprisonment for six years.

The sentence of fine imposed by the trial Court for the said offence shall remain. The conviction and sentence ordered by the trial Court, for the offence punishable under sec. 307 I.P.C. is confirmed. Both the sentences shall run concurrently. The material objects, if any, shall be destroyed after the appeal time is over.

_____ L.Narasimha Reddy, J.

_____ M.S.K. Jaiswal, J.

Date:

04. 04.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com