

Alakunta Narsimloo and ors. Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Nov-17-1993

Reported in : 1994(1)ALT(Cri)248; 1994(1)ALT(Cri)248; 1994CriLJ1721

Judge : M.N. Rao and ;N.D. Patnaik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 149 and 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 233

Appeal No. : Criminal Appeal No. 122 of 1993

Appellant : Alakunta Narsimloo and ors.

Respondent : State of Andhra Pradesh

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C. Malla Reddy and G. Anandam

Judgement :

M.N. Rao, J.

1. The two appellants herein - A-1 and A-2 in S.C. No. 25 of 1992 on the file of the Court of Additional Sessions Judge, Nizambad - were convicted under Ss. 302, r./w. 34, I.P.C. for committing the murder of the Alakunta Chinnaiah (hereinafter referred to as 'the deceased') on 18-9-1991 as 5.30 p.m. at Babu Miyan hotel

situated in Indira Nagar Colony of Pipri Village, Nizambad District, by intentionally inflicting knife injuries on various parts of his body resulting in his instantaneous death and each of them was sentenced to suffer imprisonment for life and to pay fine of Rs. 200/- each in default to suffer simple imprisonment for six months.

2. The prosecution case, in brief, is as follows :

The two accused are brothers and they are residents of Pipri village. The deceased also was a resident of the same village. The two accused suspected that the deceased was responsible for the death of A-1's wife about 19 days prior to the date of incident by practising sorcery. They, therefore, developed enmity against the deceased and were waiting for an opportunity to do away with him.

3. On 18-9-1991 at 5.30 p.m., when the deceased went to the hotel of one Babu Miyan in Indira Nagar colony of the village to have tea, A-1 and A-2, pursuant to their plan, came there armed with knives, approached the deceased and inflicted several knife injuries on several parts of his body, as a result of which, the deceased died instantaneously. The incident was witnessed by P.Ws. 2 and 3, who were present in the hotel at that time. P.W. 7, Razia Begum, the wife of the owner of the hotel, who was managing the hotel in the absence of her husband, testified about the presence of the deceased, his ordering for a cup of tea and by the time she went inside to prepare tea and came out, she found the deceased in a pool of blood. She also said in the cross-examination that P.Ws. 2 and 3 were present along with the deceased in the hotel at the time of the incident.

4. P.W. 1 is the elder brother of the deceased, who on the date of the incident, was returning from the village to go to his house and when he approached the godowns, where fertilisers were stored - a place at a distance of about 10 yards from Babu Miyan hotel - P.Ws. 2 and 3 informed him that his brother was killed by A-1 and A-2. He immediately rushed to Babu Miyan hotel and saw the deceased lying in a pool of blood; he noticed several injuries on the neck, chest, abdomen and other parts of the body of the deceased. As he was approaching the hotel, he saw both the accused running away towards Armour side. He went home and informed about the incident to the wife of the deceased, who rushed to the spot. The police station is at a distance of about 7 kilometres from the scene of

occurrence. They did not go to the police station to report about the crime as they were afraid of the accused. On the next day morning at 7.00 a.m., P.W. 1 got a complaint, Ex. P.1, written by one Sudarshan Goud and presented the same in the Police Station, Armoor, where P.W. 8, C. Gangadhar, Head Constable, registered it as Crime No. 159 of 1991 under Section 302, I.P.C. and issued FIR, Ex. P.6. The Sub-Inspector was out of station. P.W. 9, Venkata Swamy, the Inspector of Police took up investigation from P.W. 8, the Head Constable on 19-9-1991 and held inquest over the dead body from 1.00 a.m. to 12 noon. Ex. P.3 is the inquest report. He claimed that he arrested the accused on 28-9-1991 and recovered two knives, MOs. 4 and 5, under a panchanama, Ex. P.10. The dead body was sent for post-mortem examination to the Government Hospital, Armoor on 19-9-1991, where P.W. 5, Dr. Lakshmi, conducted autopsy at 4.45 p.m., on the same day and found the following 11 external injuries :

- '1. Linear lacerated wound 2 1/2' x 1/2' x 1/2' below the left lateral margin of lower mandible.
2. Lacerated wound above the left collar bone measuring 1 1/2' x 1/2' x 1/2'.
3. Lacerated wound measuring 3' x 1/2' x 1/4' on right half of chest, above and medial to right nipple.
4. Lacerated wound 3' x 1/4' along the medial border below little finger.
5. Lacerated transverse wound measuring 1/2' x 1/4' on the dorsal aspect of left wrist.
6. Lacerated wound on the lower third of right upper arm measuring 1' x 2 1/2' x 1/2', 1' above the right elbow joint.
7. Lacerated wound measuring 3 1/2' x 1/2' on the right elbow posterior aspect.
8. Lacerated wound measuring 2' x 1/4' along medial border of right fore-arm.
9. Lacerated wound measuring 4' x 1/2' on the right thigh posterior.
10. Lacerated wound measuring 1 1/2' x 1/2' over left knee joint.

11. Lacerated wound measuring 1 1/2' x 1/2' over the right knee joint, medial aspect.'

she also found the following internal injuries :

'1. On dissection of the neck, I found muscles were also cut along with the skin and subcutaneous tissues.

2. On dissection of chest, I found muscles over 4th, 5th and 6th ribs split echymosis present and 4th rib shaft fracture, 8th rib fractured at costs chondral junction. The right pleural cavity was filled with 450 cc of blood. In the right lung oozing of blood was present from surface.

On dissection of abdomen, I found 250 cc of blood in paritoneal cavity. In the stomach I found undigested food. There was injury to right lobe of liver superior part measuring 1' in length.'

According to the doctor, the cause of death was internal bleeding as a result of external and internal injuries. She also opined that the injuries mentioned in the post-mortem certificate, Ex. P. 2, are sufficient to cause the death in the ordinary course.

5. In support of its case, the prosecution examined as many as 9 witnesses and marked 11 documents and produced five material objects.

6. P.W. 1 is the elder brother of the deceased and P.Ws. 2 and 3 are the eyewitnesses to the incident. P.W. 4 is the widow of the deceased. P.W. 5 is the doctor who conducted autopsy on the body of the deceased. P.W. 6 is the panch witness. P.W. 7 is Razia Begum, the wife of the proprietor of Babu Miyan hotel. The Investigation Officer figured as P.W. 9. The plea of the accused was one of total denial. The learned Additional Sessions Judge believing the evidence of the eye-witnesses and taking into consideration the totality of the circumstances, including the circumstance that both the accused indiscriminately inflicted stab injuries on the deceased, which had resulted in his instantaneous death, convicted and sentenced both of them as stated supra.

7. Sri Malla Reddy, learned counsel for the accused-appellants, contends that the conviction is unsustainable due to several reasons; the motive part has not been brought home to the accused. The evidence of the prosecution witnesses was that the death of the wife of A-1 was due to the sorcery practised by the deceased. As there was no definite evidence as to what blows were inflicted by which of the accused and who caused the fatal injury, the invocation of S. 34, I.P.C. for convicting both the accused is impermissible in law. When there was no evidence as to the common intention on the part of the accused to cause death, they could not have been sentenced under S. 302 read with S. 34, I.P.C. The delay in presenting the complaint, Ex. P.1, is also fatal to the prosecution case. When the incident was alleged to have taken place on the evening of 18-9-1991 at 5.30, the F.I.R. was registered at the police station, which is at a distance of about 7 kilometers, only on the next day morning at 7.30. The explanation given for the delay in registering the F.I.R. is too artificial to carry conviction.

8. The incident had taken place at Babu Miyan hotel on 18-9-1991 at about 5.30 p.m. The presence of the deceased and P.Ws. 2 and 3 at the hotel was spoken to by P.W. 7, Razia Begum. When the deceased has ordered for tea, she went inside to prepare tea and by the time she came out with the tea, she found the deceased in a pool of blood. P.Ws. 2 and 3 testified that they were in the hotel at the time when the deceased also was there. They too had ordered for tea and before the tea could be served, both the accused came there armed with knives and attacked the deceased on the neck, abdomen, legs and other parts of the body, as a result of which, the deceased fell down in a pool of blood. Thereafter, the accused ran away towards Armour side, carrying the knives with them. When they (P.Ws. 2 and 3) were going home, they saw P.W. 1, the elder brother of the deceased, and informed him about the incident. No circumstances were brought out in the cross-examination to doubt the testimony of these witnesses. P.Ws. 2 and 3 are not related to the deceased and nothing was alleged attributing any motive to them to depose falsely against the accused. It is true that both of them did not individually describe which of the two accused had dealt what blows on which part of the body of the deceased. It is also true that there is no evidence that prior to the occurrence, the accused had planned to do away with the deceased.

9. The evidence shows that both the accused came together, together they attacked the deceased and together they left. From this conduct itself, it can be inferred that both of them acted in concert. The common intention to commit the murder is also clearly discernible from the fact that the attack was made simultaneously by both the accused. It is not necessary in order to invoke S. 34, I.P.C. that there should be clear positive evidence about the meeting of minds before the occurrence had taken place. This legal position is well established. Bose, J., speaking for a three judge Bench of the Supreme Court in *Pandurang v. State of Hyderabad*, : 1955 CriLJ572 while observing that to invoke S. 34, I.P.C., 'there must have been a prior meeting of minds' and after citing the observations of the Privy Council, stated the legal position thus :

'At bottom, it is a question of fact in every case and however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that interference

It is, therefore, not possible to accept the contention that where the prosecution has not led evidence regarding prior meeting of minds, it is not open to the Court to invoke S. 34, I.P.C. in any case. The Court has to scrutinise the evidence carefully in order to discern whether there are circumstances necessarily leading to the inference as to the existence of common intention. As already stated, in this case, the manner in which the attack was made on the deceased by A-1 and A-2, their coming together to the place of occurrence and leaving together are circumstances clear enough warranting the inference as to their common intention to do away with the deceased.

10. When a murder takes place, and when there are more than one accused, it is not necessary for the prosecution to lead evidence as to which accused has dealt which blow on what part of the body of the deceased. Any enquiry into the question as to who among the accused has dealt the fatal blow is clearly not warranted. The rule in this regard is well settled :

'When people play with knives and lives, the circumstance that one man's stab falls on a less or more vulnerable part of the person of the victim is of no consequence to fix the guilt for murder. Conjoint complicity is the inevitable inference when a gory group animated by lethal intent accomplish their purpose cumulatively. Section 34, I.P.C. fixing constructive liability conclusively silences such a refined plea of extrication'. (per Krishna Iyer, J.), : 1977 CriLJ352 .

11. The rulings relied upon by the learned counsel for the appellants are not relevant in the context of the facts of the present case.

12. The decision in Nanak Chand v. State of Punjab, : 1955 CriLJ721 highlights the distinction between S. 149 and S. 34, I.P.C.; it lays down that S. 34, I.P.C. does not create any specific offence. It is an authority for the proposition that the person charged with an offence read with S. 149, I.P.C. cannot be convicted of the substantive offence without the specific charge being framed as required by S. 233, Cr.P.C. (old). When two accused are convicted under S. 302, r./w. S. 34, I.P.C. and one of them is acquitted by the High Court in appeal, the other accused cannot be convicted under S. 302, I.P.C. simpliciter in the absence of proof of the exact nature of injuries caused by each of the accused.

13. In Rana Pratap v. State of Haryana, : 1983 CriLJ1272 there were three accused, who came together and two of them held the deceased while the third one stabbed him. It was held that these circumstances clearly indicated that they shared some common intention. Discussing the aspect, whether they had common intention to do away with the deceased, the Supreme Court after scrutinising the evidence held that the two accused who held the deceased did not know that the third one would cause the fatal injury though they must have anticipated that he would cause grievous injuries. The Court reached the conclusion that there was no common intention to cause death and accordingly, the two accused were convicted under S. 326 r./w. S. 34, I.P.C. The conviction of the third accused under S. 302, I.P.C., who inflicted the fatal injury, was confirmed.

14. The decision in Subran v. State of Kerala, : 1993 CriLJ1387 restates the proposition that where the existence of an unlawful assembly is not proved, the conviction with the aid of S. 149, I.P.C. cannot be sustained and the failure of the

prosecution to show that the assembly was unlawful must necessarily result in the failure of the charge under S. 149, I.P.C.

15. In *Ashok Kumar v. State of Punjab* : 1977 CriLJ164 , the facts are totally dissimilar to the instant are. The evidence of the eye-witnesses in that case was that the appellant before the Supreme Court dealt a knife blow on the left flank of the deceased. The only assailant, who according to the prosecution evidence inflicted the other two injuries, was the unidentified assailant and so, injury No. 3 could not be attributed to the appellant. Giving benefit of doubt, the possibility cannot be ruled out that injury No. 2 was caused by the appellant, the Supreme Court set aside the conviction under S. 302, I.P.C. and convicted him under S. 324, I.P.C.

16. In *Hammu v. State of M.P.*, : AIR 1979 SC1755 , it was found on evidence that the common object of the two accused in that case was to cause only grievous injuries and that P.W. 1 was the target of attack but not the deceased. In that view, the finding of the High Court that A-1 and A-2 shared the common intention of causing the death of the deceased was set aside.

17. What remains to be considered in the instant case is the contention regarding the delay in presenting the F.I.R. The offence took place at 5.30 p.m. on 18-9-1991. The Police Station is at a distance of about 6 kilometres from the village-Pipri. What is the exact distance also is in controversy. In the cross-examination, P.W. 8, the Head Constable said that the distance between Pipri Village and Armour police station is about 3 to 4 kilometres and immediately in the next sentence, he said that in the F.I.R., the distance is mentioned as 7 kilometres and that what is mentioned in the F.I.R. is correct. The Inspector of Police, P.W. 9, said that the exact distance between Babu Miyan hotel, where the incident took place, and the police station is 6 1/2 kilometres. The reason why on the very same day, immediately after the incident took place, complaint could not be given according to P.W. 1 is that he was afraid of the accused persons as there was a rumour that they were in the village. The next day at 7.00 a.m., Ex. P.1, report was got written and it was registered at 8.00 a.m. at the police station. This is not a case where two factions are involved, in which event, there would have been some justification

to draw the inference that the delay in lodging the F.I.R. was utilised for the purpose of deliberations in order to implicate innocent persons. The incident in question had happened in a village and in the evening. P.W. 1, the elder brother of the deceased, thought that it was not safe to trek a distance of nearly 7 kilometres to reach the police station for lodging a complaint, and so, the complaint was presented on the next day morning. As there was clear positive evidence of the eye-witnesses, the circumstance that immediately after the incident, the F.I.R. was not lodged, cannot throw any doubt on the truth of the prosecution story. The names of P.Ws. 2 and 3 are also mentioned in Ex. P.1 and this dispels any doubts as to the presence of these two persons at the site, where the incident happened. In the circumstances, the delay, in our view, is not fatal. The arguments advanced by the learned counsel on the aspect of motive are not very material. When there is direct evidence of the eye-witnesses, the motive aspect of the prosecution story pales into insignificance. P.W. 1, the elder brother of the deceased, and P.W. 4, the widow of the deceased, testified that the accused suspected that the deceased had practiced sorcery on the wife of A-1.

18. The learned Additional Sessions Judge was, therefore, right in convicting and sentencing the accused as stated supra. The criminal appeal, therefore, fails and accordingly it is dismissed.

19. Appeal dismissed.