

Boddu Murali Vs. State

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Court : Andhra Pradesh

Decided On : Jan-30-1993

Reported in : 1993CriLJ2077

Judge : M.N. Rao and ;Motilal B. Naik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164

Appeal No. : Criminal Appeal No. 626 of 1991

Appellant : Boddu Murali

Respondent : State

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : T. Bali Reddy, Adv.

Judgement :

1. This criminal appeal is directed against the judgment dated 14-3-1991 of the Sessions Judge, Ongole in S.C. No. 108 of 1989 convicting the appellant (the sole accused) for the offence punishable under S. 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life.

2. The case of the prosecution before the trial court, in short, is as under :-

The gravamen of the charge is that on 22-10-1988, around 8-00 p.m., near Kunderu bridge at Akkayapalem village, the accused intentionally caused the death of Chinna Somaiah (hereinafter referred to as 'the deceased') son of Munuswamy Reddy of Challareddypalem village by stabbing him indiscriminately and thereby committed an offence punishable under S. 302 of the Indian Penal Code.

3. The accused is a resident of Jandrapet. P.W. 6 is his mother and P.W. 7 is his brother who are residing in one of the portions of the house while the accused was residing in another portion of the house. The deceased is the son of P.W. 1 who is a resident of Challareddypalem. About 8 months prior to the date of occurrence, there was Poleramma Jatara in the village Vetapalem, P.Ws. 5, 8, the accused and the deceased also attended the said Jatara. The accused and one Puli Krishna seems to have indulged in teasing women folk in the Jatara, for which act, the deceased scolded the accused. As a result, there was some altercation between them. P.Ws. 5 and 8 who also accompanied the accused and the deceased, interfered and pacified them. However, the accused while leaving the Jatara, threatened the deceased with dire consequences.

4. In the evening of 22-3-1988, P.W. 2 who is a resident of Jandrapet went to Akkayapalem for consuming toddy. On the way, near Ramalayam, he found the accused and five to six other person. On seeing P.W. 2, the accused asked him to get two measures of ground-nuts. P.W. 2 obliged the accused and brought ground-nuts from the house of his sister-in-law which is situated opposite Ramalayam and thereafter went towards the house of one Achamma for drinking toddy. After consuming toddy, P.W. 2 returned from the toddy shop of Achamma. On the way, he noticed the accused. P.Ws. 3 and 4 waiting at Ramalayam and all of them followed P.W. 2 to his house where his mother was residing. While P.W. 2 was talking to his mother, the accused, P.Ws. 3 and 4 were waiting outside the house. Thereafter, P.W. 2 accompanied by the accused, P.Ws. 3 and 4 started going towards Jandrapet. When they crossed the bridge which is between Akkayapalem and Jandrapet, the deceased was coming in the opposite direction. The accused, on noticing the deceased coming in the opposite direction, asked him as to who he was. The deceased replied as to why the accused is interested

and asked him not to interfere as he was in a drunken state. On this, the accused grew wild and restored by saying 'you call me thagubothu (drunkard) - I shall kill you'. There was some exchange of words between the accused and the deceased and it led to an altercation between them. During the said altercation, the accused took out a knife which was noticed by P.W. 2. In order to prevent the accused from inflicting injury with the knife P.W. 2 made efforts to catch hold of the accused and in that process, the knife came into contact with the face of P.W. 2 below his left eye, causing a bleeding injury. On that, P.W. 2 let off the accused from his hands. Within a few seconds, P.W. 2 heard cries 'amma amma' from the place where the deceased was standing. Due to fear, P.W. 2 ran away from that place to his house. On the same night P.W. 2 developed fear and went to his mother-in-law's village at Pittuvaripalem. At Pittuvaripalem, there was a talk that the son of P.W. 1 was killed near the bridge. On the next day i.e. 23-3-1988, P.W. 2 went to Adividipalem to his brother-in-law's house. On the night of 22-3-1988, around 10-00 p.m. P.W. 1 returned home and when he enquired about the deceased, he was told that the deceased had gone to some place and has not returned home. On the next day, he learnt from one Pittu Sreenu that his son (the deceased) was brutally murdered and the dead body was thrown on the Jandrapet-Akkayapalem road P.W. 1 accompanied by others rushed to the scene of offence and remained at the dead body of the deceased up to 12-00 noon on 23-3-1988. On the advice of the people gathered there, P.W. 1 went to Vetapalem Police Station and gave a complaint, Ex. P. 1 to P.W. 14, the Head Constable. The Head Constable registered the same as Crime No. 31 of 1988 under S. 302, IPC and issued Ex. P-11. First Information Report P.W. 14 then issued a requisition to the Dog Squad, posted a guard at the scene of offence and examined P.W. 1. P.W. 16, the Inspector of Police, took up further investigation in the case. He examined P.Ws. 1, 2 and others and recorded their statements. P.W. 16, after securing the presence of P.W. 10 and others, conducted search in the house of the accused. The accused was not found during the search and he was at large. P.W. 16 seized a white cut banian having blood stains and a snuff coloured pant (M.Os. 2 and 3) in the presence of the mediators under Ex. P-5 mediators report. Thereafter, P.W. 16 went to the scene of offence by which time, the Dog Squad had arrived from Vijayawada. The dog was given the smell of the scene of offence and also the

material objects (M.Os. 2 and 3) which contained blood stains. After receiving the smell, the dog led the investigating officer to the house of the accused at Jandrapet. Thereafter, P.W. 16 visited the scene of offence again and held inquest over the dead body of the deceased in the presence of P.W. 10 and five others. At the inquest, he examined P.Ws. 2, 6, 7 and some others and Ex. P. 6 inquest report was prepared. P.W. 16 also collected the blood stained earth and control earth (M.Os. 4 and 5) from the scene of offence and drew a rough sketch of the scene of offence, Ex. P. 14. P.W. 2 identified the dead body of the deceased as that of the person with whom the accused had an altercation on the night of 22-3-1988 at Kunderu bridge.

5. On 22-3-1988 i.e., the date on which the incident took place, at about 9.30 p.m., the accused came to his house and asked P.W. 7, his brother, to give him a pair of dress for wearing. At that time, the shirt of the accused was having blood stains. The accused removed M.Os. 1 to 3 which he was wearing put them to a hook in his house and then changed his dress. He closed the door of his house and went away at 10.00 p.m. P.W. 6, the mother of the accused, who had gone to a film, returned home at about 10.30 p.m. on the same night. P.W. 7 informed her about the accused coming home with blood stained clothes and leaving the place after changing the dress. On the morning of 23-3-1988, the accused again came to the house and asked P.W. 7 as to why he had not washed M.Os. 1 to 3 as instructed by him earlier on the previous night. P.W. 7 stated that he would wash them. Thereupon, the accused left the house taking away M.O. 1 only by folding it, leaving M.Os. 2 and 3. The accused went to the laundry shop of P.W. 12, Washerman and gave M.O. 1 for washing. However, M.O. 1 was not taken delivery by the accused.

6. P.W. 16, the Inspector of Police, after conducting inquest over the dead body of the deceased, sent the dead body for post-mortem examination through P.W. 13 Police Constable. P.W. 9 the doctor who conducted autopsy over the dead body of the deceased, found as many as 29 injuries on the person of the deceased. P.W. 9 prepared Ex. P. 4, post-mortem report and opined that the deceased appears to have died due to haemorrhage and shock and due to multiple stab injuries, which he sustained. P.W. 16 along with P.Ws. 10 and 12 went to the shop of P.W. 12,

the washerman, and seized M.O. 1 under Ex. P. 7 mediators' report P.W. 2 who received injuries during the altercation between the accused and the deceased was sent by P.W. 16 to the doctor, P.W. 17, who examined him and issued Ex. P. 17 wound certificate. P.W. 16 also got the statements under S. 164, Cr.P.C. of P.Ws. 2, 6 and 7 recorded by P.W. 11, the 11 Additional Munsif Magistrate, Chirala. He then sent the M.Os., to the Director, Forensic Science Laboratory, Hyderabad for analysis and received Ex. P. 16 report. After completing the investigation the successor of P.W. 16 laid the charge-sheet against the accused.

7. The prosecution, in all, examined 17 witnesses and marked Exs. P. 1 to P. 17. M.Os. 1 to 11 were marked Exs. D. 1 and D. 2 were marked for the defence.

8. The plea of the accused is one of total denial. The trial Court, on the basis of the evidence and the material placed before it, found the accused guilty of committing the offence punishable under S. 302, IPC and sentenced him to suffer imprisonment for life.

9. Sri T. Bali Reddy, the learned counsel for the appellant-accused, impeached the correctness of the trial court's judgment by contending that the case of the prosecution mainly rests on circumstantial evidence - there being no direct eye-witness to the occurrence that took place on 22-3-1988 - and the trial court has not properly appreciated the evidence brought on record with reference to the other circumstances; P.W. 2, who is the alleged eye witness, has not spoken to the factum of the offence to any of his family members immediately after returning home and two days after the offence. P.W. 2 was arrested and kept in police station and therefore, the evidence of P.W. 2 that he was present and witnessed the occurrence cannot be accepted; P.W. 2 could not have witnessed the deceased receiving injuries at the hands of the accused as the incident took place at 7-30 p.m. and as it would be too dark by then and that the evidence of P.Ws. 6 and 7 who are the mother and brother of the accused respectively cannot be believed as the accused was having strained relations with them and staying separately, and there is every likelihood of P.Ws. 6 and 7 trying to implicate the accused in the offence. Sri T. Bali Reddy lastly contended that the report of the Forensic Laboratory as to the nature of the blood contained on the material

objects, which were sent for expert opinion, would not, in any way, connect the accused with the charges levelled against him and therefore, the trial court was gravely erred in accepting the evidence adduced on behalf of the prosecution and convicting the accused for the offence punishable under S. 302, IPC and sentencing him to suffer imprisonment for life.

10. In the wake of the serious disputes raised by the learned counsel for the appellant-accused with regard to the correctness of the judgment of the trial court, which are set out in detail in the preceding paragraph, we have examined the entire evidence of the prosecution witnesses. We have also carefully examined the reasoning adopted by the learned Sessions Judge in holding the accused guilty of the offence with which he was charged.

11. The evidence of P.W. 2 shows that the accused and some others met him at the Ramalayam near the toddy shop of Akkayapalem village. After consuming toddy, when he was returning back, he was followed by the accused P.Ws. 3 and 4. It is in the evidence of P.W. 2 that after crossing Kunderu bridge which is at a distance of two furlongs, they came across the deceased and that there was some altercation between the accused and the deceased. It is also in the evidence of P.W. 2 that the accused whipped out a knife and tried to inflict injury on the deceased. He also stated that in order to save the deceased, he caught hold of the accused and in that process he also received an injury on his face. On that, he let off the accused. Thereupon, he heard the cries of the deceased. This evidence of P.W. 2 was not shaken in the cross-examination though it was suggested to him that it was dark when the offence took place and P.W. 2 would not have properly witnessed the accused inflicting injuries on the deceased. P.W. 2 as mentioned already, identified the dead body of the deceased during the inquest as that of the person with whom the accused had an altercation on the night of 22-3-1988. This piece of evidence indicates that P.W. 2 was present at the time of the occurrence, witnessed the offence and has rightly identified the deceased. Therefore, the evidence of P.W. 2 cannot be brushed aside merely on the ground that he has not intimated about the incident to any of his family members immediately after returning home. Besides, P.W. 2 is also an injured person who has received the injury at the hands of the accused. The evidence of P.W. 17 the doctor who

treated P.W. 2, categorically indicates the presence of an incised wound on the left side of the face of P.W. 2 and, therefore, the said injury could have been caused as stated by P.W. 2. The conduct of P.W. 2 in not disclosing the commission of the offence to the investigating office though it is claimed by P.W. 2 that he was informed about the same to his family members in our view, cannot falsify his evidence. It is common knowledge that people are scared to figure as witnesses in such offences due to the fear that they will be made to go round the court for tendering evidence.

12. P.W. 2 stated that after witnessing the incident, he came running to his house. On that night itself, he developed fear and went to his mother-in-laws village, Pittuvaripalem which is at a distance of about 15 to 20 Kms. In the cross-examination P.W. 2 has categorically stated that he informed his family members about the incident; that he developed fear and that, therefore he has gone to Pittuvaripalem. When there is a categorical assertion of P.W. 2, with regard to the incident, it cannot be said that P.W. 2 has not witnessed the offence. There is nothing for this witness against the accused to implicate him falsely in the crime. The police apprehended P.W. 2 from the house of his brother-in-law at Adavidipalem, where he was hiding. This goes to show that P.W. 2 has witnessed the offence and was afraid of the accused and hiding himself in the house of his brother-in-law.

13. In so far as the evidence of P.Ws. 6 and 7 is concerned, it is not disputed that P.W. 6 is the mother of the accused and P.W. 7 is the brother of the accused. The evidence of P.Ws. 6 and 7 cannot be brushed aside as they are the kith and kin of the accused and there is no reason for them to falsely implicate one of their family members in an offence of this nature. The evidence of P.W. 7 shows that the accused came on the night of 22-3-1988 at about 9-30 p.m. with blood stained clothes, removed them, instructed him to wash them and left the house by changing his dress. P.W. 7 also intimated this fact to P.W. 6 his mother. The next day morning, when the accused found that P.W. 7 has not washed the blood stained clothes, he removed M.O. 1 and took it to the shop of P.W. 12 the washerman. The evidence of P.W. 6 is to the effect that the accused has come to the house on the morning of 23-3-1988, collected some clothes and went away.

P.W. 6 admits the facts of P.W. 7 intimating her as to the accused coming to the house with blood stained clothes on the night of 22-3-1988. We are unable to find any lacuna in the evidence of P.Ws. 6 and 7 and, therefore, in our considered view, the trial court has properly appreciated the evidence of P.Ws. 6 and 7 and arrived at a reasonable conclusion on the basis of their evidence.

14. In so far as the report of the Forensic Science Laboratory, Ex. P. 16 is concerned, it is contended by the learned counsel for the appellant-accused that the report, Ex. P. 16 would not, in any way, connect the accused with the offence. The report of the analyst with regard to the blood detected on item Nos. 2 and 7, which are white terrycot full shirt and cotton white baniyan respectively, indicates that the blood contents are human. The blood detected on item Nos. 1, 3, 4 to 6 and 8 to 10 is disintegrated and so the origin and group could not be determined. The evidence let in by the prosecution goes to show that some of the items indicated above belong to the accused and the other items were collected from the scene of offence. Though the origin and group of the blood contained on some of the items could not be determined for the reason that the blood was disintegrated, in so far as item Nos. 2 and 7 are concerned, it is found that the blood contained on them is human blood. When item Nos. 2 and 7 are found to be the belongings of the accused, it cannot be said that they are not sufficient to connect the accused with the crime. The trial court has considered all these aspects at length in coming to its conclusion.

15. Sri T. Bali Reddy, the learned counsel for the appellant-accused, has taken us to various decisions of the Supreme Court and the High Courts in support of his case. In support of his first contention that the case of the prosecution mainly rested on circumstantial evidence and that the prosecution has not appreciated the evidence properly, the learned counsel relied upon the decision of the Supreme Court in *Kansa Behera v. State of Orissa*, : 1987 CriLJ1857 and argued that it is a settled rule of circumstantial evidence that each one of the circumstances must be established beyond doubt and all the circumstances put together must lead to the only one inference and that is of the guilt of the accused. There is no dispute as to the above principle. In the instant case, when there is direct evidence of P.W. 2 with regard to the commission and involvement of the accused in the offences

coupled with the evidence of P.Ws. 6 and 7 to the effect that the accused came to the house with blood stained clothes on the night of 22-3-1988, it cannot be said that the case of the prosecution mainly rested on circumstantial evidence. In this background, we hold that the decision relied upon by the learned counsel in Kansa Behera's case (1 supra) cannot have any application to the facts of the instant case.

16. The learned counsel placed reliance upon the decisions of the Supreme Court in *R. P. Thakur v. State of Bihar*, : 1974 CriLJ335 , *State of Orissa v. Brahmananda*, : 1976 CriLJ1985 and *State of Karnataka v. Venkatesh*, 1992 AIR SCW 360, in support of his contention that P.W. 2 who claims to have witnessed the incident, did not disclose the same to any of his relatives at the earliest point of time and this conduct of P.W. 2 renders his evidence highly unbelievable. P.W. 2 is the direct eye-witness who has categorically stated that he saw the accused inflicting injuries on the deceased with a knife. P.W. 2 also sustained a bleeding injury at the hands of the accused in the said transaction. Immediately after hearing the cries of the deceased, P.W. 2 left the scene of offence due to fear and rushed to his house. P.W. 2 stated in the cross-examination that he informed his family members that there was a threatening incident; that he has got fear and as such, he was going to Pittuvaripalem. It is evident from this narration that P.W. 2 has informed his family members about the incident which he witnessed and that out of fear, he left his village and went to his mother-in-law's village. Under these circumstances, it cannot be said that P.W. 2 had not disclosed about the commission of the offence at the earliest point of time to his relatives and that his evidence is highly incredible. Therefore, the decisions cited by the learned counsel are of no avail to him.

17. Lastly, the learned counsel for the appellant-accused has taken us to the decision of the Madras High Court in *In Re, Periyaswami Thevan*, : AIR1950 Mad714 and argued that mere detection of human blood on the material objects seized from the accused is not sufficient to connect the accused with the crime but the prosecution has to establish that the blood group of the blood contained on the material objects seized from the accused tallies with the blood group of the deceased. The case before the Madras High Court mainly rested on circumstantial

evidence without any direct eye-witness to the offence. In those circumstances, the learned Judge observed that if the prosecution had shown that the blood stains on M.O. 1 (therein) belong to the same group as the blood of the deceased, the answer would have been clinching. The present case, not being the one solely based on circumstantial evidence, the decision cited by the learned counsel in *In Re, Periyaswami Thevan* (case 5 supra) is not applicable. On the other hand, the learned Additional Public Prosecutor has invited our attention to a decision of the Supreme Court in *Khujji v. State of M.P.*, : 1991 CriLJ2653 , which held that the absence of determination of blood group, the find of human blood on the weapon or garment of the accused, is of no consequence and the same can lend corroboration to the testimony of the witness who claimed that he has seen the accused inflicting a knife blow on the deceased. In the instant case, the evidence of P.Ws. 6 and 7 goes to show that the accused came to the house with blood stained clothes. P.W. 2 who is the direct witness to the incident, stated that the deceased received injuries at the hands of the accused. Therefore, as laid down by the Supreme Court in *Khujji's case* (6 supra), the human blood detected on item Nos. 2 and 7 of the Forensic Laboratory report Ex. P. 16 (which are the belonging of the accused) can safely be taken as a corroborative piece of evidence to the direct testimony of P.W. 2.

18. The prosecution has established the guilt of the appellant-accused beyond reasonable doubt and we are of the view that the appellant has not made out any grounds to interfere with the well considered judgment of the trial court.

19. In the result, the criminal appeal fails and it is accordingly dismissed confirming the judgment of the trial court dated 14-3-1991.

20. Appeal dismissed.