

R. Payani Vs. the State, Repr. by the Public Prosecutor

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Court : Andhra Pradesh

Decided On : Jul-02-1993

Reported in : 1994(2)ALT(Cri)383; 1994CriLJ78

Judge : G. Radhakrishna Rao and S.V. Maruthi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304-A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 471 of 1993

Appellant : R. Payani

Respondent : The State, Repr. by the Public Prosecutor

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : A.T.M. Rangaramanujam, Adv.

Judgement :

Radhakrishna Rao, J.

1. This appeal is preferred against the conviction and sentence passed in Sessions Case No. 105 of 1992 on the file of the Sessions Court of Chittoor Division.

2. The appellant-sole accused was charge-sheeted under S. 302 of the Indian Penal Code for causing the death of one V. Kuppuswamy by intentionally driving the tractor over him when he along with his relatives raised obstruction when the accused was transporting sand in his tractor-cum-trailor through the fields of the deceased Kuppuswamy.

3. The brief facts of the case of the prosecution are :- The accused is a resident of Ganganapalle Harijanawada in Chittoor and is a tractor driver. He was driving the tractor bearing No. ABC 5041 and trailer No. ABC 5042 and was carrying the load of sand from the river bed, which is situated on the eastern side to Vaddarapalle and was transporting the said sand through the fields of V. Ramachandra Naidu (PW

1) and his younger brother V. Kuppuswamy (the deceased). Having learnt about the accused using the fields of the de facto complainant as public road, the de facto complainant and other villagers along with the deceased objected the accused for the same, on 12-7-1991 morning, and the accused also tendered his apology. In spite of it, the de facto complainant and his brother subsequently learnt that the accused was again transporting the sand through their fields, during night times. On 16-7-1991 at about 9.30 p.m., PW 1, the deceased and the son of the de facto complainant viz., Srikanth (PW

2) along with one Chinnabba (PW

3) went to their field, situate near Akkagarigunta and noticed the accused taking his tractor-cum-trailor with a load of sand and entering into the patta land and they protested the accused not to proceed through their patta land and the de facto complainant raised his hands to stop the vehicle and on that, the accused became wild and threatened them not to obstruct his vehicle and so saying, drove the tractor intentionally and dashed against the deceased and the tractor ran over the deceased and he died on the spot. The accused drove the tractor with high speed in a zig-zag manner towards Muthirevula railway gate and the trailer got delinked during the said incidence. The accused left his tractor near Muthirevula railway gate and absconded. On a report given by the de facto complainant, the case was registered in the Muthalpet Police Station under S. 302, I.P.C. Ex. P-1 is the

complaint give to the police. Ex. P-9 is the First Information Report.

4. PW 13, the Sub-Inspector of Police, soon after the receipt of the First Information Report, inspected the scene of offence at 7.30 a.m., conducted inquest, observed the scene of offence, seized the control earth (M.O. 7) and blood stained earth (M.O. 8) and also the trailer ABC 5042 (M.O. 2). He also examined PWs 1 to 4 and others and recorded their statements. Later, he sent the dead body of the deceased for post-mortem examination. He also visited Kalavagunta river and also Muthurevula railway gate, and found tractor (M.O. 1) there and seized the same under the cover of a Mahazar (Ex. P-5). He sent requisition to the Motor Vehicles Inspector to inspect the M.Os. 1 and 2. PW 11 inspected the vehicle and gave (Ex. P-7) opinion. On 30-7-1991, the accused was apprehended at Somasila Project, and on the next day, he sent the accused for remand. He filed charge-sheet in Court after completion of investigation. PW 14 Dr. Srinivasulu, who examined the dead body of the deceased and conducted post-mortem over the dead body, found a crush injury on left side face and the skull. He also found three external injuries over the dead body, including a crush injury on the chest. On dissection, he also found multiple injuries to head, neck, chest and also lungs and liver. He opined that the deceased would have died of shock and haemorrhage due to crush injuries to vital organs on the spot. Ex. P-14 is the post-mortem certificate issued by him.

5. In order to prove the above facts, the prosecution examined PWs 1 to 14 and marked Exs. P-1 to P-14 and M.Os. 1 to 8. After the closure of prosecuting evidence, the accused was examined under S. 313, Cr.P.C. and he denied all the allegations as false and pleaded that the case has been foisted against him. After hearing arguments, the learned Sessions Judge convicted and sentenced the accused to undergo imprisonment for life for the charge framed under section 302, I.P.C. Aggrieved by the said conviction and sentence, the accused preferred this appeal.

6. It is the contention of the learned counsel for the accused-appellant that the person who drove the tractor on the date of offence was not the accused, but it was one Yesu. In this connection, he drew our attention to the evidence of PW 8,

the owner of the vehicle, who stated that one Yesu drove the tractor on that day. The witness was treated hostile. During his cross-examination by the Addl. Public Prosecutor, he tried to give an explanation for his above statement by saying that as the police did not ask him as to who was the driver, he did not state before them that Yesu was the driver. The vehicle in question was seized by the police in connection with the crime. So, when PW 8 was asserting that it was Yesu who drove the vehicle on that day, it is for him to explain as to how the accused was driving the vehicle, as is culled out from the evidence on record, without his knowledge and permission. Thus, it is clear that PW 8 wanted to help the accused by giving false evidence, and much credence need not be given to the evidence of this witness. Further, the suggestions given to PWs 2 and 3 during their cross-examination clearly go to show that the accused himself drove the vehicle in question. So, the contention of the defence counsel that the accused was not the driver must fall to the ground.

7. It is further contended by the learned counsel for the appellant-accused that the accused was falsely implicated in this crime by screening real offenders. It came on record that the de facto complainant and one Kannaiah is having lands side-by-side and that there are also disputes between these two families, and in fact, a civil suit was also filed. In that background, an application for grant of anticipatory bail was filed by the said Kannaiah apprehending arrest in the present crime, in view of the disputes existing between the two families. The learned counsel for the appellant wants to take advantage of the filing of anticipatory bail by the said Kannaiah, saying that having committed this offence, they filed anticipatory bail in Court, and the police screened the said Kannaiah and implicated the accused, who is a poor Harizan. But, in view of the strained relation, between the two families, it is not unnatural for a person like Kannaiah to file anticipatory bail. It must be noted that by the time the anticipatory bail is filed, the First Information Report was already lodged to the police and a crime was registered and F.I.R. was sent to the Magistrate, citing therein the present appellant as accused. So, filing of anticipatory bail by the persons who are inimical towards the family of PW 1 out of fear, that too after the registration of First Information Report, does not mean that the said Kannaiah committed this offence. However, the evidence of PWs 1 to 3, coupled with documentary evidence on record, clearly establishes that it is the

accused, and none else, who committed the offence. So, the contention of the learned counsel for the appellant that this case is falsely foisted against the appellant and that the real offenders were screened are all baseless.

8. It is also suggested to the investigating officer, i.e., PW 13, that as the accused refused to do bonded-labour under PW 13, he threatened him with dire consequences, and that later on this case is foisted against the accused. All these suggestions were specifically denied by PW 13. Except this bald suggestion, nothing is brought forth to prove the above allegations. So, this suggestion has remained only as a mere suggestion and nothing more.

9. The learned counsel wanted to rely upon the hostile evidence of PWs 5 and 7, who were engaged as coolies by PW 8 for loading and unloading the sand. They travelled in M.O. 1 on the date of offence. PW 5 stated about the driver asking him to wait till the tractor returns for another trip, but he did not say as to who was the driver then. It is highly improbable for PWs 5 and 7 to say that they do not know who was the driver, even though they had plenty of opportunity to get themselves acquainted with the driver of the tractor, as they were also travelling in the trailer along with the driver of the tractor for loading and unloading the sand. So, the evidence of PWs 5 and 7 cannot be given any credence.

10. PW 1 deposed that on the date of offence, when he raised his hands asking the accused to stop the tractor, the accused without stopping the same, uttered that 'he will plough me away to death if I stand in front of the tractor, and so saying he raised the speed of the tractor.' He further deposed that -

'Meanwhile, my brother, my son and the other Chinnabba tried to stop the tractor but again the accused uttered that he will plough anybody who stands in front of him and he will kill by dashing, saying I was lucky to escape.'

The learned counsel for the appellant wanted to attack the First Information Report saying that the above utterances, alleged to have been made by the accused, do not find place in the First Information Report, which is given at the earliest point of time, and hence the First Information Report is not revealing the true facts of the offence. The purpose of giving First Information Report, mainly is to set the law in

motion. Thus it is sufficient if the gist of the offence is incorporated in the First Information Report. It need not contain each and every minute incident that occurred either prior to or subsequent to the offence. It need not contain all the words uttered by the parties in the heat of passion. However, on a perusal of the First Information Report, we find that there is a mention in the report (Ex. P-1) regarding the utterances made by the accused in a vague form. So, the contention of the learned counsel for the appellant on this aspect also cannot be accepted.

11. The learned counsel for the appellant contended that as the offence took place during night time, it is highly impossible for PWs 1 to 3, especially PW 3, who is an old man aged 70 years, to identify the accused. But, it is established in the cross-examination of PWs 1 and 2 that the tractor came to the scene of offence with its head-lights focussing light towards the prosecution witnesses. So, it may not be impossible for the prosecution witnesses to identify the accused with the aid of the light focussed from the head-lights of the tractor. It must also be noted that the accused is not a stranger to PWs 1 to 3. If that is so, it is not impossible for PWs 1 to 3 to identify a known villager. Above all, it is known to the prosecution witnesses even prior to the occurrence that it is the accused that was transporting the sand through the fields of PW 1. In that connection, on 12-7-1991, when PW 1 and other villagers questioned the accused, the accused also tendered apology to PW 1 and others. In this context, the contention of the learned counsel for the appellant that PWs 1 to 3 could not have identified the accused on that night, has no legs to stand.

12. The learned counsel for the appellant contended that there is no intention or 'mens rea' on the part of the accused to cause the death of the deceased. If really there is no intention in the mind of the accused to kill the deceased, he would have slowed down the tractor and applied brakes on seeing the prosecution witness raising their hands and asking him not to proceed further through their fields. The accused had want only drove the vehicle over the deceased when he tried to raise an objection for the illegal usage of the fields belonging to the deceased, by the accused. The firm determination of the accused to proceed further, in spite of the consistent objections from the prosecution witnesses, gives rise to an indication that the accused drove the tractor only with the intention and knowledge that his

act of careless driving would certainly cause the death of the deceased. The evidence of PWs 1 to 3 further fortifies the case of the prosecution that the accused was having intention to kill the deceased. PW 1 deposed in his evidence that the accused, while pronouncing that he would plough him away to death if PW 1 stands in front of the tractor, raised the speed of the tractor, due to which, the deceased died. The manner in which the tractor hit the boulder, after running over the head of the deceased, which is situate nearby, and turned turtle indicates the speed at which the tractor was run. All these circumstances would clearly go to show that the accused was determined to do away the life of the person that causes obstruction to him. Hence, the evidence on record clearly establishes that the accused drove the vehicle intentionally and carelessly only with a view to cause the death of the deceased.

13. The learned counsel for the appellant contended that the offence squarely falls under S. 304A of the Indian Penal Code and not under S. 302 of the I.P.C. He relied upon a decision Sundaran Pillai, In re, 1969 (II) Mad LJ 464, in support of his contention. In the above case, the revision petitioner, who is the driver of a bus, was convicted by the courts below for an offence under S. 304A, I.P.C. In revision before the Madras High Court, K. N. Mudaliar, J. distinguished 'negligence' from 'culpable negligence' and held that before a conviction can be had under S. 304A of the I.P.C., a very high degree of rashness or negligence must be found. But, we are of the view that the facts of the cited case are entirely different from the facts of the instant case, because this is not a case of rash and negligence driving of the accused, but it is a case of intentional act of the accused to do away the life of the deceased. So, the above decision has no application to the facts of this case. Hence, the contention of the learned counsel is rejected.

14. The evidence on record is cogent, convincing and trustworthy, which establishes the guilt of the accused beyond all reasonable doubt. The learned Sessions Judge has rightly convicted the accused and sentenced him as stated supra. We find no merits in the appeal and the same is liable to be dismissed.

15. The appeal is accordingly dismissed, confirming the conviction and sentence passed by the learned Sessions Judge against the appellant in Sessions Case No.

105 of 1992.

16. Appeal dismissed.

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