

**Public Prosecutor, High Court of Andhra Pradesh, Hyderabad Vs. Bandi Balaiah**

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**Court :** Andhra Pradesh

**Decided On :** Jul-30-1993

**Reported in :** 1994CriLJ331

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

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 324

**Appeal No. :** Criminal Appeal No. 1187 of 1992

**Appellant :** Public Prosecutor, High Court of Andhra Pradesh, Hyderabad

**Respondent :** Bandi Balaiah

**Advocate for Def. :** C. Praveen Kumar, Adv.

**Advocate for Pet/Ap. :** Public Prosecutor

**Judgement :**

**G. Radhakrishna Rao, J.**

1. This appeal by the State is from the judgment of the learned Additional Sessions Judge, Sangareddy in S.C. No. 9 of 1989, acquitting the accused-respondent for the offences punishable under Ss. 302 and 324 of the Indian Penal Code.

2. The charges against the accused are that on 9-9-88 at 6-00 p.m. at Potharam village, he committed the murder of one Bandi Muthaiah, the deceased, by beating him with a wooden pestle (pounder) on the neck and thereby committed the offence punishable under S. 302, IPC and secondly that on the same date and time the accused voluntarily caused hurt to Bandi Yellaiah (P.W. 1) with a stick on his head and thereby committed the offence punishable u/S. 324, IPC.

3. The case of the prosecution, in brief, is as follows : One Bandi Yellaiah (P.W. 1) had two wives viz., Bandi Pochavva (P.W. 3) and Bandi Yellavva (P.W. 2). The deceased Muthaiah is the son of P.W. 1 through his first wife P.W. 3. Accused is the son of the brother of P.W. 1. They are all residents of Potharam village. One day prior to the incident there was a quarrel between the wife of accused and P.W. 2. On that, P.Ws. 2 and 3 have also quarrelled. On the next morning accused came to the house of P.W. 1 and started abusing. Then P.W. 1 and Muthaiah, the deceased, questioned the accused. Thereupon accused beat the deceased with a pestle on his neck. Muthaiah fell down. When P.W. 1 interfered, accused also beat him with pestle on his head and nose. When the deceased was taken to the hospitals at Dubbak and Mustabad he was not given treatment. P.W. 1 then came to the Police Station Dubbak. Police sent the deceased and P.W. 1 to Siddipet Hospital, where the deceased was referred to Gandhi Hospital, Secunderabad. The deceased, however, succumbed to the injuries on 10-9-1988 at the Gandhi Hospital. An inquest over the dead body was conducted on 12-9-1988. Ex. P. 3 is the inquest report. Ex. P. 5 is the recovery Panchnama. P.W. 11, the Assistant Professor, Forensic Medicine

Department, Gandhi Medical College, Hyderabad conducted autopsy over the dead body and he issued Ex. P. 8 post-mortem certificate. According to him, the death was due to multiple injuries.

4. In support of its case, the prosecution has examined P.Ws. 1 to 13 and marked Exs. P. 1 to P. 11. P.W. 1 is the complainant and P.Ws. 2 and 3 are his wives. P.Ws. 4 and 5 are the residents of the same village. P.Ws. 6 and 7 are the inquest panchayatdars. P.Ws. 8 and 9 are panch witnesses for the recovery panchanama Ex. P. 5. P.W. 10 is the doctor who treated the deceased at Siddipet hospital. P.Ws. 11 and 12 are the investigating Officers. P.Ws. 4, 5, 8 and 9 have not supported the case of the prosecution and they were treated hostile. On a consideration of the evidence on record and on the basis of the admission made by P.W. 12, the Investigating Officer, in his cross-examination that the logs of cattle shed were fallen on the head of deceased, P.W. 1 and accused and they received injuries, trial Court, came to the conclusion that the charges have not been made out and the accused is entitled for benefit of doubt and accordingly acquitted the accused of the charges. Hence the State has filed the present appeal.

5. The learned Public Prosecutor submitted that the evidence of P.Ws. 1 to 3 who are the eye witnesses to the occurrence, is fully corroborated by the medical evidence and therefore the finding of the learned Additional Sessions Judge that the accused is entitled for benefit of doubt is not correct.

6. No doubt the evidence of P.Ws. 1 to 3 is corroborated by the medical evidence. But the contention of the accused is that the deceased died on account of falling of logs of the cattle shed on his head. Curiously, P.W. 12, the investigating officer in his cross-examination admitted that in his investigation it is revealed that the logs of cattle shed were fallen on the head of deceased. P.W. 1 and accused and they received the injuries. Even according to P.W. 2 the accused was also injured. Therefore, there were two views before the learned Additional Sessions Judge. According to the learned Judge since two views are possible, the accused is entitled to benefit of doubt which is favourable to him. Therefore, the ultimate result of the decision rendered by the trial Court is based on the admission that has been made by P.W. 12. The trial Court ought to have verified from the case Diary, whether the investigation made by the police revealed such a situation or not. But, we cannot do the said exercise in this appeal filed against acquittal. It is for the authorities concerned to make an enquiry with regard to the admission that has been made by P.W. 12 and if, their view, such an admission is unwarranted, then the authorities may proceed against the Investigating Officer. To our mind we have our suspicion about the admission made by P.W. 12 in his cross-examination. It might have been made with a view to see that the accused are released. This fact is known only after an enquiry has been made in to the above aspect. Further, P.Ws. 1 to 3, in their cross-examination, have denied the suggestion that the deceased died due to falling of logs of cattle shed on P.W. 1, deceased and accused. Therefore, had the admission made by P.W. 12 is not there, the accused would have been convicted on the basis of the corroborative nature of the evidence of P.Ws. 1 to 3 supported by the Medical Evidence.

7. Coming to the evidence of P.Ws. 1 to 3, they spoke as to how the incident has happened and how the deceased and P.W. 1 received injuries. They also spoke about the motive portion i.e., the quarrel that took place prior to the date of occurrence between the wife of accused and P.W. 2. But the hands of the trial Court as well as this Court are tied in view of the admission that has been made by P.W. 12, who is the Investigating Officer, in this Case. It is for the prosecution to prove the charges against the accused beyond all reasonable doubt. But, in this case, when two views are possible as to the death of the deceased, naturally, the view which is favourable to the accused has to be taken into account. Since the accused has also received injuries as spoken to by P.W. 2, we feel that the benefit of doubt that has been given by the learned Sessions Judge cannot be taken away in a case filed against acquittal unless there is a strong ground for interfering with the finding of the learned Judge. On an appreciation of the evidence adduced on behalf of the prosecution, we do not think that it is desirable to upset the benefit of doubt already given to the accused by the trial Court. We find that the trial Court is justified in acquitting the accused by giving benefit of doubt on the basis of the admission made by P.W. 12 in his cross-examination with regard to the case of death.

8. This Criminal Appeal, therefore, fails and it is accordingly dismissed.

9. Appeal dismissed.

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