

**In Re: Govindu**

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**Court :** Andhra Pradesh

**Decided On :** Jul-12-1967

**Reported in :** 1969CriLJ1157

**Judge :** Mohamed Mirza and ;Obul Reddi, JJ.

**Appellant :** In Re: Govindu

**Judgement :**

**Obul Reddi, J.**

1. This appeal arises from the judgment on the Additional Sessions Judge, Hyderabad in Sessions cage No. 2/65 convicting the appellant under Section 302 I.P.C. and sentencing him to imprisonment for His for the murder at one Mualiah on the night of 1-12-1964.

2. The brief facts of the case of the prosecution are these: P. W. 7 a middle aged woman was living as the miatreas of the deceased Mualiah for about 18 jeara in Vijayawada Town. The accused got acquainted with P. W. 7 the mistress of the deceased as he was having a book shop next door to the laundry of the deceased. The accused who happens to be a married man with six children came down to Hyderabad about two years prior to the occurrence and started book binding business in the city. His coming over to Hyderabad made no difference so far as his relationship with P. W. 7 is concerned. At his request, the deceased and his mistress (P. W. 7) came over to Hyderabad as the accused promised the

deceased to find a suitable job for him in Hyderabad City. About 5 days prior to the occurrence the deceased at the instance of accused made a peculiar proposal to his mistress, P. W. 7 the unnatural feature of which was that the deceased should release P. W. 7 from her sexual obligations to him in order that the accused may marry her (P. W. 7) and in compensation, the accused should arrange another woman for the deceased. This proposal was not palatable to P. W. 7 and she therefore suggested that she and the deceased may get back to Vijayawada. At about 6 p. m. on 1-12-1964 the accused came to the deceased's house and later they both left the house and proceeded towards the maidan in Ohandiayangutta.

It was about 9-80 p. m. when P. W. 1 and employee in the Sarfekhas heard some one shouting in the maidan 'ohasti'. 'chasti' and when he proceeded towards the place from where the cries emanated; he saw the accused attacking the deceased with a knife. On seeing P. W. 1, the accused ran away. The deceased was badly injured and was bleeding profusely. P. W. 1 then led the injured person towards the hotel of P. W. 2 which was nearby and when he was questioned by P. W. 2, he told him that he was stabbed by Govindu (accused). Then he was removed by P. W. 1 to the Ohatrinaka Police Station nearby in a rickshaw, and there the Head Constable recorded a statement from the deceased person (Ex. P-2) to his narration. The Head Constable after registering the case took the injured to the Oamania General Hospital. He was examined by P. W. 5, Casualty Medical Officer and admitted in the Male Surgical Ward. On a requisition from the police, P. W. 4, the Second City Magistrate came and recorded a statement from the injured person (deceased) as to the cause of the injuries. Hewaalsi operated that night by the Deputy Medical Officer working under the Surgeon P. W. 8, but in spite of the best available treatment given to him the injured succumbed to his injuries in the early hours of 3-12-1964.

3. The accused himself appeared in the police station at about 10-40 p. m. on the night of occurrence and gave a report. Ex. P. 16. He was arrested the same night at a a.m. (on 2-12.1964) and at 6 a.m. he made a statement leading to the recovery of his blood stained clothes (M. Os. 8 and 9) and a knife (M. O.- 5). Autopsy was conducted on the corpse of the deceased on 3-12-1964 -by the Assistant Professor of Forensic Medicine attached to the Oamania General

Hospital who opined that the deceased died due to shock as a result of the injuries found on him.

4. The defence of the accused was that the deceased took him out, that night and had liquor on the way. Later there was a quarrel between him and the deceased regarding P. W. 7 and in the course of the quarrel, the deceased attacked him with a knife and in the struggle that ensued the deceased sustained injuries, while he (accused) was trying to defend himself. In short, it is the case of the accused that he was stabbed twice by the deceased and that he acted in self-defence.

5. The learned Additional Sessions Judge accepted the testimony of P. W. 1, the eyewitness and the statements made by the deceased as to the cause of his death to P. W. 2, the hotel keeper, P. W. 8, the Head Constable and the Magistrate (P. W. 4) who recorded the statement (Ex. P. 5) of the deceased rejected the plea of right of self-defence set up by the accused and convicted and sentenced him as stated above.

6. Mr. Rama Rao, the learned Counsel appearing for the appellant has argued that the failure to examine Dr. Raza, the Assistant Professor of Forensic Medicine who conducted the autopsy has resulted in grave prejudice to the accused as the evidence relating to the cause of death of the deceased has not been established. It is also contended by him that Dr. Haleem the Deputy Medical Officer who operated upon the deceased after his admission into the Surgical Ward has not been examined, and therefore the defence is not in a position to know whether the death of the deceased is in direct consequence of the injuries found on him or due to any supervening post-operation causes. The third contention of the learned Counsel is, that the accused has acted in exercise of his right of private defence and he was therefore justified in inflicting the fatal injuries as he (accused) himself was injured in the course of the struggle at the hands of the deceased.

7. It may be necessary to deal with the first two contentions of the learned Counsel and see whether the failure to examine the Medical Officer who conducted the autopsy or the Medical Officer who performed the operation on the deceased has caused any prejudice to the accused or has vitiated the trial. In this connection, it may be relevant to notice the evidence of P. W. 5, Casualty Medical Officer who

admitted the deceased at 10-20 p.m. on 1-12-61. The Medical Officer examined the injured person and found his condition serious, pulse feeble and blood-pressure not recordable. The injured was however conscious and he found the following 5 injuries on him:

1. A stab wound measuring 1' x 1/2' below the right nipple. Depth of the injury was not explored.

2. A stab wound of the left side of the chest measuring 1' x 1/2' depth was not recorded.

3. A stab wound on the upper portion of the abdomen measuring 2 1/2' x 1/2'. Depth was not recorded but the omentum was found protruding.

4. An incised wound measuring 8' x 1' x 1' on the left scapula.

5. An incised wound on the left hand measuring 2' x 1/2' x 3/4'.

8. The Medical Officer gave him first aid and admitted him in the Male Surgical Ward of Dr. Bismayya (P. W. 8) as the injured person's condition was serious. P. W. 5 also advised the Asst. Surgeon Dr. Haleem to get the dying declaration recorded. The injured however died at 2 a.m. on 3.12-64. P. W. 8 is the Surgeon under whom Dr. Haleem who operated upon the deceased was working. Dr. Haleem subsequently left for Delhi and according to P. W. 8, Dr. Haleem 'will not be back for six months'. P.W. 8 proved the notes made on P. 14, the bed-ticket of the deceased as he was familiar and acquainted with the handwriting of his Assistant Dr. Haleem. From the entries made in Ex. P. 14, P. W. 8 was of the opinion that the condition of the patient appeared to be poor, as he had no pulse and no blood-pressure and was unconscious also. During the operation as evidenced by the operation notes made by Dr. Haleem, he (the operating Surgeon) noticed internal injuries to the stomach, intestines, and omentum, and it is for this reason the deceased was given blood-transfusion after the operation, P. W. 8 (Dr. Rammayya) himself had seen the injured man in his Ward on 2.12-61, verified the treatment given by his Assistant, Dr. Haleem and approved the treatment till then given by his Assistant. There, fore, the evidence of these two

Medical Officers (P. We. 5 and 8) shows that the condition of the deceased at the time of his admission was very serious as his pulse was feeble and blood-pressure was not recordable although he was conscious.

The evidence of P. W. 8 further establishes that when the injured was being operated the Surgeon noticed internal injuries to the stomach, intestines and the momentum and that accounted for his feeble pulse and blood-pressure being not recordable. The doctors had given the patient oxygen also. The question now is whether the deceased died as a result of theca injuries or due to any intervening cause during the post-operation stage. For this we have the evidence of P. W. 9 a Tutor in forensic medicine. His evidence shows that Dr. Anwar Baza, Assistant Professor of Forensic Medicine whose handwriting and signatures are familiar to this witness, had migrated to Pakistan and therefore Dr. Baza who conducted the autopsy is not available to give evidence. He proved the post-mortem certificate and the entries in it and stated that in the opinion of Doctor Raza who conducted the autopsy, the deceased had 15 external and 4 internal injuries and 'the cause of death was shock due to injuries described in the certificate'. Under Section 82(2), Evidence Act statements written or verbal are relevant facts made by a person whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable when the statement was made by such person in the ordinary course of business or in the discharge of his professional duty.

Section 82(2) relates only to relevancy of evidence and not the manner of its proof and before the relevant statement is admitted, its authorship must be proved in the same way as any other document or fact. Undoubtedly as spoken to by P. W. 8, the Civil Surgeon, his Assistant Dr, Haleem was away in Delhi on deputation and it was not possible to get him back for six months, and that apart P. W. 8 proved the operation notes and the bed ticket made in the handwriting of his Assistant Dr. Haleem and he himself (P. W. 8) had examined the patient and testified to the condition of the injured and agreed with the findings noted in Ex.P-14. Therefore presumption arises that the entries made by Dr. Haleem were in the course of his official routine and must be taken to be generally true. These are entries made in the discharge of an official duty and they were made contemporaneously as the

condition of the patient was being examined and later operated. The same principle will apply to the entries in the postmortem certificate and proved through P.W. 9, a tutor in Forensic Medicine as the entries were made contemporaneously as the autopsy was being conducted. Indisputably Dr. Baza who conducted the autopsy had migrated to Pakistan and therefore his presence could not be secured without an amount of delay or expense. It would be difficult or may be even impossible to procure his attendance. The entry made by Dr. Baza, as to the cause of death of the deceased on the findings of his postmortem examination, was proved through P. W. 9, a tutor in Forensic Medicine. Apart from the fact that no prejudice has been caused, the documents (Exs. P. 14, P-15, P-15 (a)) are admissible in evidence under Section 82(2), Evidence Act as the evidence of Dr. Haleem and Dr. Baza cannot be procured without an amount of delay or expense and the documents maintained by Dr. Haleem and the post mortem report of Dr. Raza were properly proved by P. Ws. 8 and 9 respectively.

9.11 The next question that arises for consideration is whether the appellant acted in exercise of his right of private defence. The right of private defence of the body extends under the restrictions mentioned in Section 99, Penal Code, to the voluntary causing of death or of any other harm to the assailant if the offence which occasions the exercise of the right be of any of the descriptions enumerated in 8.100, Penal Code, In this case, the assault, if any, on the accused should reasonably cause apprehension that death would be the otherwise consequence of such assault or such assault as may reasonably cause apprehension that grievous hurt would be the otherwise consequence of such an assault. (His Lordship then discussed the evidence.)

12. We are therefore unable to accept having regard to the dying declarations of the deceased person and the evidence of P. W. 1, that the deceased person caused the injury found on the accused. The accused was seen going away after the occurrence with a knife and the evidence of the Sub-Inspector of Police' (P. W. 16) discloses that the accused made a statement (Ex. P-18) (admissible portion only), in the presence of P. W. 14 which led to the recovery of the blood-stained clothes, (M.O. 8' and 9) and M. O. 5 the knife. The accused-admitted the recovery of M. Os. 8 and 9 at his instance, which were found to be stained; with

human blood, but denied that the knife was recovered at his instance or in his presence. The clothes (M. Os. 8 and 9) admittedly belonged to him and the additional circum-stance that they were stained with human blood further incriminates him in the crime. It is true that the Serologist's report shows that blood-stains on the knife were disintegrated and hence their origin cannot be determined, but there is no doubt that the injuries-found on the deceased could have been caused by any eharpedged instrument similar to M. O., 5.

13. Therefore, we have no doubt from the? facts established that the accused committed the murder of the deceased Mudiah at 9-30 p.m. on 1.12.64 by stabbing him to death. We therefore confirm the conviction and sentence and dismiss the appeal.

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