

Pamandi Sathish Vs. the State of A.P. Rep. by Its P.P.

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Court : Andhra Pradesh

Decided On : Jul-31-2006

Reported in : 2007CriLJ942

Judge : A. Gopal Reddy and ;G. Yethirajulu, JJ.

Acts : Evidence Act - Sections 25; ;Indian Penal Code (IPC) - Sections 34 and 302

Appeal No. : Crl. Appeal No. 754 of 2004

Appellant : Pamandi Sathish

Respondent : The State of A.P. Rep. by Its P.P.

Advocate for Def. : Additional Public Prosecutor

Advocate for Pet/Ap. : C. Praveen Kumar, Adv.

Judgement :

G. Yethirajulu, J.

1. This Criminal Appeal is filed A-1 in Sessions Case No. 252 of 2003 on the file of III Additional District and Sessions Judge at L.B. Nagar, Ranga Reddy District.
2. The appellant and another accused were charged for the offence punishable under Sections 302 and 302 read with 34 of the Indian Penal Code (for short

'I.P.C.') for allegedly stabbing the deceased-N.Raju at about 11.30 p.m. on 18- 10- 2001 indiscriminately resulting his death. The accused denied the charges and claimed for trial.

3. The case of prosecution, leading to the conviction of appellant, is briefly as follows:

PW-1 is the mother and PW-2 is the brother of deceased. The deceased and accused are residents of the same area.

A-1 and A-2 suspected the deceased having illicit intimacy with the daughter of A-2 and there was an altercation among them. On 18-10-2001 at about 11 p.m. A-1 and A-2 went to the house of deceased and A-2 questioned him as to where did he take her daughter. They searched the house of deceased and then A-2 dragged the deceased out of the house. While A-2 holding the deceased, A-1 stabbed him with a knife on his neck, shoulder and abdomen and several parts of the body, due to which the deceased died instantaneously. PW-1 gave a report to the police at 2 a.m. and a crime was registered. The police after completion of the investigation laid the charge sheet.

4. The prosecution, in order to prove the guilt of accused, examined PWs.1 to 13 and marked Exs.P-1 to P-21 and MOs.1 to 7. No oral or documentary evidence was adduced on defence side. After completion of the trial, the trial Court found A-1 guilty of offence under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default to suffer S.I. for six months and A-2 was found not guilty of offence under Section 302 read with 34 I.P.C. and accordingly she was acquitted. A-1, being aggrieved by the judgment of trial Court dated 30-01- 2004, preferred the present Criminal Appeal challenging its validity and legality.

5. The prosecution alleged that A-1 stabbed the deceased indiscriminately causing the death of deceased, therefore, the trial Court rightly convicted him for the offence under Section 302 I.P.C. The plea of accused is one of denial.

6. The learned Counsel for the appellant, during the course of arguments, submitted that the name of PW-2 was not mentioned in Ex.P-1 complaint or in the evidence of PW-1, therefore, there is any amount of doubt about the presence of PW-2. He further submitted that when the accused questioned the deceased as to what happened to the daughter of A-2, the deceased replied that he raped and killed the girl. On hearing the said news, the accused got provoked and attacked the deceased. Therefore, the death of deceased was not intentional and it was only on account of grave and sudden provocation and hence, he is not liable to be convicted under Section 302 I.P.C. He further submitted that the police recorded Ex.P-5 confessional statement wherein A-1 mentioned about the cause for grave and sudden provocation and as there is no bar to rely on his own confession by the accused under Section 25 of the Indian Evidence Act (for short 'the Act'), the confessional statement is also lending support to the version of the appellant that the attack was on account of grave and sudden provocation.

7. The learned Additional Public Prosecutor submitted that the accused committed the offence under different circumstances and as per the prosecution story, there was no scope for any grave and sudden provocation and as there was ample time between the earlier quarrel and the attack, the offence is not liable to be brought under one of the Exceptions to Section 300 I.P.C. Therefore, the conviction given by the trial Court has to be confirmed.

8. The prosecution version is that the appellant stabbed the deceased indiscriminately by hacking him with kamma kathi. As per the evidence of PW.10- Doctor who conducted post-mortem examination over the dead body of deceased, there were 14 injuries on the dead body of deceased. The Doctor conducted autopsy over the dead body of deceased on 19-10-2002 and found the following ante-mortem injuries.

1. An incised wound measuring 3 x 1 scalp deep over right occipital region, obliquely placed, red in colour.

2. A stab wound measuring 3 x 2 cms, x bone deep over left parietal region 3 cms. from midline 19 cms. from nasion with underlying depressed fracture skull present, transversely placed. Spindle shape, angles are acute, Margins clean cut, direction

above down-wards.

3. An incised wound of 8 cms. x 5 cms. X 1 cm. over outer and upper aspect of right shoulder obliquely placed, red in colour.

4. An incised wound of 7 x 2 cms. X 0.5 cms. Below the left ear, 2 cms, from left ear, 5 cms. From outer angle of lip, obliquely placed, red in colour.

5. An incised wound measuring 4 x 1 x 0.5 cms. over left chin, 5 cms. from midline obliquely placed, red in colour.

6. An incised wound measuring 11 x 3 x 0.5 cms. over lateral side of neck on left side, 7 cms. from midline, horizontally placed, red in colour.

7. An incised wound measuring 5 x 3 x 2 cms. horizontally placed over left supra clavicle region, 3 cms. Rom midline, 2 cms. above clavicle, red in colour.

8. A spindle shaped stab wound of 3 x 2 x 4 cms. deep, over epigastric region with injury to the stomach, horizontally placed. Margins clean cut, angles acute, and direction front to back.

9. An incised wound of 7 x 3 cms. x 0.5 cms. obliquely placed over outer and lateral aspect of right upper arm over upper 1/3rd, red in colour.

10. An incised wound measuring 3 x 2 cms. over forearm 2 cms. below the elbow joint, medially and horizontally placed, red in colour.

11. An incised wound measuring 3 x 2 x 1 cms. over right hand on thenar eminence obliquely placed, red in colour.

12. Incised wound measuring 4 x 2 x 1 cms. obliquely placed over left hand hypo-thenar eminence, red in colour.

13. An abrasion measuring 3 x 2 cms. over left leg, medially placed 7 cms, below keen joint, red in colour.

14. Subdural haemorrhage present over the left parietal region.

The Doctor opined that the deceased would appear to have died due to multiple injuries. The injuries sustained by the deceased are sufficient to cause death in the ordinary course of nature. The Injury Nos. 2, 8 and 14 are fatal injuries and they are sufficient to cause death in the ordinary course of nature and except injury No. 8, all the incised wounds mentioned in the post-mortem certificate are possible by MO.1-kamma kathi. The Doctor further stated that the approximate time of death would be about 12 to 24 hours prior to the autopsy. He denied a suggestion that the injuries found on the deceased are not possible with a weapon like MO-1. In Ex.P-4 inquest report, the inquest panchas noted the injuries corresponding to the injuries found at the time of post-mortem examination and the panchas opined that the deceased died on receiving the above injuries caused with a knife.

9. From the above evidence, it is established that the deceased met with a homicidal death on account of receiving the injuries by him on various parts of the body with a knife like MO-1. The question as to who was responsible for the death of deceased is to be examined in the light of the evidence available on record.

10. Ex.P-1 is the complaint given by PW-1, who is the mother of deceased. As per the said complaint, she stated that on 18-10-2002 at about 08.30 p.m. A-2 quarreled with the deceased alleging that the deceased kidnapped her daughter Saraswathi and she want to give a report against the deceased. During the same night at about 11.30 p.m. A-1 and A-2 again came to their house and found the deceased in the house. They picked up quarrel with the deceased and scolded him stating that as to where he has taken Saraswathi forcibly, on that the deceased replied that he committed rape and killed Saraswathi and they can do whatever they like. Immediately, A-1 went to his house and brought one knife and hacked the deceased indiscriminately and the deceased on receipt of those injuries fell down and died.

11. PW-1, the mother of deceased deposed that on the date of incident at about 11.30 p.m. the murder took place in front of their house. She witnessed the incident. On the date of occurrence at about 11.30 p.m. the deceased came to their house and he was changing his clothes. At that time, A-1 and A-2 came to their house and asked her about the deceased. When she asked them why they

are coming to their house and stood across them, A-1 pushed her aside and dragged the deceased out of the house and attacked him with a kamma kathi on the neck, left shoulder and abdominal part of the body. She raised cries stating that the deceased was being killed by the accused. The deceased fell down and died on the spot. A-1 and A-2 went away from the scene of offence in an auto. After hearing the cries, neighbours have gathered at the scene of offence and later she presented Ex.P-1 complaint to the police. She further stated that the house of accused is separated by six houses from their house. The accused murdered the deceased on the suspicion that the deceased killed the daughter of A-2. She denied a suggestion that she did not witness the occurrence and gave a false complaint implicating the accused at the instance of police.

12. PW-2, the elder brother of deceased deposed that the accused have got suspicion that the deceased having illicit intimacy with the daughter of A-2. On the date of incident the deceased went away from the house by bringing the Tata-sumo and returned home at about 11 p.m. At that time, A-1 and A-2 came to their house and questioned the deceased as to where he had taken Saraswathi. When A-1 and A-2 asked about Sarsawathi, the deceased stated that she is not with him and they can search their house. The accused searched their house for Saraswathi, but did not found her in the house. The accused called the deceased out of the house and when the deceased came out of the house, A-2 held the deceased and A-1 cut the deceased with a kamma kathi and caused cut injury on his neck, shoulder, abdomen etc., due to which the deceased died on the spot. After committing the offence of murder, the accused fled away from the scene of offence. By the date of offence, he sustained a fracture to his leg, therefore, he was not in a position to move freely and was available in the house. On hearing the cries, neighbours also came to their house running to the spot. Later, PW-1 gave a complaint to the police. In the cross-examination, he stated that on the date of offence he went out in an auto and returned by 10.30 p.m. The deceased took the Tata-sumo of Ravinder Reddy as its driver and he returned to the house at about 11 p.m. without the vehicle. He did not try to resist A-1 from searching their house, as he was not in a position to walk at that time. He further stated that by the time when he reached the scene of offence, the deceased was attacked by the accused. He denied a suggestion that the accused was not at all responsible for

the murder of deceased and foisted a case against the accused.

13. PWs.3 to 6 and 8 turned hostile and did not support the prosecution case. In the column No. XI of inquest report, it was mentioned that on ascertaining by A-1 and A-2, the deceased replied that he raped Sarawathi and killed her, on that both the accused attacked the deceased with a knife and caused severe injuries. In Ex.P-5 confessional statement also, the accused stated that when he replied that he raped and murdered his sister, A-1 became angry, brought a knife from the house, dragged the deceased to the front of the house and stabbed him with the knife indiscriminately.

14. From the above material, it can safely be concluded that at about 11.30 p.m. A-1 and A-2 came to the house of deceased and questioned him as to what he has done with the daughter of A-2. The deceased replied that he raped the girl and killed her. On that reply, A-2 caught hold of the deceased and A-1 hacked him with a knife indiscriminately.

15. The sequence of events indicates that when the deceased replied that he raped and killed Sarsawathi, the accused got suddenly provoked, picked out a knife from his house, which is six houses away from the house of deceased and attacked him. Though A-1 did not take the defence of grave and sudden provocation, the sequence of events indicates that he acted with grave and sudden provocation on hearing the shocking news that his sister was raped and killed. The trial Court having regard to the fact that A-1 caused as many as 14 injuries to the deceased held that he is liable for conviction for the offence under Section 302 I.P.C.

16. In support of his contention that the confessional statement can be used by the accused for his defence, the learned Counsel for the appellant relied on a judgment in Madaiah v. State 1992 CRI.L.J. 502. In the said decision, a Division Bench of Karnataka High Court while considering the scope of Section 25 of the Act, held as follows:

There is nothing in the Evidence Act that precludes an accused from relying upon his confession for his own purpose. This advantage, no doubt, the prosecution

does not have because of the total ban enacted under Section 25 in making use of the confession in any manner barring the limited user, the prosecution can make of it under Section 26 provided the confession is made in the presence of a Magistrate. The accused is not untrammelled by either of these sections in case he desires to rely on the confession.

17. In the light of the above circumstances and provisions of law, and the accused stabbing the deceased with grave and sudden provocation, the offence comes under exception-1 of Section 300 I.P.C. Therefore, he is liable for punishment under Section 304 Part-I of I.P.C.

18. Sections 300 and 304 Part-I of I.P.C. read as follows:

300. Murder.-Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly.-If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or

Thirdly.-If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or,

Fourthly.-If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

When culpable homicide is not murder.-Exception 1.-Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any person by mistake or accident.

304. Punishment for culpable homicide not amounting to murder.-Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment or life, for imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death.

19. Homicide committed in the sudden heat of passion or great provocation is not murder, although it is an offence, which ought to be punished, and which in some cases deserves severe punishment. The reason for excusing a person who acts under grave, and sudden provocation is that he has lost his reason. If, however, the accused shows that he has deliberated in any way, or there has been a lapse of time, which would enable him to cool, then he cannot be said to be acting under sudden provocation. Where the provocation is not grave, an accused is not entitled to take shelter under the exception No. 1. There can be no universal rule as to what may amount to sufficient provocation so as to reduce the offence of murdering to one of culpable homicide when the act is done with intent to kill.

The test in all such cases, is firstly whether the accused was subject to such provocation as to cause a reasonable man to do what he did, and secondly, whether the provocation was such that it influenced him so to act. If, on the facts, it appears that a reasonable man might be so rendered subject to passion as to lead him to violence, with fatal result, and that he was, in fact, under the stress of such provocation, it will then be a question of law whether the doctrine will not apply. Whether the physical attack was of such a degree as to deprive the victim of it of his power of self-control will depend upon the nature of the injury, the nature of the weapon used, and the actual injury caused.

20. In view of the above circumstances, we are inclined to set aside the conviction of appellant for the offence under Section 302 I.P.C. and the sentence of imprisonment for life and in the alternative to convict the appellant for the offence under Section 304 Part-I I.P.C. and sentence him to undergo imprisonment for 10 years and the sentence of fine remains undisturbed.

21. In the result, the Criminal Appeal is allowed in part and the conviction of appellant/A-1 for the offence 302 I.P.C. and the sentence of imprisonment for life imposed by the trial Court are set aside. In the alternative, the appellant is convicted for the offence under Section 304 Part-I of I.P.C. and sentenced him to undergo R.I. for a period of 10 years. The sentence of fine of Rs. 1,000/- imposed by the trial Court, in default to suffer S.I. for six months, remains undisturbed.

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