

Bathula Pulla Reddy and Others Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Sep-28-1999

Reported in : 1999(6)ALD137; 1999(2)ALD(Cri)789; 1999(5)ALT422;
2000CriLJ1515

Judge : Ramesh Madhav Bapat and ;Ghulam Mohammed, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148 and 302; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161; [Evidence Act, 1872](#) - Sections 32(1)

Appeal No. : Crl. A. No. 1592 of 1998

Appellant : Bathula Pulla Reddy and Others

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor

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

Judgement :

ORDER

Ramesh Madhav Bapat, J.

1. Accused Nos.4, 5 and 6 in SC No.133 of 1995 which was decided by the 1st Additional Sessions Judge at Krishna at Machilipatnam are the appellants herein.

2. The Inspector of Police, Nuzvid originally filed a charge-sheet against 14 accused. Even before the committal of the case, A1 and A2 died and hence the case against them stood abated. The other accused Nos.3 to 14 were committed for trial before the Sessions Court. The learned Additional Sessions Judge framed the charges against A3 to A14 under Sections 148 and 302 IPC. Subsequently A3 and A7 died. Therefore the case against them stood abated. The learned Sessions Judge acquitted accused Nos.8 to 14 of all the charges, but convicted A4, A5 and A6 under Sections 148 and 302 IPC and they were sentenced to undergo rigorous imprisonment for one year for the offence under Section 148 IPC. The accused were further convicted for the offence under Section 302 IPC and they were sentenced to suffer imprisonment for life and to pay a fine of Rs. 1,000/- each, in default to undergo simple imprisonment for six months.

3. The prosecution story can be briefed as follows:

That on 19-2-1998 at about 10.00 a.m. at Thelaprolu centre on national High Way No.5, in front of Alankar hotel all the 14 accused formed themselves into an unlawful assembly and caused the death of one Vintha Sivarantakrishna Reddy by attacking him with axes, spears and sticks.

4. It is further the case of the prosecution that accused No.1 and his followers belonged to the Communist Party whereas the deceased who was earlier in the Communist Party joined Congress Party two years prior to the incident and on account of that the accused bore grudge against him and there was also enmity between the family of A3 and the deceased on account of some civil disputes between them. In 1988 the younger brother of the deceased by name Prasad Reddy was beaten by some of the accused. It is further the case of the prosecution that PW1 is the brother by courtesy and PW5 is the real brother of the deceased and they are the residents of Thelaprolu village. The accused are also the residents of the same village. On 19-2-1989, at about 10.00 a.m. the deceased is alleged to have went to Thelaprolu and informed PW1 that he secured a job in RTC at Vijayawada and requested him to accompany with him to Vijayawada to meet PW6, PW1 agreed to accompany him, thereafter both started on a scooter. They went to Vijayawada and met PW6. They left the house of PW6 at about 9

p.m. and reached Thelaprolu by about 11.30 p.m. They stopped the scooter at Alankar Coffee centre and got down from the scooter. PW2 who happened to be the proprietor of the hotel called them and informed them that their father asked them not to enter into the village since all the accused were waiting for an opportunity to attack them and asked PW1 and the deceased to go to Eluru. It is further the case of the prosecution that in the meanwhile all the accused came there armed with knives, spears and axes and surrounded the deceased. Due to fear PW1 went to a distance of about 5 or 6 yards. A1 alleged to have hacked the deceased on his right hand and left leg. A2 alleged to have hacked the deceased with an axe on the left hand and right elbow. A3 alleged to have stabbed the deceased on the abdomen with a sphere. A4 alleged to have hacked the deceased with an axe on hand. When the deceased fell down A4 alleged to have pulled a sphere from some of the accused and stabbed the deceased with a sphere. A5 alleged to have hacked the deceased on his leg. A10 alleged to have stabbed the deceased on side ribs. A7 alleged to have beat the deceased on his head with a sphere stick. A8 alleged to have beat the deceased with a sphere stick on the left shoulder. The other accused alleged to have beat the deceased indiscriminately. A3 alleged to have threatened with dire consequences if anyone gives water to the injured. Thereafter all the accused left the place. Then PW1 went to the village and informed the father and brothers of the deceased. PW1, PW5 and some others took the injured in a Car to the Government hospital at Gannavaram, in the hospital the Doctor was not available and the Nurse gave first aid and from there he was taken to Vijayawada hospital and on the way the deceased is alleged to have informed to his brother PW1 that A3, A4 and A5 and some others attacked him with sticks, knives and spears.

5. On reaching the hospital at Vijayawada, PW8 the Civil Assistant Surgeon, University General Hospital at Vijayawada examined the injured at 7.05 a.m. on 20-2-1989 and issued wound certificate Ex.P7. Thereafter, PW8 sent intimation Ex.P6 to the outpost Police Station. PW16 the Head Constable in-charge of the outpost Police Station went to the casualty on receipt of Ex.P6 and he recorded the statement of the deceased between 8.30a.m. on 20-2-1989. Ex.P19 is the statement recorded by PW16. Ex.PI5 is the endorsement of the Doctor. PW11 forwarded Ex,P19 and Ex.P6 to II Town Police Station for taking further action. It is

further the case of the prosecution that PW15 the IV Additional District Munsif, Vijayawada received a requisition Ex.P17 at 8.40 a.m. Accordingly PW15 went to the hospital and recorded the dying declaration of the deceased from 9.00 a.m. to 9.40 a.m. Ex.P18 is the dying declaration recorded by PW15. PW17 Sub-Inspector of Police, Veeravalli Police Station on receiving Ex.P6 and Ex.P19 recorded by PW16 Head Constable, he registered it as crime No.45 of 1989 under Sections 147, 148 and 307 IPC and issued FIR Ex.P20. PW17 reached the scene of offence along with the mediators and prepared the observation report Ex.P5 and Ex.P21 rough sketch and seized blood stained earth MO7 and control earth MO8. He also examined PWs.2 and 3 and some others and recorded their statements. Thereafter he went to the hospital and recorded the statement of the deceased.

6. It is further the case of the prosecution that while undergoing treatment the deceased alleged to have died at 9.40 p.m. on 20-9-1989. PW9 the Doctor sent the death intimation Ex.P8 to the Police. On receipt of the death intimation PW17 altered the section of law into 302 IPC and issued altered FIR copies Ex.P22. Thereafter he informed the Inspector of Police PW18 who took up investigation. PW18 held inquest over the dead body of the deceased in the presence of PW11 and others. Ex.P10 is the inquest report. Thereafter he made arrangements to send the dead body for conducting autopsy. PW10 the Medical Officer conducted postmortem examination and issued certificate Ex.P9. According to the opinion of the Doctor the cause of death is due to shock and haemorrhage due to multiple injuries.

7. It is further the case of the prosecution that on 12-4-1989 PW18 arrested A6, A8 and one Kadiyala Shankar in pursuance of the statements made by them under Ex.P13 and 14 and MOs.9 to 11 were recovered. He also arrested A7, A9, All and A14 on the same day. On 13-4-1989 he arrested A1, A3, A4, A5 and A13. A2 surrendered before the Court. . After completion of the investigation, PW18 filed the charge-sheet.

8. In order to connect the accused with the crime the prosecution examined 18 witnesses and marked some documents which are Ex.PI to P25. PWs.1 to 4 were examined as eye-witnesses to the occurrence. PW2 and 4 were declared hostile

and were permitted to be cross-examined by the Public Prosecutor. However, the learned Public Prosecutor who appeared in the trial Court did not put questions to these witnesses in the nature of cross-examination.

9. In addition to the oral evidence of PWs.1 to 4, the prosecution also relied upon the oral dying declaration made by the deceased before PW5, the dying declaration Ex.P19 recorded by the Head Constable PW16 and the dying declaration Ex.P18 recorded by the learned Magistrate PW15.

10. It appears the learned Sessions Judge disbelieved the evidence of PW1 that he was an eye-witness to the attack. He accepted the evidence of PW1 to the extent that he travelled with the deceased to Vijayawada and returned along with the deceased and reached Telaprolu Centre by 11.30 p.m. and on seeing the deceased being attacked, PW1 ran away due to fear into the village. The learned Sessions Judge relied upon the two dying declarations Ex.P18 and Ex.PI9 and the evidence of PW4 for convicting the appellants.

11. The plea of the accused appellants is one of total denial. It is also suggested by the accused by way of defence that they have been falsely implicated in this case because of previous enmity between them and the deceased.

12. In order to prove that the deceased died a homicidal death, the prosecution led the evidence of PW18 who conducted inquest over the dead body of the deceased in the presence of PW11 and others and thereafter he made arrangements to send the dead body for conducting autopsy. PW10 who happened to be the Medical Officer on receipt of requisition conducted post-mortem examination on the dead body of the deceased. PW10 opined that the injuries sustained by the deceased can be caused with sharp and blunt objects and according to him the cause of death was due to shock and haemorrhage due to multiple injuries. Ex.P9 is the post-mortem certificate. Considering the evidence led by the prosecution on the point of homicidal death, we hold that the prosecution was able to prove that the deceased died a homicidal death.

13. We now proceed to scrutinise the evidence led by the prosecution oral as well as documentary so as to ascertain whether the prosecution was able to connect

the accused appellants with the crime in question. Learned Counsel Mr. Padmanabha Reddy appearing on behalf of the accused appellants firstly invited our attention to the impugned judgment in which the learned Sessions Judge did not believe the evidence of PW1 to the extent that he was an eye-witness to the incident. But the learned Judge held that the evidence of PW1 can be accepted only to the extent that he travelled with the deceased to Vijayawada and returned along with the deceased and reached Telaprolu Centre by 11.30 p.m. and on seeing the deceased being attacked he ran away due to fear into the village. The learned Sessions Judge further observed that PW1 is not an eye-witness to the incident because on seeing the accused he ran away from the scene of offence.

14. With this observation of the learned Judge on record, learned Counsel Mr. Padmanabha Reddy appearing on behalf of the accused appellants submitted at the bar that infact the observation of the learned Judge appears to be correct. Though PW1 accompanied the deceased to Vijayawada and returned along with him, when he noticed the deceased being attacked by the accused he ran away from the scene of offence as he apprehend threat to his life. Thus PW1 is not an eye-witness to the incident and therefore the overtacts attributed by him to the accused cannot be relied upon. According to evidence of PW1 A1 alleged to have attacked the deceased on his right hand and left leg, A2 hacked with an axe on left hand A3 stabbed in the abdomen with a spear, A4 hacked with an axe on his hands, A5 hacked on the legs, A7 beat the deceased on his head with a spear stick and A10 stabbed the deceased on his side ribs. PW1 further stated that he accompanied the deceased to the hospital at Vijayawada in a car. Further according to the evidence of PW1 while going to hospital in that Car, the deceased is alleged to have made an oral dying declaration to his father disclosing the names of the persons who caused injuries to him. It is alleged that the deceased mentioned the names of A4, 3, 10 and 6 and some others as assailants. PW1 further stated that he supplied the names of the deceased of the remaining accused persons.

15. While commenting upon this evidence of PW1, learned Counsel Mr. Padmanabha Reddy submitted at the Bar that there was ample scope for the persons accompanying the deceased to tutor him to involve as many persons

as possible in this case. He further stated that PW1 himself admitted that he supplied the names of other assailants to the deceased. Under these circumstances, it was contended that the subsequent dying declaration given by the deceased to the learned Magistrate must be held to be tutored one and therefore no reliance can be placed on such a dying declaration. We are inclined to accept the submission made by learned Counsel. PW] himself admitted in evidence that the names of A4, 3, 10 and 6 and some others was supplied to the deceased by him. Therefore the subsequent dying declaration which was reduced into writing, it must be interpreted that the deceased person was tutored so as to involve as many persons as possible in this case.

16. PW2 happened to be the hotel owner who was declared hostile as he did not name any person who are alleged to have attacked the deceased. PW3 is the resident of the same village. He claims to be the eye-witness to the incident. He has involved A7, 8, 12 and 13 as the assailants of the deceased. He further deposed that he knows A1 to A6 by names and persons but he has not seen A1 to A6 on that night. PW4 is also the resident of the same village who is stated to be the eye-witness to the incident. According to his evidence A1to A7 hacked the deceased with axes and knives, speares and sticks. However, PW4 was declared hostile and therefore the prosecution does not want to rely on his evidence. PW5 happened to be the brother of the deceased who took the deceased in a car to the hospital before whom the deceased is alleged to have made an oral dying declaration involving A3, A4, A5 and some other in this case.

17. This is what all the evidence led by the prosecution, in addition to the dying declarations alleged to have been made by the deceased.

18. PW16 the Head Constable recorded the statement of the deceased under Section 161 Cr.PC. But after the death of deceased the statement recorded under Section 161 Cr.PC assumes importance and is admissible under Section 32(1) of the Evidence Act. According to the evidence of PW16 on receipt of the information he went to the hospital and recorded the statement of the injured (deceased) and the deceased alleged to have told him that he was attacked by A1, A2, A3, A4, A5 and A6 and while involving them in the commission of the offence the deceased

alleged to have told PW16 that A1 beat with an axe on his right hand, A2 hacked with an axe on his left hand, A3 speared on his stomach, A4 hacked him with an axe on his left leg, A5 hacked on his left leg with an axe and A6 beat on his head with a spear stick. He also spoke to the presence of A7 and A8 at the scene of offence but he did not attributes any overtacts to them. This is one set of dying declaration recorded by PW16 Head Constable. The other set of dying declaration was recorded by the learned Magistrate PW15. The said dying declaration is at Ex.P18. PW15 in her evidence stated that on receiving the requisition from the Police for recording the dying declaration, she visited the hospital and recorded the dying declaration of the deceased. The deceased alleged to have told her that A1, A2 and A6 and seven others stopped him near Alankar hotel. According to the evidence of PW15 the deceased alleged to have told that A1 hacked him with an axe on his left leg and left hand, A2 beat on his right hand, A4 beat him on his back with a spear stick and A6 beat PW1 on his back with a stick. This appears to be totally a new version. PW1 has not stated in his evidence that he was hit by any one of the accused. This appears to be an improvement by the injured person while giving the dying declaration.

19. With this two dying declarations on record, learned Counsel submitted that there is discrepancy regarding the overtacts attributed by the deceased and there is also discrepancy regarding the weapon used by the accused in hacking the deceased and the part on which each of the accused hacked him is also not consistent. Therefore, it was submitted at the Bar that the deceased was made to involve as many accused as possible in the case, and therefore conviction cannot be based upon the dying declarations which are inconsistent with each other. In support of his contention he relied ruling of the Supreme Court in the case of Khushal Rao v. State of Bombay, : 1958 CriLJ106 their Lordships held as under:

'Hence, in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of

further corroboration.

If, on the other hand, the Court, after examination the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the reported cases, but from the fact that the Court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities, referred to above or from such other infirmities as may be disclosed in evidence in that case.'

Our attention was also drawn to the latest judgment of the Apex Court in the case of Dandu Lakshmi Reddy v. State of A.P., 1999 (5) Scale 118, wherein their Lordships held as under:

'Material contradiction regarding the context in which deceased caught fire --In one declaration it was stated that she was set fire when she was lighting a stove for preparing coffee - In another declaration given to the Judicial Magistrate, it was stated that husband and mother-in-law poured kerosene on deceased and set her to fire when she was sweeping. Held -- It will be unsafe to convict any person on basis of such a fragile and rickety dying declaration.

The ratio laid down by their Lordships in the above cases also applies to the present set of facts. A reading of the entire evidence led by the prosecution, we hold that there is discrepancy in the two dying declarations recorded by the Magistrate PW15 as well as the Head Constable PW16. There is also discrepancy with regard to the oral dying declaration alleged to have been made by the deceased to PW1. Therefore, we are of the considered view that the dying declarations which are reduced into writing must be held to be tutored versions by the near relatives of the deceased and therefore such discrepancy has crept in the matter. It is unsafe to convict the accused appellants on such type of inconsistent dying declarations.

20. Therefore, we hold that it is a fit case where benefit can be given to the accused-appellants. Therefore, we pass the following order:

The appeal is allowed. The order of conviction and sentence recorded against the accused Nos.4, 5 and 6 appellants is hereby set aside and they be set at liberty forthwith if not required in any other case. Fine amount, if paid be refunded to them.

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