

Varri Appalanaidu Vs. State

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Court : Andhra Pradesh

Decided On : Aug-24-2004

Reported in : 2005(1)ALD(Cri)31; 2005CriLJ1459

Judge : P.S. Narayana, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307, 324 and 326

Appeal No. : Cri. Appeal No. 665 of 2000

Appellant : Varri Appalanaidu

Respondent : State

Advocate for Def. : PP

Advocate for Pet/Ap. : T. Bala Jayasri, Adv.

Disposition : Appeal dismissed

Judgement :

P.S. Narayana, J.

1. Heard Ms. T. Bala Jayasree, Counsel representing the appellant and the Additional Public Prosecutor.

2. This Criminal Appeal is filed by the appellant-accused aggrieved by the judgment dated 4-4-2000 in Sessions Case No. 198 of 1999 on the file of the Sessions Judge, Mahila Court, Vijayawada, wherein the appellant-accused was convicted and sentenced to undergo simple imprisonment for a period of six years for the offence punishable under Section 307, IPC; and to undergo simple imprisonment for a period of two years for the offence under Section 324, IPC and further to undergo simple imprisonment for a period of five years, for the offence under Section 326, IPC and to run all these sentences concurrently.

3. Ms. T. Bala Jayasree, the learned counsel appointed by way of Legal Aid, representing the appellant-accused, made the following submissions :

The learned counsel pointed out that P.W. 1 and accused had illicit intimacy and P.W. 1 and accused had illicit intimacy and P.W. 1 appears to have objected to the continuance of the same, in view of the grown up children. The learned counsel also would submit that the version of the prosecution is that on the fateful day, there was some marriage and since there was no place at the spot, the other witnesses also came and slept in the house of P.W. 1 and the accused attacked the injured with an axe and caused injuries. The learned counsel also would submit that the version of the prosecution is that on 20-12-1997 at about 3.00 a.m., the appellant-accused hacked P.W. 1 with an axe, when she refused to continue to live with him with an intention to kill her and caused bleeding injuries and also hacked Mokka Kanthamma, Vallaya Pushpa and Vallaya Rajamma, who were sleeping at the same place. The learned counsel pointed out that the material discrepancy relating to the date of marriage, as spoken by P.Ws. 2, 4 and 5 the marriage took place on 13-12-1997 and not on the intervening night of 19/20-12-1997 and in view of this material discrepancy, the version of the prosecution itself cannot be believed. The learned counsel also would maintain that M.O.1 - axe was not sent for chemical analysis and the learned counsel had drawn the attention of this Court to the contents of Ex. P9 and also what had been recorded in the wound certificate-Ex. P.4, unknown person and unknown weapon. The learned counsel also would submit that some light was introduced by the prosecution for the purpose of identification, which is also highly doubtful. The learned counsel also had drawn the attention of this Court to Exs. P.4, P.9 and Ex.

P. 10 and also would comment that the evidence of P.W.6 cannot be relied upon, as the same being the evidence of a child witness and the Court had not taken the precautions of examining whether the child was capable of giving rational answers and without satisfying, the Court had proceeded with the examination of the child witness on par with the ordinary witnesses, and hence, the same suffers from legal infirmity. The learned counsel also would comment that the absence of X-Ray report and the non examination of radiographer also would throw a doubt on the version of the prosecution.

4. On the contrary, the learned Additional Public Prosecutor would contend that the evidence of the injured witnesses, clearly would support the version of the prosecution and the same is well supported by the medical evidence and the mere fact that in Ex. P4, unknown person and unknown weapon had been referred to, it would not. alter the situation in any way provided the Court satisfied that, the direct evidence available on record is otherwise believable and trustworthy. The learned Additional Public Prosecutor had taken this Court through the findings recorded by the learned Judge and would contend that in the light of the convincing reasons recorded by the learned Judge in arriving at conclusion, the same need not be disturbed by the Appellate Court.

5. Perused the evidence available on record and the findings recorded by the learned Judge arriving at a conclusion that the appellant-accused is connected with the offence charged with.

6. To put the facts in nutshell, the version of the prosecution is that on 20-12-1997 at about 3.00 a.m., the appellant-accused hacked Yerusu Yallamma-P.W. 1, his concubine, with an axe, when she refused to continue to live with him with an intention to kill her and caused bleeding injuries and also hacked P.W.2, P.W.3 and P.W.4, who were sleeping at the same place along with P.W. 1 causing bleeding injuries.

7. The III Metropolitan Magistrate, Vijayawada had taken the charge-sheet on file and registered the same as P.R.C. No. 18 of 1998 and the same was committed to the Court of Sessions and the learned Metropolitan Sessions Judge, Vijayawada made over the same to the learned Sessions Judge, Mahila Court, Vijayawada on

the point of jurisdiction and the said Court framed the charges under Sections 307, 324 and 326 IPC against the appellant-accused, read over and explained to him in Telugu, for which he pleaded not guilty and then the learned Judge proceeded with trial and recorded the evidence of P.Ws. 1 to 11, and marked Exs. P1 to P11, Exs. D1 and D2 - the contradictions in the evidence of P.Ws. 4 and 5 and M.Os. 1 to 13.

8. The learned Judge, on appreciation of the evidence, ultimately, arrived at a conclusion that the accused-appellant is found guilty for the offences with which he was charged with, and the learned Judge convicted and sentenced him as referred to supra.

9. The learned Sessions Judge, Mahila Court, Vijayawada framed the following charges :

Firstly : That you during the intervening night of 19/20-12-1997 at about 3 hours at the house of Yerusu Yellamma in Prajasakthi Nagar, Payakapuram, Vijayawada did an act to wit; hacked Yerusu Yallamma on her face with an axe and when she tried to save her face with her hand, you hacked her on her right hand, with such intention or knowledge and under such circumstances that if by that act you had caused the death of Yerusu Yellamma you would have been guilty of murder and you caused hurt to the said Yellamma by the said act and thereby committed an offence punishable Under Section 307 IPC and within my cognizance.

Secondly : That you on the date and at the time and place mentioned in the 1st charge above, voluntarily caused hurt to Mokka Kanthamma by means of hacking her with an axe which is an instrument for stabbing or cutting which used as a weapon of offence which is likely to cause death and thereby committed an offence punishable under Section 324 IPC and within my cognizance.

Thirdly : That you on the date and at the time and place mentioned in the 1st charge above, voluntarily caused grievous hurt to Vallaya Pushpa by means of hacking her with an axe which is an instrument of stabbing or cutting and thereby committed an offence punishable Under Section 326 IPC and within my cognizance.

Fourthly : That you on the same date and at the place and time mentioned in the 1st charge above, voluntarily caused grievous hurt to Vallayya Rajamma by means of hacking her with an axe which is an instrument of stabbing or cutting and thereby committed an offence punishable Under Section 326 IPC and within my cognizance.

10. P.W.1 deposed that on the fateful day, there was a marriage in her neighbouring house and as there was no sufficient accommodation, Pushpa, Bhavani and Rajamma from that house also were sleeping at her house and the accused came to her and asked her to have sexual intercourse and she refused to do so and thereupon while she was sleeping, he came and hacked her with an axe and due to that her right thumb got totally cut and she received injuries on her face, near eyes due to which she lost of her eye sight, and that on the right side of her head and on left leg also she received injuries. She further deposed that her left leg became partially immobile. P.W. 1 also deposed that her daughter Kanthamma also was sleeping along with her and her neighbours. She further deposed that her daughter also received injuries on several parts of the body. P.W. 1 further deposed that Pushpa, Rajamma and Kanthamma were also injured by the accused when they tried to rescue her, on hearing her cries. She deposed that they were taken to the Government Hospital and she was treated for 15 days and the police recorded her statement and M.O.1 is the axe with which the accused injured her and others. She further deposed that the police had seized the blood stained clothes. This witness was cross-examined at length. This witness in cross-examination clearly deposed that there was illicit intimacy to this witness and the accused. But however, she deposed that she asked him to go away as her children were grown up and her elder daughter was got married prior to the said incident. P.W. 1 also deposed that she asked the accused not to come to her and he had gone away and returned to her again. P.W.1 also deposed about her third daughter Kanthamma being married to her brother who had deserted her and Kanthamma living with her. P.W. 1 specifically deposed that the marriage of the daughter of Rajamma was celebrated on the date of the incident and Rajamma is not related to her and the marriage was celebrated at 12.00 noon and after attending the marriage, they all slept at about 7.30 or 8.00 p.m. and there is no door to her house and she closed the door way only with a gunny bag. This

witness also deposed that the incident had taken place for about one hour or 1 1/2 hour's time. She deposed that the accused was armed with an axe or a knife. But however, she denied that she does not know as to with which weapon, the accused hacked her. But she added that he hacked her with a knife or with an axe. P.W. 1 also deposed that there is no electricity supply to her house. But she added there will be a kerosene lamp which was burning dimly. The other suggestions, no doubt were denied by P.W.1.

11. P.W.2 -- Kanthamma, who is the daughter of P.W. 1, had deposed about the incident in detail and also the seizure of M.Os 2 to 4 with blood stains. This witness also in cross-examination specifically deposed that the marriage was celebrated on 13th December, and they all slept at about 10.00 p.m. Certain suggestions put to P.W.2 had been denied.

12. P.W.3 is yet another witness who had deposed about the incident and also M.Os. 5 to 7.

13. P.W. 4 another injured witness also deposed that when the accused was causing injuries, attacking P.Ws. 1 to 4, she questioned the accused as to why he was beating the women folk in the middle of the night and the accused also beat her on her head, on right hand and on right leg near ankle. She further deposed that the accused beat her twice on her head and they raised cries. P.W.4 also specifically deposed that her daughter's marriage was celebrated on 13th. No doubt, she had denied the suggestion that there was darkness during that night. Most probably, these questions were put with a view to create a doubt about the identity of the person who attacked the injured on the fateful day. In the cross-examination, Ex. D1 was put to this witness as a contradiction.

14. P.W.5 is the husband of P.W.4 and P.W.3 is his daughter. This witness deposed that he heard the cries of P.Ws. 1 to 4 inside the house and he woke up from the sleep, got up and went there and when he had gone to the house, the accused pushed him away and that he fell down and he raised cries when the accused was beating him and that the accused was still inside the house until then. He further deposed that when he raised cries, people gathered there. This witness also specifically deposed that the marriage of his daughter was celebrated

on 13-12-1997.

15. P.W.6 was aged about 13 years on the date of examination. The date of examination being dated 11-1-2000. It is needless to say that on the date of the incident, she would have been about 10 years. This witness was straight away examined by the learned Judge without even taking precautions and without even putting questions to test whether she is able to give rational answers or not. In view of the same, the evidence of this witness may not be of much help to the version of the prosecution. Though the same cannot be totally discarded on that ground.

16. P.W.7 who is the grandson of P.W.1, had deposed about the incident and that by the time this witness going there, the accused fleeing away from that place and an axe was in his hand and that this witness found P.Ws. 1 to 3 with bleeding cut injuries and he had taken all of them to the police station and to the Government Hospital. Certain suggestions were put to this witness which were denied.

17. P.W.8 who is the neighbour of P.W. 1, had deposed that he advised P.W.7 that injured should be shifted to the Hospital and all the injured were taken in a rickshaw.

18. P.W.9 deposed about Ex. P1 - observation report and he deposed that all the features observed by them are incorporated in Ex. P.1 and that M.O.10 bed sheet and M.O.11-a Voni and M.O.12 blood stained earth collected from under the cot were seized from the scene of incident. This witness also deposed about the arrest of the accused and the preparation of the mediator's report and about the admissible portion (Ex. P.-2). He further deposed that Ex. P3 report is drafted by him and this witness is the Village Administrative Officer of Payakapuram.

19. P.W. 10 Doctor had deposed that on 20-12-1997, he examined P.Ws. 1 to 4 and he found the following injuries respectively :

Injuries found on the person of P.W. 1 :

1. A laceratory injury over the left cheek 6 x 2 cms muscle deep bleeding present.

2. A laceratory injury over forehead extending from injury No. 1 to the right forehead 5 x 1 cms, bone deep, bleeding present.

3. A lacerated injury over dorsal aspect of right hand of 7 x 3 cm exposing tendons bleeding present.

4. A lacerated injury over left forehead of 3 x 1 cms skin deep, bleeding present.

No other external injuries. X-ray right hand No. 2380 shows fracture right second, third, fourth and fifth meta carpal. X-ray skull shows no bone injuries. He is of the opinion that these injuries Nos. 1 and 2 and 4 with X-ray No. 2 are simple in nature and injury No. 3 with the X-ray No. 1 are grievous in nature. Ex. P. 4 is the wound certificate issued by him.

Injuries found on the person of P.W. 2 :

1. A lacerated injury over right cheek of 4 x 2 cms red muscle deep.

2. A lacerated injury over right fronto parietal area of 3 x 1 cm., red muscle deep.

3. A lacerated injury over right supra-scapular area of 4 x 2 cms muscle deep bleeding present.

No other external injuries. X-ray No. 2378 right shoulder shows no bone injuries. The above injuries 1 to 3 with the evidence of X-ray are simple in nature. Ex. P5 -- wound certificate issued by him in this regard.

Injuries found on the person of P.W.3 :

1. A lacerated injury over the left temporal area of 6 x 2 cms muscle deep, bleeding present.

2. A lacerated injury over the base of right index finger of 4 x 3 cms. Exposing meta-carpo phalanx joint.

Bleeding present.

No other external injuries, X-ray No. 2379 right hand shows fracture proximal phalanx of right index finger. X-ray of skull, fracture at inferior parietal region. He opined that the above injuries 1 and 2 with the evidence of X-ray Nos. 1 and 2 are grievous in nature. Ex. P.6 -- wound certificate issued by him, in this regard.

Injuries found on the person of P.W.4 :

1. A lacerated injury over sagittal area of 4 x 1 cms scalp deep bleeding present.
2. Defuse swelling right hand present.

X-ray right hand No. 2377 shows fracture right meta corbo bone. The above injury No. 1 is simple and the injury No. 2 with the evidence of X-ray is grievous in nature. Ex. P7 -- wound certificate issued by him in this regard.

It is no doubt true that in Ex. P4, it is mentioned that the injuries caused by unknown person and unknown weapon. In the cross-examination, this witness also made an admission that the words unknown person and unknown weapon had been specified as per the information given by the injured persons. The learned counsel representing the appellant-accused placed strong reliance on this aspect.

20. P.W. 11 Sub-Inspector of Police had deposed about the registration of the crime, sending FIRs, examination of the witnesses, recording of their statements and preparation of observation report, seizure of the blood stained clothes, photographing the scene of incident and arrest of the accused and also sending the injured for medical examination. He also deposed that after receipt of the wound certificate and also the report of the chemical analyst, he filed the charge sheet. This witness no doubt deposed that P.W.9 drafted Ex. P1 report and this witness also deposed that he seized M.O.1 from out of the bushes situated in southern side of the incident and it was stained with blood on its handle as well as on its blade by the time he seized it and he referred it for chemical analysis. He deposed that Ex. P. 10 is the chemical analyst report.

21. Ex. P.9 reads as hereunder :

'I am residing in Praja Sakthingar Payakapuram of Vijayawada. I am eking out my livelihood by selling kerosene and milk. About 15 years ago my husband has expired. I got five daughters. I got illicit intimacy with one rickshaw puller by name Appala Naidu, since five years ago. Since then Appala Naidu has been living in my house. At about 5 months back I said to Appala Naidu not to come to my house and also to give up the illicit intimacy with me as my children have become elders. Then Appala Naidu went away from my house. Since then now and then Appala Naidu used to come to my house and threatened me to kill me and hacked me. On 19-12-1997 night time we i.e., myself and my daughter Mukka Kantha and, Rajamma, Pushpa and Bhavani who came to the marriage of our neighbours' house had slept in my house. On 20-12-1997 at about 3 'O' clock, Appala Naidu came with an intention to kill me and hacked on my face with an axe. When I kept my hand across, he hacked my right hand also. When I cried loudly, then Babi, Pushpa, Kantha, Rajamma who were sleeping near me came across me, he hacked them also as he like. Mean time V. Raju who was slept out and to woke up and raised cries, then he thrust Raju and fled away. Then we came to Government Hospital in an auto. Heard by read over and found correct.'

It is no doubt true that in Ex. P4-wound certificate it is alleged that a person calling herself Yellamma, aged 60 years, accompanied by Pydi Suri Babu, neighbour, and it was alleged that the said injuries caused at 3 a.m. on 20-3-1998 and to be due to beaten with unknown weapon by an unknown person at her residence. In Ex. P. 10- Item 5 is the wooden stick handle of an axe with dark brown stains and in the result of the analyst it was specifically mentioned that blood is detected on item Nos. 1, 3 to 16, but not on item No. 2. But in the result of the Serological analysis, it was stated that blood detected on item Nos. 1, 3 to 15 and 16 is of Human origin, the blood group could not be determined. The medical evidence is available and the injuries on the person and P. Ws. 1 to 4 had been well deposed by P. W. 10 in this regard. It is no doubt true, that P. W. 1 deposed that it might have been an axe or knife and no doubt it is stated in Ex. P4 that some unknown person attacked with some unknown weapon on the fateful day. It is pertinent to note that the examination of these witnesses had taken place sufficiently after a long gap. It is no doubt true that the witnesses deposed as though the marriage was celebrated on 13th this was made a ground of attack by the learned Counsel for

the appellant -accused. The causing of injuries on the date of the incident in the hut of P. W. 1 and on the persons of P. W. 1 to 4 cannot be doubted in any way. But the only question, which may have to be decided is whether the accused is the person to be connected with the commission of this offence or some unidentified person.

22. The overall circumstances which had been established by the prosecution, if carefully scrutinized, this is a case where the accused had illicit intimacy with P. W. 1 and the evidence of P. W. 1 is clear and categorical that he made a demand, gone out, came back and may be out of a jealousy for not yielding to the demand, he might have thought of attacking the injured persons on the fateful day. It is pertinent to note that in Ex. P1, the M. O. 1 was specified as item 5 and in the report specifically it is shown as stained with human blood. The seizure of M. O.1 had been well proved. In the light of this clear evidence available on record, the evidence of P. Ws. 1 to 4 well supported by P. W. 5 and also P. W. 7 to some extent who immediately had reached the spot and the medical evidence, the mere fact that some mistake was committed relating to the date on which the marriage was celebrated and also the mere fact that in the wound certificate, it was mentioned by P. W. 1 that some unknown person with unknown weapon had attacked her and the minor discrepancies marked as Exs D1 and D2 would not discredit the trustworthiness of the evidence available on record. No doubt, certain submissions at length were made on the aspect of identification during that night when the accused had attacked. It is not as though the accused is an unknown person to P. W. 1 prior thereto. Hence, the mere fact that there was some darkness or some dim light on the fateful day, may not throw any doubt about the aspect of identification. Viewed from any angle, this Court is of the considered opinion that the findings recorded by the learned Judge did not suffer from any legal infirmity and the same need not be disturbed and accordingly, they are hereby confirmed.

23. However, it is brought to the notice of this Court that at present, the appellant-accused is aged about 65 years and the accused also is not keeping good health. Hence, it would be just if the sentence is modified.

24. In the result, the conviction imposed by the learned Sessions Judge, Mahila Court, Vijayawada against the accused in Sessions Case No. 198 of 1999 on 4-4-2000 is confirmed.

So far as the sentence for the offences under Section 307 IPC to undergo S. I. for six years; under Section 324 IPC to undergo S. I. for two years and under Section 326 IPC to undergo S. I. for five years and to run the above three sentences concurrently is concerned, it is modified in view of the facts and circumstances, inasmuch as the accused already had suffered imprisonment for a period of more than four years, and the appellant-accused is hereby sentenced for the period which he had already undergone to be run concurrently for the charges with which he had been charged with.

In view of the fact that the accused had already undergone the period specified, the appellant/accused shall be set at liberty forthwith.

Except for the above modification, the Criminal Appeal shall stand dismissed.

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