

**Kurale Pullaiah Alias Pulla Rao Vs. State**

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**Court :** Andhra Pradesh

**Decided On :** Oct-11-2002

**Reported in :** 2002(2)ALD(Cri)659; 2003(1)ALT(Cri)58; 2003CriLJ1060

**Judge :** B.S.A. Swamy and ;C. Yethirajulu, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 302

**Appeal No. :** Ref. Trial No. 1 of 2002 and Crl. Appeal No. 1056 of 2002

**Appellant :** Kurale Pullaiah Alias Pulla Rao

**Respondent :** State

**Advocate for Def. :** Public Prosecutor

**Advocate for Pet/Ap. :** C. Padmanabha Reddy, Adv.

**Judgement :**

**G. Yethirajulu, J.**

1. The VI Additional Sessions Judge, Krishna District at Machilipatnam referred this matter under Section 366 of the Code of Criminal Procedure, 1973 for confirmation of death sentence imposed by him on the accused by name Kuralla Pullaiah alias Pulla Rao convicted for the offence under Section 302, IPC. Simultaneously the accused preferred Criminal Appeal No. 1056 of 2002

questioning the legality and validity of the conviction, sentence of death and fine imposed by the learned Sessions Judge through his judgment dated 23-8-2002.

2. The gravamen of the charge against the accused is as follows :

The accused and deceased were doing business in pulses and paddy on commission basis. The accused sustained loss in the business and resorted to commit thefts. He used to visit the house of the deceased now and then in connection with the paddy business. On 30-5-2001 at about 3.00 p.m. the accused came to the house of the deceased with a view to kill him by pouring acid and to rob him. The deceased having smelt the acid suspected that the accused was likely to harm him pounded upon the accused with a knife. There was a scuffle between them and the accused snatched away the knife from the deceased by overpowering him. He stabbed the deceased on his back with the knife and threw it away. The accused dragged the deceased upon to the steps of the staircase situated in front of the building and the deceased fell down and died. The accused had stolen away a gold ring and a gold chain from the deceased. In the scuffle between them the accused also received an injury on his left hand in between the thumb and the index finger. P.W. 2 witnessed the occurrence. The accused went away with a cycle. P.W. 3 and others witnessed the accused going away on a cycle. On a report given by P.W. 1 the son of the deceased the police registered a crime under Section 302, IPC and investigated the case. During the course of investigation the police recovered M.Os. 1 and 2 at the instance of the accused and after completion of investigation P.W. 16 the Inspector of Police laid the charge-sheet.

3. The learned Sessions Judge framed two charges against the accused for the offences under Section 302, IPC and 380, IPC respectively. The accused denied both the charges and claimed for trial.

4. During trial the prosecution examined 16 witnesses marked Exs. P. 1 to P. 20 and M.Os. 1 to 44. The accused did not adduce any oral evidence, but marked Ex. D. 1 -- a contradiction from the statement of P.W. 2.

5. After conclusion of the trial the learned Sessions Judge convicted the accused under Section 302, IPC and sentenced him to death and a fine of Rs. 1,000/-.

6. The points for consideration are :

(1) Whether the prosecution proved the guilt of the accused beyond reasonable doubt and whether the conviction and the sentences imposed by the learned Sessions Judge are liable to be set aside?

(2) Whether there is something uncommon about this crime which renders Sentence of imprisonment for life inadequate and calls for a death sentence?

(3) Whether the circumstances of the crime are such that there is no alternative but to impose a death sentence even after recording maximum weightage to the mitigating circumstances which speak in favour of the offender?

Point No. 1 :

7. According to prosecution the accused and the deceased were acquainted to each other. P.W. 1 is the son of the deceased and he speaks about his reaching the house after receipt of a phone call ascertaining from P.W. 2 about the offence and giving complaint to the police.

8. P.W, 2, a woman by name Gudisava Vijayalakshmi, a neighbour of the deceased was the witness to the occurrence. She deposed that the accused used to visit the house of the deceased now and then and she knows him by face. On the fateful day at about 3 or 3-15 p.m. she was witnessing a programme in TV. along with her another and sister. At that time she heard a cry similar to that of the deceased as 'Killing, Killing'. She came out and saw the accused and the deceased pushing each other and coming out. She also saw the accused catching hold of the deceased and throwing him forcibly on the ground by the side of the steps of the building and the deceased falling down in the space between the compound wall and the steps. The clothes of the accused were bloodstained. She shouted at the accused as to why he had done such heinous crime. The accused went away hurriedly on a cycle. She informed P.W. 1 about half-an-hour after the occurrence. She denied a suggestion that she did not see the accused

visiting the house of the deceased at any time.

9. P.W. 3 a petty ice-fruit vendor stated that on the date of offence he had seen the accused with bloodstained clothes and hurriedly coming out of the house of the deceased and going away with his cycle kept there. He also saw the deceased lying dead in between the steps of the house and compound. He further deposed that on ascertaining P.W. 2 informed him about the incident.

10. P.W. 3 is not an eye-witness to the occurrence, but immediately after that he saw the accused at the house of the deceased.

11. The prosecution relied on the evidence of another witness by name D. Ramakrishna who was examined as P.W. 4. He deposed that he running an STD booth, and he knows the deceased and the accused. On the fateful day at about 3.00 p.m. while sitting in the telephone booth he heard the cries of P.W. 2 saying 'Nancharaiah was stabbed' and the assailant running away. He further deposed that immediately he came out and saw the accused going hurriedly on a cycle. By the time he came down to the road the accused crossed his shop and went away.

12. P.W. 5 a cycle hirer deposed that on the date of offence the accused took a cycle from him on rent at about 12.00 noon and at about 3 or 3-30 p.m. the accused returned the cycle saying that he would pay the rent after one week. He saw the blood on the hands of the accused and also noticed blood marks on the handle of the cycle.

13. P.W. 6, a clerk working in ITC at Bandar deposed that on the date of offence at about 3-00 or 3-15 p.m. he was going to take lunch at his house and while crossing the house of the deceased he noticed a group of persons standing there. He saw the dead body of the deceased between the steps and the compound wall. The people present there informed him that a person of black complexion murdered the deceased. He telephoned to P.W. 1 the son of the deceased, informed about the death and went away.

14. After verifying the above evidence it is noticed that P.W. 2 is an eye-witness to the occurrence and others are witnesses to the circumstances. Except denying the

commission of offence, the accused did not elicit any favourable information from any of the above witnesses. Though there is solitary testimony of P.W. 2 regarding the commission of offence, she is a natural witness present in the adjacent house and witnessing the occurrence. She is an independent witness belonging to another community and no motive was attributed to her except putting a suggestion that the accused is not connected with the offence. The evidence of P.Ws. 3 to 6 is also lending support to the version of P.W. 2.

15. The prosecution in order to prove that the accused received an injury on the side of the left thumb examined P.W. 8, a compounder of a Homeo Dispensary who spoke about the accused going to him and his applying a dressing to the wound. P.W. 15, a Civil Assistant Surgeon of the Government Hospital, Machilipatnam also examined the accused on 13-6-2001 and noticed an incised wound of 2' x 1' on the left thumb of the accused.

16. The accused is alleged to have committed the murder of the deceased for gain. In order to prove that the accused committed theft of a gold ring and Chain of the deceased at the time of commission of the offence the public examined a retired V.A.O. P.W. 9 deposed that on 12-6-2001 he accompanied P.W. 16, the Inspector of Police along with another mediator and the public arrested the accused in their presence and on the information given by the accused the police recovered M.Os. 1 and 2 from P.W. 7 a jewellery shop owner in their present under Ex. P4 -- mediator's report.

17. The Police observed the scene of offence in the presence of P.W. 10 and P.W. 11 took the photographs of the scene.

18. P.W. 12 the doctor who conducted the post-mortem examination noted the following anti-mortem injuries on the dead body of the deceased.

(1) A stab injury of laceration in the left renal angle  $2\frac{1}{2}$  x 1 cm and 6 cm. Deep blood clots.

(2) A contusion of 2 x 3 cm. Blackish on right hand wrist.

(3) An abrasion of 6 cm. x 1/4 cm. On right cheek extending to the right side of neck and opined that the deceased died due to shock and haemorrhage on account of the injury to the left kidney.

19. P.W. 16 also took pains in arranging an identification parade in the presence of P.W. 13. Judicial First Class Magistrate, Special Mobile Court, Machilipatnam, and got the accused identified through P.Ws. 2, 3 and 5 under Ex. P. 14 test identification report.

20. The learned Sessions Judge after considering the entire evidence adduced by the prosecution, accepted the same and held that the prosecution proved the guilt of the accused beyond reasonable doubt. Though the learned Sessions Judge noticed some minor discrepancies, he observed that the credibility of the witnesses was not shaken in the cross-examination and accordingly found him guilty for the offences under Sections 302 and 380, IPC and convicted him for the offence under Section 302, IPC by observing that since the accused was imposed capital punishment of death there is no need for conviction under Section 380, IPC.

21. After careful consideration of the evidence adduced by the prosecution and after going through the judgment of the learned Sessions Judge, we are convinced that the prosecution made out a case against the accused under Section 302, IPC and the learned Sessions Judge rightly convicted him for the said offence. We do not therefore propose to interfere with the conviction given by the learned Sessions Judge and it is accordingly confirmed.

Point Nos: 2 & 3 :

22. The learned Sessions Judge after informing the accused about his conviction under Section 302, IPC questioned him about the quantum of sentence. The accused submitted to the learned Sessions Judge that he has a son, daughter and mother depending on him and requested to take a lenient view in the matter. The learned Sessions Judge while treating this as a rarest of rare cases observed as follows :

This is the second murder committed by the accused. The first murder is of the wife of the deceased about 8 months prior to this offence. He was emboldened by being successful in escaping detection of the first murder. That is why he committed this offence. The accused has no considerations for the ages of the victims. His modus operandi was to observe the movements of known persons, creating confidence in them and killing them by adopting ingenious methods to achieve his object of getting money. His confessional statement reveals his methods as to how he carries on his special ammunition like acid, rat poison or rodent nodules, sweet meat etc. He has no respect for human lives. He is not concerned with the lives of others. This has become his way of life. It is highly difficult to direct offences of this nature. This is a heartless homicide and a cold-blooded murder. What security is there to men who want to live a retired life. If one crime is left unpunished another crime crops up. The accused has now committed four crimes, two murders and two thefts in two transactions. The accused believes that robbing men by killing them is no wrong. The law says that killing him by due process of law and saving public is no wrong. For all the reasons given above, the accused is sentenced to death.

23. The concern of the learned Sessions Judge towards the safety of the society is appreciable. But, at the same time, it should be remembered that the law provides that in rarest of rare cases only the maximum punishment of death penalty has to be imposed for the offence committed under Section 302, IPC. The punishment of imprisonment for life is a rule and death penalty is an exception. The extreme penalty of death will be inflicted in rare cases of extreme culpability where there are aggravating circumstances and no other alternative but to impose death sentence. While imposing death penalty due regard must be had to the magnitude, gruesome nature of the offence and the manner in which it was perpetrated. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity, as a means of deterring other potential offenders. The following are the aggravating circumstances laid down by the Supreme Court in *Bachan Singh v. State of Punjab*, : 1980 CriLJ636 :

Aggravating circumstances : A Court may, however, in the following cases impose the penalty of death in its discretion :

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed --

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempt to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal, 1973, or who had rendered assistance to a magistrate or a police officer demanding his and or requiring his assistance under Section 37 and Section 129 of the said Code. (Para 202)

24. The Supreme Court further observed that it prefers not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other and the Court shall give great weight to the relevant circumstances in the determination of sentence.

25. Pre-planned, calculated, cold blooded murder has always been regarded as one of an aggravated kind. In Jagmohan Singh v. State of U.P., 1973 SCC (Cri) 169 : (1973 Cri LJ 370), the Supreme Court held that if a murder is 'diabolically conceived and cruelly executed.' it would justify the imposition of the death penalty on the murderer. The same principle was substantially reiterated by Justice V.R. Krishna Iyer speaking for the Bench in Ediga Annamma v. State of A.P., : 1974 CriLJ683 , in the following terms :

The weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim and the like, steel the heart of the law for a sterner sentence.

26. In the case on hand the accused did not bring any weapon along with him. He used the knife, which was aimed at by the deceased by snatching it from him. It is marked as M.O. 1 which is a very small known as 'chakku'. He inflicted only one injury on the deceased i.e., a stab injury of laceration in the left renal angle, which hit the left kidney and causing injury to it. His involvement in the murder of the wife of the deceased is doubtful due to non availability of sufficient evidence and he was given the benefit of doubt in R.T. No. 2 of 2002 and Criminal Appeal No. 1057 of 2002. It cannot be treated as a cold blooded murder or a heartless homicide. The Court has to take into consideration the mitigating circumstances and the proportionality of sentence. The circumstances mentioned above are not fulfilling the test laid down in Bachan Singh (1980 Cri LJ 636) (SC) (supra) and there is no alternative but to commute the sentence of death passed on the appellant into one for imprisonment for life. Since the death sentence has to be passed in rarest of the rare cases, we are of the view that this case cannot be treated as a 'rarest of rare cases.' We are therefore inclined to alter the sentence of death imposed by the learned Sessions Judge into one of imprisonment for life.

27. The learned Sessions Judge did not convict the accused for the offence under Section 380, IPC while holding him guilty for the said offence, probably due to sentencing him to death. Since the sentence of death is modified into one of imprisonment for life, we are of the view that the accused is liable to be convicted for the offence under Section 380, IPC.

28. In the result, the reference under Section 366, Cr.P.C. for confirmation of death sentence is accordingly answered. The appeal filed by the accused is allowed in part. The sentence of death imposed by the learned Sessions Judge against the accused in S.C. No. 12 of 2002 for the offence under Section 302, IPC is modified into one of imprisonment for life. The accused is also convicted for the offence under Section 380, IPC and sentence to undergo R.I. for three (03) years. Both the sentences in this case and the sentence of imprisonment imposed in R.T.

No. 2 of 2002 and Criminal Appeal No. 1057 of 2002 for the offence under Section 411, IPC shall run concurrently. The sentence of fine imposed by the learned Sessions Judge for the offence under Section 302, IPC is confirmed.

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