(2001) 02 AP CK 0001

Andhra Pradesh High Court

Case No: Criminal Appeal No. 1559 of 1998

Chittmalla Krishna Murthy		APPELLANT
	Vs	
State of A.P.		RESPONDENT

Date of Decision: Feb. 14, 2001

Acts Referred:

- Arms Act, 1959 - Section 25(1), 27
- Criminal Procedure Code, 1973 (CrPC) - Section 329
- Penal Code, 1860 (IPC) - Section 302, 307, 506, 84

Citation: (2001) 1 ALD(Cri) 631 : (2001) 1 ALT(Cri) 343 : (2001) CriLJ 2457

Hon'ble Judges: T. Ch. Surya Rao, J; Ramesh Madhav Bapat, J

Bench: Division Bench

Advocate: A. Prabhakar Rao, for the Appellant; Public Prosecutor, for the Respondent

Judgement

R.M. Bapat, J.
The accused-appellant herein was the sole accused in Sessions Case No. 552/1994, which was decided by the learned Sessions Judge, Warrangal. The accused-appellant was tried for offences punishable under Sections 302 and 506 of the Indian Penal Code and Section 27 of the Indian Arms Act. The learned Sessions Judge recorded the finding of guilt under all the above Sections and convicted and sentenced him to suffer imprisonment for life, rigorous imprisonment for three years and rigorous imprisonment for one year for the charges respectively. All the sentences were made to run concurrently.

2. The gravamen of the charge against the accused was that on 20-12-1992 at about 2.00 p.m., he killed one J. K. Venkataiah with his service rifle.

3. The prosecution story can be briefly narrated as follows. The accused appellant was working as an Armed Reserve Police Constable. The deceased Venkataiah was an

Ex-Counsellor. The deceased illegally occupied the Government land about 15 years prior to the date of the incident. The land was divided into different plots, they were sold to various persons and one of such plots was purchased by the accused. The Government laid 80 ft. wide road in the said plot and, therefore, the accused lost about 75 per cent of the plot area under the road widening five years prior to the incident. The accused was asking the deceased to give him another plot in lieu of the plot he lost in the road widening. Thus the accused bore grudge against the deceased.

4. It is further stated by the prosecution thaton20-12-1992, the accused was posted as Centry at Collector''s Bungalow from 12 noon to 3.00 p.m. At about 1.30 p.m., he left with 303 rifle and 50 rounds of bullets informing his colleague that he would kill ne person. The accused went to the house of the deceased, which is situated at Desaipet road, Warangal and asked P.W. 1 to call his father outside the house for the purpose of talking. When the deceased came out of the house, the accused took him to some distance and fired one round at him. P.Ws. 1 to 4 tried to catch hold of the accused, but he fired one round in the air and ran away. Thereafter, the accused himself surrendered before his higher authorities.

5. The deceased was shifted to the M.G.M. Hospital, Warangal for treatment. P.W. 1, the son of the deceased gave F.I.R. to Matwada Police. P.W. 16, the S.I. of Police registered the case in crime No. 219/1992 u/s 307 of the Indian Penal Code and Sections 25(1)(a) and 27 of the Indian Arms Act and issued copies of the F.I.R. to all concerned.

6. One M.H. Hameed, the Head Constable, Outpost M.G.M. Hospital, Warangal, on the basis of the intimation given by the Chief Medical Officer, M.G.M. Hospital, Warangal, sent a requisition to the Judicial Magistrate of First Class, Warangal to record dying declaration of the deceased. P.W. 11, the Judicial Magistrate of First Class recorded the dying declaration of the deceased, which is produced on record as Ex.P8.

7. P.W. 16 recorded the statement of P.W. 1, proceeded to the scene of offence and conducted panchanama of the same in the presence of P.W. 7 Ex.P2 is the panchanama of the scene of offence. He seized one empty cartridge-M.O.1. Thereafter, P.W. 16 went to the hospital, examined the deceased and recorded his statement, which is produced on record as Ex. P16. P.W. 16 seized the bloodstained clothes from the person of the deceased in the presence of P.W. 13 under panchanama Ex.P9. P.W. 16 examined P.Ws.2 to 4 and recorded their statement. He went to the Headquarters of the Reserved Police, seized 303 rifle from the Reserve Inspector in the presence of P.W. 8 and prepared panchanama Ex.P3. On receipt of the death intimation from the Hospital, P.W. 16 altered the Section of law from 307 of the Indian Penal Code to 302 of the Indian Penal Code and 27 of the Indian Arms Act. The alteration memo was sent to the Judicial Magistrate of First Class, Warangal.

8. P.W. 14, the Investigating Officer on receipt of the report from P.W. 16 took up investigation and verified the investigation one by P.W. 16. P.W. 14 conducted inquest

over the dead body of the deceased in the presence of P.W.9 and others. Ex. P4 is the inquest report. Thereafter, the dead body was sent to P.W. 15, the Professor of Forensic Medicine for conducting autopsy over the dead body of the deceased. P.W. 15 conducted autopsy and issued Ex.P14, postmortem certificate. P.W. 15 opined that the deceased died because of the injuries with firearm to the vital organ. The accused was arrested and he was remanded to judicial custody.

9. The defence of the deceased was of total denial. It is also suggested by the deceased that at the time of the offence and at the time of the trial, he was of unsound mind. In effect, the accused wanted to take the defence u/s 84 of the Indian Penal Code.

10. Learned counsel Mr. A. Prabhakar Rao appearing on behalf of the defence submitted at the bar that a petition u/s 84 of the Indian Penal Code was presented before the trial Court for forwarding the accused-appellant for medical examination to ascertain whether the accused was of unsound mind at the time of trial as well as the time of commission of the offence. The learned Sessions Judge wrote letters to the Superintendent of the M.G.M. Hospital for examination of the accused and reports thereof. The accused appears to have been examined and the reports were received before the commencement of the trial. They are marked as Exs. D1 and D2 by the defence by examining D.Ws. 1 and 2. The letter Ex.D2 shows that the Doctor opined that the accused was under treatment and he was not in a position to optimally and meaningfully participate and instruct his counsel for conduct of his trial. In spite of this letter, without giving a finding as to whether at the commencement of the trial, the accused had recovered from his illness and whether he was able to formulate his defence, the trial proceeded. This irregularity is brought to our notice by the learned counsel at the appellate stage.

11. Section 329 the Code of Criminal Procedure, which is a mandatory provision, reads as under :

329. Procedure in case of person of unsound mind tried before Court:-

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Magistrate or Court.

12. We are satisfied that the procedure contemplated u/s 329 the Code of Criminal Procedure has been overlooked by the learned Sessions Judge. The entire trial is vitiated

on account of the illegality committed in not complying with the mandatory provisions of Section 329 the Code of Criminal Procedure. Therefore we set aside the order of conviction and sentence and remand the Sessions Case No. 552/1994 to the file of the learned Sessions Judge, Warangal with a direction to follow the procedure contained in Section 329 the Code of Criminal Procedure and then proceed with the case in accordance with law.

The appeal is accordingly allowed in part.