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**Srimanthula Chinna Sathaiah and Another Vs State of A.P.**

**Criminal A. No. 1082 of 1996**

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**Court:** Andhra Pradesh High Court

**Date of Decision:** March 11, 1998

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) " Section 154, 161, 313#Penal Code, 1860 (IPC) " Section 302, 34

**Citation:** (1998) 4 ALD 18 : (1998) 2 ALD(Cri) 160 : (1998) 2 ALT(Cri) 65

**Hon'ble Judges:** V. Bhaskara Rao, J; Motilal B. Naik, J

**Bench:** Division Bench

**Advocate:** Mr. C. Padmanabha Reddy, for the Appellant; Public Prosecutor, for the Respondent

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**Judgement**

@JUDGMENTTAG-ORDER

Motilal B. Naik, J.

A1 and A2 in S.C.No.310 of 1995 on the file of the learned Sessions Judge, Karimnagar are the appellants before us,

who were found guilty of committing an offence u/s 302, read with 34, IPC and convicted and sentenced to suffer rigorous imprisonment for life.

2. Before the trial Court the learned Sessions Judge originally tried three accused for the said offence, but on the date of pronouncement of the

judgment the presence of A3 could not be procured, though non-bailable warrants were issued against A3 and therefore the case against A3 was

separated and the sentence was pronounced only against A1 and A2.

3. The gravamen of the charge is that on 29-8-1994 at about 10.00 a.m. at Mogilipalem village, Thimmapur Mandal the accused caused death of

one Srimanthitla Pedda Sattaiah (hereinafter called the "deceased"). A3 poured acid on the face and other parts of the body of the deceased and

A1 and A2 axed the deceased on the neck and A3 beat the deceased with stick and committed the murder intentionally causing the death of the

deceased.

4. The prosecution case in brief is as follows:

A1 to A3 are brothers and residents of Mogilipalem village. The deceased is also the resident of the same village. The deceased is the junior

paternal uncle of the accused. PWs.3 and 6 are the sons of the deceased. PW4 is the brother of the deceased. PW5 is the wife of the deceased.

The deceased and the accused family developed ill-feelings against each other 4 to 5 years earlier to the date of the offence. A1 purchased Ac.0.01

gunta of land, which is situated in front of the house of the deceased. Prior to the commission of offence A1 was lodged in central prison, Warangal

in connection with a theft case. A1 suspected that the deceased had falsely implicated him in that case. A1 also suspected that while he was in jail

the elder son of the deceased, PW6 developed illicit intimacy with his wife. Thereafter A1 sent his wife to her parents' house at Thimmapur village

and left her there. As a result of the long standing grievances, A1 to A3 decided to do away with the life of the deceased.

5. On 29-8-1994 around 10.00 a.m. near the electric pole at the house of one Channamaneni Rajaiah A3 followed the deceased and poured acid

on the body of the deceased and beat the deceased with stick and the deceased fell down on the road. Then A1 axed the deceased on the left side

of the neck and A2 axed the deceased on the neck. After committing the offence all the accused left the scene of offence. Immediately thereafter a

number of people, including the members of the deceased family gathered at the scene of offence.

6. On 29-8-1994 around 2.30 p.m. PW1 gave a complaint to PW15, Head Constable of L.M.D. colony police station in Ex.P1. PW15

registered The case in Cr.No.94/94 u/s 302 read with Section 34, IPC and issued F.I.R., Ex.P23 to all the concerned. PW13, the Inspector of

Police, took up investigation on 29-8-1994 and proceeded to the scene of offence and held inquest over the dead body of the deceased in the

presence of PW8 and other panchas between 4.00 p.m. and 6.30 p.m. On the same day i.e., 29-8-1994, during the inquest he examined PWs.1

to 7 and 10, recorded their statements and seized blood stained clothes and also M.Os. 6 to 10 from the scene of offence. Ex.P3 is the inquest

panchnama and Ex.P14 is the sketch of the scene of offence prepared indicating the scene of offence.

7. PW14, the Deputy Civil Surgeon, Government Hospital, received a request from the Inspector of Police, PW13 on 30-8-1994, pursuant to

which he conducted autopsy over the dead body of the deceased. PW14 issued Ex.P22, post-mortem certificate and opined that the death of the

deceased was due to haemorrhage as a result of receiving multiple injuries. PW12, Sub-Inspector of Police, L.M.D. Colony police station took all

the accused into custody on 30-9-1994. On 1-10-1994 PW12 examined A1 in the presence of PWs.9 and 11 and recorded their statements in

the presence of PWs.9 and 11 under Ex.P4. He also recorded confessional statements of A2 and A3, Exs.P5 and P6 respectively. He seized

M.Os. 11 to 13 under a cover of panchnama, Exs.P7 and 9, at the instance of A1 to A3. After completion of investigation PW13 laid the charge

sheet.

8. On behalf of the prosecution to support its case as many as 15 witnesses were examined and Exs.P1 to P23 were marked.

9. On the basis of the incriminating evidence available against the accused the trial Court questioned all the accused u/s 313, Cr.P.C. The accused

pleaded not guilty.

10. The trial Court on the basis of the evidence of PWs. 1 and 3, who have witnessed the occurrence, though PWs.1 and 7 turned hostile and in

the light of the evidence of PWs.2 and 3 coupled with the injuries found in Ex.P22 convicted all the accused for the offence u/s 302, read with 34,

IPC. On 7-11 -1996 when the accused were directed to be produced before the Court to question them as to the awarding of sentence, A1 and

A2 were produced before the trial Court and non-bailable warrant issued against A3 returned unexecuted. Therefore the trial Court separating the

case against A3, sentenced A1 and A2 to suffer rigorous imprisonment for life. Challenging the same A1 and A2 preferred the present appeal.

11. Sri C Padmanabha Reddy, learned senior Counsel appearing for A1 and A2 firstly submitted that Ex.P1 is the first complaint setting the

prosecution in motion, in which the names of PWs.2 and 3 claiming to be eyewitnesses evidencing the occurrence have not been mentioned. The

learned Counsel further stated that though the alleged offence took place around 10.00 a.m. on 29-8-1994, the complaint by PW1 under Ex.P1 is

lodged at 2.30 p.m. and thus non-mentioning of the names of PWs.2 and 3, who claimed to be the direct witnesses to the offence, is fatal to the

prosecution case. The learned Counsel for the, appellants further submitted that in Ex.P22, post-mortem report, the doctor, PW14, though opined

that the cause of the death of the deceased could be due to haemorrhage as a result of multiple injuries, Ex.P22 report indicated as many as 9

injuries found on the dead body. The opinion of PW14 with reference to injuries 1 to 4 is that the injuries could be possible only by a blunt

weapon. In fact with regard to injuries 7, 8 and 9 the opinion of the doctor, PW14, is that these injuries could not be possible by throwing the

irritant substance from the back side. Thus the learned Counsel further stated that though the distance between the place of offence and the L.M.D.

colony police station is hardly 18 kms. and since the alleged incident seems to have taken place at 10.00 a.m. there is a delay in lodging the

complaint, which was lodged at 2.30 p.m. and that the prosecution was unable to give proper explanation for such abnormal delay. Thus the

learned Counsel contends that the lower Court has failed to examine these intricacies and has convicted the accused only on the basis of the

evidence of PWs.2 and 3 whose names did not figure in Ex.P1 and, therefore, contends that the prosecution has not been able to prove its case

beyond all reasonable doubt and therefore the accused are entitled for acquittal.

12. The learned Public Prosecutor on the contrary submits that the discrepancies as pointed out by the learned Counsel for the appellants are

minor. Inasmuch as there is direct evidence of PWs.2 and 3, who have seen the occurrence and have spoken to the fact that A3 was in possession

of tiffin box pouring acid on the deceased and A1 and A2 were in possession of the axes and hacked on the neck of the deceased, and the

medical evidence refers to the injuries 3 and 4 and also injury Nos.7 to 9, the minor discrepancies cannot be fatal to the prosecution case. The

learned Public Prosecutor further contends that though the opinion of the doctor as to injuries 1 to 4 is that those injuries could be caused by a

blunt weapon, but when there is direct evidence available tallying to the injuries referred to in the post-mortem report caused by the weapons

referred to by the prosecution witnesses, the medical opinion given by the doctor cannot futile the prosecution case, and therefore, contended that

the opinion of the doctor could be ignored. In support of her contention the learned Public Prosecutor placed before us the decision of the

Supreme Court in Solanki Chimanbhai Ukabhai Vs. State of Gujarat, .

13. On the elaborate submissions made by the learned Counsel for the appellants and the learned Public Prosecutor, the point for consideration

before us is whether the prosecution has been able to prove the guilt of the accused, who were alleged to have committed the murder of the

deceased on 29-8-1994 around 10.00 a.m.

14. PW1, who is a village servant, has deposed that around 10.00 a.m. on the fateful day while he was returning to his house attending his duty

through Chakaliwada, he noticed the deceased coming running in opposite direction. He has also noticed A1 to A3 running after the deceased.

However, he has indicated that he has not seen any weapon, but he deposed that he fell unconscious and after regaining his senses within five

minutes he has noticed that the dead body of the deceased was left at the house of Ch. Rajaiah, He has noticed bums on the body and also noticed

injuries on the head and neck caused with axes. However, PW1 spoken to the fact that PWs.2 and 3 witnessed the occurrence. He deposed that

he went to the police station around 2.00 p.m. and lodged a complaint with the head constable. The prosecution though declared him hostile and

was cross-examined by the public prosecutor, in the cross-examination PW1 has admitted the facts and contents of Ex.P1 and further stated that

the statement recorded u/s 161, Cr.P.C. is true and correct. He also recognised MO1, the tiffin box.

15. PW2 has deposed in his chief-examination about witnessing the deceased running towards the panchayat office around 10,00 a.m. while he

was returning from the fair-price shop to his house. He further deposed that he saw the accused running behind the deceased. He has also spoken

to the fact that A3 was having tiffin box in his hand and he has also seen A3 having a stick in his hand. He has also noticed A1 and A3 armed with

axes. PW2 further deposed that A3 poured acid on the deceased. He also deposed to the fact that the deceased running for about 10 yards after

the acid being poured on him. He further says that A3 beat the deceased with a stick and after the deceased received the blow at the hands of A3

the deceased requested A3 not to beat, but A3 again beat him, as a result of which he fell down on the road. It was further stated by PW2 that

after the deceased fell down on the road, A1 axed the deceased on the left side of the neck, A2 axed him on the neck of the deceased, due to

which the deceased died. He has also stated that himself, PW1 and PW3 witnessed the incident.

16. PW3 is none else than the son of the deceased, who deposed that the accused are the sons of his senior paternal uncle. According to him, the

deceased was proceeding towards his field along with the buffaloes and within a short time the buffaloes returned home. He heard the commotion

from the scene of offence and rushed to the scene. According to him, he noticed his father running towards gram panchayat office being chased by

all the accused. He noticed A3 having a tiffin carrier and a stick and A1 and A2 armed with axes. PW3 further deposed that A3 threw acid on the

body of the deceased from the tiffin box. The deceased left the chappals, threw away the stick and umbrella from his hands and running towards

the house of one Rajaiah, At Chakaliwada A3 beat the deceased with a stick though the deceased pleaded not to beat him; A3 again beat the

deceased with a stick; the deceased fell down and A1 and A2 axed the deceased. According to PW3, the accused was running away from the

spot. PW3 also mentioned the presence of PWs. 1 and 2 near the electric pole at the time of offence near the house of Rajaiah. PW3 also

deposed that M.Os.1 to 4 and M.O.5 were lying about 15 to 20 yards from the dead body. PW3 further deposed that there was a dispute

between the deceased and the accused over the land and also there was a dispute between the accused and the deceased family as a result of the

alleged intimacy with the wife of A1 by the son of the deceased. According to PW3, a week prior to the date of offence all the accused came to

their house and threatened to kill the deceased alleging that the elder son of the deceased was having illicit intimacy with the wife of A1. At that

time, according to PW3, PWs.3, 4 and 7 were also present.

17. The evidence of PW4, the brother of the deceased, PW5, the wife of the deceased, and PW6, the son of the deceased need not be

scrutinised as their evidence is only circumstantial evidence. PW7 was declared hostile since he did not support the prosecution case.

18. The evidence of PWs.8 and 9, who are inquest panchas, need not be discussed as we are primarily concerned whether the occurrence was

really noticed by the star witnesses PWs.2 and 3 as claimed by the prosecution.

19. Insofar as the evidence of PWs. 10 and 14 is concerned, according to PW14 he found 9 injuries on the dead body of the deceased while

conducting post-mortem examination and issued Ex.P22, post-mortem certificate. The said injuries are as follows :

1. Laceration 4"" x 3"" x 3"" on the right parietal region of the skull, with perforating fracture of the right parietal bone - The brain matter contused;
2. Laceration 4"" x 3"" x 3"" on the posterior part of the scalp - with fracture of skull bone and tear in the brain;
3. Laceration 6"" x 3"" x 3"" on the posterior and lateral part of the neck-muscles and vessels are cut;
4. Laceration 4"" x 3"" x 3"" below and right to injury No.3 with cut of neck structures;
5. Abrasion 2"" x 2"" on the left shoulder;
6. Abrasion 2"" x 2"" on the left dorsum of palm;
7. Blebs over the right side of the face;
8. Blebs over both legs;
9. Blebs over right upper arm.

In his evidence of PW14 has opined that injuries 1 to 4 could have been caused by blunt weapon and injuries 6 and 7 could have been caused by

irritant substance.

20. The principal contention on behalf of the appellants is that failure to mention the names of PWs.2 and 3 in Ex.P1 by PW1 while lodging

complaint to the police is a lacunae on the part of the prosecution and in the absence of mentioning the names of the crucial witnesses, PWs.2 and

3 in Ex.P1 there is every suspicion about the presence of PWs.2 and 3 at the time of occurrence. Linked with lodging of Ex.P1, the learned

Counsel also points out the delay in lodging the complaint, though the offence is said to have taken place at 10.00 a.m. the complaint was lodged

around 2.30p.m.

21. It is true that the names of PWs.2 and 3 were not mentioned in Ex.P1. Further in the inquest report Ex.P3, the names of PWs.2 and 2 found

place. Though PW1 was declared hostile, in his cross-examination he stated that the contents of Ex.P 1 are correct and the police recorded his

statement u/s 161, Cr.P.C. It is also relevant to notice that the family members of the deceased reposed confidence in PW1, as he, being the

village servant, would narrate the incident to the police while lodging Ex.P1, complaint. Though in Ex.P1 PW1 has narrated the entire scene of

offence stating participation of each of the accused including A3, he failed to mention the names of PWs.2 and 3. However, we are inclined to hold

that non-mentioning of names of PWs.2 and 3 in Ex.P1 would not be fatal to the case of the prosecution. It is relevant to notice that in Ex.P3,

inquest report, the names of PWs.2 and 3 are found. In the chief examination as well as in the cross-examination PWs.2 and 3 stated that A3

poured acid on the deceased and also beat with a stick, as a result of which the deceased fell down and though the deceased pleaded to A3 not to

beat him, still A3 beat him. At that point of time after the deceased falling down, A1 and A2 chased the deceased armed with axes and axed the

deceased on his neck. The oral evidence of PW3 as to the injuries also corroborates with the evidence of PW2.

22. PW2 spoke to the injuries received by the deceased and about the participation of the accused in the crime. The oral evidence of PWs.2 and

3 with regard to the participation of the accused is reliable and relatable to the injuries found in Ex.P22. The use of axes is also spoken to by

PWs.2 and 3. 23. As regards the opinion of the Doctor, PW14, who examined the body of the deceased, injuries 1, 3 and 4 are undoubtedly

referable to injuries caused as a result of the axes by accused 1 and 2. Insofar as injury Nos.7,8 and 9 are concerned, they attribute to the

participation of A3. Therefore, the participation has been spoken to by PWs.2 and 3 who have deposed that A3 poured acid on the face of the

deceased. Though the doctor, PW14 has stated that these injuries are not possible by pouring irritant substance from behind, the fact remains that

PWs,2 and 3 have deposed about pouring of acid by A3 on the deceased. Since the doctor found the irritant substance on the body of the

deceased while examining the body of the deceased, we are of the view, that the probabilities given by PW14, the doctor, as regards the use of

acid by A3 is only an opinion, can not defeat the prosecution case as held by respondent in the case referred to above.

24. As per the evidence of PW14, injuries 5 and 6 are possible as a result of coming into contact with rough surface. Since PWs.2 and 3 have

spoken to the fact that as a result of A3 pouring acid the deceased fell on the ground, we hold that injuries 5 and 6 might have been caused as a

result of the deceased falling on the ground

25. In *Chimanbhai Ukabhai v. State of Gujarat*, (supra) the Supreme Court held that when inconsistency between the testimony of eye-witnesses

and medical evidence is found, such inconsistency cannot be a ground for discarding the testimony of eye-witnesses. The Supreme Court

elaborating on this proposition has held that ordinarily the value of medical evidence is only corroborative. It proves that the injuries could have

been caused in the manner alleged and nothing more. The defence can make use of the medical evidence to prove that the injuries could not

possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes

too far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the

eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. Thus it is clear that as long as the

testimony of eye-witnesses cannot be thrown out, the inconsistency in medical evidence need not be a ground for rejecting the evidence of

prosecution witnesses as spoken to by them narrating the use of weapons by the accused.

26. In *Modi's Medical Jurisprudence and Toxicology* (21st Edition at page 265), the view on the character of an incised or slash wounds is

expressed thus :

The edges of a wound made by a heavy cutting weapon, such as an axe, hatchet or shovel, may not be as smooth as those of a wound caused by

a light cutting weapon, such as a knife, razor etc., and may show signs of contusion.

27. It is very much clear that even the contusion may look like a laceration also. The injuries particularly injuries 1, 3 and 4 are lacerated injuries

which are capable of being caused by axe as spoken to by PWs.2 and 3. We, therefore, find no reasons to sail with the opinion expressed by

PW14.

28. Further submission is that there is abnormal delay in lodging the complaint Ex.P1. We do not think that the delay caused in lodging the

complaint Ex.P1 could be considered as abnormal delay. After all PW1 is a village servant having evidenced the incident on 29-8-1994 around

10.00 a.m. According to him he went to police station around 2.00 p.m. on the said date. The distance between the place of offence and the

police station is said to be 18 kms. It is not brought out in the evidence that there is regular frequency of transport facilities to reach from the place

of incidence to the place of police station. We are, therefore, of the view that PW1, though not connected with the family of the deceased

particularly to inform his family and then left the village by getting a bus to the police station, the delay of four hours, in our considered view, may

not be described as abnormal delay.

29. In the light of the above discussion, we find that the aforementioned evidence of PWs.2 and 3 is sufficient to hold that the accused are

responsible for causing the death of the deceased. The manner in which the deceased is killed as spoken to by PWs.2 and 3, need not be

suspected as the testimony of PWs.2 and 3 seems to be probable, particularly, PW2 who is not related to the deceased family and has no reason

to support the prosecution case and thus his independent testimony cannot be rejected. Though there are minor discrepancies pointed out by the

learned Counsel for the appellants, in our considered view, those minor discrepancies cannot take away the prosecution case. We are inclined to

come to an irresistible conclusion that the prosecution has been able to prove the guilt of the accused proximately and thus the conviction and

sentence imposed by the trial Court need not be interfered with by this Court. Accordingly, the conviction and sentence imposed by the trial Court

are confirmed.

30. During the course of hearing, it is brought to our notice that on 7-11-1994, A3 was directed to be present for hearing the question of sentence.

Despite non-bailable warrants issued, his presence was not procured. Thus, the case against him was separated. Since we confirmed the

conviction and sentence imposed by the trial Court on A1 and A2 we direct the trial Court that as soon as A3 is apprehended, he should be

questioned as to the awarding of sentence and proceed further according to law.

31. The criminal appeal is accordingly dismissed.