(2012) 3 Crimes 526

Andhra Pradesh High Court

Case No: Criminal Appeal No. 795 of 2007

Thumma Babal Reddy	APPELLANT
Vs	
State of A.P	RESPONDENT

Date of Decision: Dec. 21, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 174, 231, 293, 293(1), 374(2)
- Evidence Act, 1872 - Section 45, 62, 64
- Penal Code, 1860 (IPC) - Section 302

Citation: (2012) 3 Crimes 526

Hon'ble Judges: N.R.L. Nageswara Rao, J; K.C. Bhanu, J

Bench: Division Bench

Advocate: A. Gayatri Reddy, for the Appellant;

Final Decision: Allowed

Judgement

K.C. Bhanu, J.
The sole accused in S.C. No. 527 of 2002 on the file of IV Additional Sessions Judge, Guntur, has filed the present appeal u/s 374(2) of Code of Criminal Procedure, 1973 challenging the conviction and sentence recorded against him u/s 302, IPC to undergo imprisonment for life. The case of the prosecution briefly stated is as follows:

The accused is the resident of Munnavaripalem. D1 and D2 were also residents of the same village. PW 1 is the wife of D1. PW 2 is the son of D1. PW 3 is the wife of D2 and sister of PW 1. D2 is the brother of the accused. D1 and D2''s family used to cultivate lands by taking on lease. Accused is residing in the opposite house of the deceased. On the date of incident, in all 50 members returned from Bapatla after fixing the date of performance of marriage of the son of D2. On that date, one Kumar and Chalamadu were disputing in respect of chit transaction and the persons present at that time pacified the dispute. While all were returning after pacifying the dispute, the accused gave liquor bottle to D1 duly informing him to drink the same along with D2. Then, D1, proceeded to

the house of D2. In D2''s house, D1 and D2 fell down after consuming the contents in the bottle. On hearing the cries of D2. PW 2 and 1 others went there and they also raised cries D2 fell down by stating that their lives were collapsed as they drank the liquor given by the accused. Then, PW 1 to 3 and some others shifted D1 and D2 on a tractor to Government Hospital. Bapatla where the doctor advised to shift them to Ponnur. While they were moving towards Ponnur, D1 died at Appikatla and D2 died at Chintalapudi. Then PW 1 to 3 and other villagers brought the dead bodies of D1 and D2 to their houses. The elders of the village called the accused to know the incident and accused admitted that he gave the said liquor bottle to D1. There are no prior disputes between the deceased and accused. Prior the incident in question, D1 from the tank and, as such, the accused bore grudge against D1.

2. On 9.4.2004 at about 1.30 p.m. PW 1 went to Bapatla Police Station and presented Ex. P1 report to PW 18, who in turn registered the same as a case in Cr. No. 43 of 2002 u/s 174, Cr.P.C. and issued First Information Reports to all concerned. PW 18 proceeded to the scene of occurrence along with staff and secured the presence of mediators PW 15 and 20 and observed the scene of offence. Ex. P9 is the observation report with regard to scene of occurrence. PW 18 conducted inquest over the dead bodies of D1 and D2 in the presence of panch as under Ex. P7 and Ex. P8. PW 18 prepared Ex. P11 rough sketch of scene of offence. After completion of inquest, he sent the dead bodies to post-mortem examination. PW 11 conducted autopsy over the dead body of D1 on 10.4.2002 at 10.00 a.m. and opined that D1 died due to consumption of cyanide poison. Ex. P3 is the final opinion of Post-mortem doctor. PW 12 conduced autopsy over the dead body of D2 on 10.04.2002 and opined that the cause of death of D2 was due to consumption of cyanide along with alcohol. Ex. P4 is the Post-mortem report of D2 and Ex. P5 is the final opinion. PW 20 took up investigation and visited the scene of offence and arrested the accused on 19.6.2002 and after completion of investigation he filed charge-sheet.

3. The following charge was framed against the accused.

... That upon on 8.4.2002 at about 10.15 p.m. while proceeding towards Pallamaneni Bala Koti Reddi''s house in Munnavaripalem, Bapatla did commit murder by intentionally causing the death of (1) Pallamaneni Balakoti Reddi s/o Raghava Reddi, 55 years, Munnavaripalem, Bapatla (2) Thamma Sree Ramulu Reddi s/o Brahma Reddi, 45 years, Munnavaripalem, Bapatla by giving Rustom xxx Rum quarter bottle to Pallamaneni Bala Koti Reddi to have the liquor along with Tumma Sree Ramulu Reddi and by drinking the liquor provided by you (1) Pallamaneni Bala Koti Reddi and Thumma Sree Ramulu Reddi died and thereby committed an offence punishable u/s 302 of the Indian Penal Code and within my cognizance...

4. The trial Court while accepting the evidence of PWs 1 to 3 found that it is the accused who gave liquor containing the cyanide poison for consumption to D1 and D2 and accepted the evidence of prosecution that immediately after consumption of the same, both the deceased fell unconscious and died and accordingly the accused was found

guilty of the charge levelled against him.

5. Now the point for determination is whether the prosecution is able to prove the guilt of the accused beyond reasonable doubt for the offence punishable u/s 302, IPC?

6. Learned counsel appearing for the appellant contended that the report of the Regional Forensic Science Laboratory does not show that the accused died as a result of cyanide poison, is not established and that the bottle which was seized from the scene of occurrence has not been sent to RFSL to ascertain whether it contains any substance of cyanide, that two other important circumstances namely (i) the motive and (ii) that the accused was in possession of cyanide poison have not been established by the prosecution. He further contends that the finding of the trial Court with regard to the guilt of the accused is not established beyond, all reasonable doubt even assuming that the evidence of PWs. 1 to 3 is to be accepted as true and correct that the accused gave brandy bottle to both the deceased and they consumed the same. He also contends that on suspicion the crime has been registered and that suspicion is not sufficient to convict the accused. Therefore, he prays to set aside the conviction and sentence imposed by the lower Court.

7. On the other hand, learned counsel, representing Public Prosecutor contended that the evidence of PWs. 1 to 3 is very clear that it is the accused who gave brandy bottle to the deceased No. 1 with a direction to share the liquor along with D2 and thereafter, the deceased No. 1 went to the house of D2 and consumed liquor and immediately thereafter they fell unconscious and thereafter they were taken to the hospital, that the doctors, after examining them, declared as brought dead and, therefore, there is no scope for possibility of any other person except for the accused to give liquor which contained cyanide poison and, therefore, the trial Court after appreciation of evidence rightly found the accused guilty and there are no grounds to interfere with the same.

8. PW 11 is the Doctor, who conducted autopsy over the dead body of the deceased No. 1 on 10.4.2002 at 10.00 a.m. and found no external visible injuries, therefore, he preserved viscera and sent the same to RFSL, Vijayawada, for analysis. After receipt of the RFSL report, he gave final report Ex. P3 to the effect that the deceased No. 1 died as a result of cyanide poison. He did not observe specifically the alcohol in the stomach of the deceased. He sent entire stomach contents to RFSL. He did not notice any alcoholic smell in the stomach of the deceased No. 1. The cause of death as spoken by PW 11 and as recited in Ex. P3, remained unchallenged. On the same day, PW 12 conducted autopsy over the dead body of deceased No. 2 and found no external injuries. He also preserved viscera and sent for RFSL, Vijayawada, for chemical analysis. After receipt of the report from the RFSL) he gave Ex. P5 stating that the deceased No. 2 died as a result of cyanide poison. He also did not notice alcohol contents in the stomach of the deceased at the time of Post-Mortem examination. Thus from the evidence on record, it is proved beyond doubt that both the deceased died as a result of the consumption of cyanide poison and homicidal nature of deaths of both deceased persons is proved.

9. Now it has to be seen whether the prosecution is able to prove that the accused had given the liquor bottle to D1 which contained the cyanide poison.

10. The law with regard to the death by administration of cyanide poison is very well settled. This Court in the decision reported in Thurumella Ramesh Babu v. State of A.P. 2010 (3) ALT (Crl.) 197 (DB) (AP) held as under:

... On this aspect, it is pertinent to refer to a decision reported in Anant Chintaman Lagu Vs. The State of Bombay, 500 wherein at para 65 it was held that:

A case of murder by administration of poison is almost always one of secrecy. The poisoner seldom takes another into his confidence, and his preparations for the commission of the offence are also secret. He watches his opportunity and administers the poison in a manner calculated to avoid its detection. The greater his knowledge of poisons, the greater the secrecy and consequently the greater the difficulty of proving the case against him. What assistance a man of science can give he gives; but it is too much to say that the guilt of the accused must, in all cases, be demonstrated by the isolation, of the poison, though in a case where there is nothing else such a course would be incumbent upon the prosecution. There are various factors, which militate against a successful isolation of the poison and its recognition. The discovery of the poison can only take place either through a post-mortem examination of the internal organs or by chemical analysis.

In Sharad Birdhichand Sarda Vs. State of Maharashtra, wherein at para 164 it was held that:

So far as this matter is concerned, in such cases the Court must carefully scan the evidence and determine the four important circumstances which alone can justify a conviction.

1. There is a clear motive for an accused to administer poison to the deceased.

2. That the deceased died of poison said to have been administered.

3. That the accused had the poison in his possession.

4. That he had an opportunity to administer the poison to the deceased.

In Ram Gopal Vs. State of Maharashtra, wherein at para 15 it was held that:

Further, this Court, in Dharambir Singh v. State of Punjab Crl. App. No. 98 of 1958 date 4.11.1958 (SC) dealing with a case of poisoning observed that where the evidence is circumstantial the fact that the accused "had motive to cause death of the deceased, though relevant, is not enough the dispense with the proof of certain facts which are essential to be proved in such cases. Three questions arise in such cases, namely

(firstly), did the deceased die of the poison in question? (secondly), had the accused the poison in question in his possession? And (thirdly), had the accused an opportunity to administer the poison in question to the deceased? It is only when the motive is there and these facts are all proved that the Court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death.

So from the above decisions, it is clear that the prosecution has to prove the four circumstances. Insofar as the first circumstance i.e., motive, is concerned, though it is stated that the deceased fell in love with the sister of the accused, that cannot be the motive for the accused to eliminate the deceased. There is no evidence to show that the deceased fell in love with the sister of the accused and thereby the accused developed grouse against the deceased to eliminate him. If really the accused has entertained any idea of committing the murder of the deceased, because the deceased fell in love with the sister of the accused, certainly he would have given the liquor mixed with poisonous substance to the deceased alone. But, it is the specific case of the prosecution that the accused allegedly gave the brandy bottle mixed with poison to the deceased as well as to PW 4. Motive is not an integral part of the crime, but is only an aid in assessment of criminality. Motive looses its significance when there is an acceptable evidence on record to show that it is the accused and none else committed the murder. Therefore, there is absolutely no motive for the accused to commit the murder of the deceased.

It is also pertinent to refer to the decision reported in Anant Chintaman Lagu Vs. The State of Bombay, wherein in it is held as under:

In these cases, the Court referred to three propositions which the prosecution must establish in a case of poisoning: (a) that death took place by poisoning (b) that the accused had the poison in his possession; and (c) that the accused had an opportunity to administer the poison to the deceased.

11. It has to be seen whether the accused is the person who gave liquor bottle to both the deceased. PW 1 is the wife, PW 2 is the son of D1 whereas PW 3 is none other the wife of D2 and the accused is none other than the brother of D2. Prior to the incident, according to PW 1, there were no disputes exist between the accused and both the deceased. It is not in dispute that son of accused died due to drowning in tank and the deceased No. 1 took out the body from the tank. According to PW 1, for that reason the accused bore grudge against deceased No. 1. It is not the case of PW 1 that deceased No. 1 was responsible for death of son of the accused and simply for the reason of bailing out the body from the tank, the accused need not entertain any animosity or hostility against the deceased. So the evidence of PW 1 does not say anything about the criminal motive for the accused to commit murders. No doubt, the motive is not an integral part of the crime, but is only an aid in assessment of criminality. The Apex Court held that motive is one of the ingredients in case of death by poison and that motive is lacking in this case. PW 2, who is the son of deceased No. 1 also did not speak anything as to the immediate motive for the accused to commit the murders. Similarly PW 3, who is the wife of the

deceased No. 2 also did not state as to what was the motive for the accused to give a brandy bottle containing cyanide to D1. Therefore, the first ingredient for the offence relating to the deaths of both the deceased is not established at all.

12. Coming to the second ingredient, the evidence of PWs 1 and 2 is clear that on the date of incident, 50 persons returned from Bapatla after fixing the date for performance of marriage of son of D2. On that day, one Kumar and Chalamadu were disputing in respect of chit transaction. Therefore, deceased No. 1, PWs 1 and 2 pacified the matter and after pacifying the matter, PWs 1, 2 and the deceased No. 1 they were returning to their respective houses, at that time, the accused gave the liquor bottle to deceased No. 1 duly informing that the brandy has to be consumed along with D2. Therefore, D1 went to the house of PW 3. In the house of PW 3, D1 and D2 consumed the liquor and immediately fell down. Then, they were shifted to the Government Hospital, Bapatla and the doctors advised them to shift them to Ponnur. Both the deceased were shifted to Ponnur, where the Doctors after examining them declared as brought dead. Thus, even if the evidence of PW 1 and PW 2 is accepted that the accused gave a liquor bottle to the deceased No. 1, their testimony does not establish except that there is nothing that the liquor bottle given by A1 was consumed by D1 and D2, PW 3, who is the wife of D2, stated that both the deceased came to her house and they asked to bring two glasses and D1 and D2 poured brandy in glasses, then they consumed and immediately both D1 and D2 fell down. If the evidence of PWs 1 to 3 is to be accepted that the accused gave a brandy bottle, which contained cyanide poison, the important circumstance that the brandy bottle and two glasses used by D1 and D2 in consuming liquor which were seized by the police had not been sent to the RFSL. According to doctors, stomach contents of viscera have been admittedly forwarded to RFSL, Vijayawada. The report of RFSL is not marked as a document in the case. No explanation is forthcoming for not marking the document, which would have proved that the stomach contents of both deceased contained cyanide poison. No doubt, the opinion of the doctors who conducted autopsy over the dead bodies of the deceased shows that both the deceased died as a result of cyanide poison, but at the same time, it must be based on a document of the opinion given by the expert. That expert opinion is not brought on record. The expert opinion is very much essential and important in this case because the specific case of the prosecution is that the brandy bottle contained cyanide poison, which was given by the accused to the deceased No. 1. Therefore, if really the accused had given the brandy bottle which contained cyanide poison and the same was consumed by both the deceased, certainly the expert would have found contents of alcohol in the stomach. u/s 45 of Evidence Act, the Court in order to form an opinion upon a point of foreign Law, or of science or art, or as to identify hand writing or finger impressions can treat the opinion upon that point of person specifically skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions as relevant facts. In other words, the opinion of persons specially skilled in such foreign law, science or art, or questions as to the identity of handwriting or finger impression, called experts therein, are relevant facts. The evidence of doctors, who conducted autopsy over the dead bodies of the deceased, categorically show that they

did not find any alcohol smell from the viscera.

13. No doubt, u/s 293 of Code of Criminal Procedure, 1973 the report of Government Scientific Expert to whom this section applies can be proved by the production of the document itself. It must be tendered in evidence in the trial Court so that the accused may have a chance of questioning it. The report should contain factual data with regard to analysis. u/s 231, Cr.P.C. the Judge shall proceed to take all evidence as may be produced in support of prosecution. The opinion of both doctors based upon the report of Chemical Examiner of Regional Forensic Science Laboratory.

14. Rule 58 of Criminal Rules of Practice and Circular Orders, 1990 inter alia provides that exhibits admitted in evidence shall be marked with capital letter P followed by a numerical P1, P2, P3 and the like if they are filed by prosecution.

15. Section 62 of Evidence Act defines primary evidence which means the document itself produced for inspection of Court. Thereafter the contents of a document have to be proved by admissible evidence but not necessarily by the author of document in view of Section 293 of Code of Criminal Procedure. u/s 64 of Evidence Act, documents must be proved by primary evidence except in the cases hereinafter mentioned. When the document is proved to have been issued, it follows the exhibit number.

16. From the above provisions, it is clear that a document has to be exhibited in the Court of Law. Though u/s 293, Cr.P.C., it is not necessary for the experts mentioned therein need not come to Court unless Court thinks otherwise under sub-section (2), the person who receives the document has to speak about the factum of receiving. There is no evidence to show that either Doctor or Investigating Officer received the document from Chemical Examiner. Whoever received the document, it has to be marked through him. Then only the contents can be looked into in view of Section 293(1) of Cr.P.C. Such procedure is not followed. The opinion of the doctor in the facts of this case appears to be in the nature of hearsay evidence. It is not his objective observations or analysis. His opinion is based upon the analysis conducted by some other expert. In the absence of marking the Chemical Examiners report, the opinion of Doctor is hit by rule of hearsay.

17. It is needless to observe, that it is the imperative duty of prosecution to mark the document in accordance with law. If the prosecutor for obvious reasons, has not tendered the document, the Court is not helpless. Judge is not a mere spectator to watch the game in the field. Court has to bring the document on record as an exhibit as per the provisions of Evidence Act.

18. Therefore, the case of the prosecution that the deceased consumed alcohol, which contained cyanide poison, cannot be said to be proved beyond reasonable doubt. Therefore, the origin and genesis of the occurrence has been Suppressed by the prosecution and a distorted version was brought on record.

19. The third circumstance is that the accused must be in possession of cyanide poison. The Investigating Officer after arrest of the accused did not seize any bottle from the possession of the accused. No steps have been taken to identify the person from whom the cyanide poison was purchased. So first and third ingredients have not been established beyond all reasonable doubt at all by the prosecution. Except the second circumstance that the accused gave brandy bottle to deceased No. 1, there is no other circumstance to indicate that it is the accused and none else, who gave the brandy bottle containing the cyanide poison. Even that circumstance is also not conclusively proved beyond all reasonable doubt because the stomach contents are not shown to have contained alcohol and, therefore, the benefit of doubt should go to the accused. This aspect of the case had been completely overlooked by the trial Court Hence, it is a fit case where benefit of doubt be given to the accused as the prosecution failed to establish the guilt of the accused beyond reasonable doubt. In the result, the conviction and sentence imposed against the accused for the offence punishable u/s 302, IPC in S.C. No. 527 of 2002 on the file of IV Additional Sessions Judge, Guntur are set aside. He shall be set at liberty forthwith, if he is not required in any other cases.

Criminal appeal is allowed accordingly.