
(2004) 07 AP CK 0014

Andhra Pradesh High Court

Case No: Criminal Appeal No. 861 of 1997

Aravelly Shankar

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision: July 26, 2004

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307

Citation: (2004) 2 ALT(Cri) 629 : (2004) CriLJ 4456

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: C. Praveen Kumar, for the Appellant; The Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Narayana, J.

Heard Sri C. Praveen Kumar, the learned Counsel representing appellant-accused and the learned Additional Public Prosecutor.

2. This Criminal Appeal is filed against the judgment dated 07.07.1997 in Sessions Case No. 73 of 1997 made by the Metropolitan Sessions Judge, Hyderabad. The appellant-accused was convicted for the offence punishable u/s 307 of Indian Penal Code (IPC) and sentenced to suffer Rigorous Imprisonment for a period of ten years.

3. Facts in brief, are as hereunder:

The victim Janardhan is an auto-trolley driver and the appellant-accused-Aravelly Shankar belongs to the same locality and the appellant-accused is a habitual offender and a desperate unsocial element of the locality and also a rowdy-sheeter of Gandhinagar Police Station, Secunderabad. It is the further case of the prosecution that the elder brother of the victim Lingam and the uncle of the accused Mutyalu are residents of Bagh Lingampally, Hyderabad and there are family disputes between them and

Mutyalu sought the help of the accused in this regard and there was series of incidents. The victim, and his brother Lingam had lodged police complaints against the accused, and thereby, the accused bore grudge against the victim and his family and had decided to kill the victim. On the fateful day, on 12.08.1995 at about 7.30 P.M. the victim who was examined as P.W.1 along with his friends P.Ws 2 and 3 and another had been chit-chatting at a vegetable shop of Bholakpur and the accused arrived there in an auto, pushed his friends aside, caught hold of the victim and stabbed him with a knife on the left side of his head and when P.W.1 fell down, the accused again attacked him and caused bleeding injuries. On seeing the same, the locality people gathered, and hence, the accused ran away. The victim was immediately shifted to the police station and then, to hospital for treatment and the police recorded the statement of P.W.1 and registered the same as a case in Crime No. 206 of 1995, Gandhinagar Police Station, and during the course of investigation police had examined the eye witnesses, observed the scene of offence and apprehended the accused, and recovered the knife used for the commission of offence in presence of mediators, and on receipt of the wound certificate, ultimately, the police laid the charge sheet.

4. The Xth Metropolitan Magistrate committed the case to the Court of Sessions in P.R.C. No. 22 of 1996 and after hearing both sides, and on consideration of the material available on record, a charge u/s 307 of IPC was framed by the Metropolitan Sessions Judge, Hyderabad, which reads as hereunder:

"That you on or about the 12.08.1995 in Bholakpur area did an act, attacked D. Janardhan with such intention or knowledge and under such circumstances, that if by that act you had caused the death of D. Janardhan you would have been guilty of murder and thereby committed an offence punishable u/s 307 of the Indian Penal Code and within my cognizance."

The accused pleaded not guilty and he was tried. The evidence of P.Ws 1 to 7 was recorded. Exs.P1 to P.6 and M.Os 1 to 4 were marked on behalf of the prosecution and none were examined on behalf of the defence, and the learned Metropolitan Sessions Judge after hearing both the parties, and on appreciation of the oral and documentary evidence available on record, and after hearing the accused on the quantum of sentence, ultimately had imposed rigorous imprisonment for a period of ten (10) years, and hence, the present appeal.

5. The learned Counsel representing appellant-accused had taken this Court through the contents of Ex.P.1 and would contend that in the light of the earliest version in Ex.P1, the very presence of P.Ws 2 and 3 at the scene of occurrence is doubtful. The learned Counsel would maintain that even otherwise, these are interested witnesses and though it is stated that there was gathering, none others had been examined. The learned Counsel also maintained that relating to the aspect of motive or the enmity, which was the cause for the incident, according to the prosecution version, none had been examined. The learned Counsel also had pointed out that the evidence of the Doctor and also the wound

certificate would go to show that the injuries caused are only simple injuries and hence, definitely the ingredients of Section 307 IPC are not attracted. The learned Counsel pointed out certain portions of the evidence of P.Ws.1, 2 and 3 and commented that this evidence is shaky and unreliable. The Counsel also placed reliance on Sukhar V. State of Uttar Pradesh (AIR SC 3883) and Public Prosecutor V. Paladugu Venkateswara Rao (1997(2) ALD (Cri.) 800 (AP)).

6. On the contrary, the learned Additional Public Prosecutor would contend that it is the intention to do away with the life of the victim, that is the material to attract the ingredients of Section 307 IPC and not the nature of the injuries. The learned Counsel also submitted that the evidence of P.W.1 is well supported by the other eye witnesses, who were present at the scene of offence and merely because they are the associates of P.W.1, on the ground of interested witnesses, the said evidence cannot be discarded. The learned Counsel also would maintain that when clear evidence spoken to by eye witnesses is available on record, motive may not be so relevant, and merely because those witnesses were not examined, on that ground, the version of the prosecution cannot be disbelieved. The learned Counsel also had taken this Court through the findings recorded by the learned Judge in this regard and would submit that inasmuch as all aspects had been considered, the said findings need not be disturbed in the present appeal.

7. Heard the Counsel on record and also perused the oral and documentary evidence.

8. P.W.1 is the victim and P.Ws 2 and 3 are the eye witnesses to the incident. P.W.4 and P.W.5 are the mediators for the seizure of the blood stained clothes and P.W.6 is the Investigating Officer and P.W.7 is a doctor who had treated the victim. Ex.P.1 is the first report given P.W.1. Exs.P2 and P3 are mediators report and seizure of blood stained clothes and recovery of knife. Ex.P.4 is the entry made in the General Diary of Police Station, Gandhinagar. Ex.P.5 is the original F.I.R. issued by the police and Ex.P.6 is the wound certificate. M.O1 is the Barber's knife, which was used in the commission of the offence as stated by the prosecution. M.Os 2 to 4 are the blood stained clothes of the victim.

9. The evidence of P.Ws.1, 2 and 3 is available on record and apart from this, the evidence of the Doctor-P.W.7 is also available on record.

10. P.W.1-the victim deposed that he is a resident of Bholakpur, Secunderabad and he has been running an auto-trolley and one D. Lingam is his brother who is residing at Bagh Lingampally and another, Muthyalu is also resident of Bagh Lingampally and the house of his brother is opposite to the house of Muthyalu and he knows the accused Shankar and he is a resident of Bholakpur and there are twenty houses in between his house and the house of the accused. P.W.1 also deposed that on 12.08.1995 at about 7.00 p.m. himself, PWs.2, 3 and another were standing near vegetable shop in Bholakpur, and the accused came in an auto rickshaw, got down and pushed aside his friends and took out a barber's knife and attacked PW1 with the said knife on his head by uttering that he would kill if

PW1 does not withdraw the case, and he sustained a head injury on the left side of his head and he also sustained injury on the left ear with the same blow and he fell down on receiving the said injury and the accused also uttered that unless PW1 was killed, his people will not get any lesson and so saying he beat P.W.1 with the same weapon on the left side of his shoulder, near his chest. When P.W.1 tried to ward off the blow with his left hand, he also sustained injury on his left wrist and on sustaining injuries, P.W.1 raised hue and cry and some public gathered there, and on seeing them, the accused ran away along with the weapon. P.W.1 deposed that his friends had witnessed the attack and the public did not intervene, since they were afraid of the accused as he being a rowdy of their locality. P.W.1 also deposed that he went to Gandhinagar Police Station in an auto rickshaw of one Narsing Rao, who is a resident of that locality and the police had taken to him to Gandhi Hospital for treatment and after half an hour, the Sub-Inspector of Police came to Gandhi Hospital and recorded his statement and obtained his signature. Ex.P1 is the statement recorded by the police. P.W.1 also deposed in detail about the disputes between his brother Lingam and the uncle of the accused i.e., Mutyalu. P.W.1 also deposed about M.O1-barber's knife, which was used by the accused to attack him, M.O2-blood stained shirt, M.O.3-blood stained banian and M.O4-Handkerchief. P.W.1 also deposed that he was discharged from the Hospital and his statement was also recorded by the police.

11. P.W.1 was cross-examined at length. P.W.1 admitted that his brother is a Joint Secretary of Ambedkar Association at Bagh Lingampally and he does not know whether he is an active associate of the said society. P.W.1 also deposed that he did not state before the police that on 07.07.1995, there was a quarrel between the women folk of his family and he did not state before the police that on 30.07.1995, the accused Shankar went to the house of his brother at Bagh Lingampally and he does not know whether there is any other person by name Shankar apart from the accused in that locality. P.W.1 also deposed that he stated before the police that on 10.08.1995 at 8.30 p.m., Shankar, S/o Chandraiah and Raju, S/o Yadagiri attacked the family members of his brother at Bagh Lingampally. He further deposed that normally he would come back to his house by 5.00 or 5.30 p.m., after completing auto driving and he has nothing to do with the affairs of his locality and he does not actively involve in the said activities. P.W.1 also deposed that he stated before the police that the accused Shankar went to the house of his brother along with 15 to 20 people on 12.08.1995 and again visited the house by 6.30 p.m. on the same day. P.W.1 further deposed that he heard about the same through the son of his brother. P.W.1 also deposed that usually they used to assemble everyday at the place of incident at about 7.00 or 7.30 p.m. and there are residential houses and shops near the scene of offence and, usually, the children will be playing on the road by the time of the incident in the said locality and the vegetable shop where the incident occurred will be opened till 10-00 or 10-30 P.M. every day. P.W.1 also deposed that he knows the vendor of the vegetable shop and her name is Mallamma. He further deposed that there was some electric light near the scene of offence at the time of the offence and he denied the suggestion that he stated before the police that he suspected, the accused might have

arrived at the at the scene of offence from his brother"s house. This witness was also cross-examined at length in relation to M.O1 and, ultimately, it was suggested that due to business rivalry, the accused was implicated in this case.

12. Apart from the evidence of P.W.1, the other eye witnesses available on record are P.Ws 2 and 3. P.W.2 deposed what actually happened on 12.08.1995, the time and the occurrence, and the way in which the incident had taken place had been well deposed by P.W.2. He was cross-examined at length. A careful scrutiny of the cross-examination would go to show that the credibility of this witness had not been shaken in any way.

13. P.W.3 is yet another witness, who also had deposed about the incident in clear terms. So the evidence of P.Ws.1 and 2 is well supported by the evidence of P.W.3 also and the same is further corroborated by the evidence of P.W.7-the doctor. Ex.P.6-wound certificate issued by P.W.7 shows the following injuries.

"The nature of injury and treatment (State simple) alleged to have assaulted by knife at Bholakpur Bus Stand at 8.10P.M. No H/O loss of consciousness/NOH/D vomitings O/E2-pt. Conscious, coherent.

PR:- 82/mt BP:- 110/70 mn HG A/c:- NAD P/A:-

Soft pupils, NSRL

Injuries:- (1) 1 1/2 " x 1/2" scalp deep laceration over left parietal area

(2) 1/4" x 1/4" laceration over lf. Ear lobe

(3) 1/4" x 1/4" incised wound lf-collar- bone

(4) 2" x skin deep incised wound over lf-Thorax

(5) 1/4" x 1/4" Rt ear lobe

(6) 1/2" x 1/4" laceration over lt-ear

From the evidence of P.W.7 and also Ex.P6, there cannot be any controversy that the injuries are simple in nature.

14. The learned Counsel representing the appellant-accused pointing out Ex.P1, would submit that the evidence of P.Ws 1,2 and 3 is contradictory in relation to the way in which the incident happened. The learned Counsel placed strong reliance on this portion of Ex.P1

"Today i.e., Sunday on 12.08.1995 at about night 7.30 P.M. my friends by names G.Ramesh, Sanjeev, Venkatswamy son Ramesh and myself while chit chatting, our area rowdy sheeter Shankar came there, saw us and ordered Ramesh to leave the place and

sent him away and then he caught hold of me tightly then on seeing it the other two persons who are along with me fled away and then threatened me as "what man your brother Lingam staying in Baghlingampally had beat my paternal uncle (Kaka) and on 10.08.1995 night I came to our house and though searched for you and your brother nobody could be seen."

On the strength of this statement, it is contended that inasmuch as it is stated in Ex.P1 that Shankar came there, saw them and ordered Ramesh to leave the place and sent them away, the stand taken by P.Ws 2 and 3 that they had witnessed actual incident, cannot be believed. A careful reading of the whole statement of Ex.P1 would not disclose such a meaning and a sentence cannot be read in isolation and even otherwise, in the light of the clear evidence of P.Ws 1 to 3, this Court is not inclined to accept the contention put forth by the learned Counsel for the appellant-accused that this is a serious variation touching the very credibility of these direct witnesses. On the aspect of motive, the evidence of P.W.1 is clear.

(a) In [Nachhittar Singh Vs. The State of Punjab](#), the Apex Court held that

"The failure of the prosecution to establish the motive for the crime committed by the accused does not mean that the entire prosecution case has to be thrown over-board. It only casts a duty on the Court to scrutinize the other evidence, particularly of the eye-witnesses, with greater care."

(b) In [Raja Vs. State](#), it was held that

"In order to bring home the guilt of the accused, it is not necessary in each and every case to prove the motive. More often than not what motivates a man to cause a particular crime is only within his knowledge. It is a hard nut to crack to find out in each and every case as to what was the motive which led to the commission of a particular crime. Further more, the penal Code is a codified law. Each and every section of the Code gives out the requisite ingredients of a particular offence with which the said sections deal. Thus, the prosecution is only required to show that a particular case falls within the domain of a particular section. If it succeeds in showing the same, in that eventuality, it is not required to do anything further more."

15. Hence, in the light of the clear evidence of P.W.1 well supported by the evidence of P.Ws 2 and 3 and further corroborated by the medical evidence, P.W.7 and Ex.P-6, the evidence of eye witnesses cannot be disbelieved. Yet another ground of attack, these witnesses P.Ws 2 and 3 are interested witnesses and none others gathered at the locality, had been examined. It is pertinent to note that the version of the prosecution is that P.Ws 2 and 3 and another who were along with P.W.1 had witnessed the incident and in the light of the happening, the people of the locality had gathered and the local people could not intervene because they were afraid of the accused as he being a rowdy sheeter of that locality.

(a) [State of U.P. Vs. Jodha Singh and Others](#), it was held that,

"Though interested witness when the testimony of the eye witness is consistent with the version given in first information report and eye witness also sustaining injury in the occurrence and his presence at scene cannot be doubted. Such testimony cannot be rejected on the ground that he is an interested witness."

(b) In [State of U.P. Vs. Hari Ram and Others](#), the Apex Court held that

"The ground that a particular witness as interested witness is no ground to discard his testimony and at the best, the same may have to be examined with caution."

16. The learned Counsel for the appellant-accused also placed strong reliance on Sukhar V. State of U.P. AIR 1989 SC 3883 and Public Prosecutor V. Paladugu Venkateswara Rao 1997 (2)ALD (Cri.) 800(AP) and advanced an argument that at any rate, the ingredients u/s 307 of IPC are not satisfied.

17. P.W.4 is a mason by profession and he speaks about the seizure of blood stained clothes-M.Os 2 to 4 from P.W.1 in their presence under the cover of mediator"s report-Ex.P2.

18. P.W.5 deposed that police recovered the knife M.O1 and prepared panchanama-Ex.P3 for seizure of M.O.1 and the admissible portion of the panchanama alone had been marked.

19. P.W.6 is the Investigating Officer who had deposed in detail that on 12.08.1995 at about 8.00 p.m., P.W.1 came to the police station along with one Narasimha, with bleeding injuries and after verifying the reasons for injury, he made a General Diary entry and sent P.W.1 to Gandhi Hospital, Secunderabad for immediate treatment. Ex.P.4 is the relevant G.D. entry made by him. P.W.6 also further deposed that by about 9.00 P.M. he proceeded to Gandhi Hospital and recorded Ex.P1-statement of P.W.1 and returned to the police station and registered the same as a case in Crime No. 206 of 1995 for the offence punishable u/s 307 IPC. Ex.P.5 is the First Information Report registered by him and the copies of Ex.P5 were sent to all the concerned, and on the same day, he proceeded to the scene of offence and examined P.Ws 2 and 3 and recorded their statements and returned to the police station and then, examined P.W1. P.W.6 further deposed that on 13.08.1995, he again proceeded to the scene of offence and prepared rough sketch of the scene of offence and the said rough sketch was not filed in the Court. P.W. 6 also deposed about the recovery of M.O1 under Ex.P3 and seizure of M.Os 2 to 4 in presence of P.W.4 under Ex.P2-property seizure memo and he arrest of the accused and his remand to judicial custody and on receipt of the wound certificate from the hospital, P.W.6 filed the charge sheet.

20. The evidence of P.W.7-Doctor and the wound certificate, already had been referred to supra. The version of the defence is one of total denial and implication of the

appellant-accused in a false case is due to enmity. The ground raised relating to the identity of Shankar S/o Chandraiah and Raju, S/o Yadagiri also had been explained.

21. Hence, in the light of the foregoing discussion, the evidence of P.Ws 2 and 3 well supporting the evidence of P.W.1, cannot be disbelieved on any ground whatsoever. The learned Metropolitan Sessions Judge, had taken all the facts and circumstances into consideration and recorded findings in this regard.

22. The next question, which had been seriously canvassed is that at any rate, this is a case of causing simple injuries and, definitely, the ingredients of Section 307 IPC are not attracted. The evidence of P.W.1 is clear and categorical and during the attack, it was not just causing the injuries, and the utterances made by the appellant-accused also may be relevant and, hence, at any stretch of imagination, it cannot be said that the appellant-accused had no intention to do away with the life of P.W.1 but only attacked with a view to cause simple injuries. It is the intention which would be material in deciding whether the Section 307 IPC is attracted or not.

23. In the light of the foregoing discussion, this Court has no hesitation in accepting that the ingredients of Section 307 IPC are satisfied. It is also not in controversy that the appellant-accused is a rowdy sheeter and involved in certain crimes of that locality. However, taking into consideration the circumstances explained and also the fact that the injuries are simple injuries as reflected from Ex.P.6 and the evidence of P.W.7, the interest of justice would be met, if the conviction and the sentence of rigorous imprisonment for ten years imposed by the learned Metropolitan Sessions Judge, is modified to seven years.

24. In the result, the conviction and the sentence of Rigorous Imprisonment for a period of Ten (10) years u/s 307 IPC imposed by the learned Metropolitan Sessions Judge, Hyderabad in Sessions Case No. 73 of 1997 on 07.07.1997 are modified to Seven (7) years and the Criminal Appeal is hereby dismissed.