

## Arepalli Swamy Vs The State of Andhra Pradesh

**Court:** Andhra Pradesh High Court

**Date of Decision:** April 29, 2014

**Acts Referred:** Evidence Act, 1872 â€” Section 113  
Penal Code, 1860 (IPC) â€” Section 302

**Citation:** (2015) 2 ALD(Cri) 506 : (2014) 3 ALT(Cri) 272

**Hon'ble Judges:** M.S.K. Jaiswal, J; L.N. Reddy, J

**Bench:** Division Bench

**Advocate:** A. Prabhakar Rao, Advocate for the Appellant

**Final Decision:** Allowed

### Judgement

L. Narasimha Reddy, J.

The accused, by name, Arepelli Swamy, was tried by the Court of II Additional Sessions Judge, Warangal, in

S.C. No. 341 of 2008, on a charge that he caused the death of one Matla Raju, the deceased, at 19 hours, on 30.01.2008 at Gopalpuram

Village, Chityal Mandal, Warangal District.

2. The background of the case is that the deceased, accused and LW.7 - Eku Sammaiah were working in a Musical Band, under the leadership of

one Md. Jeelani - PW.2. About three years before the date of incident, there was division among the players. LW.7 got himself separated, the

accused joined him, and the deceased was continuing under PW.2.

3. The deceased was working as a Casio Player. It is stated that with the combination of the deceased and PW.2, they were getting substantial

work and it became an eyesore for the accused and LW.7. Quarrels are said to have ensued in this behalf, and on one occasion, the deceased

attacked the accused, and that in the resultant panchayat, the deceased was required to pay a fine of Rs. 8,000/-, to the accused.

4. On 30.01.2008, at about 7.00 P.M., the accused, deceased, PW.2, LW.7 and one person, by name, Neelam Chinna Sadaiah - PW.3 were

said to have gone to the house of LW.8, by name, Mula Thirupathi Goud, for consumption of toddy. PW.3 was said to be taking toddy inside the

house, whereas PW.2, accused, deceased and LW.7, were sitting on the pial of the house of LW.8. All of a sudden, the accused is said to have

picked up an axe and attacked the deceased by giving blows on head and chest and when PW.3 made an attempt to intervene, the accused

pushed him aside and ran away.

5. PW.1, the father of the deceased, submitted a complaint, Ex.P.1, at 10.30 P.M., before the Police Station Chityal, about the incident. After

furnishing the background of the relationship between the accused and the deceased, he stated that his younger brother, LW.14, came and

informed him about the death of the deceased, and soon thereafter, he rushed to the spot and found the deceased in a pool of blood. The police

registered Crime No. 8 of 2008 alleging offence punishable u/s 302 I.P.C., against the accused. The scene of offence panchanama was prepared,

inquest was conducted, and the body of the deceased was sent for post-mortem examination. Statements of the persons acquainted with the

incident were recorded. A charge sheet was filed alleging the offence against the accused. The trial Court framed the charge and on the accused

pleading not guilty, trial was conducted. PWs.1 to 11 were examined. Exs.P.1 to P.7 were marked. M.Os.1 to 7 were also taken on record. A

publication in Eenadu Telugu Daily on 31.01.2008 was marked as Ex.D.1.

6. Through its judgment, dated 19.01.2010, the trial Court convicted the accused and sentenced him to undergo imprisonment for life and fine of

Rs. 500/-, in default to suffer simple imprisonment for one month. Hence, this appeal.

7. Sri A. Prabhakar Rao, learned counsel for the appellant, submits that PW.1 received the information about the death of his son through LW.14,

his younger brother, but the prosecution failed to examine the said witness. He contends that the incident is said to have taken place in the house of

one Mr. Thirupathi - LW.8, where that person, his wife -LW.9, were supplying toddy and for the reasons best known to them, the prosecution did

not examine those two persons. Learned counsel further submits that the root cause for the disputes between the deceased and the accused was

the professional rivalry between PW.2 and LW.7 and though LW.7 was said to be present at the time of occurrence, he too was not examined.

8. Learned counsel submits that though PW.1 stated that the accused caused serious injuries to PW.3, by giving fist blows on mouth and

abdomen, PW.3 himself did not depose on those lines. Another argument advanced by the learned counsel is that PW.2 stated that if a person sits

in the room of LW.8, he cannot see as to what is happening outside and PW.3, who was sitting in the room, deposed about the incident that is said

to have taken place outside the room. Other contentions also are urged by the learned counsel.

9. Learned Additional Public Prosecutor, on the other hand, submits that the prosecution has examined two eye witnesses, and adduced other

evidence to prove its case and the trial Court was satisfied with the evidence on record. She contends that once the presence of PWs.2 and 3 is

not disputed, other discrepancies pointed out by the learned counsel for the accused, are of no consequence. She further submits that the accused

has a motive to kill the deceased, since there was an altercation on the earlier occasion, and he was not satisfied with the imposition of fine upon

the deceased.

10. The deceased and the accused were working together under PW.2, in the Band. LW.7 was part of the same. However, on a division that had

taken place between PW.2 and LW.7, the accused and the deceased parted ways. The professional rivalry that existed between PW.2 and LW.7

is said to have percolated to the accused and the deceased. It is an admitted fact that a quarrel of serious nature took place between the accused

and the deceased about three months prior to the incident, that gave rise to the present case, and on finding that the deceased was at fault, a sum

of Rs. 8,000/-, was imposed as fine.

11. The incident on 30.01.2008 at 7.00 P.M., is said to have taken place in the house of LWs.8 and 9 and in the presence of many. They include,

PWs.2 & 3 and LW.7. It has already been mentioned that the complaint was submitted by PW.1, father of the deceased, on the basis of the

information furnished to him by his younger brother - LW.14. PW.4 is another brother of PW.1. Even to him, the source of information was

LW.14. However, the prosecution did not examine LW.14. The presence of that witness to the Court would have been helpful to know as to the

nature of information he has furnished to his brothers - PWs.1 and 4, and to see whether the complaint - Ex.P.1 reflected such information or

whether it is an improvement upon it. Things would have been different, had PW.1 submitted a complaint, on the basis of his own information or on

the basis of what is noticed by him on proceeding to the spot. Notwithstanding the importance of LW.14, in this episode, failure to examine him

cannot be treated as fatal.

12. Coming to the occurrence, it is said to have taken place at 7.00 P.M., in the house of LWs.8 and 9, where all the four members of the Band,

which was together before it was divided, namely PW.2, LW.7, accused and the deceased. PW.3, a farmer of the village, is said to have come

there, for consumption of toddy. While the four members of the Band were said to be on the pial, in front of the house, PW.3 and LW.9 were

inside the room. It was elicited from PW.2 that a person, who is inside the room, cannot notice what is happening outside. PW.3 stated that he

was drinking toddy inside the room. Therefore, it is difficult to accept the evidence of PW.3 that he has noticed what was happening outside.

However, he said that when he was inside the room, the accused picked up an axe and attacked the deceased. On hearing cries, he is able to have

come out and trying to intervene, but the accused fled away after pushing him aside. PW.2 has also deposed on the same lines. There is, however,

some discrepancy as to the manner in which the accused attacked the deceased. PW.2 stated that the deceased had one leg inside and one leg

outside the room, when the attack took place.

13. The best persons to present the correct picture about the incident would have been LWs.8 and 9, the couple, who were serving toddy at their

house, to the persons, named above. Having recorded their statements and included them in the list of witnesses, the prosecution did not choose to

examine them before the Court. From the point of view of the accused, the presumption provided for under sub-section (g) of Section 113 of the

Indian Evidence Act, gets attracted.

14. It has already been mentioned that PW.1 is not an eyewitness, and his role is limited to the one of submitting the complaint, after seeing the

incident. In the cross-examination, suggestions were made to him to the effect that soon after the incident, the house of the accused was burnt.

However, he feigned ignorance about it. Some of the prosecution witnesses admitted that the house of the accused was burnt, as a spontaneous

reaction. That was substantiated by filing Ex.D.1.

15. Motive plays an important role in a criminal case. That there existed disputes between the accused and the deceased, was admitted by almost

every prosecution witness. In relation to a quarrel, the deceased was found to be at fault and he was made to pay Rs. 8,000/-. That development,

if at all, gave rise to grievance or grudge, to the deceased vis-a-vis the accused. The prosecution, however, projected the case exactly the other

way. Suggestions were made to various prosecution witnesses to the effect that the deceased was killed elsewhere and his body was brought to

the place where the accused and other persons, are consuming toddy in front of the house of LWs.8 and 9. The lingering suspicion, in this behalf,

could have been removed by the prosecution, by examining LWs.8 and 9. That not having been done, the prosecution left a missing link in the

chain of events. The benefit of doubt, as in any other criminal case, must naturally go to the accused.

16. In the result, the criminal appeal is allowed. The conviction and sentence ordered in S.C. No. 341 of 2008 on the file of the II Additional

Sessions Judge, Warangal, dated 19.01.2010, against the appellant-accused, are set aside. The appellant-accused shall be set at liberty forthwith,

unless his detention is needed in any other case. The fine amount, if any, paid by the appellant-accused shall be refunded to him.

17. The miscellaneous petition filed in this appeal shall also stand disposed of.