

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

Andhra Pradesh High Court

Case No: Criminal Appeal No. 181 of 2010

Arepalli Swamy

APPELLANT

Vs

The State of Andhra
Pradesh

RESPONDENT

Date of Decision: April 29, 2014

Acts Referred:

- Evidence Act, 1872 - Section 113
- Penal Code, 1860 (IPC) - 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.