

P. Babu And Ors. vs State Of A.P. on 1 October, 1993

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Bench: G.N. Ray

JUDGMENT

K. Jayachandra Reddy, J.

1. There are three appellants - original accused Nos. 1, 2, and 3. They were tried along with four others for offences punishable under Sections 148, 302 and 302/149 I.P.C. These appellants were also charged under Section 302 simplifier. The trial court acquitted all of them. The State preferred an appeal against the acquittal and the High Court while confirming the acquittal of A-4 to A-7, convicted the appellants under Sections 302/34 I.P.C. and sentenced each of them to undergo imprisonment for life. Hence the present appeal.

2. The prosecution case is as follows:

P. Narasinga Rao, the deceased in the case was working as a Welder at Secunderabad. He had a vegetable shop also in the market and he used to attend to his shop in the evening. P.W. 16 is the maternal uncle of the deceased. He has also a vegetable shop in the same market. The accused are all related to each other. A-4's younger brother was murdered on 4.8.78. The deceased and two others were prosecuted in that case and the same ended in acquittal. All the accused herein and also the absconding accused Sriramulu were aggrieved with the acquittal and bore grudge against the deceased. The deceased told P.W. 16 that the accused were intending to kill him. On 21.3.79 at about 5 P.M., P.W. 7, a neighbour of P.W. 16 was doing painting work in a house in Picket, Secunderabad and after completing that work, he was going home.

At about 7 P.M. he came near the State Bank and saw A-1 to A-7 and the absconding accused Sriramulu and heard Sriramulu telling A-1 and A-4 to do away with the deceased. After coming home, P.W.-7 informed P.W. 16 about what he has heard. On that day at about 6.30 P.M., P.W. 2 who worked under the deceased, went to the shop of deceased to meet him on a cycle. The deceased asked him to take him to the police station as he had to mark his attendance. Then both of them went on the cycle to the Market Police Station. After marking the attendance, both of them were coming back to the shop of the deceased on cycle. When they reached the State Bank, A-1 emerged from the lane and caught hold of the deceased. A-2 to A-7 also joined A-1. A-1 stabbed the deceased with a knife on his chest. A-2 and A-3 axed the deceased on his back with axes. A-4 to A-7 stabbed the deceased with knives on various parts of his body. P.W. 2 ran to the Police Station to give a report about the incident to the Inspector of Police, P.W. 21, who made an entry in the general diary and alongwith S.Is and Head Constables rushed to the scene of occurrence. They carried the deceased to the hospital. P.W. 10, the Civil Assistant Surgeon who was on duty, examined the injured and found 10 injuries and issued the wound certificate Ex.P.6. P.W. 10 admitted the injured into Cardio-Thoracic Ward and asked the S.I. to fetch the Magistrate for recording the dying declaration. The S.I. returned after 15 minutes and reported that the Magistrate was not available in his residence at that time. P.W. 21 also was present at that time in the hospital. He asked P.W. 1, who was working as House Surgeon in the Casualty Department to record the dying declaration of the deceased. P.W. 1 recorded the dying declaration of the deceased Ex. P.1 which was read out to the deceased and his thumb impression was taken. P.W. 1 handed over Ex.P.1 to P.W. 21 in the presence of P.W. 19, another Police Officer, who registered a case and issued express F.I.R. P.W. 21 continued the investigation. P.W. 20, Assistant Professor of Thoracic Surgery was contacted and he came to the hospital at about 9 P.M. and found the deceased to be in a bad condition. Therefore he could not undertake any surgical treatment. The injured expired at about 11.10 P.M. and an altered F.I.R. was issued. The dead body was sent for post-mortem and the Doctor found a number of incised injuries, which could have been caused by knives and axes. The accused were arrested except Sriramulu and the accused who were arrested were charge-sheeted and tried.

3. The prosecution relied on the dying declaration Ex.P.1 and also on the evidence of P.Ws.2 to 5. The accused pleaded not guilty. The trial court discarded Ex.P.1 pointing out certain infirmities and also held that the same was not recorded at 8.35 P.M. as claimed by the prosecution but it was brought into existence later. The trial court also discarded the evidence of P.Ws 2 to 5, the eye-witnesses pointing out certain inconsistencies. Accordingly all the accused were acquitted. The High Court mainly relied on the dying declaration Ex.P.1 recorded by P.W. 1, the House Surgeon whose evidence is also corroborated by another Doctor, P.W. 10 who was on duty at that time. In the said dying declaration, the overt acts were attributed to A-1 to A-3. Since no overt acts were attributed to A-4 to A-7, the High Court confirmed their acquittal but set aside the acquittal of A-1 to A-3 and convicted them as mentioned above. The High Court, however, relied on the evidence of P.Ws 2 and 4 also and held that the same lends corroboration to the dying declaration so far as A-1

to A-2 e concerned. The High Court also observed that the dying declaration by itself is sufficient to convict A-1 to A-3.

4. Learned counsel for the appellants submitted that normal safeguards to be observed in recording the dying declaration have not been strictly observed and the evidence of P.Ws 1 and 10 regarding the manner in which the dying declaration was recorded and the time at which the same was recorded, does not inspire confidence and that the dying declaration was recorded at the instance of P.W. 21, the Investigating Officer and the said declaration was brought into existence later and that the view taken by the trial court is quite reasonable and the High Court erred in interfering with the findings of the trial court.

5. As noted above, the injured was immediately rushed to the hospital. P.W. 1, Dr. Pratap Kumar, the House Surgeon was on duty in the hospital at that time. He deposed that at about 7.40 P.M. the deceased was in the Casualty Department and that P.W. 10, Dr. C. Srihari Rao, the Casualty Medical Officer was also present. The condition of the injured Narasing Rao was serious. P.W. 1 further deposed that he was asked by P.W. 10 to record the statement of the injured Narasingh Rao and accordingly P.W. 1 recorded the same and obtained the thumb impression of the injured in the presence of P.W. 10 and after recording, handed over the same to the Inspector of Police, P.W. 21, who was present in the hospital at that time. The dying declaration reads thus:

Ex.P.2 dt. 21.3.79 STATEMENT OF NARASING RAO RECORDED BY P.W. 1
Statement of Shri P. Narasing Rao s/o Rajaiah, age 23 years, resident of Sajanlal Street.

Today i.e., on 21.3.79 at about 7.40 P.M. I went to Police Station Market and returning to my home. When I reached Rajeswar Talkies 2 persons namely Babu and Daya caught hold of me and Raju A.3 beat me. I fell down. Then all the three inflicted injuries with axe and knives. I received injuries on chest, back side and on right side of the neck. They took revenge on me due to previous enmity.

Statement is read over to me and explained in Telugu and accepted to be correct. The incident was witnessed by one Daya of Kalasiguda who was came (not clear). Recorded by Dr. P.B. Pratap Kumar, Gandhi Hospital.

L.T.I. of P. Narsing Rao L.T.I. of 8.35 P.Narasing Rao P.M. Pratap Kumar It can be seen that the deceased has mentioned that A-1 and A-2 caught hold of him and Raju, A-3 beat him and he fell down. Thereafter all the three inflicted injuries, with axes and knives. He also mentioned that the incident was witnessed by P.W. 2. The main criticism levelled against this dying declaration is that P.W. 1, the Doctor, who recorded the same, has not taken care to verify whether the injured was in a fit condition to make the statement and that the evidence of three Doctors, P.Ws.1, 10 and 20 would show that the condition of the deceased was very bad and therefore the injured would not have been in a position to make the said statement and that the statement was also recorded when P.W. 21, the Inspector of Police was there.

Learned counsel also contended that some of the admissions made by P.Ws 1 and 10 in their cross-examinations would throw any amount of doubt on the authenticity of this dying declaration. We shall now proceed to consider the evidence of P.Ws 1, 10 and 20. P.W. 1, in his chief examination, as already mentioned, clearly suited that he recorded Ex.P.1 as stated by the injured. He also stated that he obtained the thumb impression of the declarant in the presence of the Casualty Medical Officer, P.W. 10 and thereafter he handed over it to P.W. 21. In the cross-examination, P.W. 1 admitted that the treatment of the injured was not entrusted to him. However, he was asked at about 8 P.M. to record the statement of the injured. P.W. 1 had further admitted that the injured gave the statement in Telugu and he recorded the same in English. P.W. also admitted that P.W. 21 was present there and that after recording the statement, he handed over the same to him. He denied the suggestion that Ex.P. 1 was not recorded in the manner stated by the injured and that it was prepared subsequently at the instance of the Circle Inspector.

6. P.W. 1 is a young doctor and a highly independent witness. There is no reason whatsoever for him to speak falsehood. The recording of Ex. P.1 by P.W. 1 is not in dispute. P.W. 1 has clearly stated that the injured gave the said statement and he duly recorded it and obtained his thumb impression. P.W. 10, the Casualty Medical Officer who examined the injured and admitted him, asserted that Ex.P. 1 was recorded by P.W. 1 as per his instructions. P. W. 10 also deposed that he asked the Inspector to secure the presence of the Magistrate but he was told that the Magistrate was not available. Therefore the Circle Inspector requested him to record the dying declaration. He, however, asked P.W. 1 to record the same. P.W. 10's evidence shows that he was present when the dying declaration was being recorded by P.W. 1 and that the patient was fully conscious when the dying declaration was recorded. P.W. 10 further deposed that after the statement was recorded, he verified it and the same was read over to the victim who affirmed the same to be correct and therefore his thumb impression was taken. P.W. 10 was cross-examined at length. In the first instance he was cross-examined about the availability of the Magistrate and the time taken to get the information that the Magistrate was not available. Then he was cross-examined with reference to actual recording. P.W. 10 asserted in the cross-examination that he asked P.W. 1 to record and he himself had gone through the entire dying declaration recorded by P.W. 1. P.W. 10 also stated that they noted in the accident register that the dying declaration was recorded. Ex.P. 6 is the injury certificate. It appears that it was noted in Ex.P. 6 against an entry that the injured was said to have been stabbed by somebody. Placing much reliance on this entry, P.W. 10 was asked in the cross-examination as to how it was made. P.W. 10 stated that the deceased stated so in the first instance. The learned counsel relying on this admission sought to contend that the deceased was not aware as to who stabbed him. We see no force in this submission. It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc. It is next submitted that the condition of the injured was very serious and therefore it is highly doubtful whether he would have been in a position to make the statement. In support of this submission, the learned counsel relied on the evidence of P.W. 20 and also P.W. 9 another doctor, who conducted

the post-mortem. P.W. 20 deposed that he found that the condition of the injured was serious and that the Magistrate should be informed for recording the dying declaration. Relying on this admission made by P.W. 20, the learned counsel contended that the condition of the injured was serious and therefore it would not have been possible to record the dying declaration. The other submission is that since P.W. 20 made an entry that the Magistrate should be informed, it becomes doubtful that Ex.P. 1 was already recorded and if, in fact, the same was already recorded, P.W. 20 would not have made such an entry. We do not find any substance in this submission. P.W. 20 does not say that he enquired P.W. 10 whether any dying declaration was recorded already. Further, the accident register itself reveals that P.W. 10 has already made an entry in the relevant column that the dying declaration was recorded. Therefore the entry made by P.W. 20 that he visited the hospital at about 9 P.M. would not in any manner affect the veracity of the evidence of P.Ws. 1 and 10 who are respectable doctOrs.

7. The next submission is that as P.W. 1 knew Telugu, he should have recorded the dying declaration in the same language. P.W. 1 has clearly stated that he can read and write Telugu. Therefore there can not be any doubt about the contents of the dying declaration which is recorded in English and what is more, P.W. 10 clearly stated that he read out the statement and explained to the injured, who admitted it to be correct. Having carefully examined the evidence of P.Ws 1 and 10, we see absolutely no grounds to reject their evidence. They are independent and truthful witnesses and their evidence establishes beyond all reasonable doubt that Ex.P. 1 was duly and sincerely recorded as stated by the deceased. The view taken by the trial court that Ex.P. 1 was fabricated, is highly erroneous and unsound. The High Court was fully justified in reversing the said finding.

8. Learned counsel also contended that the medical evidence namely that of P.W. 9, who conducted the post-mortem, is in conflict with the version given in the dying declaration that after the deceased fell down, the three appellants inflicted injuries with knives and axes. P.W. 9 in the cross-examination gave his opinion that the injuries as found would show that they might have been inflicted while the injured was standing. nO doubt in the dying declaration, it is mentioned that the deceased was beaten by A-3 and he fell down. But that does not mean that he would not have made an attempt to get up and stand. The opinion given by P.W. 9 is not in direct conflict with the version given in the dying declaration. Apart from the dying declaration, Ex.P.1, there is evidence of P.Ws 2 to 4 also which has been relied upon by the High Court also. P. W.2 after witnessing the occurrence immediately rushed to the Police Station and informed the Police. As a matter of fact his name was mentioned in the dying declaration itself. P.W. 4 deposed that he was selling groundnuts on a pushcart. He knew the accused and deposed that these accused persons attacked the deceased. The evidence of these two witnesses lends ample corroboration to the dying declaration. Therefore we see no grounds to interfere with the findings of the High Court.

9. It is reported that A-1, P. Babu is dead. Learned counsel for the appellants also confirms the same. Consequently appeal against A-1 stands abated. So far as A-2, G. Dayanand and A-3 M.Rajender are concerned, the appeal is dismissed.