

PETITIONER:
KOMMU VINJA RAO

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH & ANR.

DATE OF JUDGMENT: 31/03/1998

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T

NANAVALI, J.

The appellant was convicted for the offence punishable under Section 302 IPC by the Sessions Court, East Godavari Division, in S.C. No.198 of 1994. His conviction was confirmed by the Andhra Pradesh High Court.

What has been held proved against him is that on 2.8.1993 at about 7.00 p.m., he assaulted Lakshmi with a knife and killed her on the spot. The prosecution case was that he had developed illicit intimacy with Lakshmi and for about 8 to 9 years they had stayed together as husband and wife. Some months before the date of incident, Lakshmi and the appellant had separated and since then she was staying in a thatched hut near the hut of her father. After separating from Lakshmi, the appellant wanted to join his first wife-Mariyamma but Lakshmi was creating obstacles in his way. That was the reason why he assaulted her on 2.8.1993.

In order to prove its case, the prosecution had relied upon the evidence of three eye-witnesses. PW-2 Polanati Nookaratnam did not support the prosecution and was declared a hostile witness. PW 1-Mariyamma, the former wife of the appellant did not support the prosecution fully and merely stated that at about 7.00 p.m. on the day of the incident, when she saw PW 2 running on the road and asked her why she was running like that, she was told by her that the appellant was beating Lakshmi. PW 3, the brother of Lakshmi, fully supported the prosecution case and both the courts below have accepted his evidence. Relying upon his evidence and the evidence of recovery of knife by the accused in presence of the village Administrative Officer (PW 5) the trial court convicted the appellant. The High Court also believed the evidence of PW 3 and confirmed the conviction of the appellant.

What was urged by the learned counsel for the appellant is that the High Court and also the trial court failed to appreciate that there was no light at the place of the incident and, therefore, PW 3 could not have identified the assailant of Lakshmi. He submitted that it was raining on that day and as disclosed by the prosecution evidence it had

become dark when the incident had happened. There were no electric lights around because of load shedding. That, however, cannot mean that there was no sufficient light at the time of the incident. The evidence of PWs 3 and 4 discloses that the incident had happened near the shop of one Kapala Bapiraju at a distance of about 10 feet. It can be safely assumed that the shopkeeper would not have kept his shop open without providing for some other source of light. Moreover, the incident took place at about 7.00 p.m. and, therefore, it is not possible to accept the contention that there must have been complete darkness at that time and PW 3 could not have identified the assailant. It was not raining heavily. There was movement of persons on the road. All these suggest that there was enough light and PW 3 could not have found it difficult to recognise the appellant, who was none other than the person with whom his sister had stayed for 8 to 9 years.

We have carefully scrutinised the evidence of PW 3 and we find no infirmity in his evidence. His evidence receives support from the evidence of the Village Administrative Officer, and independent person, who was informed about the incident within a very short time. As we find that the appellant has been rightly convicted under Section 302 IPC, this appeal is dismissed.