

ANDHRA PRADESH HIGH COURT

T. Munirathnam Reddi

Vs.

State (Andhra)

Referred Trial No.67 of 1954 and Cr. Appeal No.403 of 1954

(Subba Rao, C.J. and Satyanarayana Raju, J.)

02.08.1954. 30.11.1954

JUDGMENT

Subba Rao, C.J.

1. The learned Sessions Judge of Chittoor Division has convicted the 1st accused under Section 302, Penal Code, and sentenced him to death. He also convicted the 2nd accused under Section 326 read with S.511, Penal Code, and sentenced him to undergo rigorous imprisonment for two years. The two accused preferred the above appeal against their conviction and sentence.

2. The case of the prosecution may briefly be stated. The 1st accused Munirathnam Reddi is the son of the 2nd accused, Narayana Reddi. The deceased Kuppi Reddy was Narayana Reddi's first cousin. All of them belong to Velkur village. Kuppi Reddi's wife was staying with her father in a different village and there was a proposal that Kuppi Reddi should stay with his father-in-law as illatom son-in-law, but Kuppi Reddy was not willing to do so. The 2nd accused supported the father-in-law. This led to estrangement between the members of the two families and the accused were not on talking terms with the deceased. On the evening of 21-9-1953, Kuppi Reddy met the 2nd accused's wife in the fields and addressed her insultingly and even suggested to her that she should take the place of his wife. On the next morning Kuppi Reddy, his two brothers, P.Ws.1 and 8 and their mother P.W.2 went to there field. At about 8 A.M., Kuppi Reddy went to his village to bring in two more coolies. Shortly thereafter, they heard the cries of the deceased from the adjacent vanka. They saw the two accused chasing the deceased. The 1st accused was having a bill-hook and the 2nd accused a gun. When Kuppi Reddy's mother caught her son in her arms, Kuppi Reddy pushed her stating that the accused were going to shoot him. The accused were pursuing him closely behind. The 2nd accused took aim to shoot but, as he was unsteady and fumbling, the 1st accused took the gun from his father and shot him hitting him on the left side. Thereafter, the 1st accused ejected the spent cartridge and reloading the gun with a new one left the place along with his father.

3. In the 1st accused's statement, his version is given as follows:

After he returned to the village from the College during the vacation, he used to go to the fields often. On the morning of 22-9-1953, he went to his paddy field. When he came by the side of the river bank, he heard a noise and when he came to the bank of the river, he saw his father holding a gun and Kuppi Reddy armed with a bill-hook. He also saw Mala Kannadu and Palle Kannadu behind him armed with bill-hooks. Kuppi Reddy, was uttering some vulgar terms.

Fearing that his father would shoot him, he snatched the gun from his father but the trigger accidentally went off and Kuppi Reddy, who was standing in front, received injuries. His defense, therefore, is that there was a quarrel between his father and Kuppi Reddy and that the gun went off accidentally when he attempted to snatch the gun from his father to prevent him from shooting Kuppi Reddy.

4. The 2nd accused in his statement, would give his version in the following manner. On the morning of the 22nd, he came to the outskirts of the village as usual to hunt birds with a gun and three cartridges. When he got into the river bed, he saw Kuppi Reddy, Mala Kannadu and Palle Kannadu chopping the branches with knives. Kuppi Reddy accosted him along with Mala Kannadu and Palle Kannadu and asked him whether he would go along with him to get back his wife. When he refused he began to abuse him in vulgar language to which he remonstrated. His son suddenly came behind and snatched the gun when it went off accidentally.

5. The learned Sessions Judge accepted the prosecution version in preference to that given by the accused and held that the prosecution has brought home the guilt to the accused.

6. The eye-witnesses to the occurrence are P.Ws.1, 2, 3, 5, 6, 7 and 8. P.Ws.1, 2 and 8 are blood-relations of the deceased. P.W.1 is the younger brother of the deceased. He speaks to the version of the prosecution in minute detail. After the incident, he went to the Village Munsif and gave a complaint, Exhibit P-1 at 8 A.M. In that statement, which is the earliest record of the incident, this witness described the incident broadly bringing out the main features. He stated that accused 1 and 2 chased his brother from the village and that the 1st accused took a gun from his father Narayana Reddy and shot his brother dead. He also mentioned that, at the time of the shooting P.Ws.3, 5, 6 and 7 and one Rami Reddy were present. The only conflict between the statement made by him and his present version is that in the statement he mentioned that one Thammi Reddy also chased his brother. He did not state there that P.W.2 and P.W.8 were also witnesses to the occurrence. This does not 'ex facie' show that P.W.1 also saw the shooting. But these discrepancies are not such as to detract from the veracity of this witness. As regards the presence of Thimmi Reddy at the scene of offence, in his deposition he says that he saw Thammi Reddy after his brother was shot and that he has no explanation for stating in his first report that Thammi Reddi also chased. As Thammi Reddy was also present, this witness might have

thought that he was one of the pursuers. The non-mention of P.Ws.2 and 8 is not of much relevance, for P.W.2 is the mother and P.W.8 is the brother of the deceased. He only gave the names of outsiders, who witnessed the offence. The argument that P.W.1 did not state expressly in Ex. P-1 that he witnessed the occurrence has no point, for, this witness himself gave the report describing the incident. Some minor discrepancies between the evidence he gave before the Sessions Court and that given by him before the committing Magistrate are brought out in the cross-examination but they are such as will ordinarily be found in a witness speaking to facts on two different occasions. Much is made of the difference in the shades of meaning between the words "take" and "wrest", but we do not think that any distinction was intended. The learned Sessions Judge, who had seen this witness, was impressed by his evidence and we do not discover any valid reason to take a different view of the same.

7. P.W.2 Mangamma, the mother corroborates the evidence of P.W.1 on almost every material particular. She says in her evidence that Thammi Reddy met the accused on the way with a bill-hook and that he threw the bill-hook on the advice of the accused and went along with accused 1 and 2. This explains the presence of Thammi Reddy at the scene and the reason why in Ex. P-1 his name was mentioned. She stood the test of cross-examination fairly well and, indeed nothing has been elicited in the cross-examination to shake her veracity. The non-mention of the fact that the deceased asked the wife of the 2nd accused to take the place of his wife to the police is not of any consequence, for it is unreasonable to expect a mother in sorrow to give a graphic description of every detail. She stated in her evidence that the 1st accused took the gun from his father saying that he would shoot and go to jail. She was very near the accused and there is nothing improbable in her hearing those words. We have carefully gone through the evidence and we are very much impressed with it.

8. P.W.8 is another brother of the deceased. He also corroborated the evidence given by the other two witnesses. The mere fact that P.Ws.1, 2 and 8 are close relations of the deceased is not a ground for discrediting their evidence. There cannot be any reason why these witnesses should implicate a young man, who is also their relation, if really he came to rescue the deceased and if the gun went off accidentally.

9. P.W.5 belongs to Velkur and he knows all the parties. On that fateful morning he was going to his jonna fields by the side of Chettivanka when he heard the cries of the deceased. He saw Kuppi Reddy running from east to west in the sandy bed and accused 1 and 2 running behind him, accused 1 carrying a bill-hook and the 2nd accused a gun. He was one of the eye-witnesses and he saw what all happened and he fully supported the version of the prosecution. It is true that there are some minor discrepancies in his evidence, but they are not really of much consequence. He saw the entire incident from about 20 yards. He is a disinterested witness and there are absolutely no reasons to discredit him.

10. P.W.6 is another villager and he knows all the parties. He followed P.W.1 when he gave the

report to the Village Munsif. Only a field intervenes between his field and the vanka. A suggestion was put to him, namely, that he went there after hearing the shot, but he denies it. He is another disinterested witness.

11. P.W.7 is the younger brother of P.W.6. He went to the scene of offence after he heard the shot. In other respects, he too minutely described the incident. His evidence is straight-forward and there are absolutely no infirmities attaching to it. After carefully considering the account of the eye-witnesses, we have no hesitation in agreeing with the Court below that they spoke nothing but truth.

12. P.W.9 is the Head Clerk of Sri Venkateswara College, Tirupati, in which the 1st accused was a student. He deposed that the 1st accused was trained in the National Cadet Corps. His evidence establishes that the 1st accused knew how to use a gun. We have, therefore, no hesitation to hold that the 1st accused took the gun from his father and shot the deceased.

13. Mr. Basi Reddi in a forceful argument advanced the theory that the wound inflicted on the body of the deceased could not have been caused if the 1st accused took a conscious aim at him. In support of his argument, he relied upon the statement made by the eye-witnesses before the Committing Magistrate to the effect that the 1st accused wrested the gun from the hands of the 2nd accused. It is said that, in the course of the wresting, the trigger must have gone off accidentally and hit the deceased. Reliance is also placed upon the evidence of the doctor in support of this theory. The Doctor, as P.W.4, says that the wounds Nos.4 and 5 were exit wounds at the same level and that the deceased must have been shot within about 10 yards. In cross-examination, he further adds that the entry and exit wounds were almost on the same level in line with the first lumber vertebra. But he concedes that it is possible that there was a slight deflection on hitting the vertebra.

The wounds found on the body were described by him as follows :

1. A circular wound 1" in diameter (edges inverted) 4" from the umbilicus and 6" from left nipple in the anterior axillary line (vertically parallel to nipple line and a little away 1" to 2") with a part of the intestine projecting outside the wound.
2. An abrasion 1" in diameter leftwards to the 1st wound.
3. A contusion 3" x 2" around the first wound.
4. Five perforated wounds $1\frac{1}{8}$ " in diameter on the right side of the abdomen in the lumber region 3" above the right iliac crest.
5. A perforated wound 1" in diameter in the right arm at the level of the medial condyle in the right humerus.

14. Relying upon these wounds and the opinion of the doctor, it is contended that when a person shoots another of about the same height from a short distance on the side of abdomen, it is

impossible to cause an injury which would cause wounds almost in the same level in line with the lumber vertebra. To put it differently, the argument is that, if accused 1 shot the deceased on the side of the abdomen, the bullet could not have passed in a straight line from one side to the other but should have passed only in the direction in which the gun was placed, i.e., the wound should have been not in a straight line, but in a slanting direction. The learned advocate also made a demonstration with a gun showing that the trigger could easily be released with a slight pressure. It is true that, if the gun was used in an orthodox manner, the wound might not have been caused in the manner now found on the dead body. Even then, there is no guarantee that the bullet would pass only in a slanting direction corresponding to the way in which the gun was held, for, there might have been a deflection of the bullet when it came into contact with the vertebra. The evidence has not made it clear that the track of the wound was also in a straight line. But we do not think it is advisable to speculate on the basis of theoretical considerations. The 1st accused is 19 years old and the 2nd accused is 65 years old. They were pursuing the deceased. The 1st accused found his father's hand shaking. He took the gun from him and shot the deceased. The 1st accused obviously must have been in an emotional state and he could not have had an opportunity at the time to take aim as he would have done in ordinary circumstances when he would shoot an animal or bird. In the hurry, he would have taken the gun from his father and released the trigger immediately. It is not possible to say in what position he kept the gun when he released the trigger. The fact that the witnesses stated that he aimed at the deceased cannot be taken to mean that he aimed at the deceased in the manner he would have done under ordinary circumstances. We cannot, therefore, reject the evidence of the eye-witnesses relying upon some theoretical considerations based upon the nature of the wound. We, therefore, hold that the 1st accused committed the offence of murder.

15. The next question relates to the nature of the offence, which the 2nd accused had committed. From the eye-witnesses' account, it is obvious that the 2nd accused pursued the deceased with a loaded gun. He was about to release the trigger, but his hands were shaking. At that time his son, who is young and who has had practice at shooting as a Cadet, took the gun from his father and shot the deceased.

16. It cannot be disputed that, on the facts, the 2nd accused had the intention to shoot the deceased. But it is said that he was hesitating to shoot the deceased when his son took the gun from him and shot the deceased. In support of this argument, reliance is placed upon the evidence of the eye-witnesses. P.W.1 states in his evidence that the 2nd accused aimed the gun to shoot Kuppi Reddy and, in so doing, he was unsteady and his hands were shaking. P.W.2 also says that he was unsteady and shaking. So too, P.W.3 uses similar words. The corresponding Telugu word for shaking and unsteadiness is "Thadabaduta". It is argued that the word means that the 2nd accused was hesitating. We cannot agree. The word "hesitation" implies an idea of indecision, whereas the word shaking indicates the unsteadiness of the hands. In the case of hesitation, there is a mental conflict whether to do or not to do an act, but, in the case of unsteadiness, there is a determination to do the act; we cannot therefore, agree with the learned

counsel that there was any hesitation on the part of the 2nd accused to shoot the deceased at the time when the 1st accused took the gun out of his hands.

The facts, therefore, are these. The 2nd accused intended to shoot the deceased. He aimed a loaded gun at him. He was about to release the trigger. As his hands were shaking the 1st accused took it from him and completed the act. The question is whether on these facts, the offence of an attempt to commit murder was committed by the 2nd accused. Mr. Obul Reddy, learned counsel for 2nd accused, would argue that the 2nd accused might have prepared to commit the offence but in law he did not attempt to commit it. The argument turns upon the provisions of S.511, Penal Code. It reads

"Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment or to cause such an offence to be committed and in such attempt does not act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence for a term of transportation or imprisonment which may extend to one half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both."

The crucial words in the sections are that the accused should have done the act "towards the commission of the offence". The two illustrations appended to the section brings out the intention of the Legislature. The illustrations are

"(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore, is guilty under this section.

(b) Attempts to pick the pocket of Z by thrusting his hands into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section."

17. There are decided cases which recognize the existence of three stages in the commission of a crime: (i) intention to commit; (ii) preparation to commit and (iii) attempt to commit. If the attempt results in the actual commission of the offence, the crime is complete. But the Indian Penal Code makes the attempt also an offence, if the accused does any act towards the commission of the offence. The distinction between preparation and attempt may be clear in some cases but, in most of the cases, the dividing line is very thin. Nonetheless, it is a real distinction. The crucial test is whether the last act, if uninterrupted and successful, would constitute a crime. If the accused intended that the natural consequence of his act should result in death but was frustrated only by extraneous circumstances, he would be guilty of an attempt to commit the offence of murder. The illustrations in the section bring out such an idea clearly. In both the illustrations, the accused did all he could do but was frustrated from committing the offence of theft because the article was removed from the jewel-box in one case and the pocket

was empty in the other case.

18. The cases cited at the Bar only illustrate the application of the principle to the varying situations. In - '*Narayanaswamy Pillai v. Emperor*¹', the accused was held not to be guilty under Section 511, Penal Code, because though he intended to transport the opium into French territory, he was frustrated before he crossed the border. Walsh J. held that there was 'locus penitentiae' and that he might have changed his intention to smuggle the goods before he crossed the border. In - '*N. Veeriah v. Emperor*²', Burn, J., held that the accused, who was found to be making some preliminary diggings, which were necessary to remove the earth so that he would get at a stone slab fixed to a Buddhist stupa, was not guilty under Section 511, Penal Code. The learned Judge held that his act amounted to a preparation and not to attempt to commit theft. So too, in - '*Queen Empress v. Ramakka*³', where a woman went to a well to commit suicide, it was held that she was not guilty under the section as she might have changed her mind and she was caught before she did anything which might be regarded as the commencement of the offence of which she is convicted. It

¹ AIR 1932 Mad 507 ³8 Mad 5

²1935 Mad WN 651

is not necessary to express our view on the correctness of the decisions on the facts found in those cases. But they are only illustrations of the principle that, to constitute an attempt, the accused must do an act towards the commission of the offence. Where an accused had presented a loaded revolver at another person but had been prevented from discharging it by a third person, it was held that the accused intended to do that which he was prevented from doing and that there was sufficient evidence to support the conviction under Section 511, Indian Penal Code (See - '*Reg v. Duckworth*⁴', So too, where the accused aimed a revolver at the prosecutor and pulled the trigger of the revolver and the hammer fell upon a chamber which contained an empty cartridge case, it was held that the accused could be convicted of attempt to commit murder. (See - '*Reg v. Jackson*⁵', In the aforesaid two cases, the accused was only frustrated from committing the offence by extraneous circumstances over which he had no control.

19. The question is really one of fact depending upon the circumstances of each case. In the present case, the 2nd accused with a clear intention to shoot aimed the gun at the deceased and if he did not release the trigger, it was because the 1st accused, noticing the shakiness of his hands, took it out of his hands. He did not commit the offence only because of an extraneous interruption. If the son had not taken it out of his hands, he would have shot the deceased. On the facts of the case, we hold that the 2nd accused did an act towards the commission of an offence within the meaning of S.511, Indian Penal Code and, therefore, he was rightly convicted under that section.

20. The next question is what is the punishment to be imposed on the accused. So far as the 2nd accused is concerned, he was sentenced to undergo rigorous imprisonment for two years. There are no grounds for interference with that sentence. So far as the 1st accused is concerned, in our view, there are some mitigating circumstances. The 2nd accused stated that he went to the

outskirts of the village as usual to hunt birds. There is no reason to disbelieve this statement. The fact that he owned a gun and also possessed cartridges supports his case that he would occasionally go to shoot birds. The 1st accused, who was also a Cadet and was, therefore, interested in shooting followed his father. There is, therefore, nothing in the evidence to establish beyond reasonable doubt that the father and the son went to the fields with premeditation to kill the deceased. The mere fact that the deceased, who is after all a near relative of the 2nd accused, had used vulgar language in addressing the 2nd accused's wife would not have been a sufficient motive for the 2nd accused to kill his cousin. He would have reprimanded him or would have abused him in return. But something must have happened when they accosted the deceased on their way and questioned him about his previous conduct. He must have abused the 2nd defendant also. The 1st accused, being an young man of 19 years, when his father and mother were insulted, in an excited and emotional mood, shot the deceased without any premeditation. In the circumstances, we think the ends of justice will be served if the lesser penalty of transportation for life is inflicted. In this case, we are satisfied that the 1st accused is not a hardened criminal. He was a student of Sri Venkateswara College and was below 21 years at the time he was convicted of the offence. We have also found that he shot the deceased when he abused him and his father presumably when they

⁴(1892) 17 Cox CC 495

⁵(1890) 17 Cox CC 104

questioned him about his conduct in insulting his mother. The act was done by an young man of good antecedents in an emotional state. In our view, Section 10-A, Borstal Schools Act is really intended to govern the case of such accused. We, therefore, while sentencing the 1st accused to transportation for life, recommend his case to the Government to take action under Section 10-A and to commit him to the Borstal School for such period as they think fit. Conviction confirmed. Sentenced on 2nd accused confirmed. Sentence on 1st accused reduced to transportation for life and case remanded for action under Borstal Schools Act.

Order accordingly.