

HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No. 97 of 2011

Date: 15..04..2015

Between :-

Nanavarapu Lakshmanarao

& four others

.. Appellants

And

The State of A.P.,

Rep.by Public Prosecutor

.. Respondent

HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Appeal No. 97 of 2011

JUDGMENT: (*Per Hon'ble Sri Justice G.Chandraiah*)

This appeal is filed by the appellants, who are five in number, aggrieved by the conviction and sentence awarded by the IV Additional District & Sessions Judge, (Fast Tract Court), Tanuku in S.C.No.409 of 2006 dated 11.01.2011, arising out of PRC No.5 of 2006 on the file of II Additional Judicial First Class Magistrate, Tanuku, and Crime No.62/2005 of Penugonda Police Station.

2. The brief facts of the case are that there are six accused in the above crime. The accused party consists of the entire family headed by A.3. Their

relationship is that A.3 and A.4 are the parents, A.1 and A.2 are the sons, A.6 is the daughter and A.5 is the wife of A.1. During the course of trial itself, Accused No.3 –Nanavarapu Venkateswarlu died and therefore the case against him was abated.

3. The case of prosecution is that all the accused, the deceased and the injured are the residents of Mutyalavari Street, Siddantham village of Penugonda Mandal of West Godavari district. They are having long standing disputes with regard to Dhobi Ghat, and several cases were registered against them. For the last four years, there is a boundary dispute between both the parties, which was not settled in spite of several mediations. On 01.07.2005 between 8.00 am to 10.30 am a panchayat was convened at Vinayaka temple, but no solution was found out, and both parties dispersed. Therefore, the accused bore grudge against the deceased party. On the same day at about 10.30 am., after completion the 'Rajaka Sangam' meeting, while the deceased – Duvvarapu Satyam, who was one of the caste elders, was going on the bicycle, all the accused waylaid him and A.3 made the deceased fell down, A.1 stabbed the deceased with a knife on his chest, A.2 stabbed him with another knife on his left side ribs part, over the abdomen, and A.4 to A.6 instigated A.1 to A.3 to kill the deceased. On hearing the cries of the deceased, LWs.1 to 10 rushed to the spot, all the accused surrounded them and on the instigation of A.4 to A.6, A.1 and A.2 stabbed and attempted to murder the prosecution party, and A.1 hacked P.Nagswara Rao (PW.1), with knife on his left axilla (armpit part). When A.2 to A.6 caught D.Satyanarayana (PW.2) by using criminal force, A.1 hacked him with a knife on his waist part and on his abdomen. All the accused beat the persons gathered there i.e., LWs.3 to 10, but no injuries were sustained by them. Then in order to save themselves and to prevent the accused, PWs.1 and 2, retaliated and counter attacked the accused, and as such A.1 and A.2 received injuries. Thereafter, the injured, including the deceased, were shifted to Government Hospital, Tanuku for treatment. The Medical officer, Dr.K.Satyavathi (PW.19) examined the deceased and declared as brought dead.

4. On receipt of the said intimation from the hospital, the S.I. of Police, Penugonda visited the scene of offence, posted a guard there, visited the hospital, recorded the statement of PW.1, registered a case in Cr.No.62/2005

for the offences under Sections 302, 307, 324 read with Sec.34 IPC, and sent express FIR to the Court. A counter case in Cr.No.63 of 2005 under Sec.324 read with Sec.34 IPC was also registered against the prosecution party. Thereafter, the Inspector of Police took up the investigation, got conducted inquest over the dead body of the deceased in the presence of inquest panchayatdars, examined and recorded the statements of the witnesses, got photographed the dead body of the deceased, prepared scene observation report, seized the blood stain clothes and the controlled earth in the presence of mediators. Thereafter, the Inspector of Police arrested A.2, A.4 and A.5 on 13.7.2005 at 4.00 p.m. in front of their house, got recorded their confession statements, in pursuance of which seized long knife from the possession of A.2, in the presence of mediators, and sent them to judicial custody. On 3.8.2005 at 1.00 p.m., the Inspector of Police arrested A.1, A.3 and A.6 in front of their houses, recorded confessional statements and seized a small knife in the presence of mediators, and sent them to judicial custody. After completion of investigation, the C.I. of Police filed the charge sheet concluding that the accused caused the death of the deceased, and injuries to PWs.1 and 2, by using the weapons, and thereby committed murder of the deceased and caused grievous and simple injuries to PWs.1 and 2, and therefore the accused are liable to be punished for the offences under Sections 302, 307, 326, 324, 109 IPC, read with Sec.34 IPC.

5. The learned II Additional Judicial First Class Magistrate, took cognizance of the offence, and registered the case as PRC No.5 of 2006. After complying with the mandatory provisions of Cr.P.C., the learned Magistrate committed the case to the Court of Sessions, West Godavari, Eluru, where it was registered as S.C.No.409 of 2006, and made over to the trial Court for disposal according to law.

6. Charges referable to Sections 302, 307, 324 IPC against A.1 and A.2; and Sections 302, 307, 324 and 109, read with Sec.34 IPC against all the accused were framed, read over and explained to them to which the accused pleaded not guilty and claimed to be tried. In order to prove its case, the prosecution examined PWs.1 to 26, marked Ex.P.1 to Ex.P.28 and produced M.Os. 1 to 10. After completion of the evidence, the accused was examined under Section 313 Cr.P.C., where they denied the incriminating evidence appearing against them. The accused got examined Dr. AVR Mohan, as DW.1 and got marked Exs.D.1

to D.13 in support of their defence. During the pendency of the case, A.3 died and therefore, the case against him is abated, as per the orders of the trial Court, dt. 05.03.2010. After hearing the arguments and perusing the material on record, by the impugned Judgment, the trial Court found A.1 and A.2 guilty of the offences under Sections 302 and 307 IPC, A.4 to A.6 for the offences under Sections 302, 109 and 307, read with Sec.34 IPC., and convicted all the accused under Section 235(2) Cr.P.C. The trial Court sentenced A.1 and A.2 to undergo life imprisonment and pay a fine of Rs.1000/- each, and in default, to undergo simple imprisonment for three months each, for the offence under Sec.302 IPC; and further sentenced A.1 and A.2 to undergo seven years rigorous imprisonment and pay fine of Rs.1000/- each, in default to undergo simple imprisonment for three months each, for the offence under Sec.307 IPC. Further, the trial Court sentenced A.4 to A.6 to undergo life imprisonment and pay a fine of Rs.1000/- each, and in default, to undergo simple imprisonment for three months each, for the offences under Sections 302 and 109 IPC; and further sentenced A.4 to A.6 to undergo seven years rigorous imprisonment and pay fine of Rs.1000/- each, in default to undergo simple imprisonment for three months each, for the offence under Sec.307, read with Sec.34 IPC. The trial court further ordered that all the substantive sentences imposed on the accused shall run concurrently, and given set off of the remand period already undergone by them. However, the trial court found not guilty and acquitted all the accused for the offence under Sec.324 IPC. Aggrieved by the said conviction, the appellants, who are A.1, A.2, A.4 to A.6, preferred the present appeal.

7. The contention of the learned Counsel appearing for the appellants/accused is that the trial Court erred in appreciating the material evidence on record in proper perspective and has erroneously found the accused guilty. Further, the learned trial Court ought to have seen that the prosecution has not come forward with the true version of the case and has suppressed the genesis of the incident; the prosecution failed to explain the injuries on the accused, the abnormal delay in lodging the report and its reaching the Court, and the absence of the injuries sustained by the accused in the FIR; the medical evidence is inconsistent with the prosecution case, and therefore the impugned Judgment is not sustainable. The learned counsel further submits that the knife, which was allegedly seized from the possession of the accused, do not contain

any blood stains, and even not shown to the Doctor, who conducted post-mortem, and therefore, no reliance can be placed on the alleged recovery and the use of the weapon in the commission of the offence. She further submits that insofar as A.4 to A.6 are concerned, the prosecution utterly failed to prove the instigation alleged against them to kill the deceased. The evidence of material witnesses PWs.1 to 5 is contradictory to each other and not consistent with respect to the alleged instigation of A.4 to A.6. Therefore, the conviction of the accused is not proper and justifiable. Alternatively, the learned counsel for the appellants submits that even for any reason the version of the prosecution is believed, having regard to the nature of the allegations and the overt acts attributed to A.1 and A.2, their case may be considered that they have not committed the offence under Sec.302 IPC, but can be convicted for the offence under Sec.304, Part.II of the IPC. Thus, the learned counsel for the appellants/accused, by placing reliance on the following judgments, sought for acquittal of the accused: ***Kartar Singh v. State of Punjab; Panchaiah v. State of Karnataka; State of M.P. v. Surbhan;*** and ***Resham Singh v. State of Punjab.***

8. On the other hand, learned Public Prosecutor submits that PWs.1 and 2 are the injured eye-witnesses for the incident, who have narrated the incident properly, and there is no discrepancy in their evidence. All the prosecution witnesses have clearly spoken about the presence of all the accused and the instigation of A.4 to A.6 to kill the deceased. The learned Public Prosecutor further submits that the trial Court has taken into consideration the evidence on record in proper perspective and believing the same, found the accused guilty. Therefore, the appeal does not merit any consideration and hence the same is liable to be dismissed.

9. The point for consideration is as to whether the prosecution proved its case against the accused beyond reasonable doubt, so as to sustain their conviction and sentence, or whether it needs to be modified, set aside or varied?

10. The prosecution party as well as the accused belong to 'washerman' community and are engaged in their professional work. However, there were longstanding disputes between the two groups in the matter of a joint lane. The parties have also approached the Civil Court for redressal of their grievances.

Therefore, there was bitter animosity in between the two groups. The accused party consists of the entire family headed by A.3, who died, and thus, the case against him was abated by the trial Court itself. A.1 and A.2 are the sons of A.3 whereas A.4 is the wife of A.3, A.5 is the wife of A.1 and A.6 is the daughter of A.3. The deceased is Duvvarapu Satyam who is one of the caste elders along with PW.1. PWs.2 to 5 are the members of the caste association.

11. There is voluminous evidence to show that in pursuance to the existing dispute between two groups, efforts were being made to settle the same with regard to the lane. On 01-07-2005 a panchayat was convened for the said purpose but no compromise could be effected. There is also evidence to the effect that there is a tradition in the community that on the date when the meeting is convened, which usually will be on the first day of English Calendar, no member of the Association shall carry out the professional work of either washing the clothes or ironing them. Contrary to this tradition, it is alleged that on 01-07-2005, the accused persons were attending to their profession. The deceased and some of the prosecution witnesses went there, objected for it and disturbed the clothes that were dried by the accused. This has ignited the ill-feeling between the two groups further, which resulted in the incident, which took place at about 10.30 a.m.

12. Coming to the evidence part, the injured witness – P.Nageswara Rao, who examined as PW-1, deposed about the long pending disputes between the deceased family and the accused family, which were placed before their community elders and not settled, as the accused did not agree. He further deposed that on 01.07.2005 there was a meeting, and on that day nobody should take up their professional work, but the accused were carrying on their work and refused to stop the same. Therefore, they removed the clothes and left the place. Later, while the deceased was proceeding on his bicycle from Ammavari temple, through Anjaneya Swamy temple, around 12.00 noon, A.1 and A.2 pulled down the deceased from the cycle abusing him in filthy language, A.1 stabbed the deceased with knife in the chest, A.2 stabbed the deceased with knife on the left side ribs part; A.4 to A.6 instigated A.1 and A.2 not to leave them though they are washerman and to kill them. Then, he along with others went to the place of offence; then A.1 and A.2 attacked all of them with knives. Therefore, in order to protect their lives, they left for short

distance. Then A.1 stabbed him on his left side arm pit, A.2 stabbed Duvvarapu Satyanarayana (PW.2) on his chest and A.1 also stabbed PW.2 on the left side of the back. He further deposed that the mark of the injury is still visible on his body, and due to stabbing, the intestines of PW.2 came out.

PW.2 – Duvvarapu Satyanarayana, another injured witness, deposed that there were disputes between the families of the deceased and accused with regard to discharge of water and filed cases against each other. On 01.07.2005 at 11.00 a.m. A.1 and A.2 stabbed the deceased. A.1 stabbed on the left side of the chest with knife, and A.2 stabbed on back side with knife. Immediately, they all rushed to the spot to rescue the deceased, and then A.2 stabbed him with a knife on the left side of his stomach, and A.1 stabbed PW.1 on his left shoulder. A.1 also attacked him with knife and stabbed on the left side of his back. Immediately, they were shifted to the hospital.

PWs.3 to 5 are the eye-witnesses to the incident. They too deposed about the long pending disputes between the deceased and the accused and the caste elders tried to settle the same, but all went in vain. They deposed that on 01.07.2005 there was a meeting of the caste association. Usually, the caste people should not attend to their regular work, but the accused violated the same on which the deceased and others questioned the accused. After sometime, when the deceased was going on his cycle, A.1 and A.2 waylaid and stabbed him. They further deposed that on their intervention, A.1 and A.2 also stabbed PWs.1 and 2. These witnesses also deposed that A.4 to A.6 instigated A.1 and A.2 to kill the deceased and others. Originally, PW.4 deposed about the incident, but subsequently he stated that he heard about the incident, came to the scene of offence, found the deceased, PWs. 1 and 2, who were lying in a pool of blood on the road. He found injuries on the chest and stomach of the deceased and also on the bodies of PWs.1 and 2. Thereafter, all the injured, including the deceased were shifted to the Government Hospital, Tanuku in autos.

PWs.6,7, 9 and 10 deposed that they came to the scene of offence and found the deceased, PWs. 1 and 2 in a pool of blood. PW.8 also deposed that the accused stopped the deceased, while he was going on cycle, and stabbed him. He also deposed that A.1 and A.2 also stabbed PWs.1 and 2 with knife.

PWs.11 to 13 are the auto drivers, who shifted the injured to the Government

Hospital, Tanuku in their autos. PW.14 is the photographer. PW.15 is the witness to the inquest, seizure of clothes of the injured, scene observation report, arrest of the accused and seizure of the knife. PWs.16 and 17 are the panchayatdars of the inquest. PW.18 is a mediator for the seizure of M.O.5 from the possession of A.1. They all supported the version of the prosecution to the extent of their part.

PW.19 – Dr. K.Satyavathi is the doctor, who treated the injured. She deposed that she examined PWs.1 and 2, found some simple and grievous injuries on them, which could be caused by a sharp object and can be possible by M.Os.4 and 5, and issued wound certificates, Exs.P.17 and P.18.

13. Keeping in view the above evidence and the medical evidence, it is to be seen as to whether the appellants/accused have committed any offence or not. The allegation of the prosecution is that when the deceased was returning on his bicycle and when he reached near Anjaneya Swamy Temple, A.3 fell him down from the bicycle and thereafter A.1 and A.2 have stabbed him resulting in his almost instantaneous death. With regard to A.4 to A.6, who are ladies, the allegation is that they have instigated the male accused to kill the deceased. It is also admitted fact that in the same transaction, the prosecution witnesses have also attacked A.1 and A.2, and both of them sustained several injuries. Both the groups joined in the hospital where the Police Officers reached and recorded the statements of the injured, basing on which the Police registered two crimes viz., Cr.No.62 of 2005 in which the deceased and prosecution witnesses are the victims, whereas Cr.No.63 of 2005 was registered against the prosecution witnesses. However, it is on record that the crime registered against the prosecution witnesses and the deceased was closed as *mistake of fact*, which, in our opinion, is not correct and proper.

14. From the evidence that is discussed above, it is evident that there was a free fight between the two groups and in that A.1 and A.2 stabbed the deceased, PW.1 and PW.2, and the prosecution witnesses caused several injuries to A.1 and A.2. As many as four lacerated injuries were found on the person of A.1, and he also sustained a fracture on the left fore arm. A.2 also sustained three injuries, which were simple in nature. The injuries on A.1 and A.2 were said to have been caused by stick and iron rod. The prosecution failed to explain clearly about the injuries on the accused persons.

15. From the evidence on record the fact that is established is that on the date of the incident, in a free fight that took place between the two groups, the deceased, PW.1, PW.2, A.1 and A.2 sustained several injuries. The provocation for the incident came from the prosecution party. It is admitted that after the meeting when the accused were washing the clothes, the deceased, PWs.1, 2 and others went there, picked up a quarrel with them and disturbed the clothes which were dried by the accused family. Thereafter, the incident took place. The evidence establishes that it is A.1 and A.2, who caused stab injuries on the deceased, PW.1 and PW.2, were also assaulted by the prosecution party with rods and sticks.

16. Insofar as the womenfolk viz., A.4, A.5 and A.6 are concerned, the only allegation is that they have instigated the other accused to attack the deceased and the prosecution party. The words that are put in the mouth of A.4, A.5 and A.6 are inconsistent. According to PW.1, A.4 to A.6 instigated by calling upon the other accused not to spare the deceased even though they are washerman by caste. According to PW.2, when A.1 and A.2 were stabbing the deceased, A.4 to A.6 intervened, but they did not do anything. PWs.3 and 4 are conspicuously silent even about the presence of A.4 to A.6. PW.5 would have it that when A.1 and A.2 were attacking the deceased, A.4 to A.6 are standing nearby shouting that the deceased be killed. Therefore, the participation of A.4 to A.6 is not established, and the evidence on record is not sufficient for holding that they have instigated their male counterparts to cause injuries on the prosecution party. Their conviction therefore is erroneous and is liable to be set aside.

17. The learned counsel for the appellants/accused submits that the deceased and the prosecution party were the aggressors, who attacked the accused. There can be no doubt that an encounter took place on the road between the two groups, and both sides sustained injuries. With regard to A.1 and A.2, the specific overt acts alleged are that they stabbed the deceased on chest and back. Two injuries were found on the deceased - one was an incised injury below the left side of chest, and the other was on the lower part of right back. Considering the circumstances in which the incident took place and the evidence on record, we are of the opinion that the offence that is committed by A.1 and A.2 do not fall within the provisions of Section 302 I.P.C., but instead

their acts amount to an offence punishable under Section 304 Part-II of the IPC.

18. In the result, the Criminal Appeal is partly allowed. The conviction of the Appellant Nos.1 and 2/A.1 & A.2 in S.C.No. 409 of 2006, dt. 11.01.2011, awarded by the IV Additional District & Sessions Judge, (Fast Track Court), Tanuku, for the offence under Section 302 I.P.C., is set aside; and instead A-1 and A-2 are convicted for the offence under Section 304 Part-II of the Indian Penal Code; and sentenced to undergo rigorous imprisonment for a period of five years.

Further, the conviction of Appellant Nos.1 and 2/A.1 and A.2 for the offence under Sec.307 IPC is sustained. However, taking into consideration the circumstances, the sentence of imprisonment is reduced to five years rigorous imprisonment, as against seven years as imposed by the trial court. The fine amount imposed by the trial Court on two counts is maintained. Both the sentences of imprisonment shall run concurrently. After completion of this modified sentence of imprisonments, which shall run concurrently, with set off of the period already undergone by them, the Appellant Nos.1 and 2/A.1 and A.2 shall be set at liberty, unless their detention is required in any other case.

Insofar as the Appellant Nos.3 to 5/A.4 to A.6 are concerned, we found them not guilty of the offences charged in the above case, and their conviction and sentence of imprisonment imposed by the trial Court is set aside. Therefore, the Appellant Nos.3 to 5/A.4 to A.6 shall be set at liberty, unless their detention is required in any other case. The fine amount paid by them, if any, shall be refunded to them after the appeal time is over.

The material objects shall be destroyed after the appeal time is over.

G. CHANDRAIAH, J.

M.S.K.JAISWAL, J.

Dt:15.04.2015

HON’BLE SRI JUSTICE G.CHANDRAIAH
AND
HON’BLE SRI JUSTICE M.S.K.JAISWAL

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Criminal Appeal No. 97 of 2011

(Judgment of the Division Bench delivered by
Hon'ble Mr. Justice G.Chandraiah)

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Date: 15..04..2015

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