

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1958 OF 2009

ORDER:

Petitioner/complainant filed this criminal revision case by invoking the provisions under Sections 397 & 401 of the Criminal Procedure Code, being aggrieved by the judgment, dated 14.05.2009, rendered in S.C.No.12 of 2007 by the III Additional Sessions Judge, Tirupati, whereby and whereunder A-1 to A-7 and A-9 to A-12 were found guilty of the offences under Sections 148 and 324 read with 149 IPC and convicted them under Section 235(2) of Cr.P.C. and sentenced to the period of imprisonment already undergone by A-1 to A-7, A-9, A-11 and A-12 and fine of Rs.1,000/- each, in default to suffer Simple Imprisonment for a period of fifteen (15) days each for the offence under Section 148 IPC and fine of Rs.1,000/- each, in default to suffer Simple Imprisonment for a period of fifteen (15) days each for the offence under Section 324 read with 149 IPC by A-1 to A-7, A-9, A-11 and A-12; fine of Rs.2,000/-, in default to suffer Simple Imprisonment for a period of fifteen (15) days for the offence under Section 148 IPC and fine of Rs.2,000/-, in default to suffer Simple Imprisonment for a period of fifteen (15) days for the offence under Section 324 read with 149 IPC by A-10. A-1 to A-7 were not found guilty of the charge under Section 302 IPC; A-1 to A-3, A-6, A-7 and A-9 to A-11 were not found guilty of the charge under Section 307 IPC; A-9 to A-12 were not found guilty of the charge under Section 302 read with 149 IPC; A-4, A-5 and A-12 were not found guilty of the charge under Section 307 read with 149 IPC and they were acquitted under Section 235(1) Cr.P.C. Challenging the order

of acquittal of the accused under Section 302 IPC, the present criminal revision case is filed by the petitioner/complainant.

2. The case of the prosecution as culled out from the evidence adduced and the documents produced, in brief, that are necessary for the disposal of the present criminal revision case, may be stated as follows:

The accused and Sri Veeraraghava Reddy (P.W.1) and the injured are residents of B.C. Colony, Kalikapuram village, Vijayapuram Mandal. The accused are supporters of Congress (I) and P.W.1 and others are followers of Telugu Desam Party. There were ill-feelings and grudges between the group of the deceased, father of P.W.1 and the group of the accused about a passage to their fields since a long time. The deceased and the accused left some part of their fields for the purpose of passage of their vehicles and there was a written agreement between the accused family and the deceased family.

Few days prior to the date of incident, the accused placed bushes across the field and obstructed P.W.1's group from entering into the fields. P.W.1 approached Vijayapuram Police and the Sub-Inspector of Police, Vijayapuram Police Station, called the accused, but the accused refused to come to police station. As the dispute was of civil nature, the Sub-Inspector of Vijayapuram Police Station, expressed his inability.

On 20.05.2005 at about 9.00 p.m., the accused hatched up a plan and formed into an unlawful assembly to kill P.W.1 and his family members and when P.W.1 and his father and his brother-in-law were proceeding to their fields to water their plants, A-1 to A-12 and Nethaji (Juvenile) attacked them with deadly weapons,

knives and stout sticks and in the altercation, the group of the deceased and the group of accused sustained severe injuries.

A-1 beat P.W.1 with knife, A-2 beat P.W.1 with knife on his left hand index finger, A-6 beat P.W.1 with stick on his left side of abdomen, A-7 beat P.W.1 with knife on the left side of abdomen, A-10 and A-11 beat P.W.1 with sticks on the back side. A-1 and A-2 beat the deceased with knife on the head, A-3 and A-4 beat the deceased with knife on the right leg, A-5 beat the deceased on the right side head, A-6 beat the deceased with stick on the right side of the leg, A-7 beat the deceased with knife on the beard. A-1 beat P.W.2 with knife on the right side of the head, A-2 beat P.W.2 with knife on the left side of the head, A-3 beat P.W.3 with knife on the right side of eyebrow, A-6 beat P.W.2 with the stick on the upper right side ear, A-8 beat P.W.2 with stick on the left side of the chest, A-9 beat P.W.2 with stick on the right hand, A-10 beat P.W.2 with stick on the right shoulder. A-11 beat P.W.2 with stick on the back side and caused injuries.

On a complaint given by the accused group, Vijayapuram Police Station, registered a case in Crime No.11 of 2005 under Section 324 read with 34 IPC against the deceased and his group.

The accused and P.W.1 and his group members were admitted in Government hospital, Puttur and on account of serious condition of the deceased and P.W.1, they were shifted to SVRRGG hospital, Tirupati. P.W.1 sent a report to Vijayapuram Police Station through police constable Murali and basing on it a case in Crime No.12 of 2005 under Section 324 read with 34 IPC was registered.

During the course of investigation, the Investigating Officer altered the section of law under Section 324 read with 34 IPC to Sections 147, 148, 324, 307 read with 149 IPC and as the deceased succumbed to injuries on 28.05.2005 at 1.35 a.m., FIR was once again altered to Sections 147, 148, 324, 307, 302 read with 149 IPC. The inquest over the dead body of the deceased was conducted in the presence of panchayatdars and a rough sketch of the scene of offence and observation mahazar were prepared, material objects, blood-stained clothes and knives were seized and sent to F.S.L., Hyderabad. All the accused were arrested and sent for judicial custody and after receiving post-mortem and F.S.L. reports, charge sheet was laid.

3. Charge sheet was taken on file under Sections 147, 148, 324, 326, 307, 302 read with 149 IPC against A-1 to A-8 and case against A-8 was abated and under Sections 147, 148, 326, 307, 302 read with 149 IPC against A-9 and under Sections 147, 148, 324, 307 read with 149 IPC against A-1, A-2, A-7, A-10 and A-11 under Sections 147, 148, 324, 326, 307, 302 read with 149 IPC against A-12. As the above offences are exclusively triable by the Court of Sessions, it was committed to the Court of Sessions, Chittoor, which in turn sent the same to the III Additional Sessions Judge, Tirupati, for trial.

4. On appearance of the accused before the trial Court, the charges under Sections 148 IPC against A-1 to A-7 and A-9 to A-12, charge under Section 302 IPC against A-1 to A-7, charge under Section 307 IPC against A-1 to A-3, A-6, A-7 and A-9 to A-11, charge under Sections 302 read with 149 IPC against A-9 to

A-12 were framed, read over and explained to the accused, for which, they pleaded not guilty and claimed for trial.

5. To substantiate its case, the prosecution got examined PWs.1 to 15 and marked Exs.P-1 to P-20 and M.Os.1 to 15. On behalf of defence, no oral or documentary evidence was adduced.

6. After appreciating the oral and documentary evidence available on record, the trial Court found the accused guilty of the offences as stated above and accordingly, convicted and sentenced them as stated above. A-1 to A-7 were not found guilty of the charge under Section 302 IPC; A-1 to A-3, A-6, A-7 and A-9 to A-11 were not found guilty of the charge under Section 307 IPC; A-9 to A-12 were not found guilty of the charge under Section 302 read with 149 IPC; A-4, A-5 and A-12 were not found guilty of the charge under Section 307 read with 149 IPC and they were acquitted under Section 235(1) Cr.P.C. Challenging the same, the present revision case is filed by P.W.1.

7. Heard and perused the entire material available on record.

8. The present criminal revision case is filed by the petitioner/complainant against the order of acquittal of the accused for the offence under Section 302 IPC. The learned trial Judge appreciated the evidence and thereafter acquitted the accused for the charge under Section 302 IPC and convicted the accused for the offence under Section 324 IPC.

9. The main ground on which the learned trial Judge acquitted the accused is that the evidence of P.W.11 - doctor is totally contrary to the case of the prosecution. P.W.11 opined that

the injuries sustained by the deceased were not sufficient to cause death of the deceased and the death of the deceased was on account of bronchioles with bronchopneumonia. P.W.11 has also stated that the injuries sustained by the deceased were not sufficient to cause death. In a decision relied by the trial Court in **RAMJAS AND ANOTHER Vs. THE STATE OF RAJASTHAN [2002 (1) Crimes 351]**, it is held that when doctor opined that though injury was dangerous but not sufficient in ordinary course of nature to cause death, the accused are not liable to be convicted under Section 326 IPC or under Section 307 IPC. Hence, the learned trial Judge had taken into consideration the same thing that the injuries sustained by the deceased are not capable of causing death of the deceased and the accused cannot be convicted for an offence under Section 302 IPC.

10. Having regard to the facts and circumstances of the case and considering the observations made by the learned trial Judge in the impugned judgment, this Court is of the view that the judgment of the trial Court with regard to the acquittal of the accused under Section 302 IPC is in accordance with law and it does not suffer from any illegality or perversity necessitating interference by this Court. Hence, the criminal revision case fails and is liable to be dismissed.

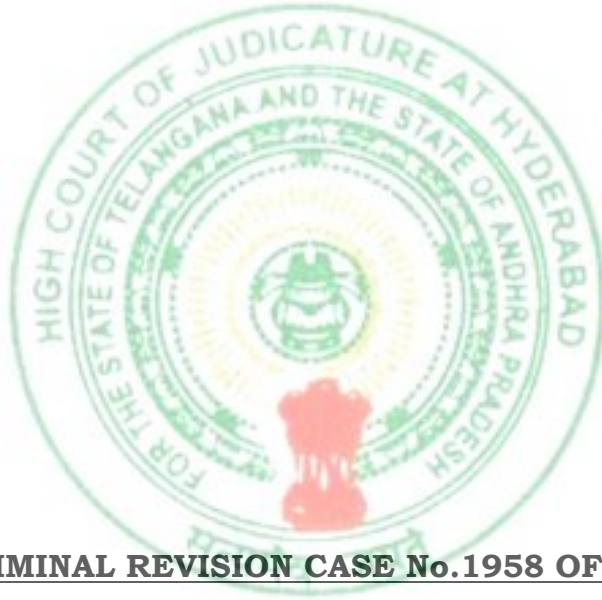
11. The Criminal Revision Case is, accordingly, dismissed. Consequently, the Miscellaneous Petitions pending, if any, shall stand closed.

RAJA ELANGO, J

Date: 2nd September, 2016

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