

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1346 of 2008

JUDGMENT:

1. This revision is filed by the petitioners-accused against the Judgment dated 5.9.2008 passed by the II Additional Sessions Judge, Kadapa at Proddatur, in CrI.A.No.85 of 2004.

2. The case of the prosecution is as follows:

All the accused and P.Ws. 1 to 3 are the residents of Kanapalli village. A1 and P.W.1 are having lands adjacent to each other in the limits of Kanapalli. There is a dispute between A1 and P.W.1 regarding the ridges of their land. In view of the above disputes, on 30.10.2000 at 6 a.m., P.W.1 attacked A1 with a deadly weapon and inflicted injuries to A1 and the same was registered as Crime No.120 of 2000 under Section 324 IPC and the said case is pending trial before the I Additional Judicial Magistrate of First Class, Proddatur in C.C.No.838 of 2000. A1 felt insulted as he sustained injuries in the hands of P.W.1. Therefore, A1 decided to do away P.W.1 and he started watching the movements of P.W.1. On 3.4.2001 at about 6 a.m., P.W.1 went to his cotton field in the limits of Kanapalli village where his son-P.W.2 and Gosula Yellareddi were spreading insecticide poison to cotton crop. P.W.1 supervised the above work for some time. At about 7 a.m., P.W.1 left the fields and was proceeding towards his house by walk. When he reached the fields of Obulareddi and Subbareddi, A1 to A7 arming with axes came and surrounded P.W.1. A4 instigated the other accused to hack and kill P.W.1. A1 to A3 and A5 to A7 beat on the head, hands, legs and stomach of P.W.1 with the axes and caused injuries to P.W.1. P.Ws.2 and 3, Subba Reddi and Yellareddi

witnessed the incident and rushed to the spot and went to the rescue of P.W.1. P.W.1 was shifted to the hospital. The statement of P.W.1 was recorded and a case was registered and investigated into. After completion of the investigation, charge sheet was filed.

3. The learned I Additional Judicial Magistrate of First Class, Proddatur committed the case to the Court of Sessions. The learned Sessions Judge, Kadapa made over the same to the learned Assistant Sessions Judge, Proddatur for trial.

4. The trial Court framed charges under Section 148 IPC against A1 to A7; under Section 326 IPC against A1 to A3 and A5 to A7; charge under Section 324 IPC against A1 to A3 and A5 to A7; charge under Section 307 IPC against A1 to A3 and A5 to A7 and a charge under Section 307 r/w 149 IPC against A4, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws.1 to 6 were examined and Exs.P1 to P9 and M.Os.1 to 4 were marked on behalf of the prosecution. No oral or documentary evidence on behalf of the accused.

6. On appreciation of both oral and documentary evidence, the trial Court convicted and sentenced the accused as follows:

- 1) A1 to A3 and A5 to A7 were convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.100/- each in default to undergo simple imprisonment for a period of ten days for the offence under Section 148 IPC;
- 2) A1 to A3 and A5 to A7 were convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.100/- each in default to undergo simple

imprisonment for a period of ten days each for the offence under Section 307 IPC;

- 3) A4 was convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.100/- in default to undergo simple imprisonment for a period of ten days for the offence under Section 307 r/w 149 IPC;
- 4) Rigorous imprisonment and simple imprisonment shall run consecutively.

Aggrieved by the judgment of the trial Court, the accused filed appeal viz., Crl.A.No.85 of 2004 before the II Additional Sessions Judge, Kadapa at Proddatur. The said appeal was dismissed. However, the lower appellate Court reduced the sentence of five rigorous imprisonment imposed by the trial Court for the offence under Sections 307 and 307 r/w 149 IPC to that of four years and also reduced the sentence of two years rigorous imprisonment imposed under Section 148 IPC to one year while maintaining the sentences of fine. The lower appellate Court further ordered that the sentences shall run concurrently.

7. Learned Counsel for the petitioners submitted that there is a doubt with regard to the weapons used by the accused persons and that the medical evidence does not corroborate with the evidence of the other witnesses and that there are discrepancies in their evidence and that the Courts below failed to appreciate the evidence in a proper perspective.

8. Learned Additional Public Prosecutor submitted that even though the lower appellate Court found the accused guilty of the offence under Sections 148 and 307 IPC, but took a lenient view. The judgment under revision does not warrant any interference by this Court.

9. It is the evidence of P.Ws.1 to 3 that all the accused attacked P.W.1 with weapons and sticks and caused injuries to him. P.Ws.2 and 3 who are

eye witnesses to the incident deposed that they witnessed the occurrence from 500 yards. They specifically admitted in their cross-examination that they cannot state the specific overt acts of any of the accused persons in the present case. P.W.1 stated that all the accused caused injuries to him. But he could not be able to depose before the trial Court implicating any one of the accused with any specific overt acts. According to P.W.1 also, A4 is the person who instigated the others to attack him. According to the Medical Officer, 8 injuries were found on P.W.1 and three of them are grievous in nature and other injuries are simple in nature. On the entire reading of the evidence on record, this Court is of the view that it is not a case of 307 IPC. Even according to the witnesses P.Ws.2 and 3, when they went to the scene of occurrence, the accused ran away from the place of occurrence. If it is the case of P.W.1 that the accused armed with weapons and caused injuries to him and if really, the accused have any intention to kill P.W.1, nothing prevented them from committing the offence of murder. Hence, this Court is of the view that the offence committed by the accused falls under Section 326 IPC. The conviction imposed by the lower appellate Court against A1 to 3 and A5 to A7 for the offence under Section 307 IPC is modified to that of 326 IPC. The conviction imposed by the lower appellate Court against A4 for the offence under Section 307 r/w 149 IPC is modified to that of Section 326 r/w 149 IPC. The sentences of imprisonment imposed by the lower appellate Court for the offences under Sections 307 and 307 r/w 149 IPC are aside.

10. The occurrence took place in the year 2001. It is evident that from the year 2001 the petitioners-accused were on bail and they are also coolies and they have not involved in any crime. Considering the said fact, this

Court is inclined to take a lenient view insofar as the sentence of imprisonment is concerned.

11. In the result, the conviction imposed by the learned II Additional Sessions Judge, Kadapa at Proddatur, against A1 to A3 and A5 to A7 for the offence under Section 307 IPC is modified to that of 326 IPC. Consequently, the sentence of imprisonment imposed against A1 to A3 and A5 to A7 for the said offence is set aside. However, the imprisonment already undergone by A1 to A3 and A5 to A7 shall be construed as that of the period of sentence of imprisonment for the offence under Section 326 IPC. The above accused are directed to pay a fine of Rs.100/- each for the said offence in default to undergo simple imprisonment for a period of 10 days each for the offence under Section 326 IPC. Further, A1 to A3 and A5 to A7 are directed to pay additional fine of Rs.30,000/- (Rupees Thirty Thousand only) each on or before 30th November, 2016, in default to suffer rigorous imprisonment for a period of one year.

12. The conviction imposed by the learned Additional Sessions Judge against A4 for the offence under Section 307 r/w 149 IPC is modified to that of 326 r/w 149 IPC. The imprisonment already undergone by A4 shall be constructed as that of the period of sentence of imprisonment for the offence under Section 326 r/w 149 IPC. A4 is directed to pay fine of Rs.100/- in default to suffer simple imprisonment for a period of 10 days. Further, A4 is directed to pay additional fine of Rs.30,000/- (Rupees Thirty Thousand only) on or before 30th November, 2016, in default to suffer rigorous imprisonment for a period of one year.

13. Further, the conviction imposed by the learned Additional Sessions Judge against A1 to A3 and A5 to A7 for the offence under Section 148 IPC

is confirmed and the period of sentence of imprisonment imposed by the learned Additional Sessions Judge is modified to that of the period, which each of the above accused has already undergone, while maintaining the sentence of fine.

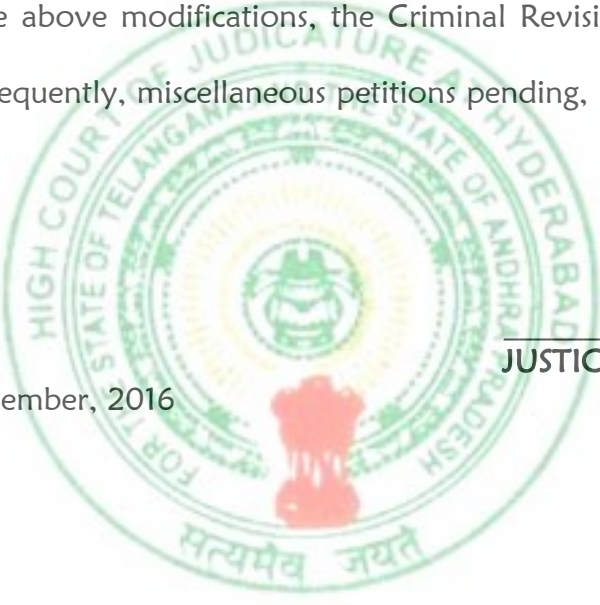
14. Both the substantive sentences imposed against A1 to A3 and A5 to A7 shall run concurrently.

15. On payment of additional fine amount, the same shall be given to P.W.1 as compensation.

16. With the above modifications, the Criminal Revision Case is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Dated:28th September, 2016

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JUSTICE RAJA ELANGO

THE HONOURABLE SRI JUSTICE RAJA ELANGO



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28.9.2016

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