

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1396 of 2007

JUDGMENT:

This criminal appeal is preferred by the appellants/A-1, A-2, A-4, A-5 & A-8 by invoking the provision under Section 374(2) of the Code of Criminal Procedure being aggrieved by the judgment, dated 25.09.2007, rendered in S.C.No.603 of 2006, by the II Additional Sessions Judge, Fast Track Court-I, at Khammam, whereby and whereunder the learned Sessions Judge found A-1, A-2, A-4, & A-8 guilty of the offence punishable under Section 324 IPC, convicted and sentenced them to undergo rigorous imprisonment for a period of one (1) year each and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for a period of three (3) months and A-5 was found guilty of the offence punishable under Section 304 Part-II IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of seven (7) years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three (3) months.

2. The case of the prosecution, in brief, is as follows:

The complainant, Rayani Ramana is a resident of Etapaka. The deceased, Rayani Satyam is the father of the complainant. Some disputes arose between the family of Rayani Satyam and his sister, Pasupuleti Krishnaveni (A-9), W/o. Gopal Rao and her husband (A-1), with regard to three cents of land given by the father of A-9 to her. On 12.05.2005 at about 6.00 p.m., the elder brother of the complainant, namely Rayani Ramesh and his brother-in-law, Raghu, were proceeding to Bhadrachalam to see a movie. At that time, the son-in-law of Gopal Rao namely

Nagabushanam (A-2), R/o. Thadepalligudem, picked up a verbal altercation with Rayani Ramesh. Meanwhile, A-1 & A-9 picked up a quarrel with the family of R. Satyam. At that time, Gampa Suryam (A-3), Gampa Savithri (A-8), Gampa Srinu (A-4), also picked up quarrel with Rayani Ramesh and the wife of the *de facto* complainant, Rayani Ramana. In this regard, the elder brother of the complainant namely R. Ramesh, went to police station, to report the matter. On the same day, at about 10.30 p.m., A-1 to A-6, A-8 to A-11, under the leadership of A-7, armed with deadly weapons, such as sticks, spears, axes and knives, unlawfully assembled with a common object to do away the lives of Rayani Satyam family, came to his house and attacked them. The women folk sprinkled chilli powder, by pelting stones and attacked Rayani Satyam and Rayani Venkat Rao, pulled Rayani Satyam. A-5, beat him with butt end of the axe, on the back of his head, as a result he sustained severe bleeding injury and fell down on the ground. Immediately, A-2 stabbed Satyam near the left ear with a spear. When the complainant and his mother went in rescue of Satyam, A-4 hacked the complainant on his left leg and A-1 beat him on his back with a stick. A-2 also beat him with a stick. A-4 pocked Hymavathi on her right leg and caused bleeding injury. Then, all the above persons left the place. The victim became unconscious. As such, he was immediately taken to the Government Hospital, Bhadrachalam, where he was found dead. The complainant came to police station and presented a report. The same was registered as a case in Crime No.139 of 2005 under Sections 147, 148, 324, 407, 302, 109 read with 149 IPC and issued express FIRs to all the concerned. The original FIR was dispatched to the Court, through

a special messenger. The Sub-Inspector of Police had proceeded to the scene of offence along with A.S.I. and P.C. He secured the presence of mediators and observed the scene of offence at that time. He prepared C.D.F. and rough sketch and obtained the signatures of the mediators. He got photographed the scene of offence. The S.I. of Police, Bhadrachalam Town along with his staff and mediators went to the Government Area Hospital, Bhadrachalam, examined the witnesses and recorded their statements. He also conducted inquest on the dead body of the deceased in the presence of the above mediators. The dead body was subjected for Postmortem examination. The injured, P.Ws.1 & 2, received treatment at Government Area Hospital, Bhadrachalam. The S.I. of Police also examined P.Ws.8 & 9. The Medical Officer, who conducted postmortem examination on the dead body, gave a report with the opinion that the cause of death of the deceased was due to head injury due to intracranial haemotoma due to fracture of occipito parietal bones of skull. The complainant and his mother received simple injuries as per wound certificates issued by Medical Officer. On 17.05.2005 at 6.00 a.m., the S.I. of Police, Bhadrachalam Town arrested all the accused A-1 to A-11 at Karakatta, Charla Road at Bhadrachalam, interrogated them one after the other, separately in the presence of mediators.

3. After taking cognizance of the charge sheet filed by the investigating agency, the Judicial Magistrate of First Class, Bhadrachalam, committed the case to the Court of Sessions, Khammam, as the same was exclusively triable by the Sessions Court. In turn, the Sessions Judge registered the same as S.C.No.603 of 2006. On appearance of the accused before the trial

Court, the charges under Section 148 IPC against A-1 to A-11, under Section 302 IPC against A-2 and A-5, under Section 302 read with 149 IPC against A-1, A-3, A-4, A-6, A-8 to A-11, under Section 302 read with 109 IPC against A-7, under Section 324 IPC against A-1, A-2 & A-4 and under Section 324 IPC against A-8 were framed on 11.06.2007, read over and explained to them in telugu, for which they pleaded not guilty and claimed for trial.

4. During the course of trial, P.Ws.1 to 12 were examined and Exs.P-1 to P-14 and M.Os.1 to 5 were marked on behalf of the prosecution. On behalf of the accused, no oral evidence was adduced, but Exs.D-1 to D-5 were marked.

5. On appreciation of the oral and documentary evidence, the trial Court found A-1, A-2, A-4, & A-8 guilty of the offence punishable under Section 324 IPC, convicted and sentenced them as stated above and A-5 was found guilty of the offence punishable under Section 304 Part-II IPC, convicted and sentenced him as stated above. Aggrieved by the conviction order, the present appeal is preferred by the appellants/A-1, A-2, A-4, A-5 & A-8.

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

7. P.W.1 is the son, P.W.2 is the wife, P.W.3 is another son and P.Ws.4 and 7 are the daughters-in-law of the deceased. P.W.1 deposed that on 12.05.2005 there was a wordy quarrel at about 6.30 p.m. in between their family and the family of the accused, in connection with Ac.0.03 cents on three sides and that the fencing on one side fell down due to rains. P.W.2 did not state anything about the disputed site. P.W.3 deposed that there was a dispute in connection with site in between their family and the

family of A-1. P.W.4 did not state anything about the dispute with regard to site. P.W.7 also did not state anything about the disputed site. However, P.Ws.2, 3, 4 & 7 have also stated about the 6.00 p.m. incident. P.W.8 is closely related to the above witnesses. He also did not state anything about the disputed site. However, he also deposed about the 6.00 p.m. incident.

8. P.W.1 in his cross-examination for accused has also stated about much earlier dispute, in between their family and the family of the accused by stating that there were earlier disputes in between A-5 and his father, as A-5 obtained the signatures of his father on documents when he was drunken state, conveying property to A-9 in an extent of $\frac{3}{4}$ acre of wet land and $\frac{3}{4}$ acre of dry land, conveying to A-9 by his father. He was examined on that aspect by eliciting whether they have given any report or notice. He deposed that his father did not give any notice to A-9 and A-5, to recover that property and that himself and his brother, Ramesh also, did not give any notice to them to recover that property. However, he deposed that the said incident took place about 6 years prior to the date of death of his father.

9. P.W.1 deposed that on 12.05.2005 at about 6.30 p.m., A-2 asked his brother, Ramesh (P.W.3), to erect fencing on one side of the disputed site, which fell down due to rains, that his brother replied that he will erect the fencing on the next day morning as it was late on that day, that then A-1 and A-9 abused his brother and his brother-in-law, Raghu and that then A-3, A-4, A-5 and A-11 came in support of A-1 and A-9. P.W.2 with respect of that quarrel deposed that her son, Ramesh (P.W.3) presented a report to police in connection with the incident of 6.00 p.m. and that the

S.I. of police on report of the matter, gave assurance to them that he will come and settle the matter. P.W.3 deposed that at about 6.00 p.m., on the date of incident, himself and his brother-in-law, Raghu (P.W.8) were proceeding to Bhadrachalam to see a movie, that then, A-2 asked him to construct fencing saying that their cattle were entering into their house, that then he informed him that he will construct the same on the next day and so saying, himself and his brother-in-law, Raghu went to road to catch an auto to go to Bhadrachalam, that at that time A-2 to A-4, A-8 to A-11 were abusing them, that on hearing their abuses himself and Raghu returned home from the road, that by the time he returned home he found A-2, A-4 and A-11 quarrelling with his sister-in-law, P.W.4, that then he had interfered and separated P.W.4 from the accused, that then A-2 and A-4 have threatened with dire consequences and then A-1, A-3, A-8 and A-9 also abused them at that time. He also stated that A-2 had also uttered stating that he has come from his native place for that purpose. According to him, he went to Bhadrachalam to report the matter along with his father, mother, P.W.1, his wife and presented a report. P.W.4 also deposed on the evening incident by stating that on the date of incident, there was a quarrel in the evening time in between their family and A-1 to A-4, A-8 and A-11 in regard to the fencing, which fell down. She also stated that the above said accused demanded them to erect the fencing alleging that their cattle were coming into their house, that they were raising cries against her brother-in-law, P.W.3, that on hearing the same she came out of the house, interfered and tried to subside the matter, stating that there is no need to raise cries as their people promised to construct the

fencing on the next day, that then A-3, A-4, A-8 and A-11 pushed her into drainage and came over her to beat her and that then P.Ws.1 to 3 and her father-in-law went to police station to file a case on that incident. P.W.7 also deposed that on the date of incident P.W.3 and Raghu were proceeding to Bhadrachalam at about 6.00 p.m. to see a movie, that then A-2 asked P.W.3 to erect fencing, that her husband, P.W.3 was proceeding to Bhadrachalam by saying that he will erect the fencing on the next day, but A-1, A-2, A-9 were abusing then, that on hearing the same her husband and Raghu returned home and asked the other party to go away stating that he has already informed them that he will erect the fencing on the next day and that her husband, Ramesh brought her and P.W.4 into the house from the bazaar and that thereafter herself, P.Ws.2 to 4 and her father-in-law together went to Bhadrachalam to report the matter to police and her husband, P.W.3 presented a report to police. P.W.8 also deposed on the evening incident by stating that on the date of incident in the evening time, himself and P.W.3 were proceeding to Bhadrachalam to see a movie, that A-2 asked P.W.3 to erect fencing, that then P.W.3 replied that he will erect the fencing on the next day, that then A-2, A-3 and A-8 were abusing them for not erecting the fencing on that day itself, that then P.W.4 came to the fencing of their compound, that at that time himself and P.W.3 were on the Karakatta and that on hearing the quarrel, himself and P.W.3 returned home, that P.W.3 subsided P.Ws.1 and 4 stating that they will report the matter to police and that accordingly, P.Ws.1 and 4 stating that they will report the matter to police and that

accordingly, P.Ws.1 to 4 and 7 went to police station to report the matter.

10. P.W.1 deposed about the incident by stating that his brother, Ramesh, P.W.3 proceeded to the centre to contact the S.I. of police by phone as A-1 and A-5 were abusing them while sitting at the centre, which was at a distance of about 100 yards from their house, that A-5 came to his father, who was sitting on a cot in the varanda and dragged him into the bazaar, pushed him over the thorny fencing and also beat his father with an axe with its butt end, that A-1 beat his father with a stick and that A-2 beat his father with a spear. He also deposed about his interference and interference of his mother and assault by some of the accused by stating that when he went to the rescue of his father and was bringing him into the house. A-4 hacked him with an axe and A-1 beat him with a stick and that A-6 and A-11 beat his mother with hands. He also deposed the overt acts of A-8 to A-11 by stating that A-8 to A-10 dragged his father into bazaar and pushed him again on the thorny fencing and that A-8 to A-11 brought chilly powder and sprinkled it against him, mother and his wife.

11. On 07.09.2007 P.W.5 produced the M.L.C. register and deposed on the entries relating to the injuries of A-1. He deposed that on 13.05.2005 at 12.30 a.m., he examined A-1 and found a contusion on right arm, a laceration on left fore arm, an abrasion behind the right elbow, an abrasion on right chest and he also found both eyes congested redness.

12. P.W.6 found four injuries in all on the person of the victim. They are superficial linear laceration on the posterior aspect of left ear, small abrasion on the left side of back, small

linear laceration on the back of head and fracture left side occipito parietal bone of skull.

13. P.W.2 supported the evidence of P.W.1 on the incident proper. P.Ws.4, 7 and 8 have also supported the evidence of P.W.1 on the incident proper. P.W.2 is the wife of the victim. She deposed that A-5 hacked her husband with an axe and A-2 stabbed her husband, with a spear in his ear. She also stated that A-1 beat her husband with a stick. P.W.4 deposed on the main incident, by stating that A-5 hacked her father-in-law with an axe and A-2 stabbed her father-in-law on the right side of the ear with a braise. P.W.7 deposed that A-5 hacked her father-in-law with an axe and A-2 stabbed her father-in-law with a barise. P.W.8 deposed that A-5 hacked the victim with an axe and A-2 stabbed the victim with a spear.

14. P.W.6 is the Medical Officer, who conducted autopsy on the dead body of the deceased. She found injury No.1 a linear laceration on the posterior aspect of left ear. It is corroborating the overt act attributed against A-2, with a spear. P.W.6 found injury No.4, a fracture left side occipito parietal bone of skull. In her cross-examination, she deposed that injury No.4, fracture was associated with external injury namely contusion. She also stated that the fracture found by her was a depressed fracture and not a hair line fracture. However, she admitted that she did not mention about that contusion in Ex.P-4 report. Thus, it appears that P.W.6 also found a contusion corresponding to injury No.4 and the fracture was depressed one. Thus, the medical evidence of P.W.6 is corroborating the oral evidence of P.Ws.1 to 4, 7 and 8 on the specific overt acts, attributed against A-2 and A-5. P.W.6 found

two other injuries, small abrasion on the back and a linear laceration on the back of head.

15. P.W.1 deposed about the overt acts against A-4 and A-1 with respect of him. He deposed that A-4 hacked him with an axe and A-1 beat him with a stick in her chief-examination, but supported that fact in her cross-examination. P.W.2 corroborated the evidence of P.W.1 by stating that A-4 hacked P.W.1 with an axe. She did not state about A-1 beating P.W.1 with a stick. P.W.4 deposed that A-1 beat her husband, P.W.1 with a stick and that A-4 hacked her husband, P.W.1 with an axe on his right left. P.W.7 deposed that A-4 hacked P.W.1 with an axe. He did not state about A-1 beating P.W.1 with a stick. P.W.8 deposed that A-4 hacked P.W.1 with an axe. He also did not state about A-1 beating P.W.1 with a stick. Thus, the evidence of P.W.1 that A-4 assaulted him with an axe is corroborated by the evidence of P.Ws.2, 4, 7 and 8. His evidence that A-1 beat him with a stick is corroborated by the evidence of P.Ws.2 and 4. The evidence of P.W.5, Medical Officer, is relevant in this connection. He treated P.W.1 and another. His evidence shows that he found an abrasion on right shoulder, a contusion on left leg, an abrasion on left iliac crest, a contusion on right upper chest and another contusion on right lower chest. With respect of the nature of injuries, he deposed that the above injuries are simple in nature and caused by blunt object and he gave Ex.P-3, wound certificate for the injuries of P.W.1.

16. Thus, the evidence of P.W.1 on the overt acts attributed against A-1 and A-4 with respect of him will be accepted as it was corroborated by the material facts of Ex.P-1, report and

the medical evidence of P.W.5 besides corroborated from the evidence of other P.Ws.

17. P.W.1 has deposed with respect of the assault against his mother, by stating that A-6 and A-11 beat his mother with hands. P.W.2 specifically deposed that when she was weeping, A-8 came to her, armed with a knife and stabbed her. She did not mention the place of her body at which A-8 stabbed her. P.W.4 deposed that A-8 hacked P.W.2 with a knife on her left leg. Only side of leg is contra. P.Ws.7 and 8 have also deposed the same by stating that A-8 stabbed P.W.2 with a knife. He deposed that he examined P.W.2 and found a lacerated injury in front of right leg and it is simple in nature and caused by blunt object.

18. It is stated in Ex.P-1, report that the accused came over their house under the leadership of A-7, bearing the old grudges in mind and attacked his father. P.W.1 did not state anything about the presence of A-7. However, he gave an explanation for showing A-7 as one of the accused in this matter. In his chief-examination, he deposed that he found A-1 to A-6 in a room in the Government Hospital, Bhadrachalam and the S.I. of police took them away.

19. Thus, the trial Judge observed that the circumstances proved the guilt of A-1 and A-4 for an offence under Section 324 IPC for voluntarily causing simple hurt to P.W.1 with deadly weapons namely stick and axe respectively. No case was made out against A-2 as P.W.1 failed to support the overt act attributed against him. The circumstances also proved guilt of A-8 for the offence under Section 324 IPC for voluntarily causing simple hurt to P.W.2, with a deadly weapon namely knife. The offence under

Section 304 Part-II IPC and the offence under Section 324 IPC are minor when compared to the offence of murder under Section 302 IPC and they are inclusive in Section 302 IPC. Thus, A-2 and A-5 could be dealt with accordingly.

20. For the above said reasons, it is held by the trial Judge that the prosecution proved the guilt of A-5 for the offence under Section 304 Part-II IPC, the guilt of A-2 for the offence under Section 324 IPC, the guilt of A-1 and A-4 for the offence under Section 324 IPC and the guilt of A-8 for the offence under Section 324 IPC beyond all reasonable doubt. The above accused namely, A-5, A-2, A-1, A-4 and A-8, are liable for punishment for the charges proved against them. The prosecution failed to prove the guilt of A-1 to A-11 for the offence under Section 148 IPC, the guilt of A-2 and A-5 for the offence under Section 302 IPC, the guilt of A-1, A-3, A-4, A-6, A-8 to A-11 for the offence under Section 302 IPC read with Section 149 IPC, the guilt of A-7 for the offence under Section 302 read with Section 109 IPC, and the guilt of A-2 for the offence under Section 324 IPC, beyond all reasonable doubt. Thus, they are entitled for the benefit of doubt and so, they are entitled for acquittal, for the above said charges.

21. Learned counsel for the appellants vehemently contended that the prosecution has failed to prove the occurrence of the incident by adducing proper evidence by witnesses, who are closely related to the deceased.

22. Learned Public Prosecutor, on the other hand, submitted that the conviction and sentence recorded by the trial Court are in accordance with law and there is no need to interfere with the same.

23. After evaluating the entire material available on record, this Court expressed its opinion that there are no valid reasons to interfere with the judgment of the trial Court in convicting A-1, A-2, A-4 & A-8 for the offence under Section 324 IPC and A-5 for the offence under Section 304 Part-II IPC.

24. When this Court pointed out that there are no merits in the appeal, learned counsel for the appellants conceded for the same and confined his arguments only to the quantum of sentence and as the appellants have already suffered considerable period in the prison, a lenient view may be taken in imposing sentence.

25. Admittedly, the appellant No.4, who is arrayed as A-5 and the deceased are own brothers. The entire occurrence took place over the quarrel between the two parties and the prosecution witnesses are also six in number and the accused are 11 in number. There was exchange of blows between the parties concerned. In such a quarrel, the deceased died in the hands of A-5. Hence, the deceased succumbed to the injuries, which is on his back side. Hence, this Court is of the view that the conviction recorded by the trial Court need not be interfered and the conviction is confirmed.

26. Considering the facts and circumstances of the case and also in view of the submission of the learned counsel for the appellants, this Court is inclined to reduce the sentence of imprisonment imposed against A-1, A-2, A-4 & A-8 for the offence under Section 324 IPC to that of the period, which A-1, A-2, A-4 & A-8 have already undergone and the sentence of imprisonment imposed against A-5 for the offence under Section 304 Part-II IPC is modified to Rigorous Imprisonment for a period of two (2) years.

27. In the result, the conviction recorded against A-1, A-2, A-4 & A-8 by the II Additional Sessions Judge (Fast Track Court-I), At Khammam, in S.C.No.603 of 2006, vide Judgment, dated 25.09.2007, for the offence under Section 324 IPC and the conviction recorded against A-5 for the offence under Section 304 Part-II IPC are hereby confirmed. However, the sentence of imprisonment against A-1, A-2, A-4 & A-8 imposed by the trial Court is modified to that of the period, which A-1, A-2, A-4 & A-8 have already undergone and the sentence of imprisonment against A-5 imposed by the trial Court is modified and reduced to two (2) years Rigorous Imprisonment. However, the sentence of fine imposed by the trial Court shall not be interfered with. The period of imprisonment already suffered by the appellants/A-1, A-2, A-4, A-5 & A-8 is directed to be given set off.

28. The 4th appellant/A-5 is directed to surrender before the Court concerned on or before 13th October, 2016, in default, the Court concerned is at liberty to take appropriate steps in accordance with law.

29. Accordingly, the Criminal Appeal is partly allowed. Miscellaneous petitions, if any, pending in this criminal appeal shall stand closed.

RAJA ELANGO, J

Date: 22nd August, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO**CRIMINAL APPEAL No.1396 of 2007**Date: 22nd August, 2016

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