

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1232 of 2008

JUDGMENT:

1. This appeal is filed by A1 to A3 against the Judgment dated 6.10.2008 passed by the Special Judge for SPE & ACB Cases-cum-II Additional District & Sessions Judge, (FAC) III Additional District Judge (Fast Track Court), Nellore in S.C.No.139 of 2006.

2. The case of the prosecution is as follows:

The accused and the injured belong to Yadava community. The ancestors of one Bakkamunthala Sessaiah gave Ac.0.30 cents of wet land to Gangamma temple of their village. One Devarala Venkata Ramaiah, Sarpanch of Kanaparthipadu village, who belongs to the group of P.W.1, was looking after the said temple since 10 years prior to the date of offence. The group of P.W.1 demanded Bakkamunthala Sessaiah to execute a bond in favour of their group to sell the said land, the rate of which was increased due to laying of bypass road near the said land. In that connection, disputes arose in Yadava community of that village and the community was divided into two groups. One group belongs to P.W.1 and another group belongs to Puli Sriramulu. The dispute was placed before one elder viz., B.V. Ramana Reddy, an advocate Nellore to compromise the issue. The said B.V. Ramana Reddy suggested that a trust may be formed with six members of each group. But the group of P.W.1 refused to form a trust with the members of the group of the accused. While so, on 21.3.2004 at 13.30 hours, the group of the accused picked up a quarrel with Budida Venkateswarlu as his sheep were grazing in the fields of Bakkamunthala Sessaiah. Taking advantage of the same, the group of

P.W.1 armed with deadly weapons, chased A1. But Puli Sriramulu, who intervened, was killed by the group of P.W.1 and the same is the subject matter of S.C.No.57 of 2005. A1 is the son of said Puli Sriramulu. By observing the same, A1 to A3 armed with deadly weapons, attacked P.Ws.1, 2 and 4 with axe and spears to do away their lives and caused injuries to P.Ws.1, 2 and 4. The injured were shifted to the Government Headquarters Hospital, Nellore. On receipt of hospital intimation, P.W.6, the then Sub-Inspector of Police, Nellore Rural Police Station rushed to the hospital, Nellore and recorded the statement of P.W.1 under Ex.P1 and registered a case in Crime No.95 of 2004. After completion of the investigation, charge sheet was filed.

3. The learned IV Additional Judicial First Class Magistrate, Nellore, took the case on file and committed the same to the Court of Sessions, Nellore. The learned Principal District & Sessions Judge, Nellore took the case on file as S.C.No.139 of 2006 for the offences under Sections 324, 326 and 307 r/w 34 IPC against A1 to A3 and made over the same to the learned III Additional District & Sessions Judge (FTC), Nellore for disposal.

4. The trial Court framed a charge under Section 307 IPC, 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 13 were examined and Exs.P1 to P31 and M.Os.1 to 4 were marked on behalf of the prosecution. D.W.1 was examined and Exs.D1 to D9 were marked on behalf of the accused.

6. On appreciation of both oral and documentary evidence, the trial Court found A1 to A3 guilty for the offence under Section 307 IPC, convicted and sentenced each of them to undergo rigorous imprisonment

for a period of seven years and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a period of three months. Aggrieved by the same, the appellants-A1 to A3 filed this appeal.

7. Learned Counsel for the appellants submitted that the trial Court erred in placing reliance on the highly interested and discrepant testimonies of P.Ws.1 to 4 and that there are number of circumstances to indicate that the incident did not take place at the time and place and in the manner as spoken to by the prosecution witnesses and that the evidence of P.Ws.1, 2 and 4 is falsified by the medical evidence and that A1 and A2 did not attack P.Ws.2 and 4 as alleged by the prosecution and that P.W.1 did not receive any injuries on vital parts of his body. He further submitted that the group of P.W.1 firstly attacked the deceased-Sriramulu in Cr.No:94/2004 and killed him and out of such angry, some people belong to the group of the deceased might have caused injuries to P.Ws.1, 2 and 4 but they did not attack the prosecution party as alleged by the prosecution. He further submitted that in Ex.P1 report, P.W.1 stated that the deceased-Sriramulu beat him with a stick, whereas he deposed in his evidence that A1 to A3 beat him with axes, and that he has not stated that any of the accused armed with spears. The trial Court has failed to appreciate the evidence in a proper perspective.

8. In response, the learned Additional Public Prosecutor submitted that the prosecution has proved its case against the appellants beyond all reasonable doubt and that the contentions raised by the learned Counsel for the appellants are devoid of merits and the appeal is liable to be dismissed.

9. Now the point for consideration in this appeal is:

“Whether the judgment under appeal warrants interference by this Court?”

10. The appellants were convicted by the trial Court for the offence under Section 307 IPC. It is to be examined as to whether the prosecution is able to prove the guilt of the appellants-accused beyond all reasonable doubt and whether the judgment impugned herein warrants any interference by this Court.

11. P.W.1, who is an injured, deposed that on the date of incident, while he was unloading the paddy at his house, he heard cries from Rachabanda and he rushed to that place. L.W.2-B. Mastanaiah, L.W.3-Ramanaiah and L.W.4-Penchalaiah sat on the pial. A1 to A3 and Puli Sriramulu armed with deadly weapons like axes came there, raised shouts at Mastanaiah and others stating that why cattle were allowed to the fields. Puli Sriramulu beat P.W.1 with a stick on his left upper arm. A1 with axe hacked him on his left leg knee. A2 with an axe beat him on his right knee. A3 hacked him with an axe on his left wrist and on the left forearm. A1 to A3 and Puli Sriramulu beat L.W.2-Mastanaiah and L.W.3-Ramanaiah. After the said attack, the accused ran away towards eastern side on the main road. The legs of P.W.1 were broken. The intestines came out from the stomach of Mastanaiah and Ramanaiah. They were shifted in the car to the hospital. The statement of P.W.1 was recorded in the hospital.

12. P.W.2-Mastanaiah deposed that on the date of incident, when he along with L.Ws.3 and 4 sat at Rachabanda, A1 to A3 and Puli Sriramulu armed with axes and spears, attacked them questioning about the throwing of the cattle from L.W.7's fields. An altercation took place among them,

A1 to A3 and Puli Sriramulu. Meanwhile, P.W.1 rushed to the spot. Puli Sriramulu with a stick beat P.W.1 on his left upper arm. A1 and A2 with axes beat on the knees of P.W.1. When P.W.2 tried to rescue P.W.1, A3 with spear poked him on his left side of the stomach and intestines came out. A3 with a spear poked on the left side stomach of P.W.4. A1 to A3 and Puli Sriramulu left towards eastern side. The injured were shifted to the hospital in a car. He lost consciousness during the transit. He further deposed that there is a dispute between themselves and the accused regarding the land of the temple. One B.V. Ramana Reddy proposed that a trust can be created and six people from each group can act as members and manage the land. Puli Sriramulu and Sessaiah did not agree for that proposal. In view of the land dispute, the accused and Puli Sriramulu attacked them.

13. P.W.3-Gummadi Penchalaiah deposed as follows:

On the date of incident, Puli Sriramulu along with A1 to A3 armed with weapons, came to Rachabanda and questioned them stating that in the morning the cattle were thrown away from the fields of Bakkamunthala Sessaiah. P.W.2 and the father of P.W.3 replied that they question Budida Venkateswarlu, who threw away the cattle. Meanwhile, P.W.1 came to Rachabanda hurriedly. Puli Sriramulu with stick beat P.W.1 on his left upper arm. P.W.1 fell down. A1 and A2 with axes attacked on the knees of P.W.1. Then, P.W.2, P.W.3 and his father questioned the accused as to why they were beating P.W.1. Then, A3 with the spear stabbed P.W.2 on his stomach. The father of P.W.3 was also stabbed by Madhu with spear. Due to fear P.W.3 ran away. Intestines of P.Ws.2 and L.W.3-Ramanaiah came out. Later, they were shifted to the hospital.

14. P.W.4-Gummadi Ramanaiah deposed as follows:

On the date of incident around 5 p.m., P.W.4 and P.W.3 sat on Rachabanda. P.W.2 joined them. Around 5.30 p.m., A1 to A3 and Puli Sriramulu came with weapons to Rachabanda. Puli Sriramulu armed with a stick, A1 armed with a spear, A2 and A3 armed with axes. A1 to A3 and Sriramulu questioned as to why the cattle were thrown out. They replied that they have nothing to do with the said event. On hearing the cries, P.W.1 came there. Puli Sriramulu beat P.W.1 with a stick on his left upper arm. P.W.1 fell down. A2 and A3 with axes hacked P.W.1 on both knees. A3 poked P.W.2 on his stomach. A3 with spear poked P.W.4 on his left side of stomach. A1 with spear poked him on below his left eye. A2 with axe hacked him on his left hand nearby wrist. A3 with axe beat P.W.1 on the left wrist.

15. P.W.5-Mulam Umasankar deposed that he was present when inquest was conducted over the dead body of Puli Sriramulu in Crime No.94 of 2004.

16. P.W.6 is the police official who recorded the statement of P.W.1 in the hospital.

17. P.W.7-Civil Surgeon gave opinion on the X-rays taken on P.W.1. According to him, three injuries were found viz., 1) fracture of the Patella and fracture lateral condole femur;(2) X-ray rt. knee AP and lateral views-shows no fracture; (3) X-ray left fore-arm AP and later views-shows fracture of the lower end of radius.

18. P.W.8 deposed that as seen from Ex.P17, Dr. Madhavi examined P.W.1 and found the following injuries:

1) a cut injury of size about 4 x 1 cm., x bone deep present on medial aspect of right knee. Bone exposed. Bleeding present;

2) An irregular cut injury of size about 7 x 4 cms., x bone deep anterior aspect of left knee with exposure of bone bleeding present;

3) An oblique cut injury of size about 4 x 1 x 1 cms., on left fore- arm. Margins regular bleeding present;

4) An oblique cut injury of size about 4 x 1 x 1 cms., on lateral aspect of left wrist bleeding present.

Basing on the clinical findings and expert opinion, P.W.8 expressed her opinion that injuries No.1 and 3 are simple and injuries No.2 and 4 are grievous in nature.

19. P.W.8 examined P.W.2 and found a stab injury over Rt. Side middle of the abdomen sized about 6 cms., x 2 cms., and bowels seen outside the Abdomin. She deposed that she advised plain X-ray abdomen. But the patient did not take the x-ray and he was discharged from the hospital against medical advice. According to her, the above injury is grievous in nature. Ex.P15 is the wound certificate. She also examined P.W.4 and found the following injuries:

1) A stab injury over the left side middle of the abdomen sized 4 cms., x 2 cms., and bowels seen outside the injury;

2) Incised injury over the left side face, temporal region sized about 2 cms., x ¼ cms., x ¼ cms;

3) A lacerated injury over the left wrist joint region sized about 4 cms., x 2 cms., x 2 cms., bleeding present;

4) A lacerated injury over the left hand seized about 6 cms., x 2 cms., x 2 cms., bleeding present.

She deposed that the patient was advised to take plain X-ray of abdomen. But he did not take the X-ray and he was discharged from the ward against the medical advice. According to her, injury No.1 is grievous in nature and

injures No.2 to 4 are simple in nature. Ex.P16 is the opinion issued by P.W.8.

20. P.W.9-Inspector of Police deposed that he completed the investigation and filed the charge sheet. P.W.10 has also investigated into the case since it is a counter case. He deposed that he found no incriminating material to be seized from the scene of offence. He found P.Ws.1, 2 and 4 in the Government Hospital, Nellore. He recorded the statement of P.W.1. Since P.Ws.2 and 4 were not in a position to speak, he did not record their statements. Later, he learnt that P.Ws.2 and 4 were admitted in Ramachandra Reddy's Hospital. He deposed that as per FIR and the report given by P.W.1, Puli Sriramulu-deceased was the first accused in this case. But as per the contents of FIR in another crime viz., Crime No.94 of 2004 Puli Sriramulu died.

21. P.W.11-G. Ajay Kumar, Duty Doctor, deposed that he performed surgery to B. Masthanaiah-P.W.2 on 22.3.2004 at 5.30 a.m., to 8.30 a.m., and found the injury on the left side of the abdomen. P.W.2 came to their hospital with a bandage and when he opened the bandage he found that the intestines came out. He deposed that if the patient had not undergone the surgery, he might have collapsed. He further deposed that P.W.4 came to their hospital with a bandage and P.W.4 sustained injury on the left side of the abdomen and the intestines came out and three holes were found in the intestines. If the surgery was not done, P.W.4 might have collapsed.

22. P.W.12-Dr. Harsha Kumar, Narayana Medical College, deposed that he is working as Assistant Professor in Narayana Medical College, Nellore and as per their records, P.W.1 was admitted in their hospital on 24.5.2004 and they found a cut injury to the left fore-arm. He attended surgery and

repaired the extensor tendons on 3.6.2004 and he brought the case sheet relating to the history of patient and the treatment and surgery done at their hospital. Ex.P26 is the case sheet.

23. P.W.13-Dr. B. Krishnamoorthy was examined to mark accident register extracts relating to P.Ws.1, 2 and 4 and the deceased-Puli Sriramulu.

24. Before going to appreciate the evidence on record, it is relevant to extract Section 307 IPC, which reads as follows:

Attempt to murder - Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

In a case of this nature, it is sufficient to justify a conviction under Section 307 IPC if an intention or knowledge coupled with some overt act in execution thereof is present. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge.

25. From the material on record, it is obvious that there are disputes between the accused and the prosecution party with regard to the land of the temple. In view of previous disputes, the present incident took place. It is the evidence of the prosecution witnesses viz., P.Ws.1 to 4 that the accused and one Sriramulu (deceased in Cr.No:94/2004) attacked them, whereas it is the defence of the accused that the prosecution party killed one Sriramulu as a result of which, the group belonging to the deceased viz., Sriramulu attacked the prosecution party. From the material on record, it is evident that there are case and counter-cases against the prosecution party and the accused. The accused also filed a complaint in

Crime No.94 of 2004 against the prosecuting party in connection with the death of the father of the 1st appellant-A1 i.e., Sriramulu.

26. The evidence of P.Ws.1, 2 and 4, who are the injured witnesses, is very important for consideration in this case. After perusing the evidence of P.Ws.1, 2 and 4, it appears that the presence of A1 at the time of incident is doubtful because on the death of his father Sriramulu, A1 might have gone to the police station to lodge the complaint in Cr.No:94/2004, which was the first complaint prior to the crime in question, against the prosecuting party for the offence under Section 302 IPC, at the time of the incident in question. In the cross-examination of the witnesses, though the suggestions put to the witnesses that A1 was not present at the time of occurrence in the present case, was denied, since the report given by A1 is the first one, an inference can be drawn in favour of the A1 that he might be in the police station at the time of the present incident. Even though it is a case and counter-case, admittedly, the occurrences did not take place at the same time. As the prosecution party attacked the father of A1, the group of A1 gathered and attacked the prosecuting party. According to the learned Counsel for the appellants that if A1 participated in the crime, he would not have lodged the complaint against the prosecuting party in the first instance and the case was registered against the prosecuting party on the basis of the complaint given by A1. In the circumstances, the contention of the learned Counsel for the appellants as to the absence of A1 at the time of occurrence can be accepted.

27. In the above circumstances coupled with the cross examination of the witnesses, this Court is of the view that there is a doubt regarding the participation of A1 in the present crime. Therefore, A1 is entitled to the benefit of doubt for the charge leveled against him.

28. Now, there remains for consideration about the charges levelled against A2 and A3. In this regard, the evidence of P.Ws.1, 2 and 4 goes to show that A2 caused injuries to the legs of P.Ws.1 and 4. But the said injuries inflicted by A2 are not on vital parts. Since the injuries caused by A2 are not on the vital of parts of the body of P.Ws.1 and 4, it cannot be said that the ingredients of Section 307 I.P.C would attract against him. But, however, in the light of the medical evidence coupled with the evidence of P.Ws.1, 2 and 4 and the objects used for commission of the offence and the circumstances that led to the attack, it can be said that A2 voluntarily caused injuries to P.Ws.1 and 4 on the grief that the father of A1 was attacked by the prosecuting party, but not with an intention to kill them. Therefore, this Court is of the view that it is a fit case wherein the conviction recorded by the trial Court against A2 for the offence under Section 307 IPC can be modified to that of Section 326 IPC.

29. Insofar as the charge levelled against A3 is concerned, the evidence of P.Ws.1 to 4 is clear and cogent, which clearly goes to show that A3 attacked P.Ws.2 and 4 with the spear and stabbed them. The evidence of P.Ws.1 to 4 coupled with the medical evidence clearly establishes that A3 caused grievous injuries in the abdomen of P.Ws.2 and 4. The nature of injuries caused by A3 with the object attracts the ingredients of Section 307 IPC. Therefore, this Court is of the view that the conviction recorded by the trial Court against A3 for the offence under Section 307 IPC needs no interference.

30. At this stage, the learned Counsel for the appellants has submitted that A3 is aged about 32 years and he has to look after his family members and therefore, a lenient view may be taken insofar as the sentence is concerned.

31. Considering the facts and circumstances of the case and the case and counter cases and the submission made by the learned Counsel for the appellants, this Court is inclined to reduce the sentence.

32. In the result, the conviction and sentence imposed by the Special Judge for SPE & ACB Cases-cum-II Additional District & Sessions Judge, (FAC) III Additional District Judge (FTC), Nellore against the 1st appellant-A1 for the offence under Section 307 IPC in S.C.No.139 of 2006 vide judgment dated 6.10.2008 are set aside. The fine amount paid, if any by the 1st appellant-A1, shall be refunded to him.

33. The conviction recorded by the learned Special Judge against the 2nd appellant-A2 in the above Sessions Case for the offence under Section 307 IPC is modified to that of Section 326 IPC. Consequently, the sentence of imprisonment and fine imposed for the offence under Section 307 IPC are set aside. The 2nd appellant-A2 is sentenced to undergo rigorous imprisonment for a period of six months for the offence under Section 326 IPC and to pay a fine of Rs.5,000/- (Rupees Five Thousand only), in default to suffer simple imprisonment for a period of three months.

34. The conviction recorded by the learned Special Judge against the 3rd appellant-A3 in the above Sessions Case for the offence under Section 307 IPC is confirmed. However, the period of sentence of seven years rigorous imprisonment imposed by the learned Special Judge for the said offence is modified as that of three years rigorous imprisonment, while confirming the sentence of fine with default sentence.

35. The period already undergone by the appellants Nos.2 and 3-A2 and A3 shall be given set off under Section 428 Cr.P.C.

36. Appellants Nos.2 and 3-A2 and A3 are directed to surrender before the Court concerned on or before 30th October, 2016 so as to serve the remaining sentence. In default, the Court concerned is directed to take steps in accordance with law.

37. Accordingly, the Criminal Appeal is partly allowed. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Date: 29.09.2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO



29.9.2016

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