

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.162 of 2008

JUDGMENT:

1. This revision is filed by accused Nos.1 to 10 aggrieved over the judgment passed in CrI.A.No.156 of 2006 by the II Additional District & Sessions Judge, Amalapuram, dated 5.2.2008 modifying the judgment dated 30.6.2006 in S.C.No.366 of 2005 on the file of the Assistant Sessions Judge, Amalapuram.

2. Originally, the revision petitioners herein were tried in S.C.No.366 of 2005. By judgment dated 30.6.2006, the learned Assistant Sessions Judge, Amalapuram convicted A.1 to A.10 for the offence under Section 148 IPC and sentenced them to undergo simple imprisonment for two years and to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for one month each. A.1 & A.4 were convicted for the offence under Section 307 IPC and were sentenced to undergo simple imprisonment for five years and to pay a fine of Rs.1,000/- each, in default, to suffer simple imprisonment for three months each. A.1 to A.10 were further convicted for the offence under Section 324 IPC and were sentenced to undergo simple imprisonment for three years and to pay a fine of Rs.500/- each, in default, to undergo simple imprisonment for three months each. On the appeal preferred by A1 to A10, the learned II Additional District & Sessions Judge, East Godavari at Amalapuram partly allowed the appeal viz., CrI.A.No.156 of 2006 by judgment dated 05.02.2008. While upholding the conviction of A.1 to A.10 for the offences under Sections 148 and 324 IPC, the lower appellate Court modified the sentences imposed by the trial Court under those counts to

that of rigorous imprisonment for one year and rigorous imprisonment for two years respectively, while maintaining the fine imposed by the trial Court under the above two counts. Further the lower appellate Court set aside the conviction imposed on A.1 & A.4 for the offence under Section 307 IPC and convicted A.1 alone for the offence under Section 326 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. It was directed that all the sentences shall run concurrently. Against the said conviction and sentence imposed by the lower appellate Court, A1 to A10 filed the present revision.

3. The brief facts of the case are as follows:

The accused and the prosecution witnesses belonged to two different castes in the village and there were ill-feelings between them. On 22.8.2005, some persons in the weavers' colony gathered near Vinayaka temple and discussed with regard to placing of icon of actor-Chiranjeevi at the temple. On coming to know about the same, A10-Nallaya Mutyala Rao and some others criminally trespassed into the house of Kasina Joga Rao and caused damage. When Kasina Dhana Laxmi questioned their behavior, they also beat her and caused contusions. In that connection, Crime No.64 of 2005 was registered and A1, A2, A10 and Kola Durga Rao were arrested on 22.9.2005 and they were released on bail. On 7.9.2005 while L.Ws.1 to 6 and others were performing Bajana programme at the Vinayaka temple on the eve of Vinayaka Chaviti festival, all the accused with an intention to kill them, armed with deadly weapons like long knife, kamzar and cricket stumps, went upon them raising cries to kill them. A.2 hacked L.W.1 with a knife on his head and caused bleeding injury. A.3 hacked with a knife on his left hand while A.10 hacked L.W.1 with a knife

on his waist and caused bleeding injuries. A.1 hacked L.W.2 with a knife on his head and right hand elbow and caused bleeding injuries. A3 also hacked him with a knife on his right hand and caused bleeding injuries. A1 hacked L.W.3 on his head and both hands and caused bleeding injuries on his person. A5 beat him with cricket stump on his waist and caused contusions on his person. A.10 beat L.W.3 with a cricket stump and caused contusions on his person. A.1 hacked L.W.4 with a knife on his left hand and A.3 hacked him on his back bone and caused bleeding injuries on his person. A.6 beat L.W.5 with cricket stump on his thigh and caused contusions. A.2 hacked L.W.6 with a knife on his head and A.7 hacked him with a knife. A.8 beat L.W.6 with an iron rod on his right hand. On hearing cries of the injured persons, L.Ws.8 to 12 rushed to the scene and rescued them. While returning, A.9 beat L.W.7 with iron rod on his head and caused bleeding injury. The injured were shifted to Government hospital and on receipt of information, police recorded the statement of the complainant and registered a case, and after completion of the investigation, laid the charge sheet against all the accused for the offences under Sections 147, 148, 307 r/w 149 IPC.

4. In order to prove the case, the prosecution examined P.Ws.1 to 15 and got marked Exs.P.1 to P.31 and M.Os.1 to 7. On behalf of defence, Exs.D.1 to D.7 were marked.

5. The trial Court after appreciation of entire evidence on record more particularly, the evidence of injured persons i.e. P.Ws.1 to 7, convicted the accused as aforementioned. On appeal, the lower appellate Court on re-appreciation of entire evidence, partly allowed the appeal as stated above.

6. Learned Counsel for the revision petitioners-accused contended that the Courts below erred in convicting the accused for the offences under Sections 148 and 324 IPC since there was no cogent or convincing evidence to substantiate the same. Further the lower appellate Court ought not to have convicted A.1 for the offence under Section 326 IPC in the absence of any sufficient evidence adduced by the prosecution. It is submitted that the evidence of P.Ws.1 to 7 is not consistent and corroborative and that their evidence is not in corroboration with the medical evidence. It is further submitted that the prosecution has failed to establish the motive for the offence and that the Courts below have not appreciated the evidence in a proper perspective. The learned Counsel further submitted that by the time of incident, the petitioners are adolescents and now, they are leading respectable matrimonial lives and they are having children and old parents and that the incident might have happened due to differences among fans of the actor and the villagers and therefore, a lenient view may be taken.

7. The learned Public Prosecutor submitted that there is cogent evidence on record with regard to the occurrence and the commission of offence and that the evidence of the prosecution witnesses establishes the guilt of the accused and that the lower appellate Court has taken a lenient view and that the judgment under revision does not warrant any interference.

8. This Court perused the records and heard the arguments.

9. At the hearing, the learned Counsel for the petitioners has submitted that A2 and A7 died. In view of the said submission, the revision case against them is abated.

10. In this case, P.Ws.1 to 7 are the injured persons and P.Ws.8 to 11 are the witnesses, who rushed to the scene of offence and found the accused running away from the scene. P.Ws.12 & 13 are the doctors who treated the injured persons and issued wound certificates.

11. P.W.1 deposed before the Court that on the date of occurrence while they were performing Bajana in the temple, all the accused came there armed with knives, iron rods, cricket stumps and all of them proclaimed to kill them. A.2 beat him with a knife on his right side of his head while A.2 again tried to hack him, when P.W.1 tried to escape the blow, he sustained injury on his left side waist. When A.3 tried to hack him, he warded off the blow and he sustained injury on his right forearm.

12. P.W.2 deposed that all the accused attacked them with deadly weapons and A.1 beat him with a knife on the center of his head, right hand elbow joint with a knife. A.4 tried to beat him on his head with an iron rod and when he warded off the blow with his right hand, he sustained injuries on his right hand fingers and sustained fracture. A.4 beat him with an iron rod on his right thigh and caused two injuries. He further deposed that P.Ws.1, 3 to 6 also sustained injuries in the hands of the accused.

13. P.W.3 deposed that A.1 hacked him on his head and caused injury. A.5 beat him with cricket stump and caused injury on his forehead and on his nose. A.10 beat him with cricket stump on his back.

14. P.W.4 deposed that A.1 beat him with a knife on his head. A.4 beat him with a knife on his left hand and elbow joint. A.3 beat him with an

iron rod on his back and sustained injuries. All the injuries on his back were caused by A.3.

15. P.W.5 deposed that A.5 beat him with an iron rod on his head. A.6 beat him with a cricket stump on his left thigh.

16. P.W.6 deposed that A.2 beat him with a knife on left side of his head. A.7 beat him with an iron rod on right side of his head. While A.3 was trying to beat him on his head, he warded off the same with his right hand and in that process, he received injury on his right forearm.

17. P.W.7 deposed that on hearing the sound of falling of the motorcycle on the ground, he returned and then A.10 caught hold of his hand, A.9 beat him with an iron rod on his head and on his shoulders. He received bleeding injury on right side of his forehead.

18. The evidence of P.Ws.1 to 7 regarding the injuries sustained by them in the hands of the accused is in corroboration with the medical evidence of P.W.12-doctor, who treated them and issued corresponding wound certificates. Considering the nature of injuries received by P.Ws.2, 3 and 4 and the corresponding medical evidence of the doctor-P.W.12, the lower appellate Court held that the main ingredients of Section 307 IPC are not established by the prosecution and accordingly set aside the conviction imposed by the trial Court under Section 307 IPC as against A.1 & A.4 and instead, found A.1 guilty for the offence under Section 326 IPC since he had inflicted several injuries including grievous injury on P.W.2 and accordingly convicted A.1 for the offence under Section 326 IPC apart from 148 and 324 IPC.

19. The remaining accused-A2 to A10 were convicted and sentenced for the offences under Section 148 and 324 IPC. Among them, the case against A2 and A7 is abated since it is reported that they died during the pendency of this case.

20. From the material on record, it is evident that there were disputes between the accused and the prosecution party. It is the case of the prosecution that earlier, an incident took place with regard to the icon of the actor-Chiranjeevi and in that connection, some of the accused herein were arrested and released on bail and on that, the accused bore grudge against the prosecution party and attacked them with deadly weapons.

21. It is evident that the incident occurred due to the differences between the accused and the prosecution party with regard to placing of icon of the actor-Chiranjeevi. The evidence of the prosecution witnesses is consistent and corroborative with regard to attack of the accused upon the prosecution party. The lower appellate Court observed that as per the evidence of P.W.2, A1 hit him on his head with a knife. But the said object could not have caused any lacerated injury, and depending on the force, it is also possible to cause a depressed fracture in the skull. But there is no evidence to show the consequences of that fracture. In those circumstances, it cannot be said that the injury caused by A1 would attract the ingredients of Section 320 and 326 IPC. In the above circumstances, this Court is of the view that it is a fit case wherein the conviction imposed on A1 for the offence under Section 326 IPC can be altered to that of Section 324 IPC. The conviction imposed by the lower appellate Court against A1, A3 to A6 and A8 to A10 for the offence under Sections 324 and 148 IPC warrants no interference.

22. In view of the fact that the incident took place in the year 2005 and by the date of incident, all the accused are adolescents, and in view of the nature of the dispute for occurrence, this Court is of the view that it is a fit case to take a lenient view.

23. In the result, the conviction imposed by the lower appellate Court against A1 for the offence under Section 326 IPC for causing injuries to P.W.2 is modified to that of 324 IPC. Consequently, the sentence imposed by the lower appellate Court for the offence under Section 326 IPC is set aside. However, the period which has already been undergone by A1, shall be construed as that of the sentence of imprisonment for the offence under Section 324 IPC, and further, A1 is sentenced to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for three months under the above count.

24. Further, the conviction imposed by the lower appellate Court against A1, A3 to A6, A8 to A10 for the offence under Sections 148 and 324 IPC is confirmed. However, the sentences of imprisonment imposed by the lower appellate Court under the above two counts are modified to that of the period, which each of the accused has already undergone, while maintaining the sentences of fine imposed by the lower appellate Court.

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

Dated: 11.07.2017.
TSR/Nn

Justice Raja Elango

THE HONOURABLE SRI JUSTICE RAJA ELANGO



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Nh.