

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL Nos.226 of 2009 and 229 of 2009

COMMON JUDGMENT:

The appellant in Criminal Appeal No.226 of 2009 is A.1, and the appellants in Criminal Appeal No.229 of 2009 are A.2 and A.3, in Sessions Case No.515 of 2007 on the file of the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad (for short, 'the trial Court'). They preferred the respective appeals under Section 374 (2) Cr.P.C. questioning the judgment dated 17.02.2009 in the aforesaid Sessions Case, whereby the trial Court found the appellants-A.1 to A.3 along with A.4 guilty of the offences punishable under Sections 307 read with 34, 427, 447 and 506 IPC, accordingly convicted them in terms of Section 235 (2) Cr.P.C. and sentenced them to undergo rigorous imprisonment for a period of two years each and to pay fine of Rs.500/- each in default to suffer simple imprisonment for a period of one month each for the offence punishable under Section 307 read with 34 IPC, and to pay fine of Rs.500/- each under each count in default to suffer simple imprisonment for 15 days each under each count, for the offences punishable under Sections 427, 447 and 506 IPC.

2. Heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for

the respondent-State, and perused the material available on record.

3. Case of the prosecution is as follows:

A.1 had earlier stayed in the premises of Eknath Swamy Temple, Chandrayanagutta. He was doing carpentary work. Later, he was evicted from the said premises. He bore grudge on the temple founder family members. For the last two years prior to the incident, A.1 had been trying to encroach into the temple lands. P.W.1 is elder brother of P.W.2. P.W.2 is a practising advocate and was defending the temple cases. On 09.07.2005 at about 5.30 AM, A.1 to A.4 along with 10 others came to the temple by Maruti car No.AP29A 2787 and Lorry No.AP25T 7852, trespassed into the temple land by breaking open the gate and cutting the fencing, damaged some nursery plants and removed signboard of temple and tried to dump firewood into the premises in order to prove that A.1 was still in possession of the said premises. When P.Ws.1, 2 and other neighbours tried to stop their illegal activity, the said persons attacked P.W.2 with axes with an intention to kill him and A.1 caused grievous injury on right shoulder of P.W.2 with axe while A.2 to A.4 assaulted him with hands and firewood sticks and threatened the others who came to their rescue. Immediately, P.Ws.2 and 3 rushed to police station from where P.W.2 was shifted to Osmania General Hospital, Hyderabad with the help of police.

Basing on the report lodged by P.W.1, P.W.16 registered a case in crime No.148 of 2005 of Chandrayanagutta police station for the offences punishable under Sections 307, 427, 447, 506, 147, 148 read with 149 IPC and entrusted the file to P.W.14 for further investigation. During the course of investigation, P.W.14 visited the scene of occurrence, conducted scene observation panchanama, drafted rough sketch of the scene, seized the material objects M.Os.3 to 6 in the presence of P.W.6 and another, examined the witnesses & recorded their statements and referred P.Ws.1 and 3 to Osmania General Hospital, Hyderabad for treatment as they complained pain on their body. P.W.14 visited the Osmania General Hospital, examined and recorded statement of P.W.2 and seized M.O.2-blood stained shirt. After arrest of A.1, A.3 and A.4, he seized M.O.1-axe basing on the confessional statement of A.1, and sent M.Os.1 and 2 to the Forensic Science Laboratory for analysis. He sent them for remand. A.2 surrendered before the Court.

P.W.12-Doctor who treated P.Ws.1 and 3, issued wound certificate opining that the injuries sustained by them are simple in nature. P.W.9, who treated P.W.2, issued wound certificate opining that the injuries sustained by P.W.2 are grievous in nature. After receipt of relevant documents and completion of investigation, police laid the charge sheet.

4. The learned Chief Metropolitan Magistrate, Hyderabad took cognizance of the case as P.R.C. No.12 of 2007 for the offences punishable under Sections 307, 427, 447 and 506 read with 34 IPC, and after compliance of Section 207 Cr.P.C., committed the case to the Court of Session under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.515 of 2007 and was made over the trial Court.

5. On appearance of the accused, the learned Sessions Judge framed charges for the offence -punishable under Section 307 IPC against A.1; punishable under Section 307 read with 34 IPC against A.2 to A.4; punishable under Sections 323, 447, 427 and 506 IPC against A.1 to A.4. When the respective charges were read over and explained to A.1 to A.4, they pleaded not guilty and claimed to be tried.

6. In order to prove the guilt of the accused, the prosecution examined P.Ws.1 to 16 and got marked Exs.P.1 to P.22 and M.Os.1 to 6 before the trial Court. Ex.D1-relevant portion in the statement of P.W.11 under Section 161 Cr.P.C. was marked on behalf of defence. Ex.X1-case sheet of Bhagavan Devi Maternity Orthopaedic and General Hospital, Hyderabad was marked as court document.

7. The trial Court, after considering the entire evidence on record, *vide* the impugned judgment dated 17.02.2009,

convicted the accused, and sentenced them, as stated supra. Challenging the said convictions and sentences imposed against the accused, the present appeals are filed by A.1 to A.3.

8. Learned counsel for the appellants-A.1 to A.3 would submit that the findings of the trial Court are contrary to law and facts of the case; that the learned trial Judge erred in convicting the appellants; that the evidence of prosecution witnesses P.Ws.1 to 3 is inconsistent and there is no corroboration; that the court below ought not to have relied on their evidence; that as per the evidence of P.W.4, there was exchange of fights between two groups; that there is no trespass as alleged by the prosecution; that all the prosecution witnesses are interested witnesses; that the case is foisted due to bitter enmity on the part of P.W.2 and other prosecution witnesses with the accused; that P.W.2 left Osmania General Hospital and took treatment in a private hospital; that there is no consistency between medical evidence and ocular testimony of prosecution witnesses, and ultimately, prayed to set aside the convictions and sentences recorded against the appellants-A.1 to A.3.

9. In the course of submissions, it has come to light that A.4 died and Criminal Appeal No.228 of 2009 filed by him is pending. Since A.4 died, the appeal automatically stands

abated and therefore there is no need to record any finding with regard to A.4 in these two appeals.

10. On the other hand, the learned Additional Public Prosecutor appearing for the respondent-State would submit that there is consistency and corroboration in the evidence of prosecution witnesses; that the trial Court had dealt with the evidence on record elaborately and rightly convicted and sentenced the appellants-A.1 to A.3 for the offences mentioned above and there are no circumstances to warrant interference with the same, and ultimately, prayed to dismiss the appeals.

11. In view of the rival submissions, the point for determination is whether the convictions and sentences recorded by the trial Court against the appellants-A.1 to A.3 are sustainable or liable to be set aside?

POINT:

12. Case of the prosecution is that on 09.07.2005 at about 5.30 AM, A.1 to A.4 along with 10 others came to Eknath Swamy Temple, Chandrayanagutta by Maruti car No.AP29A 2787 and Lorry No.AP25T 7852, trespassed into the temple land by breaking open the gate and cutting the fencing, damaged some nursery plants and removed signboard of temple and tried to dump fire wood into the premises in order

to prove that A.1 was still in possession of the said premises. When P.Ws.1 and 2 and other neighbours tried to stop their illegal activity, the said persons attacked P.W.2 with axes with an intention to kill him and A.1 caused grievous injury on right shoulder of P.W.2 with axe while A.2 to A.4 assaulted him with hands and firewood sticks and threatened the others who came to their rescue. Immediately, P.Ws.2 and 3 rushed to police station and shifted P.W.2 to Osmania General Hospital with the help of police. The motive for the attack is that P.W.2, being a practising advocate, was coming in the way of A.1 in encroaching into the temple lands.

13. P.W.1, who is the informant, is an L.I.C. Agent and brother of P.W.2. P.W.3 and one K.Vittal (L.W.4) are neighbours of P.Ws. 1 and 2. The evidence of P.W.1 reveals that on 09.07.2005 at about 5.30 AM, when he was at his house, he heard some sounds outside. On that, he came out of his house and saw A.1 to A.4 entering into nursery and found lorry bearing No.AP25T 7852 stationed there. There was also Maruthi car bearing No.AP29A2787. Nursery was uprooted by the accused and temple board was thrown away by them. Mean while, P.W.2, who is his brother, came out of house and tried to stop the illegal activities of the accused. Then, A.1 to A.3 fisted his brother P.W.2. A.4 beat P.W.2 with a stick on back. All of sudden, A.1 took out an axe and raised it to attack P.W.2 on head with an intention to kill

P.W.2. However, P.W.2 warded off the hit and thereby the axe caused injury on the right shoulder of P.W.2 and P.W.2 fell down. P.W.3 and L.W.4-K.Vittal came there and tried to rescue P.W.2. Then, A.1 to A.3 abused them in filthy language and thereafter P.W.1 and others rushed to police station. A.1 followed them with axe. Thereafter, they gave report to Chandrayanagutta police.

14. The evidence of P.W.2 reveals that he is a practicing advocate. P.W.1 is his elder brother, P.W.3 and L.W.4-K.Vittal are his neighbours. On 09.07.2005 at about 5.30 AM, he came out of his house on hearing some noise outside the road and found A.1 to A.3 there along with their friend A.4 and others. He also found a Maruti car bearing No.AP29A 2787 and lorry bearing No.AP25T 7852 loaded with firewood stationed in front of the temple premises. The accused tried to encroach the temple land, trespassed therein, damaged nursery plants and removed signboard of Eknath Swamy Temple. When he objected their illegal facts, A.1 attacked him with an axe with an intention to cause his death due to previous enmity and caused injury to his right hand shoulder. A.2 and A.3 along with A.1 manhandled him and gave him fist blows. A.4 carried lathi stick and beat on his back. He suffered injuries on his right shoulder and on other parts of the body including kidney and fell down unconscious. On gaining consciousness, he escaped from

the scene, ran towards Chandrayanagutta police station and reported the matter to police. P.W.2 identified M.O.1 as the axe and M.O.2 as the blue colour check shirt belonging to him which was seized by police.

15. The evidence of P.W.3, who is poojari, reveals that on 09.07.2005 at about 5.30 AM, he heard hue and cries when himself and his brother came to Eknath Swamy temple and saw some galata going on. A.1 to A.4 and 10 others were present and they were cutting barbed fence wire and removing the name board of temple. Mean while, P.Ws.1 and 2 came to the spot and tried to stop the accused. A.2 and A.3 gave fist blows to P.W.2 and A.4 beat him with lathi. A.1 tried to attack P.W.2 on his head with an axe. P.W.2 received injuries on right shoulder with axe caused by A.1. P.W.2 was also attacked by A.2 and A.3, who pushed P.W.2 down. It is also the evidence of P.W.3 that A.1 came with an axe and attacked him. He also received injuries and was sent to Osmania General Hospital, Hyderabad.

16. P.W.4 is the driver of firewood lorry. He deposed about occurrence of the incident. He stated that both the groups were quarrelling with each other.

17. P.W.5, who was A.P.S.P. Constable, deposed about the quarrel between the two parties on 09.07.2005 at 5.30 AM. He also stated that A.1 was chasing P.W.3 Pramod Kumar

with an axe, but the latter pushed the gate and came into police station.

18. P.W.6 is punch witness. He deposed that about seizure of M.Os.3 to 5 viz. Maruti car, name board and fence cutter. Ex.P3 is the scene of occurrence panchanama. It is also evidence of P.W.6 that there was another panch by name Krishna Sagar. Ex.P4 is the rough sketch of scene of occurrence. He also stated that M.O.2-shirt was seized from the possession of P.W.2 at Osmania General Hospital, Hyderabad under Ex.P5-panchanama.

19. P.W.7 is a commission agent and dealing with firewood. His deposed about transportation of firewood in the lorry bearing No.AP25T 7852 on that day. P.W.8 is the photographer who took photographs of the scene of occurrence under Exs.P7 to P13.

20. The evidence of P.W.9, who is Director of Smt. Bhagavan Devi Maternity Orthopaedic and General Hospital, Hyderabad reveals that on 11.07.2005, he treated P.W.2 and discharged on 17.07.2005. P.W.2 was admitted in the hospital with injury of fracture of right arm bone (humerus) and lacerated wound on the front shoulder. He issued Ex.P14-Medical certificate opining that the injuries are grievous in nature. He also stated that P.W.2 was operated on 13.07.2005 and plate and screw were fixed.

21. The evidence of P.W.10 reveals that he is resident of Husnabad, Karimnagar district and owner of oil mill. He deposed that on 08.07.2005, he loaded lorry bearing No.AP25T 7852 with firewood and it was driven by P.W.4. He also deposed about seizure of M.O.6-lorry by police.

22. P.W.11, who worked as Head Constable of Chandrayanagutta police station, stated that he was on duty on 09.07.2005 till 1.00 PM. At about 5.30 AM on 09.07.2005, he saw P.W.3 coming into the police station by opening gates. P.W.5 followed him and informed him that some quarrel was going on. Then, P.W.5 and he went outside and saw A.1 running away along with an axe, and then they chased A.1 and caught hold of him. He also deposed about P.W.2 coming to police station and showing the injuries on right hand shoulder. He also stated about referring P.W.2 to Osmania General Hospital, Hyderabad.

23. P.W.12 who worked as the C.M.O. of Osmania General Hospital, Hyderabad deposed in his evidence that on 09.07.2005 at about 4.45 PM, police constable brought P.W.3 and he gave first aid and found no external injuries on him. Ex.P15 is the wound certificate of P.W.3. He further deposed that he also examined P.W.1 and gave first aid to him and referred him to D.S.O. General. Ex.P6 is the wound certificate of P.W.1.

24. P.W.13 worked as Sub Inspector of Police, Chandrayangutta police station. He deposed that when he was in police station on 09.07.2005 at about 6.00 AM, P.W.11 produced A.1 to A.3 before him along with M.O.1-axe and that he sent P.W.2 to Osmania General Hospital, Hyderabad for treatment.

25. P.W.14 also worked as Sub Inspector of Police, Chandrayangutta police station. He deposed in his evidence that on 09.07.2005, P.W.16 handed over him the file after issuing FIR in crime No.148 of 2005 and then he took up investigation. During the course of investigation, he visited the scene of occurrence which is near Eknath Swamy Temple along with P.W.6 and another, prepared scene of observation panahcnama Ex.P3 in the presence of panchas and seized M.os.3 to 6-Maruti car, name board and wire cutter, got photographed the scene of occurrence under Exs.P7 to P13, prepared Ex.P4-rough sketch, recorded statements of P.Ws.1, 3, 4, 7, 5, 11, 14 and L.W.4-K.Vittal. He also stated about sending P.W.1 and P.W.3 to Osmania General Hospital, Hyderabad and seizure of M.O.2-shirt from P.W.2 under Ex.P5-panchanama in the presence of mediators.

26. P.W.15 worked as C.M.O. of Osmania General Hospital, Hyderabad. His evidence is that on 09.07.2005 at 7.00 AM, he examined P.W.2 and found a deep lacerated injury measuring 12 x 2 cm on the right arm and swelling and

deformity of right arm. Thereafter he referred the patient to Orthopaedic department. Ex.P20 is the wound certificate of P.W.2 issued by the C.M.O. He identified signature of the C.M.O. by name Dr. Naseeruddin on Ex.P20.

27. P.W.16 is the then Inspector of Police, Chandrayangutta police station. He stated that he issued Ex.P21-F.I.R. in this crime for the offence for the offences punishable under Sections 307, 427, 506, 447, 147, 148 read with 149 IPC and filed charge sheet after verifying the investigation done by P.W.14.

28. As seen from the evidence of material prosecution witnesses P.Ws.1 to 3, it is clear that P.W.2 suffered an axe injury in the hands of A.1. These witnesses also deposed that A.2 and A.3 also fisted P.W.2. P.W.3 also suffered injuries at the hands of A.2 and A.3. P.Ws. 1 and 3 also corroborated the injuries suffered by P.W.2. Ex.P20 is the wound certificate of P.W.2 wherein there is specific mention of P.W.2 suffering a deep lacerated injury admeasuring 12 x 2 cm, and swelling and deformity of right arm. P.W.9-Doctor who treated P.W.2 stated that P.W.2 was operated for fracture of right arm bone (humerus) on 13.07.2005 and plate and screw were fixed to him. There is also evidence of P.Ws.1, 2 and other witnesses in this case – firstly that P.W.2 was taken to Osmania General Hospital, Hyderabad and thereafter he had gone to a private hospital for treatment. P.W.15-

C.M.O., Osmania General Hospital also stated that he examined P.W.2 and issued Ex.P20 wound certificate of P.W.2. It corroborates with the evidence of P.W.9-Doctor and other witnesses.

29. All the material witnesses have clearly and categorically deposed that the accused cut fence wire and removed name board of the temple and trespassed into the temple premises. There is also evidence of these witnesses that A.1 to A.3 uprooted nursery plants. A.1 attacking P.W.2 with M.O.1-axe and causing injury on right hand is supported by material witnesses and also medical certificate. P.Ws.1 and 2 have clearly and categorically stated that in order to kill P.W.2, the attack was caused by A.1. A.1 is father of A.2 and A.3. P.W.3 also suffered injuries. Merely because P.Ws.1 and 2 are brothers, their testimony cannot be rejected. There are no omissions or inconsistencies in his evidence. As per the investigation, P.W.1 was present at the relevant point of time of the incident. There is also consistency with regard to P.W.3 suffering injuries at the hands of A.2 and A.3. A.2 and A.3 have actually participated in commission of the offence as narrated above i.e. uprooting the nursery plants, cutting fencing and removing sign board of the temple. Under these circumstances, it cannot be said that A.2 and A.3 did not share common intention with A.1. All the accused came to the scene of offence together by Maruthi car. There

is also evidence of P.W.5-police constable to the effect that A.1 chased P.W.3, and he along with P.W.11-Head Constable apprehended A.1 with M.O.1-axe and produced before the Inspector of Police. Under these circumstances, it can be held that the accused were the aggressors. No credibility can be given to the evidence of P.W.4-Driver. The manner how the attack was made and the nature of injuries that were caused to P.Ws.2 and 3, it can be held that there was intention on the part of A.1 to A.3 to do away with the life of P.W.2. Therefore, the prosecution is able to establish beyond all reasonable doubt the trespass and mischievous acts of A.1 to A.3 and their intention to kill P.W.2.

30. The submission of the learned counsel for appellants-A.1 to A.3 that the findings of the trial Court are contrary to law and facts of the case, is not acceptable. The findings recorded against the appellants-A.1 to A.3 are based on proper appreciation of the evidence on record. There is unimpeachable evidence of the prosecution witnesses to establish the guilt of the appellants-A.1 to A.3 for the offences for which they are convicted and sentenced by the trial Court.

31. The trial court imposed punishment of 2 years' rigorous imprisonment against the appellants-A.1 to A.3 for the offence punishable under Section 307 read with 34 IPC. The manner in which P.W.2 was chased, attacked and caused injuries, deserves no consideration to take a lenient view with

regard to sentence. There is no infirmity in the impugned judgment passed by the trial Court. Therefore, there are no grounds to interfere with the convictions and sentences recorded by the trial Court. The appeals are devoid of merits and are liable to be dismissed.

32. In the result, both the Criminal Appeals are dismissed confirming the judgment dated 17.02.2009 in Sessions Case No.515 of 2007 on the file of the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

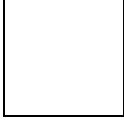
33. As a sequel, miscellaneous petitions, if any, pending in the Criminal Appeals shall stand closed.



Dr. SHAMEEM AKTHER, J.

Date: 06.2.2018
DRK

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



COMMON JUDGMENT
IN
CRIMINAL APPEAL Nos.226 of 2009 and 229 of 2009

DRK

06.02.2018