

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.288 OF 2008

JUDGMENT:

1. The State, aggrieved by the acquittal of the respondents for the offence under Section 307 r/w 34 of IPC vide judgment in S.C.No.27 of 2004 dated 19.06.2006 passed by the Assistant Sessions Judge, Huzurabad, filed the present appeal.

2. The case of the prosecution is that on 07.10.2002, P.W.1 filed the complaint stating that there were disputes between him and A1 to A4. A1 and P.W.1 filed case and counter case. On 07.10.2002, P.Ws.1 to 5, who are accused in the case filed by the 1st respondent herein, went to Huzurabad to attend the Court. P.Ws.2 and 3 started to Kannapur village on their Suzuki motor cycle and later when P.Ws.1 and 4 reached Erukalagudem X road, they found P.Ws.2 and 3 lying in pool of blood. On enquiry they stated that while they were coming on motor cycle, A1 stopped them on the road and then A2 to A4 came from bushes and attacked them with sticks and iron rods and caused injuries and thrown them beside the road, thinking that they might have died. Immediately, P.Ws.2 and 3 were shifted to the Government Hospital, Huzurabad for treatment. For the said reason, a

complaint was lodged which was registered as Cr.No.152 of 2002 under Section 307 of IPC and charge sheet was filed against the respondents for the said charge.

3. Learned public prosecutor submits that the injured themselves, who are P.Ws.2 and 3 deposed that A1 stopped their vehicle at Erukalagudem X roads, thereafter A2 to A4 came out from bushes and attacked them. In view of consistent evidence of injured, acquitting the respondents by the trial court is erroneous.

4. The trial court found the accused not guilty for the following reasons; i) There are political differences and disputes between the respondents herein and P.Ws.1 to 5; ii) P.Ws.1 to 5 are closely related; iii) there are no independent witnesses examined to state that the respondents had attacked and injured P.Ws.2 and 3. (iv) seized Material Objects i.e., M.Os.1 to 3 are sticks and no other weapons were found and sticks were recovered from open place, as such, the said recoveries cannot be accepted. (v) The case of the prosecution is that P.W.2's clothes were stained with blood. However, there was no seizure of the clothes. P.W.8, the Doctor gave inconsistent evidence regarding the injuries received. (vi) The accused/respondents did not attend court on the date of alleged

incident, as such, the evidence of P.Ws.1 to 5 that the respondents 1 to 4 appeared in the court is incorrect. (vii)The injuries are in consonance with accidental fall from the bike.

5. The conclusions of the learned Sessions Judge are based on record. He dealt with every aspect of injuries, disputes between the parties and the improbable version given by the witnesses. The very genesis of the case is that the respondents herein went to the Court on the said date of incident. However there is no proof. P.Ws.4 and 5 are examined in the present case are accused in the said case filed by the 1st respondent/accused herein as complainant as such interested witnesses.

6. The Hon'ble Supreme Court in the case of **Radhakrishna Nagesh v. State of Andhra Pradesh**¹ held that under the Indian criminal jurisprudence, the accused has two fundamental protections available to him in a criminal trial or investigation. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair trial and investigation. Both these facets attain even greater significance where the accused has a judgment of acquittal in his favour. A judgment of

¹ (2013) 11 supreme court Cases 688

acquittal enhances the presumption of innocence of the accused and in some cases, it may even indicate a false implication. But then, this has to be established on record of the Court.

7. When two views are possible, the view which is favourable to the accused has to be considered and more so, in a case of acquittal, when there are no glaring infirmities in the finding of the trial court, the order of acquittal cannot be interfered with.

8. In view of the consistent finding of the learned Assistant Sessions Judge, on the basis of records, it cannot be said that the findings are erroneous only because different view could be taken on the basis of oral and documentary evidence, this Court cannot interfere with the findings of the trial court. The reasons for acquitting the respondents are also reasonable. For the said reasons, the appeal filed by the State fails.

9. Accordingly, Criminal Appeal is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

K.SURENDER, J

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kvs

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