APHC010697382018

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI [3596]
(Special Original Jurisdiction)

TUESDAY, THE 6th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

CRIMINAL APPEAL No: 2572/2018

Between:

1. THUMULA KRISHNA, R/O.KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.
2. MAMIDI APPANNA, R/O.KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.
3. MAMIDI MUSALAYYA, R/O.KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.
4. MAMIDI APPANNA, R/O.KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.
5. MAMIDI NOOKA RAJU, R/O.KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.
6. MAMIDI SIMHACHALAM, R/O.KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.

...APPELLANTS

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT AT HYDERABAD.
2. MR TUMULA SIMHACHALAM, OCC . FARMER, R/O.KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT.

...RESPONDENTS

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to set aside the Judgement dated 06-09-2018 in S.C.No. 4 of 2017 on the file of the Court of the II Additional District and Sessions Judge, Parvathipuram in so far as the Appellants / Accused No. 2, 4, 5, 7 to 9 is concerned and dismiss the SC No. 4 of 2017, and pass

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the Judgment dated 06-09-2018 passed in S.C.No. 4 of 2017 on the file of the Court of the II Additional District and Sessions Judge, Parvathipuram, and release the petitioners / Accused No. 2, 4, 5, 7 to 9 on bail, pending final disposal of the main criminal appeal, and pass

Counsel for the Appellant(S):

1. POSANI AKASH

Counsel for the Respondent(S):

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

APHC010758432018

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI [3596]
(Special Original Jurisdiction)

TUESDAY, THE 6th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

CRIMINAL APPEAL No: 2684/2018

Between:

1. MAMIDI SANKARA RAO, OCC-CULTIVATION, R/O. KURAKULA VEEDHI, PACHIPENTA VILLAGE AND MANDAL, VIZIANAGARAM DISTRICT

...APPELLANT

AND

1. STATEOF ANDHRA PRADESH, Rep., by its Public Prosecutor, High Court at Hyderabad

...RESPONDENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to set aside the Judgment dated 06.09.2018 in S.C No.4/2017 on the file of the Court of the II Additional District and Sessions Judge, Paravathipuram in so far as the Appellant and Accused No.1 is concerned and dismiss the SC No.4 of 2017

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the Judgment dated 06.09.2018 in S.C No.4/2017 on the file of the Court of the II Additional District and Sessions Judge, Paravathipuram in so far as the Appellant and Accused No.1 is concerned and release the Petitioner and Accused No.1 on bail pending final disposal of the main Criminal Appeal

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant temporary bail to the Petitioner/Accused No.1 in SC No. 4 of 2017 on the file of the Court of the II Additional District and Sessions Judge, Parvathipuram, for a period of ten (10) days i.e., from 03.12.2019 to 13.12.2019 to perform Pedda Karma of his deceased father, pending final disposal of the main appeal, and pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to enlarge the Petitioner Accused No. 1 on bail after suspending the sentence of imprisonment dated. 06-09-2018 passed in SC No. 4 of 2017 on the file of the II Addl. District and Sessions judge, Parvathipuram pending disposal of the Criminal Appeal No. 2684 of 2018 and to pass

Counsel for the Appellant:

1. POSANI AKASH

Counsel for the Respondent:

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

COMMON JUDGMENT: *(Per Hon'ble Sri Justice K. Suresh Reddy)*

As both the appeals arise out of the same Sessions Case i.e., S.C.No.4 of 2017 on the file of the Judge, Family Court-cum-III Additional Sessions Judge, FAC.II Additional District & Sessions Judge, Parvathipuram, they are taken up together and being disposed of by way of this common judgment.

2. A-1 in the above Sessions Case, filed Criminal Appeal No.2684 of 2018, whereas A-2, A-4, A-5, A-7, A-8 and A-9 filed Criminal Appeal No.2572 of 2018.

3. The appellants along with A-3, A-6 and A-10 were tried by the learned Additional Sessions Judge under the following charges:

1st charge was under Section 148 IPC against A-1 to A-10.

2nd charge was under Section 302 r/w.149 IPC against A-1 to A-10

3rd charge was under Section 324 r/w.149 IPC against A-1 to A-10.

and the last charge was under Section 326 r/w.149 IPC against A-9.

4. Substance of the charge is that on 01.08.2016 at about 06.00 a.m., A-1 to A-10 formed into an unlawful assembly, armed with axes and sticks, attacked one Mamidi Simhachalam (hereinafter referred to as “deceased”), and also attacked P.W-1,

P.W-2 and P.Ws-6 to 8 at Kurakula Street, Pachipenta Village, Vijayanagaram District, causing death of the deceased and also causing injuries to P.W-1, P.W-2 and P.Ws-6 to 8 and thereby committed offences punishable under Sections 148, 302, 324, 326 r/w.149 IPC.

5. After completion of trial, the learned Additional Sessions Judge convicted A-1 under Section 302 IPC and sentenced him to suffer imprisonment for life, and also to pay a fine of Rs.50,000/-, in default, to suffer simple imprisonment for six months. The learned Additional Sessions Judge further convicted A-2, A-4, A-5, A-7 and A-8 under Section 324 IPC and sentenced them to suffer simple imprisonment for a period of one year and also to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for six (06) months. The learned Additional Sessions Judge convicted A-9 under Section 326 IPC and sentenced him to suffer simple imprisonment for a period of one year and six months, and also to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for three months. Aggrieved by the same, the appellants filed the present appeals.

6. Case of the prosecution as emanated from the evidence of prosecution witnesses, briefly, is as follows:

i) All the accused and the material prosecution witnesses are residents of Kurakula Street, Pachipenta Village, Vijayanagaram District. The deceased was also resident of the same village. P.W-1 is the elder brother and P.W-3 is the wife of the deceased respectively. P.W-2, P.Ws-4 to 8 are the close relatives of the deceased.

ii) On 30.07.2016, P.W-4 was cleaning the vacant site situated near his house, as there was a function in his house. On the same day, one Mamidi Narayanamma, who is close relative of A-10 threw debris in the said cleaned vacant site. Then, P.W-4 questioned her about throwing debris in the vacant site. Thereafter, the said Narayanamma went and informed A-10 about P.W-4 questioning her.

iii) On the next day, there was a commotion between A-1 to A-10 and the prosecution party on the other side. Both the groups formed into an unlawful assembly armed with sticks and other weapons. P.W-4 was questioning the said Narayanamma about throwing debris in the vacant site. There ensued a wordy altercation between both the groups. Suddenly, A-10 proclaimed to kill the prosecution party. Immediately, A-4 beat the deceased with a stick on his legs and the deceased fell down. Immediately, A-1 hacked the deceased on his head with an axe. A-2 and A-3 said to have kicked the deceased with hands and legs. When

P.W-1, P.W-2 and P.Ws-6 to 8 intervened, they were also beaten by the accused. The deceased, P.W-1, P.W-2 and P.Ws-6 to 8 were shifted to hospital.

iv) At about 09.00 a.m. on 01.08.2016, P.W-17 Sub Inspector of Police, Pachipenta Police Station, received information from the hospital. Immediately, he deputed Head Constable by name Srinu to visit the Community Health Center, Saluru. The said Head Constable recorded statement from P.W-2, marked as Ex.P-2. On the basis of Ex.P-2, P.W-17 registered a case in Cr.No.82/2016 under Sections 148, 323, 324 r/w.149 IPC. FIR was marked as Ex.P-12. Immediately, P.W-17 rushed to the scene of offence and prepared an observation report/Ex.P-3. He also seized M.Os-1 to 3 at the scene of offence. He has also prepared a rough sketch/Ex.P-13 at the scene of offence. He went to Community Health Center, Saluru, and recorded statements of P.W-1, P.W-2 and P.Ws-6 to 8. He shifted the injured/Mamidi Simhachalam to Government Hospital, Vijayanagaram, and from there to KGH, Visakhapatnam.

v) On the next day at about 08.30 a.m., P.W-1 went to police station and informed P.W-17 that the deceased succumbed to injuries. He received Ex.P-1 report from P.W-1 and altered the section of law to sections 148, 302, 324, 323 r/w.149 IPC and

issued alteration memo/Ex.P-14. Further investigation was taken over by the Inspector of Police/P.W-18.

vi) P.W-18/Inspector of Police, received altered FIR and also verified the investigation conducted by P.W-17. Immediately, he rushed to King George Hospital, Visakhapatnam, and examined P.Ws-1 to 5 at mortuary. He secured the presence of mediators P.W-11 and another and held inquest over dead body. Inquest report was marked as Ex.P-4. He forwarded the dead body for post mortem examination.

vii) P.W-15 Assistant Professor, Andhra Medical College, conducted autopsy over dead body. He opined the cause of death was due to head injury. He issued post mortem certificate Ex.P-11.

viii) On 03.08.2016, P.W-18 visited scene of offence and recorded statements of P.Ws-9 and 10. On 10.08.2016, he apprehended A-1 in the presence of P.Ws-12 and 13. A-1 said to have confessed about commission of offence. On the confession made by A-1, P.W-18, seized M.Os-4 and 5 weapons from the house of A-1 under a panchanama/Ex.P-5 in the presence of P.Ws-12 and 13. On the same day at about 10.45 a.m., P.W-18 arrested A-2 to A-10. All the accused were produced before Judicial Magistrate of First Class, Saluru, who were remanded to judicial custody. On 12.08.2016, P.W-18 forwarded M.Os-4 and 5

to RFSL, Visakhapatnam, under a letter of advice/Ex.P-15. RFSL report was marked as Ex.P-16. After receiving all the documents and after completion of investigation, P.W-18 filed charge sheet.

7. In support of its case, the prosecution examined P.Ws-1 to 18, marked Exs.P-1 to P-16 and exhibited M.Os-1 to 5. On behalf of defence, Exs.D-1 to D-16 were marked.

8. When the accused were examined under Section 313 Cr.P.C., they denied the incriminating evidence appearing against them.

9. Accepting the evidence of P.Ws-1 to 10, the learned Additional Sessions Judge convicted the accused as aforesaid.

10. Heard Sri Posani Venkateswarlu, learned Senior Counsel appearing for Sri Posani Akash, learned counsel for the appellants/accused, and Sri Marri Venkata Ramana, learned Additional Public Prosecutor appearing for the respondent/State.

11. Learned Senior Counsel strenuously contends that admittedly, both groups formed into an unlawful assembly and quarreled with each other. He also contends that even according to the allegations made in the charge sheet, both groups with common intention formed themselves into an unlawful assembly,

armed with deadly weapons like sticks and axes and fought with each other. He further contends that the motive for the clash by both groups is trivial in nature.

According to the prosecution, P.W-4 cleaned the vacant site for the purpose of a function in his house. Thereafter, one M.Narayanamma, who is close relative to A-10 threw debris in the said vacant site. That was the reason for both groups to clash with each other. Of course, the said M.Narayanamma was not examined by the prosecution, as such, the learned Senior Counsel contends that there is a free fight between both groups and the accused are responsible for their individual acts.

He further contended that there was a counter case, which was registered against the prosecution party in Cr.No.83/2016 of the same police station. The said counter case i.e., C.C.669/2016 on the file of Judicial Magistrate of First Class, Saluru, is still pending for trial. The learned Senior Counsel further contends that as there are case and counter case, both of them ought to have been tried simultaneously one after the other. But, the said procedure was not followed by the learned Additional Sessions Judge. Of course, neither the prosecution party, nor the accused brought to the notice of the learned Additional Sessions Judge about the counter case pending against the prosecution party.

He further contends that A-1, A-4, A-5, A-7 to A-9 and two others received injuries in the hands of prosecution party, which is subject matter of C.C.669/2016. He further contends that the prosecution has not explained the injuries on the accused. He also contends that the wound certificates pertaining to A-1, A-4, A-5, A-7 to A-9 were marked as Exs.D-8 to D-14. He further contends that Exs.D-8 to D-14 were marked through Civil Assistant Surgeon, Saluru, who was examined as P.W-14. P.W-14 has specifically admitted in the cross-examination that Exs.D-8 to D-14 are the wound certificates pertaining to some of the accused.

He further contended that all the prosecution witnesses i.e., P.Ws-1 to 10 have stated that A-1 hacked the deceased on his head with an axe/M.O-4. But, the medical evidence adduced through P.W-15 coupled with Ex.P-11 does not corroborate the version of P.Ws-1 to 10, as such, he requested this Court to allow both the criminal appeals, by setting aside the conviction recorded by the learned Additional Sessions Judge.

12. On the other hand, the learned Additional Public Prosecutor opposed both the appeals, contending that P.W-1, P.W-2, P.Ws-6 to 8 are the injured witnesses and their presence cannot be ruled out. He further contends that the evidence of P.Ws-1 to 10 is

consistent with regard to the attack on deceased. All the witnesses stated that it is A-1, who hacked the deceased on his head with axe/M.O-4, as such, he requested this Court to dismiss both the appeals, by confirming the conviction and sentence recorded by the learned Additional Sessions Judge.

13. We have carefully scrutinized the entire evidence on record.

14. Admittedly, P.Ws-1 to 8 are closely related to the deceased. P.Ws-9 and 10 are the villagers, who were also shown as eye witnesses to the incident. P.Ws-1 to 10 in their evidence have categorically stated that A-4 hacked the deceased on his legs and A-1 hacked the deceased on his head. But, as seen from the medical evidence adduced through P.W-15, there was no injury on the legs of the deceased. P.W-15, who conducted post mortem examination over dead body, found only one injury on the head of deceased, except the said injury, there is no other injury on the body of deceased. So far as attack on P.W-1, P.W-2, P.Ws-6 to 8 is concerned, they were beaten by some of the accused. But, there was no corroboration from the medical evidence adduced through P.W-14. The injuries attributed by P.W-1, P.W-2 and P.Ws-6 to 8 were not tallying with the medical evidence adduced through P.W-14.

15. P.W-6 in his evidence has stated that A-9 beat him with a long handled spade on the head. But, the Medical Officer/P.W-14 found the said injury as simple injury. P.W-14 has also found another injury on left ring finger, which is grievous in nature. But, P.W-6 did not attribute this injury to anyone.

16. Even according to the prosecution, both groups formed into an unlawful assembly, armed with deadly weapons and attacked each other, as such, it can be safely concluded that it is a case of free fight between the prosecution party on one side and the accused on the other side.

17. It is well settled by the Hon'ble Supreme Court in the case of **Vadivelu Thevar Vs. State of Madras**[1], that "*in a case of free fight, question of unlawful assembly and common object does not arise and each accused were responsible for their individual acts*." In the case on hand also, even according to the allegations in the charge sheet, both groups formed into an unlawful assembly, armed with deadly weapons and fought with each other, as such, accused are liable for their individual acts.

18. Coming to the overt acts attributed to accused, only consistency in the evidence of P.Ws-1 to 10 is attack on the

[1] 1957(1) SCC 700

deceased. All the ten witnesses in their evidence have stated that initially A-4 hacked the deceased on his legs and when the deceased fell down, A-1 hacked the deceased on his head with M.O-4/axe. So far as attack on the prosecution witnesses i.e., P.W-1, P.W-2, P.Ws-6 to 8 is concerned, absolutely there is no consistency in their evidence. Independent witnesses P.Ws-9 and 10 did not spoke about the attack on the prosecution witnesses by the accused. They only say the attack on the deceased, as such, we are not inclined to place any reliance on the so-called attack by the accused on P.W-1, P.W-2 and P.Ws-6 to 8. But, the attack made by A-1 on the deceased is concerned, though all the witnesses have stated that A-1 hacked the deceased on his head with an axe, but there is no corroboration from the medical evidence adduced through P.W-15. P.W-15 in his evidence has stated that the injury received by the deceased was possible by a blunt object.

19. At this stage, it is elicited by the defence in the cross-examination of P.W-9 that A-1 used the stick portion of the axe, and dealt a blow on the head of the deceased, as such, A-1 has not used the sharp portion of the axe in attacking the deceased. Except the head injury, there are no other injuries on the body of deceased, as such, even if the case of the prosecution is accepted

in entirety, the only injury established by the prosecution is injury on the head of the deceased, which is attributed to A-1.

20. As already pointed out, A-1 never used the sharp edge portion of the axe in beating the deceased. Further, A-1 also received injuries at the hands of prosecution party, which is the subject matter of C.C.669/2016 on the file of Judicial Magistrate of First Class, Saluru, as such, it cannot by any stretch of imagination be said that A-1 is guilty of the offence U/s.302 IPC. If really A-1 is intended to kill the deceased, he ought not to have stopped with one blow, and ought to have inflicted few more blows on the deceased, as such, the conviction U/s.302 IPC passed against A-1 is liable to be interfered with.

21. In the result, the Criminal Appeal No.2572 of 2018 is allowed. The conviction and sentence recorded by the learned II Additional District and Sessions Judge, Parvathipuram, against the appellants/A-2, A-4, A-5, A-7, A-8 and A-9 in Sessions Case No.4 of 2017 dated 06.09.2018 for the offences under Sections 324, 326 IPC is hereby set aside. The appellants/A-2, A-4, A-5, A-7, A-8 and A-9 are acquitted for the offence under Sections 324, 326 IPC and the fine amount if any paid by the appellants/A-2, A-4, A-5, A-7, A-8 and A-9, shall be refunded to them.

22. The Criminal Appeal No.2684 of 2018 is partly allowed. The conviction and sentence recorded by the learned II Additional District and Sessions Judge, Parvathipuram, against the appellant/A-1 in Sessions Case No.4 of 2017 dated 06.09.2018 for the offence under Section 302 IPC is hereby set aside. Instead, the appellant/A-1 is convicted Section 304 Part-II of IPC. As the appellant/A-1 has already served nearly six (06) years of imprisonment, the period already undergone by him, shall meet the ends of justice, while maintaining the fine amount.

23. As the appellant/A-1 in Criminal Appeal No.2684 of 2018 was released on bail by order dated 18.03.2024 *vide* I.A.No.1 of 2024 in terms of orders passed by the Combined High Court in ***Batchu Rangarao and others Vs. The State of Andhra Pradesh*** (Crl.A.M.P.No.1687 of 2016 in Crl.A.No.607 of 2011), his bail bonds shall stand cancelled.

Pending miscellaneous applications, if any, in both the Criminal Appeals, shall stand closed in consequence.

JUSTICE K. SURESH REDDY

JUSTICE SUMATHI JAGADAM

6th October, 2026

PSK

Whether the judgment is:

Speaking	--	Reasoned	√
Reportable	--	Non-Reportable	√

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

32 & 33

CRIMINAL APPEAL No.2572 & 2684 OF 2018

6th October, 2026

W
PSK