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**(2004) 10 AP CK 0046**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No.104 of 2003

Gannu Umamaheswara Rao

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

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**Date of Decision:** Oct. 12, 2004

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 307, 326, 488

**Hon'ble Judges:** P.S. Narayana, J

**Bench:** Single Bench

**Advocate:** B.Parameswara Rao, for the Appellant; Public Prosecutor, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

Heard Sri B.Parameswara Rao, counsel representing appellant-accused by way of legal aid and the learned Additional Public Prosecutor, Mohd. Osman Shaheed.

2. The appellant-sole accused Gannu Uma Maheswara Rao preferred this criminal appeal aggrieved by the conviction and sentence made by Metropolitan Sessions Judge, Vijayawada in S.C.No.122 of 2002, dated 01.11.2002, whereunder the appellant was convicted for an offence u/s 448 IPC and sentenced to undergo Rigorous Imprisonment for a period of one year, and was also convicted for the offence u/s 307 IPC and sentenced to suffer Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.100/-, in default to suffer Simple Imprisonment for one month.

3. Sri B.Parameswara Rao, learned counsel representing the appellant-accused would submit that there is no independent evidence available on record and this is a dispute between close relatives and there is some doubt or suspicion about the weapon used. The learned counsel would also submit that except examination by a private Doctor, though a case of serious nature has been registered by the police,

the Investigating Officer had not chosen to get the injured examined through Government Doctors. The learned counsel would submit that this would throw some suspicion relating to the case of prosecution. The learned counsel also would submit that the Investigating Officer admitted that he had sent the accused to hospital, as he was having abrasion on his ankle and this would show that there was some quarrel between the relatives and nothing more and nothing beyond.

4. Per contra, the learned Additional Public Prosecutor had drawn the attention of this Court to the evidence available on record and would submit that the evidence is clear and categorical and the very fact that the injured were not examined by Government Doctor may not alter the situation in any way.

5. Heard both the counsel.

6. The accused was tried for the offences punishable under Sections 448 and 307 IPC and the learned Metropolitan Sessions Judge, on appreciation of the evidence of P.Ws.1 to 7, Exs.P.1 to P.15 and M.Os.1 and 2, found him guilty of the offence under Sections 448 and 307 IPC and sentenced him as already referred to supra.

7. The case of the prosecution is that P.Ws1 and 2 are residents of Buddavari Street, Mallikharjunapeta and the accused is co-son-in-law of P.W.1. On 4.3.2002 at about 19.00 hours, the accused trespassed into the house of P.W.1 and stabbed him with onion cutter on left side of his chest and left thigh and attempted to kill him and when P.W.2, his wife went to his rescue, the accused also stabbed her with the same knife on left side of her ribs and attempted to kill her due to previous grudge. When the blood relatives of the injured and neighbours gathered at the scene of offence, accused fled away. P.Ws1 and 2 were shifted to Peoples Nursing Home at Gandhinagar for treatment, where the Sub-Inspector recorded statement of P.W.1, registered the same as F.I.R. in Cr.No.199 of 2002 against the accused and after completion of investigation, charge sheet was filed.

8. The learned Judge, after recording the reasons in detail and relying on the material available on record, arrived at a conclusion that the offences with which the accused was charged with had been proved. It is no doubt true that P.W.6- private practitioner, who examined P.Ws1 and 2 deposed that he is resident of Vijayawada and he is a private practitioner at Peoples Nursing Home. On 4.3.2002 the injured by name Ramisetty Ramanjaneyulu-P.W.1 came to his hospital with the following injuries:

1. Stab injury on the left side of chest just inside an interior to the axillary line with lower end of the scapular length 6 1/2 inches. 1 1/2 x 1" depth. The injuries are bleeding profusely with severe pain and unable to move the chest.

2. A cut injury 2" above the knee joint 4" length and 1/2 inch depth.

9. He stated that the above said injuries are all grievous in nature and according to the patient some unknown person stabbed him. He further stated that the above

injuries may be caused by a knife like M.O-1. The duration of injuries are 15 to 30 minutes. He issued wound certificate under Ex.P.5.

10. He also examined P.W.2 wife of P.w.1 and found the following injuries on her person:

1. A stab injury from anterior axillary line to the lower end of the scapular. It is 6 1/2" length, 1 1/2" width, Cutting the muscles and with profuse bleeding.

11. P.W.6 stated that the said injury is also grievous in nature and may be caused with M.O.1. He issued wound certificate under Ex.P.6. The duration of the injury may be 15 to 30 minutes. M.O.1 marked is the knife.

12. P.W.5, deposed about the blood stained pant of accused, which is M.O.2, that the accused lead them near boring pump situated at the house of Maddala Ramaswami and by the side of canal he brought the knife M.O.1, which was seized by S.I. of Police. He drafted arrest mahazar of the accused under Ex.P.3 and drafted mahazar for recovery of M.O.1 under Ex.P.4. The accused is the person, who was arrested, from whom M.Os.1 and 2 were seized. In the cross-examination, this witness deposed that M.O.1 is not the weapon that was recovered from the accused as it has no sharp edge or serrated edge. The witness says that the knife is called as RAMPAPU BLADE KATTI. This witness also deposed that it is not true to suggest that he cannot identify the accused without the aid of spectacles. This is the evidence of P.W.5 in relation to M.O.1.

13. P.Ws.1 and 2 the husband and wife deposed in one voice. P.W.1 deposed that the accused, who is related to them, on 4.3.2002 at 7.00p.m., trespassed into the house and stabbed him with onion cutter on left side of his chest and left thigh and attempted to do away with his life. When his wife-P.W.2 intervened to rescue him, he also stabbed her with the same weapon on the left side of her rib and attempted to do away with her life. His daughter and sister had taken them to Kolli Prasada Rao hospital for treatment. Police visited the hospital and recorded his treatment, Ex.P.1. Previously, accused had also stabbed his wife and his wife lodged a report before the Police against him. He thought that P.W.1 was responsible for lodging the report and that is the motive for the accused for stabbing P.W.1 and his wife P.W.2. M.O.1 is the knife used by the accused against him and his wife. P.W.2 had also supported the version of P.W.1 in all material particulars. Thus, the evidence of both the injured witnesses, P.Ws1 and 2 is available on record.

14. The main contention of the learned counsel for the appellant-accused is that the injured witnesses are husband and wife and they are interested witnesses and there is no other independent evidence available on record.

15. It is pertinent to note that the incident happened just inside the house of P.W.1. It is too natural that wife of P.W.1, who was present had witnessed the incident and she also had sustained injuries, and the evidence of P.W.6- a private Doctor is also

available on record, who had issued the wound certificates, Ex.P.5 and P.6. It is no doubt true that P.W.6 stated that P.W.1 stated to him that some unknown person stabbed him. May be, due to relationship, he might have stated so to P.W.6. Certain contentions had been advanced relating to the doubt of the weapon, which had been used in the attack. It is no doubt true P.W.5 deposed that M.O.1 is not the weapon, which had been seized from the accused. P.Ws.3 and 4 supported the version of P.Ws1 and 2 to some extent. P.W.7, Investigating Officer, deposed all the details relating to his investigation. This witness also deposed about sending the accused to hospital as he was having abrasion on his ankle. It is no doubt true that the Investigating Agency, which had registered a serious crime of this nature, could have sent the injured witnesses to a Government Hospital for the purpose of examination. However, on that ground alone the evidence available on record cannot be totally discarded. From the nature of evidence available, it appears that the appellant-accused, a close relative of P.Ws1 and 2, is having grievance against P.W.1 in view of the dispute, which he has with his wife. On the fateful day, no doubt he entered the house and attacked P.Ws1 and 2 as spoken to by P.Ws1 and 2. Mere discrepancy relating to M.O.1 may not alter the situation in the light of the clear evidence of P.Ws1 and 2 available on record coupled with the medical evidence.

16. Hence, in view of the findings, the conviction and sentence u/s 448 IPC are hereby confirmed, but however, it is not a case of doing away with the life and at the best due to grudge there was an attack and nothing more. Hence, the ingredients of Section 307 IPC are not attracted and at best, the same may fall u/s 326 IPC. Hence, the conviction and sentence of Rigorous Imprisonment for seven years and to pay a fine of Rs.100/- u/s 307 IPC are hereby set aside and instead, the appellant-accused is convicted and sentenced to undergo Rigorous Imprisonment for a period of 11/2 years for the offence u/s 326 IPC. The period of conviction and sentence for a period of 11/2 years imposed u/s 326 IPC and the period of Rigorous Imprisonment of one year imposed u/s 448 IPC shall run concurrently.

17. It is brought to the notice of the Court that almost the modified sentence by this Court had been served by the appellant-accused. If that be so, it is needless to say that on calculation of the period of imprisonment already suffered by the appellant-accused, the appellant-accused be set at liberty, if he had already completed the modified sentence imposed by this Court.

18. Accordingly, the criminal appeal is partly allowed.