

**(2007) 01 AP CK 0041**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No. 1952 of 2004

Golla Jacob @ Yacob and Others

APPELLANT

Vs

The State of A.P.

RESPONDENT

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**Date of Decision:** Jan. 23, 2007

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 34

**Citation:** (2007) 1 ALD(Cri) 825 : (2007) CriLJ 1934

**Hon'ble Judges:** Nooty, J; Bilal Nazki, J

**Bench:** Division Bench

**Advocate:** C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Bilal Nazki

1. On 3rd of March 2002 at 9.30 p.m., PW-1 gave a statement to PW-9 the Station House Officer, Razole Police Station, which was registered as F.I.R. in Crime No. 22 of 2002 for the offence u/s 302 read with 34 of I.P.C. In this statement, PW-1 stated that when he was returning home from a provision shop at 7 p.m. on 03.03.2002, on the tar road at Gudimoola Centre, he saw Golla Yacobu (A-1) abusing his junior paternal uncle Oguri Bhushanam (deceased). He was referring to him as bastard and asked, "why you are abusing me for taking the toddy from your trees - you die". After abusing, A-1 hacked Bhushanam with an axe on the rear side of his head, Nalli Devadasu (A-2) beat him with an iron rod on his forehead with force, Dondapati Vijayakumar (A-3) beat him on his head with an iron rod and Gavidi Babujee (A-4) beat him on his head. There was blood from the head of deceased and he fell on the road. His junior paternal uncle's eldest son Oguri Srinivas (PW-3) and others witnessed the incident. He went to his junior paternal uncle's house and informed his aunt about the incident. He, his aunt and Srinivas brought his junior uncle in an auto to Razole Government hospital at 8.30 p.m. A lady doctor examined

Bhushanam and declared him dead. After the case was registered, it was investigated and a charge sheet was filed against the accused persons. Charges were framed in accordance with the allegations in the F.I.R. and the accused were informed that they are being tried u/s 302 read with 34 of I.P.C., as according to the prosecution, in furtherance of their common intention, they had committed the murder of the deceased. They pleaded not guilty and claimed to be tried. Prosecution examined 12 witnesses and exhibited 35 documents. The trial Court convicted all the accused u/s 302 read with 34 of I.P.C. and sentenced them to suffer imprisonment for life and also to pay a fine of Rs. 200/- each, and in default of payment of fine, they should suffer rigorous imprisonment for two months each.

2. PW-1 is the Nephew of the deceased. He was categorical in his statement that he saw A-1 hacking Oguri Bhushanam with an axe. A-1 attacked the deceased on the back of the head. A-1 also blamed that deceased had committed theft of toddy. A-2 beat the deceased with an iron rod on the forehead, A-3 and A-4 also beat the deceased with iron rods on the head. The deceased fell down. It was witnessed by him and his brother Oguri Srinivas (PW-3), Javvadi Satyanarayana (PW-4), Medida Mohan Rao (not examined) and Valluri Ananda Raju (not examined). Then he went to the house of his junior paternal aunt Oguri Bharathi and brought her to the scene of offence. The deceased was in the pool of blood. He and his brother Srinivas brought an Auto and took the deceased to the Razole Government hospital. Doctor examined and declared him dead. Thereafter, Police came to the hospital and recorded his statement. On the next day morning Circle Inspector came to the house of deceased and conducted inquest. Ex.P-1 was the statement recorded from him by the Police. A-1 to A-4 were having enmity against the deceased, as they had committed theft of toddy from the trees. As such, the deceased admonished them and then they murdered the deceased. He could identify the weapons used by the accused if shown to him. He identified M.O.1 axe and M.Os.2 and 3 iron rods, which were used by the accused on the date of incident.

3. In his cross-examination he stated that his house was situated by the side of the house of the deceased. Gudimoola village centre is situated at a distance of one furlong from his house. Scene of offence was not visible from his house. He accepted that A-2 had filed a case against him that the witness was trying to kill him. He was not on talking terms with accused. A-2 had filed an attempt to murder case against him. The offence took place at 7 or 7.30 p.m. He went to the shop at Gudimoola centre for purchasing jaggery. He did not state before the Police in Ex.P-1 that he went to Gudimoola centre for purchasing jaggery. He was at a distance of 20 feet from the scene of occurrence. The entire occurrence took place within 10 or 15 minutes. He did not try to rescue the deceased as the accused were armed with deadly weapons. He had not seen that the accused had committed theft of toddy. A-1 hacked the deceased with sharp edge of the axe on the back of the head of the deceased. The deceased did not fall down immediately after receipt of the blow. A-1 hacked the deceased twice on the back of the head at different places.

There was pool of blood at the scene of occurrence. He did not furnish the names of witnesses in Ex.P-1, but he stated in Ex.P-1 that his brother Srinivas was present. A-2 to A-4 beat the deceased when he was about to fall on ground. He further stated that there were two lights on at the time he witnessed the occurrence, but he had not stated this in Ex.P-1 or in his statement before the Police at the time of inquest. It was not true to suggest that he had developed this light theory for the first time.

4. PW-2 is the wife of the deceased. She stated that her husband was doing toddy tapping and he was selling toddy. A-1 to A-4 were used to come to their house for consuming toddy. A-2 and A-3 had to pay Rs. 50/- each, on account of purchasing toddy. On the day of incident, A-1 to A-4 came to their house for consuming toddy, but she refused to give them toddy, as they had not paid the earlier amount. Then they threatened that they would see their end and went away. On the same day at about 3 p.m., when her husband was about to prepare for toddy tapping, she asked him to wait for a while to take coffee. Then she went to Gudimoola centre shop for tea. At that time, A-2 stated that he would kill one of her family members. When she was coming back, A-2 again made such comments. After returning home, she informed about it to her husband. She also informed to PW-1. At about 7 or 8 p.m. on that day, she instructed her son to bring oil from kirana shop, but he returned back and informed that her husband was murdered by A-1 to A-4. PW-1 also came and informed the same fact. Then she ran along with PW-1 and others towards the scene of offence. There were others present at the scene of offence. They took the deceased in an Auto to Razole Government hospital, where the doctor declared the deceased dead. She became unconscious. Police took the statement of PW-1 and registered the crime. The accused became violent and committed the offence, as her husband had demanded payment of the amount due on account of consumption of toddy. In cross-examination she stated that there are no other disputes with the accused other than the dispute of money, which was due from them. There were other toddy sellers in the village. There was no enmity between the accused and PW-1. Her son and PW-1 came one after the other and simultaneously informed her about the incident. Police came to Razole but did not come to the hospital. PW-3 is the son of the deceased. He stated that his father would tap toddy and his mother would sell it at the house. On the day of occurrence at 7 p.m., his mother sent him to the shop for purchasing some oil. He found villagers were running away. A-1 to A-4 were quarrelling with his father. He was by the side of the kirana shop wall and witnessed the occurrence. A-1 questioned his father and asked him why he was propagating that he had committed theft of toddy and then he hacked his father with an axe on the back of the head. A-2 beat his father with an iron rod on the forehead. A-3 and A-4 also beat his father with iron rods on his head. On seeing the occurrence, he got scared and ran away towards his house. The occurrence was witnessed by PW-1, Javvadi Satyanarayana, Valluri Ananda Raju, Medida Mohan Rao and some others. He informed the incident to his mother. PW-1 also came behind him and informed his mother. Then they came back

to the place of occurrence. He found his father in a pool of blood. Then they brought an Auto and took the deceased to the hospital. Razole Circle Inspector came there and recorded the statement of PW-1. The accused used to come to his house and consume toddy. A-2 and A-3 had to pay some money to his mother. On 03.03.2002 at 9.30 a.m., A-1 to A-4 came for consuming toddy, but his mother refused to give them toddy, as they were already indebted. At that time, A-2 threatened them.

5. In the cross-examination he stated that he witnessed the incident from a distance of 15 to 20 feet. His father fell down on receiving blows from the accused. He did not observe whether the accused went away from the scene of offence when he returned back to his house. Nobody came forward to rescue his father. He did not raise any cries as his father was being hacked. Nobody raised cries. PW-1 also was standing at the kirana shop. PW-1 did not see him and he also did not see PW-1 at the scene of occurrence. Nearly 30 to 40 villagers were present at the time of incident. His father had gone there to purchase some pesticides. There was no pesticide shop at Gudimoola centre. His father did not have dinner by that time. His father had lunch in the afternoon and went away to the fields. His father did not take any food in the intervening period. He would only take food after returning from his work in the evening. He did not go to the Police Station, but went to the hospital directly. He did not inform the incident to anyone except his mother.

6. PW-4 stated that his buddy cart is situated at a junction in Gudimoola village. He knew the deceased. The deceased and A-2 were quarrelling with each other in connection with toddy. A-2 hacked the deceased on the back of the head. Then he went away with his buddy cart. This witness was declared hostile.

7. PW-5 is the Panchayat Secretary. He went to Gudimoola centre and drafted a scene of offence and observation report in Ex.P-3. N.V. Satyanarayana Murthy signed as another mediator on the said report. A Hero Cycle M.O.4, bloodstained earth M.O.5 and control earth M.O.6 were seized. They also found an empty pesticide tin on the cycle carrier, which was M.O.7. He also signed Ex.P-3. Then he went to the Government hospital where inquest was conducted on the dead body of the deceased. He, along with others, was present at the time of inquest. He was also present to the seizure of black colour nicker M.O.8, Polyester shirt M.O.9 and waist thread M.O.10. Ex.P-4 was the inquest report.

8. PW-6 conducted autopsy and found following injuries on the body of deceased-

1. A 5 cm x 2 cm bone depth lacerations over right forehead. Bony fracture seen through the wound, edges are irregular.

2. A 4 cm x 2 cms bone depth lacerations over left forehead edges are irregular caused by a blunt object.

3. A 4 cms x 2 cms x bone depth lacerations over right eyebrow region.

4. A 6 cms x 2 cms x bone depth lacerations over occipital region. Edges are regular, caused by a sharp object.

5. A transverse 6 cms x 2 cms x bone depth lacerations over occipital region on right side. 6. A 4 cms x 2 cms x bone depth lacerations over left parietal occipital region.

9. Fracture of skull present over frontal region on right side (Depressed fracture) and occipital bone (linear fracture) and depressed fracture at left parietal occipital region.

10. On opening the skull, a 4 cms x 1 cms laceration present over fore brain matter including maninges. Hyoid intact. No other bony injuries are seen. Stomach pale in colour contains 200 to 300 gms of undigested rice."

11. Cause of death according to this witness was shock due to head injury. In the cross-examination he stated that deceased might have had his last meal about less than two hours prior to his death. He also stated that there were no incised wounds on the body of deceased.

12. PW-7 is the witness to recoveries, who turned hostile. PW-8 is the Photographer who took photos of the body and scene of offence. PW-9 is the Head Constable who received Police intimation from Community Health Centre at 9 p.m. in Ex.P- 27. Then he went to the hospital and recorded the statement of PW-1, which was Ex.P-1. He sent it to the Police Station concerned under Memo No. 25, General Razole 04, on 03.03.2002. According to this witness, he received the intimation from hospital at 9 p.m., then went to the hospital immediately and recorded the statement of PW-1. Ex.P-1 was recorded at 9.30 p.m. Hospital is situated at a distance of one furlong from the Police Station. Court is situated opposite to the hospital. He denied the suggestion that Ex.P-1 was prepared subsequently and not at 9.30 p.m.

13. PW-10 is the A.S.I., who stated that on 3/4.03.2002 at about 1 a.m., he received intimation of death from Station House Officer, Razole. He registered the case in Crime No. 22 of 2002. He informed the registration of crime to Circle Inspector through phone. He sent original F.I.R., death intimation and statement of PW-1 to the Magistrate Court at Razole. He did not go to the hospital. He was incharge of the Police Station, Razole. He handed over F.I.R. to be sent to Magistrate immediately. He denied the suggestion that Exs.P-1, P-27 and P-28 were brought into existence after arrival of Circle Inspector of Police, by suppressing the original F.I.R. It would take one hour by two- wheeler to reach Razole from Sakhinatipalli.

14. PW-11 was Inspector of Police. He stated that on 3/4.3.2002 at 2 a.m., he was informed by A.S.I. about the occurrence and about the registration of case. He visited Sakhinatipalli Police Station on 04.03.2002 and secured the presence of PW-5 and proceeded to the scene of offence. He made seizures, got a photographer and took photographs of the scene of offence, also prepared a rough sketch, visited the Government hospital and conducted inquest on the dead body, then sent the body

for postmortem. On 07.03.2002 he visited Gudimoola village, secured the presence of witnesses and recorded their statements. During the course of investigation on 13.03.2002, arrested A-1 to A-3 and recorded their confessional statements under Ex.P-30. A-1 to A-3 led them to the coconut garden of Rudraraju Padmaraju. They went to the said place at 2.30 p.m., where A-2 and A-3 removed a coconut leaves heap and produced two iron rods M.Os.2 and 3. From there, A-1 to A-3 led them to the house of Golla Jacob (A-1). They reached there at 4 p.m., where A-1 produced one axe. It had some bloodstains. He seized it under the cover of Ex.P-32. The material objects seized were forwarded by him to the Forensic Science Laboratory, Visakhapatnam through J.F.C.M., Razole.

15. He denied the suggestion in cross-examination that he had arrested A-1 to A-3 much before 13.03.2002. He also denied the suggestion that he had suppressed the original F.I.R. and Ex.P-1 was prepared after due consultation of his colleagues and PWs.1 to 3. PW-12 filed the charge sheet after receipt of report of the Chemical Analyst.

16. The learned Counsel for appellants submit that there are only two eyewitnesses to the occurrence i.e. PWs.1 and 3. PW-1 did not say in his statement that PW-3 was also present at the place of occurrence and PW-3 also categorically stated in his statement that he had not seen PW-1 at the place of occurrence, nor PW-1 had seen him. It could be possible that PW-1 was seeing the occurrence from a place wherefrom it was not visible to PW-3 and similarly PW-3 was watching the occurrence from a place wherefrom it was not visible to PW-1. On the other hand PW-2 claimed that she was informed of the incident by PWs.1 and 3, but PW-1 never stated that PW-3 had also come to inform his mother. Therefore, it is, according to the learned Counsel, very unlikely that PWs.1 and 3 were actually the eyewitnesses. The learned Counsel wants to doubt the presence of PWs.1 and 3 at the scene of occurrence on various other reasons as well. He states that according to PW-1, there was a fight between the deceased and the accused on the ground that deceased was blaming A-1 that he had stolen toddy from his trees and the accused told the deceased as to why he was spreading false information that the accused had stolen toddy from his trees. Whereas PW-2 gives another reason for a fight between the accused and the deceased, and the reason was that accused used to take toddy from their shop and A-2 and A-3 owed her Rs. 50/- each and her husband was demanding them to pay the amount, therefore, there was fight between the accused and deceased. She was also categoric that during the day time, accused had come and demanded toddy, but she had refused as they had not cleared earlier accounts. Since PWs.2 and 3 gave different reasons for the occurrence than PW-1, therefore, it is highly improbable that these witnesses were present at the scene of occurrence.

17. The learned senior counsel also submits that in the report Ex.P-1, there was no mention of any lights. For the first time this theory was put up by the prosecution

through PW-1, and it is highly improbable that at 9 p.m., these witnesses would have seen the occurrence and reproduce it in their statements that A-1 had hit the deceased with an axe on the rear side of the head twice. As a matter of fact, PW-3 even went further to say that A-1 gave a blow to the deceased's head with the sharp edge of the axe, but the doctor could not find any incised injury on the body of the deceased. If two blows were given with sharp edge of the axe on the rear side of the head, there could have been atleast two incised injuries on the head of the deceased. In this case, he relies on a judgment of Supreme Court reported in [Hallu and Others Vs. State of Madhya Pradesh](#), . In para 11 of this judgment, the Supreme Court held-

11. The postmortem report prepared by Dr. N. Jain that on the body of Jagdeo were found three bruises and a hematoma. On the body of Padum were found four lacerated wounds and two bruises. According to the eye-witnesses the two men were attacked with lathis, spears and axes but that clearly stands falsified by the medical evidence. Not one of the injuries found on the person of Jagdeo and Padum could be caused by a spear or an axe. The High Court however refused to attach any importance to this aspect of the matter by saying the witnesses had not stated that "the miscreants dealt axe blows from the sharp-side or used the spear as a piercing weapon". According to the High Court axes and spears may have been used from the blunt side and therefore the evidence of the eye- witnesses could safely be accepted. We should have thought that normally when the witness says that an axe or a spear is used there is no warrant for supposing that what the witness means is that the blunt side of the weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as a blunt weapon.

18. To the same effect, there is another judgment of Supreme Court reported in [Bhola Singh Vs. State of Punjab](#), . In para 5 of this judgment, the Supreme Court held-

As was done before the Courts below, it was contended before us that injuries suffered by the deceased-Saun Singh were from blunt weapon as indicated by the post-mortem report and the same could not have been inflicted with Gandasa and, as such, there is no good reason to hold that Didar Singh and Kartar Singh witnessed the occurrence. We have carefully gone through the evidence of Kartar Singh (PW-1) and Didar Singh (PW-2), the two eye-witnesses. If they had really witnessed the occurrence as had taken place, they would have certainly described the weapons used in causing injuries to the deceased-Saun Singh, leading to his death. It is highly improbable and unlikely that when the accused armed with sharp weapons like Gandasa and Ghop had used only the blunt edged side and not the sharp edged side of the said weapons. We are convinced that these two eye-witnesses had set out this version only to fit in what had been found in the post-mortem report. The normal way in which a Gandasa and Ghop could be used

was only from the sharp edged side and not from the blunt edged side.

Therefore, it is highly unlikely that the two eye-witnesses PW-1 and PW-2 could have seen the incident as had taken place. It gives rise to serious doubt as to their presence at the time of incident. The trial Court and the High Court did not duly appreciate this aspect of the matter and, therefore, we are of the view that there is an error in this regard. Hence, we accept the case as set forth on behalf of the appellant. We allow this appeal, set aside the conviction passed by the trial Court as confirmed by the High Court and set him at liberty.

19. Though PW-4 was also cited as eyewitness, but he turned hostile and gave altogether a different version. It is further contended that the report was available to the Police by 9.30 in the evening of 3rd of March 2002. The Magistrate's Court is just opposite to the Police Station, but it reached the Magistrate after 12 hours i.e. at 9.30 in the next day morning. Further, it is contended that according to PW-3, the deceased had gone to work, he had returned, had bath and had again gone to the market for purchase of pesticide, but there was no pesticide shop in the Gudimoola centre and he was also specific that the deceased had not taken any food after taking food in the afternoon, but according to the doctor who conducted the postmortem, the deceased had taken some food within less than two hours of his death.

20. Then coming to the report of FSL, the learned Counsel submits that even if the recoveries are believed, which is otherwise doubtful, with which we will deal separately, even then, the recoveries do not connect the accused with the crime. Item No. 4 in Ex.P-35 i.e. the report of the Forensic Science Laboratory, is a torn polyester full sleeve shirt. According to the report, it contained blood. Item No. 5 is a cotton waist thread, which contained blood. Item No. 6 is a mud pot containing soil. Blood was also detected on it. Item No. 8 is a metallic axe with wooden handle. Blood was also detected on this item. But the Laboratory was able to say that blood detected on item Nos. 4 to 6 was of human origin and blood detected on item No. 8 axe could not be detected whether it was of human origin or not. Iron rods which were allegedly seized from the accused at their disclosure, were item Nos. 1 and 2. They did not even contain the blood.

21. Coming to the recovery of M.Os.1 to 3, PW-4 turned hostile and in the absence of any evidence connecting the alleged recoveries with the crime, the accused cannot be convicted on the basis of such recoveries alone.

22. For the reasons given by us hereinabove, we do not believe that PWs.1 and 3 were eyewitnesses to the occurrence. We also do not believe that the correct version about the occurrence has been putforth by the prosecution before the Court, therefore, the appellants/accused are given benefit of doubt.

23. Appeal is allowed. The conviction and sentences imposed by the trial Court on the appellants/accused, are set aside. The appellants shall be released forthwith, if



not required in any other case. They are entitled for refund of fine amount paid, if any.