
(2014) 04 AP CK 0105

Andhra Pradesh High Court

Case No: Criminal Appeal No. 334 of 2010

Nadava Jakraiah

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision: April 21, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 304, 326, 34

Hon'ble Judges: M.S.K. Jaiswal, J; L.N. Reddy, J

Bench: Division Bench

Advocate: A. Gayatri Reddy, Advocate for the Appellant

Final Decision: Partly Allowed

Judgement

L. Narasimha Reddy, J.

A1 to A7 were tried in S.C. No. 370 of 2009 on the file of the I Additional Sessions Judge, Guntur alleging that they caused the death of one Dodda Srinivasa Rao and injuries to his elder brother, Dodda Samuel in the evening of 17.11.2008 at Challavaripalem Village of Guntur District.

2. Through its judgment, dated 07.01.2010, the trial Court acquitted A4 to A7 of all the charges, however, A1 to A3 were convicted of the offence punishable u/s 302 read with Section 34 I.P.C. and punishment of imprisonment for life and fine of Rs. 100/-, in default to suffer simple imprisonment for one week, was imposed against each of them. They were also found guilty of committing the offence punishable u/s 326 read with Section 34 I.P.C. Sentence of Rigorous Imprisonment for three years and fine of Rs. 100/-, in default to undergo simple imprisonment for one week each was imposed against A1 to A3. Hence, this appeal by those three accused.

3. P.W.1 and the deceased are brothers and they are residents of Ankireddypalem Village. One of their sisters, by name Rani, P.W.2, is married to A1. The couple had three children. A1 was living at Hyderabad working as a Mason and P.W.2 and her children were living with her parents at Ankireddypalem Village. The relationship

between P.W.2 and A1 is said to be a bit strained. There is also an allegation that A1 developed illicit intimacy with a woman at Hyderabad.

4. P.W.1 was working as a Driver at Bangalore. He is said to have come to his native place on 15.11.2008. P.W.2 is said to have complained to P.W.1 about the conduct of A1 and that the money earned by her by doing labour work was also appropriated by A1 by getting it through their son. P.W.1, his brother-the deceased, P.W.3-son of elder sister of P.W.1 and another person, by name Velagathoti Kumar (not examined), are said to have gone to the house of A1 to discuss with him, the problems being faced by P.W.2. During the course of discussion, A1 is said to have become wild and himself, his brother-A2, and A3-the son of A2, attacked firstly upon Srinivasa Rao, the deceased, with iron rods and when P.W.1 sought to intervene, injuries were caused to him. In an Ambulance, the deceased and P.W.1 are said to have been brought to the Hospital at Guntur.

5. On receiving the information from the Hospital, the Sub-Inspector of Police, Guntur Rural Police Station recorded the statement of P.W.1 at 10.30 p.m. on 17.11.2008 and registered Crime No. 273 of 2008. Necessary steps, such as preparation of scene of offence panchanama, causing inquest and post-mortem were completed. The statements of the persons acquainted with the incident were recorded. Thereafter, a charge sheet was filed alleging the offences against A1 to A7.

6. The trial Court framed the charges against the accused. Since all the accused pleaded not guilty, the trial was conducted, wherein P.Ws.1 to 13 were examined and Exs.P1 to P14 were marked. M.Os. 1 to 10 were also taken on record. The result of the case has already been mentioned in the preceding paragraphs.

7. Smt. Gayathri Reddy, learned counsel for A1 to A3, submits that there is substantial improvement over Ex.P1, in the evidence of P.W.1. She contends that P.W.1 was not even sure about the alleged participation of A3, since neither his name was mentioned nor the correct relationship vis-a-vis A2 was indicated. She submits that it is P.Ws.1 to 3, the deceased and others, who came to the house of the accused with the sole objective of punishing A1 and when the villagers intervened, P.Ws.1 to 3 and the deceased ran away and in the process, received injuries. Learned counsel further submits that there is no motive whatever, for A1 to A3 to commit crime against P.W.1 and the deceased and at the most, it was an altercation that took place during the course of discussion and intervention of the villagers.

8. Learned Additional Public Prosecutor, on the other hand, submits that P.W.1 is an injured eye-witness and his evidence is supported by P.Ws.2 and 3, who too are eye witnesses. She submits that the occurrence of the incident right in the house of A1 is not disputed and the accused have no justification to attack the deceased and P.W.1, who came to discuss the matter pertaining to P.W.2. She submits that the trial Court

was objective enough, in acquitting A4 to A7, since their names were not mentioned in Ex.P1 and in convicting and sentencing A1 to A3 who caused the death of the deceased and injuries to P.W.1, who came to discuss the family matters with them.

9. The root cause for the incident, that led to the death of the deceased and the injuries to P.W.1 is the disturbed relation between A1, and his wife, P.W.2. The relation is so strained that while A1 was residing alone at Hyderabad for three years prior to the incident, P.W.2 was residing in the house of her parents along with her children. P.W.1 was also working at a different place, namely Bangalore. In November 2008, it so happened that while A1 came from Hyderabad, P.W.1 came from Bangalore. Being the elder in the family, P.W.1 thought it fit to discuss the matter pertaining to the family of his sister-P.W.2, with his brother-in-law, A1. Accordingly, himself and his brother-deceased, P.W.2 and the nephew of P.W.1 i.e. P.W.3 went to the place of the accused. That the incident occurred right near the house of A1, is beyond any pale of doubt. Apart from not denying the occurrence of the incident near the house of A1, there is a clear suggestion in the cross-examination of P.W.1, which fortifies the case of the prosecution. The post-mortem conducted upon the deceased discloses that as many as 11 injuries were noticed. P.W.1 also received some injuries.

10. This is a typical case in which a suggestion was put to P.W.1 to the effect that P.W.1 and others received injuries when the villagers gathered and chased them. Relevant portion reads as under:

It is not true to suggest that we went to the house of A1 by throwing soda bottles and tried to attack them and that hearing their cries, villagers gathered and galata took place, and that in drunken stage, while we are escaping from there, we fell down and received injuries. We did not raise cries. It is true that 50 or 60 members gathered.

11. Learned counsel for the accused in the trial Court would have been well advised not to put a question which yielded the answer extracted above. The possibility of there being any doubt about the very presence of the deceased nearby the house of A1 is virtually wiped away, by the defence, and not by the prosecution.

12. That the deceased Srinivasa Rao died and P.W.1 received injuries in the course of discussion or altercation with A1, is a matter of record and not disputed by any one. The fact that the incident occurred in the house of A1, to which place, P.W.1, the deceased, P.Ws.2 and 3 and certain others would not probablise the existence of enmity on the part of the accused, to do away with the life of the deceased or to cause injuries to P.W.1. If that were to be so, the accused would have gone all the way to the place of P.W.1 and the deceased to commit the crime. Secondly, P.W.2 herself stated that she did not reveal the nature of disputes between herself and her husband to anyone and the purpose of going to the village of A1 was only to verify about the money said to have been taken away by the son of P.W.2 and A1. What

exactly transpired between the two groups is not immediately before this Court. Once the altercation has erupted, A1 is said to have gone to the house of his brother, A2, they picked up rods and attacked the deceased and P.W.1, together with A3.

13. Though there is specific assertion about the identity of A1 and A2 and the acts resorted to by them, there is some wavering vis-à-vis A3. For example, in Ex.P1, A3 was described as son-in-law of A2, whereas that gentleman is in fact, the son of A2. Further, the name of the person was not indicated. P.W.1 did not mention the names of A4 to A7. Obviously for that reason, the trial Court acquitted them.

14. On a close scrutiny of the record of the case, we are of the view that A1 to A3 did not have any intention to kill the deceased and the attack on him was only in the course of Panchayat that was being held with the participation of P.W.1 and other family members. Here again, there is a distinction as to the acts attributed to A1 and A2 on the one hand and A3 on the other. We are of the view that the case fits into Part II of Section 304 I.P.C. and the punishment commensurate with the participation of A1 to A3, being imposed against them.

15. In the result, the Criminal Appeal is partly allowed and the conviction ordered in S.C. No. 370 of 2009 on the file of the I Additional Sessions Judge, Guntur against A1 to A3 is modified from the one u/s 302 I.P.C., to be the one u/s 304 Part-II I.P.C. The sentence handed out to A1 to A3 is also modified to the effect that A1 and A2 shall undergo Rigorous Imprisonment for seven years and to pay fine of Rs. 100/-, in default to undergo Simple Imprisonment for one week and A3 shall undergo Rigorous imprisonment for five years and to pay fine of Rs. 100/-, in default to undergo Simple Imprisonment for one week. The conviction and sentence ordered by the trial Court against A1 to A3 u/s 326 I.P.C. is sustained.

16. The miscellaneous petition filed in this appeal shall also stand disposed of.