

CASE NO.:
Appeal (crl.) 784 of 2004

PETITIONER:
Sabbi Mallesu and Ors.

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 12/07/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:
JUDGMENT

S.B. Sinha, J.

Delay in filing Special leave petition is condoned.

Leave granted in special leave petition.

These two appeals arising out of a common judgment and order dated 18.2.2003 passed by the High Court of Andhra Pradesh were heard together and are being disposed of by this judgment.

One Kota Prasadarao who examined himself as PW-1 before the trial Court, lodged a First Information Report before the Station House Officer of Hiramandalam Police Station alleging that a dispute had occurred between Karanam Chandraiah and Vanjarapu Savariah in regard to a bund. Allegedly, with a view to settle the dispute 15 persons named, therein, including the appellants is Criminal Appeal No. 784/2004 and respondents in Criminal Appeal arising out of SLP (Crl). No. 4438/2004, came to the place of occurrence and accused No. 1-Sabbi Mallesu (Appellant No. 1) beat Gade Sreeramulu (deceased No.1) with stout stick on his head. Accused No.4 (appellant No.2) is alleged to have poked with spear on his jaw. A general statement was made to the effect that the other accused persons beat him indiscriminately. Accused No. 16, Karanam Janardhanarao Pilla Ramula allegedly beat Kota Prasadarao, Kaji Asirinaidu and some others with sticks and stones as a result one Karanam Chandraiah (deceased No.2) as also Gade Sreeramulu.

Although fifteen persons were named in the First Information Report, 39 persons were put on trial. They were charged under various Sections, namely, Sections 147,148,302,324,323,341,120B and 506(2) of the Indian Pennal Code.

It is not in dispute that in respect of Charge under Section 147 IPC, all were acquitted. We would at this juncture like to reproduce charge No.2 and 3 which relate to the charges framed under Section 302 IPC against all the accused persons.:

Charge No. II:

That you A.1 to 19 and A.22 at about 7.00 a.m. near Dok Kulakhana on the road leading from Pindravada were formed into an unlawful assembly armed with deadly weapons like spears, knives, sticks and Tentulu, with a common object to kill Gade Sreeramulu and Karanam Chandrayya (Deceased Nos. 1 and 2).

And that you thereby committed an offence punishable under Section 148 IPC within the cognizance of the court of sessions.

Charge No. III.

That you A.1 to A.6, A.10, A.16 and A.19 at the same time and at the same date and place mentioned in charge No.II committed murder intentionally causing the death of Gade Sreeramulu (deceased No.1) that you A.2 and A.5 beat him with sticks that you A.4 spear on his jaw and that while the said deceased fell down that you A.3 and A.6 inflicted a blow on the head with knife that you A. 10 caused injury with tentu on the head and that you A.16 and A.19 beat him with stout stick on his back.

And that you thereby committed an offence punishable under Section 302 IPC within the cognizance of the Court of Sessions."

The prosecution in support of its case examined three alleged eye witnesses. PW-1, as noticed hereinbefore was the first informant. PW-2, Karanam Lakshmanaro and PW-3, Karam Chinnammai were to be the eye witnesses.

The learned Sessions Judge as also the High Court did not place any reliance on the evidence of PW-3 It is not in dispute that no charge was framed as against the appellants herein under Section 302/149 IPC. The learned Sessions Judge, however, without altering the charge proceeded to convict the six accused persons under Sections 302/149 I.P.C.

Before proceeding further we may notice that apart from accused before us all other accused were acquitted of the charges. On an appeal preferred by them before the High Court, the respondents in Civil Appeal arising out of SLP (Crl.) No. 4438/2004, Vanjarapu Boddu (accused No. 3) and Duvva Simmayya (accused No.6) were directed to be acquitted following the logic of the learned trial Judge stating:

"It appears from the judgment of the trial Court that while giving evidence P.Ws.1 and 2 had attributed overt acts to A-4 alleging that A-4 had caused injuries to D-1 by spearing him on the jaw. But such corresponding injury is absent in the post mortem examination and therefore, A4 was given benefit. Apply the same logic, we are of the considered view that A-3 and A-6 were not given any role at the time of giving FIR by P.W. 1 Under these circumstances, we feel that it would not be safe to convict A-3 and A-6 and therefore, we are inclined to give benefit of doubt to A-3 and A-6."

The High Court, however, as was done by the learned Sessions Judge, relying on and on the basis of the evidence of the depositions of P.W.-1 and P.W. 2 dismissed the appeals referred by the appellants herein stating:

"According to P.W.1 and P.W.2., A-4 speared on the left cheek of the deceased and the corresponding injury was found at the time of post mortem examination. But it appears that while delivering the judgment, there was a little confusion in the mind of the trial Court and therefore, injury No. 1 was attributed to A-14 by the learned Judge. But in fact, A-14 caused injuries 2 and 3 as given in the post mortem examination. As far as A-8 is concerned, injury No.1 should have been attributed to A-8. The injury, which is alleged to have been caused by A-8 finds place in the post mortem examination and his name also finds place in FIR given by P.W. 1. The circumstances canvassed about the fabrication of F.I.R. are minor discrepancies. Therefore, as far as the death of D-2 is concerned, we hold that A-4, A-8 and A-14 are responsible for causing the death of D-2 after believing the reliable and trustworthy evidence of P.W. 1 and P.W. 2 which is corroborated, by medical evidence as well as Ex.P.1."

The learned counsel appearing on behalf of the appellants, inter-alia, submitted that from a perusal of the First Information Report, lodged by

PW-1, it would appear that overt acts were alleged also against appellant Nos. 1 and 2 (accused Nos. 1 and 4). Our attention was further drawn to the fact in regard to the deceased No. 2, apart from general allegation no specific overt act was attributed to any of the appellants. It was further submitted that although in the First Information Report, the appellant No.2 (accused No. 4) was alleged to have caused injury to deceased No.1 but he was acquitted of the said charge and purportedly was convicted only for causing injury to deceased No.2.

Learned counsel appearing for the State, on the other hand, not only would support the judgment of the High Court but would also contend that the High Court committed a manifest error in passing the Judgment of acquittal in respect of accused Nos. 3 and 6. Learned counsel appearing for the State submitted that failure to frame charge under Sections, 302/149 I.P.C., is not fatal inasmuch as the learned trial Judge was entitled to alter the charge in exercise of its jurisdiction under Section 46 of the Criminal Procedure Code.

At the outset, we would like to observe that in a case of this nature, the High Court should have considered the matter more closely. The High Court dismissed the appeal filed by the appellants herein in a very slipshod manner. As appellants had raised a number of contentions before the High Court, it was expected of the High Court to deal with each one of them.

Unfortunately, both the learned Sessions Judge as also the High Court failed to attach due importance to the fact that in the First Information Report, PW-1 did not disclose any overt acts played by the other accused persons apart from appellant Nos. 1 and 2 herein. If the statements of the said witnesses are to be believed, he was himself injured in the occurrence and, therefore, it was expected of him at least to state as to who amongst caused the said injury. Even injury on his person was not proved. We have noticed herein before that no overt act against any person was at all attributed in regard to the death of Karanam Chandraiah.

The learned Sessions Judge as also the High Court unfortunately failed to notice that in a case of this nature where a large number of people allegedly took part in commission of an offence, some by-standers' may being falsely implicated therein cannot be ruled out.

Submission of the learned counsel appearing on behalf of the State is that the First Information Report need not contain all the details may be correct but in a case of this nature it is expected that incident would be narrated in some details as otherwise it will be difficult for the trial Judge to find out the truth particularly having regard to the fact that both P.W. 1 and P.W. 2 made omnibus statements. It is beyond any cavil that in his deposition before the Court, P.W. 1 made improvements. He not only attributed overt acts to those who were alleegedly responsible for causing death of deceased No. 1 but also who had allegedly caused the death of deceased No. 2 If he was an eye witness and had seen the entire occurrence from a close proximity and indeed suffered an injury himself, we fail to understand as to why the First Information Report would lack the details of the offence involving all the accused persons.

A part of the testimony of P.W. 2 had not been relied upon by the learned Sessions Judge. Even the High Court had noticed that the statements of both P.W.1 and P.W.-2 in relation to the overt act in respect of some of the accused persons did not find any corroboration from the medical evidence. On the said basis some of the accused persons have been given the benefit of doubt. Following the same logic the accused No.2 and accused No.6 were also acquitted by the High Court.

Having considered the materials on record and keeping in view the submissions made at the Bar, we are of the opinion that not only no case has, thus, been made out to interfere with the judgment of acquittal passed as against the respondents in Criminal Appeal arising out of SLP (Crl.) No.

4438/2004 but also the judgment of conviction and sentence passed against the appellants Nos. 3 and 4 in CrI. Appeal No. 784/2004 herein are not sustainable as they are entitled to be given benefit of doubt as no overt act had been attributed as against them. We are also not in a position to subscribe to the submissions made by the learned counsel appearing on behalf of the State that the trial Court in a case of this nature was entitled to alter the charge under Section 246 of the Criminal Procedure Code.

The power of the Court to alter the charges is neither in doubt nor in dispute but in terms of Sub-section 2 of Section 246, Cr.P.C., it was obligatory on the part of the learned Sessions Judge to bring it to the notice of the accused and explain the same to the accused. The same having not been done, it cannot be said that the requirements of Section 246 of the Criminal Procedure Code stood complied with. It must also be borne in mind that all the accused were acquitted for commission of an offence under Section 147 of the Indian Penal Code.

The High Court did not find any common object on the part of all the accused so as to make themselves liable to be convicted for commission of an offence under Sections 302/149 IPC. It must be borne in mind that in case of this nature, where a large number of persons are made accused, the possibility of some accused person committing murder at the spur of the moment cannot also be ruled out.

We are, however, of the opinion that the names of appellant Nos. 1 and 2 only having been mentioned in the First Information Report and the statements of P.W. 1 and P.W. 2 in relation to the role played by them having been found corroboration from the medical evidence, the judgment of conviction and sentence as against them must be sustained.

For the reasons aforementioned Criminal Appeal No. 784/2004 is allowed in part. The appeal of appellant Nos. 1 and 2 is dismissed, whereas the appellant Nos. 3 and 4 in Criminal Appeal No. 784/2004 are given benefit of doubt and are acquitted. Appellant Nos. 3 and 4 are in jail. They are directed to be set at liberty forthwith unless they are required in any other case.

Criminal appeal No. 773/2006 (arising out of SLP (CrI). No. 4438/2004) filed by the State is dismissed.