

CASE NO.:
Appeal (crl.) 1122 of 2002

PETITIONER:
Chava Ankama Rao & Ors.

RESPONDENT:
State of Andhra Pradesh

DATE OF JUDGMENT: 12/10/2004

BENCH:
B.N.AGRAWAL & H.K.SEMA

JUDGMENT:
J U D G M E N T

WITH

CRIMINAL APPEAL NO. 137 OF 2004

The Public Prosecutor, High Court of Andhra Pradesh,
Hyderabad.

\005.Appellant

Versus

Chava Sreenu & Ors.

\005Respondents

B.N.AGRAWAL, J.

Out of the eleven chargesheeted accused persons, two, namely, Chava Subbarao (accused No. 4) and Chukkapalli Suraiah (accused No. 11) died before the commencement of trial and Daruvuri Nageswararao (accused No. 7) absconded himself and his trial was separated, as such remaining eight accused persons were tried and by judgment rendered by the trial court, they were convicted under Section 148 of the Penal Code and each one of them was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 200/-, in default to undergo rigorous imprisonment for one month; they were further convicted under Section 304 Part I/149 of the Penal Code and out of them, Chava Ankama Rao (accused No. 1), Chava Bhadraiah (accused No. 2), Chava Narasimharao (accused No. 3), Chava Sreenu (accused No. 5) and Vempati Prasad (accused No. 9) were sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 1,000/- each, in default to undergo rigorous imprisonment for a further period of six months whereas Chava Pullaiah (accused No. 6), Vempati Narayana (accused No. 8) and Vempati Venkateswarlu (accused No. 10) were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/- each, in default to undergo rigorous imprisonment for a further period of six months. Chava Pullaiah (accused No. 6) was further convicted under Section 324 of the Penal Code and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 100/-, in default to undergo rigorous imprisonment for a further period of one month. All the sentences, however, were ordered to run concurrently.

The convicted accused persons preferred two appeals before the High Court of Andhra Pradesh whereas an appeal was preferred by the State of Andhra Pradesh making a grievance that trial court was not justified in convicting the accused under Section 304 Part I/149 of the Penal Code rather they should have been convicted under Section 302/149 of the Penal Code. Similar grievance was made by Daruvuri Subbarao (PW 2), brother-in-law of the deceased, by filing a revision application before the High Court. So far as conviction of Chava Ankama Rao (accused No. 1), Chava Bhadraiah (accused No. 2), Chava Narasimha Rao (accused No. 3) and Vempati Prasad (accused

No. 9) is concerned, the High Court was of the view that the trial court committed an error in convicting them under Section 304 Part I/149 of the Penal Code. Accordingly, they have been convicted under Section 302/149 of the Penal Code and sentenced to undergo imprisonment for life. Their conviction and sentence under Section 148 of the Penal Code, however, have been confirmed. So far as A-5, A-6, A-8 and A-10 are concerned, the High Court acquitted them of all the charges.

Against the order of their conviction, A-1, A-2, A-3 and A-9 preferred appeal to this Court by special leave which gave rise to Criminal Appeal No. 1122 of 2002, whereas the State of Andhra Pradesh preferred another appeal by special leave giving rise to Criminal Appeal No. 137 of 2004 against the order of acquittal of A-5, A-6, A-8 and A-10 who are respondent Nos. 1 to 4 respectively in the said appeal, and out of whom, as Vempati Venkateswarlu (respondent No. 4) died during the pendency of the appeal, the same abated against him. As such, the said appeal has to be considered only in relation to the remaining three respondents.

Prosecution case, in short, was that on 21st June, 1993 at 7.25 p.m., one Bolineni Raghavarao (deceased) and Daruvuri Subbarao (PW 2) were returning on a scooter from nursing home situated near Tower Clock Centre, Narasaraopet, and when they reached near the Centre, all the eleven accused persons, armed with spears and coconut cutting knives, appeared, surrounded the deceased and PW-2 and pounced upon the deceased, out of them, A-2 exhorted. A-1, A-2, A-3, A-6 and A-9 assaulted the deceased with coconut cutting knives. A-1 and A-2 assaulted on the head whereas A-3 on the right shoulder, A-6 on the right side of abdomen and A-9 on the right eyebrow. When Gannamneni Ramaiah (PW 1) came to the rescue of the deceased, A-4 and A-6 assaulted him with coconut cutting knife. Thereafter, A-5 assaulted the deceased on his back by spear. A-7 stabbed the deceased on his right hip. A-8, A-10 and A-11 stabbed the deceased indiscriminately. As a result of the injuries, the deceased fell down and succumbed to his injuries. Choppalli Venkateswara Rao (PW 3) and Bolineni Krishna (PW 4) also came to the place of occurrence and had also seen the occurrence. Stating the aforesaid facts, a first information report was lodged at Narasaraopet Town police station on the same day at 8.30 p.m.

The police after registering the case took up investigation and on completion thereof submitted chargesheet against all the eleven accused persons, on receipt whereof, the learned magistrate took cognizance and committed the accused persons to the Court of Session to face trial.

Defence of the accused persons was that they were innocent, falsely implicated in the present case and no occurrence, much less the occurrence alleged, had taken place.

During trial, prosecution examined several witnesses and exhibited certain documents. Defence in support of its case has not examined any witness. As before the commencement of trial, accused Nos. 4 and 11 died and accused No. 7 remained absconder, the trial proceeded only against eight accused persons out of eleven. Upon conclusion of trial, the trial court convicted eight accused persons, as stated above. Thereafter, on appeals being preferred, while maintaining their conviction under Section 148 of the Penal Code, the High Court modified conviction of four appellants of Criminal Appeal No. 1122 of 2002 from 304 Part I/149 of the Penal Code to 302/149 of the Penal Code and acquitted the other four accused persons, which is subject matter of challenge by the State of Andhra Pradesh in Criminal Appeal No. 137 of 2004 and as Respondent No. 4 of the said appeal died during the pendency of the appeal, the same abated against him.

Prosecution, in support of its case, examined four eyewitnesses in all, namely, Gannamneni Ramaiah (PW 1), Daruvuri Subbarao (PW 2), Choppalli Venkateswara Rao (PW 3) and Bolineni Krishna (PW 4), out of whom PW-1 is the informant himself. He is an injured witness. His injuries were examined by

Dr. I.Jagannadha Reddy (PW 12) who found five injuries on different parts of his body. PW.1 is an independent villager and the prosecution case disclosed by him is supported by his subsequent statement made before the police as well as in court. He has supported the prosecution case in all material particulars and no infirmity could be pointed out in his evidence. PW-2 is nobody else than brother-in-law of the deceased. He had also gone to the police station along with PW-1 to lodge the first information report. He was accompanying the deceased on the scooter. His presence at the place of occurrence cannot be doubted. He has consistently supported the prosecution case in his statement made before the police as well as in court. The only ground of attack to his evidence was that he was related to the deceased. It is well settled that if evidence of a witness is otherwise trustworthy, merely because he is relation of the deceased, his evidence cannot be doubted. PWs 3 and 4 also claimed to be eyewitnesses to the occurrence and they have consistently supported the prosecution case in all material particulars. These two witnesses are independent villagers and no infirmity could be pointed out in their evidence.

Coming now to the medical evidence, the doctor who held postmortem examination on the dead body of Bolineni Raghavarao found fifteen injuries. In the opinion of the doctor, the same were caused by coconut cutting knife as well as spear. According to the postmortem report, two of the injuries on the head were fatal which are said to have been caused by A-1 and A-2. The postmortem report supports the prosecution case of inflicting injuries by the four appellants of Criminal Appeal No. 1122 of 2002 and in our view the High Court has not committed any error in convicting them under Section 302/149 of the Penal Code.

Turning now to the State's appeal, i.e., Criminal Appeal No. 137 of 2004, as respondent No. 4 died during the pendency of the appeal, we are required to consider cases of remaining three respondents, namely, Chava Sreenu (respondent No. 1), Chava Pullaiah (respondent No. 2) and Vempati Narayana (respondent No. 3). Out of these respondents, so far as respondent No. 1 is concerned, according to the prosecution case and evidence, he stabbed the deceased on his back with a spear but curiously enough, the doctor did not find any injury on the back of the deceased. So far as respondent No.2 is concerned, the allegations are that he inflicted injury in the stomach of the deceased with a coconut cutting knife but the doctor found injury in the stomach of the deceased caused by spear and no injury was found in the stomach by coconut cutting knife. From the aforesaid facts, as the prosecution case in relation to these two respondents is falsified by the postmortem report, the High Court recorded their acquittal. We find that the view taken by the High Court was not only possible but reasonable one and the same cannot be said to be perverse in any manner so as to be interfered with by this Court in exercise of powers under Article 136 of the Constitution.

Now remains the case of respondent No. 3 (A-8). The High Court recorded his acquittal by committing an error of record as if there was no allegation against him, which is factually incorrect. According to the first information report, A-8 stabbed the deceased indiscriminately. PWs 1, 2 and 3 consistently stated that A-8 along with others surrounded the deceased and stabbed him. PW-4 specifically stated that A-8 assaulted the deceased with knife. These facts clearly show that A-8 assaulted the deceased and statements of prosecution witnesses are consistent with the prosecution case disclosed in the first information report and the High Court has committed an error while acquitting this respondent stating that there was no allegation against him. As such, we are of the view that this respondent is also liable to be convicted under Section 302/149 of the Penal Code along with the appellants of Criminal Appeal No. 1122 of 2002. In view of the foregoing discussion, we are of the view that the prosecution has succeeded in proving its case beyond reasonable doubt against appellants of Criminal Appeal No. 1122 of 2002 and respondent No. 3 Vempati Narayana of Criminal Appeal No. 137 of 2004 as all of them committed an offence punishable under Section 302/149 of the Penal Code. Accordingly, Criminal Appeal No. 1122 of 2002 is dismissed. Criminal Appeal No. 137 of 2004 is dismissed in relation to Chava Sreenu (respondent No. 1) and Chava Pullaiah (respondent No. 2) and so far as Vempati

Venkateswarlu (respondent No. 4) is concerned, the same abated against him as he died during the pendency of the appeal. The appeal against respondent No. 3 \026 Vempati Narayana is allowed, the order of acquittal rendered by the High Court in relation to him is set aside and he is convicted under Section 302/149 of the Penal Code and sentenced to undergo imprisonment for life. He is further convicted under Section 148 of the Penal Code and sentenced to undergo rigorous imprisonment for a period of one year. Both the sentences, however, shall run concurrently. Bail bonds of this respondent are cancelled and he is directed to be taken into custody forthwith to serve out the remaining period of sentence for which compliance report must be sent to this Court within a period of one month from the date of receipt of order by the trial court.

JUDIS