

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 25 of 2007

Chakali Maddilety & Ors.

...Appellants

Versus

State of Andhra Pradesh

...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order of the High Court of Andhra Pradesh at Hyderabad, dated 9.3.2004, by which it has dismissed Criminal Appeal No. 289 of 2002, affirming the judgment and order dated 12.2.2002 passed by the Sessions Court, Kurnool in Sessions Case No. 830/1999, convicting the appellants under Sections 302 and 148 of the Indian Penal Code, 1860 (hereinafter called as "IPC") and sentencing them to undergo life imprisonment and one year R.I. respectively.

2. Facts and circumstances giving rise to this appeal are that accused (A1 to A7) and Harijana Ayyanna (hereinafter called as “deceased”) were residents of village G. Singavaram. On 8.2.1999 at about 7.30 PM, the deceased along with his wife Harijana Ayyamma (PW.2) and son, Harijana Ramakrishna (PW.1) went to the clinic of Dr. Ramana for treatment of Harijana Ayyamma (PW.2) and while they were coming back and reached near the house of Anjaneya Goud at about 8.00 p.m., accused (A1 to A7) suddenly appeared on the spot. A1, A3, A5, A6 and A7 were armed with daggers and A2 was armed with a stick. They surrounded the deceased and his son Harijana Ramakrishna (PW.1). A1 abused the deceased and stabbed on his back with a dagger causing injuries and then A2 to A7 carried the deceased towards the mosque and threw him on the road near it. A1, A3, A5, A6 and A7 stabbed the deceased on his chest, stomach and back with daggers. A2 beat the deceased with a stick and A4 caused injury on his head with a stone. Harijana Ramakrishna (PW.1) and Harijana Ayyamma (PW.2) made hue and cry as a result of which Harijana Sekhar (PW.3), P. Muniswamy (PW.4) and A.

Samuel (PW.5) reached the place of occurrence and all the accused fled away from there. PWs. 1 to 5 took the deceased in a vehicle to the Government Hospital, Kurnool, however, he succumbed to the injuries at about 9.30 p.m. Harijana Ramakrishna (PW.1), son of the deceased filed the F.I.R. (Ext. P-1) in Kurnool Taluk Police station and Crime No.16 of 1999 was registered. T.Naganna (PW.9), the Investigating Officer drew up the panchanama of the scene of offence and held an inquest on the dead body at the hospital in presence of witnesses Molakapogu Daveedu (PW.6) and Molakapogu Harijana Pakkiranna (PW.7) and the dead body was sent for post mortem. In the post mortem report, Dr. L.C. Obulesu (PW.10) found 13 ante-mortem injuries on the body of the deceased. After completing the investigation, T. Naganna (PW.9) filed the charge sheet against the accused persons and they were put to trial.

3. The learned Sessions Judge, Kurnool, after conclusion of the trial, found A1, A3, A5, A6 and A7 guilty of offences punishable under Sections 148 and 302 IPC. They were sentenced to life imprisonment and a fine of Rs.1,000/- each

for an offence punishable under Section 302 IPC and one year RI and fine of Rs.500/- each for an offence punishable under Section 148 IPC. However, both the sentences were directed to run concurrently. The Court acquitted A2 and A4 of all the charges.

4. Being aggrieved, the appellants preferred Criminal Appeal No.289 of 2002 before the High Court, which has been dismissed vide impugned judgment and order dated 9.3.2004. Hence, this appeal.

5. Shri R. Sundaravaradan, learned senior counsel appearing for the appellants, has submitted that in view of the evidence of alleged eye-witnesses, namely, Harijana Ramakrishna (PW.1) and Harijana Ayyamma (PW.2), two accused namely, Chakali Krishna (A2) and Chakali Sreenivasulu (A4) had been acquitted by the Trial Court. Harijana Sekhar (PW.3) and Muniswamy (PW.4) and A. Samuel (PW.5) had been disbelieved by the Trial Court. Molakapogu Daveedu (PW.6) and Molakapogu Harijana Pakkiranna (PW.7) turned hostile and did not support the prosecution. In fact, A2 and A4 had caused fatal injury No.1 on the head. In such

a fact-situation there was no occasion for the courts below to convict the appellants. More so, it is nobody's case that all the accused persons came with deadly weapons. Therefore, the question of application of the provisions of Section 148 IPC could not arise. The entire incident occurred in two parts. First, the deceased was hit near the house of Anjaneya Goud and a second time, when as alleged, the appellants caused serious injuries after taking the deceased in injured condition near the mosque. In case there is no evidence that all the appellants were armed with weapons at the time of the first part of the incident, in absence of any evidence that they had been supplied the arms by somebody else in between, question of causing serious injuries in the second part stands falsified. Had the incident been as alleged by the prosecution, at least, Harijana Ramakrishna (PW.1), son of the deceased, as he was 24 years of age, could have intervened and made attempt to protect his father. The incident occurred in a residential area, no independent witness was examined. All these factors have not been considered by the courts below in correct perspective. Therefore, the appeal deserves to be allowed.

6. On the contrary, Shri Anoop G. Choudhari, learned senior counsel appearing for the State, has submitted that two courts have recorded concurrent findings of fact. The Trial Court had an opportunity to examine the demeanour of the witnesses and assess their credibility. The Trial Court, after assessing the evidence on record, reached the conclusion that A2 and A4 had falsely been enroped in the crime. Therefore, they had been acquitted. However, on the basis of the depositions of Harijana Ramakrishna (PW.1) and Harijana Ayyamma (PW.2) the appellants have been convicted and the High Court has affirmed their conviction. The findings of fact as recorded by the courts below cannot be held to be so perverse as to warrant interference by this Court. Had Harijana Ramakrishna (PW.1), the son of the deceased tried to intervene and protect the deceased, there was a possibility of receiving grievous injuries or he could have also faced death at the hands of the appellants. The FIR has been lodged promptly. Appellants were known to the complainant. They had been named in the FIR. In such a fact-situation, appeal lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

8. Admittedly, FIR was lodged promptly within a period of 2 ½ hours, though, the distance between the place of occurrence and the police station was about 15 kms. All the appellants had been named therein. As per the post mortem report, following 13 ante-mortem injuries were found on the dead body of the deceased:-

“1. Lacerated wound on right side head, back part of parietal area. Obliquely placed 7 x 1 ½ cms x scalp layer deep with a fracture of left parietal bone 13 cms in width, contusion of brain with fracture of base of skull in mid cranial fossa 12 cms in length.

2. Incised wound on right eye-brow 4 x 1 cms x bone deep.

3. Stab wound on front of right side chest right nipple. Oblique, 4 ½ x 1 ½ cms x chest cavity deep cutting the 4th rib.

4. Stab wound on left side chest below left nipple obliquely 4 ½ x 1 ½ cms x chest cavity depth cutting ribs 4th and 5th.

5. Stab wound on front of right upper abdomen outer part $4 \times 1\frac{1}{2}$ cms x abdomen deep, cutting the intestines.

6. Stab wound on front of left side abdomen, near the midline, oblique, $4\frac{1}{2} \times 1\frac{1}{2}$ cms x abdomen cavity deep, cutting the liver.

7. Incised wound on back of left upper are near the shoulder $4 \times 1\frac{1}{2}$ cms x 3 cms muscle deep.

8. Abrasion with contusion on the back of left elbow and fore-arm 6×4 cms red in colour.

9. Incised wound on outer part of left leg near the knee $4 \times 1\frac{1}{2}$ cms x bone deep.

10. A stab wound on upper part of right buttock $4\frac{1}{2} \times 1\frac{1}{2} \times 5$ cms muscle deep.

11. A stab wound on the back of chest upper part, near the spine upper thoracic $4\frac{1}{2} \times 1\frac{1}{2}$ cms x vertebra deep.

12. Stab injuries 4 in number on the back of middle of chest 2 on right side of thoracic spine, 2 on left side measuring $4 \times 1\frac{1}{2}$ cms, $4\frac{1}{2} \times 1$ cms, $4\frac{1}{2} \times 1\frac{1}{2}$ cms, $4\frac{1}{2} \times 1$ cms chest cavity deep.

13. Stab wound on back left side chest lower and outer part obliquely $4\frac{1}{2} \times 1\frac{1}{2}$ cms x chest cavity the ribs and injured the left side lung tissues.

As per the medical evidence the cause of death was shock and hemorrhage due to multiple injuries.

9. The Trial Court, after appreciating the evidence on record, came to the conclusion that the FIR had been lodged most promptly and all the appellants were named therein. An earlier incident had occurred on 4.11.1998 between the deceased and A1 & A5, thus the deceased was inimical to them. Harijana Sekhar (PW.3), Muniswamy (PW.4) and A.Samuel (PW.5) came to the spot after hearing the hue and cry made by Harijana Ramakrishna (PW.1) and Harijana Ayyamma (PW.2), thus they could not be eye-witnesses of the actual incident. Therefore, the Trial Court brushed aside their depositions. Molakapogu Daveedu (PW.6) and Molakapogu Harijana Pakkiranna (PW.7), who were the witnesses of inquest on the dead body, were declared hostile and, therefore, they did not support the case of the prosecution. The Trial Court came to the conclusion that in spite of the fact that Harijana Ramakrishna (PW.1) and Harijana Ayyamma (PW.2)

were family members of the deceased and a dispute had arisen on 4.11.1998, few days before the incident, between the deceased and Chakali Maddilety (A1) and Chakali Lakshmananna (A5), though there may be a possibility to enrope some persons falsely, the question of leaving the real culprits for causing the death of the deceased out of the FIR could not arise. All the persons involved in the case were from the same village. There was no contradiction in the version in the FIR and the statement under Section 161 of Code of Criminal Procedure, 1973, of PW.1 and PW.2 and the case also stood corroborated by the medical evidence. Therefore, the Trial Court acquitted Chakali Krishna (A2) and Chakali Sreenivasulu (A4) in view of the fact that there was no evidence of the deceased being hit by stone and stick. The depositions of close relatives cannot be discarded merely because they are relatives, but their evidence has to be considered with due care and caution. In a case like this, independent witnesses may not come forward to depose, as out of fear, people prefer to run away from the place of occurrence and avoid witnessing the crime, but that does not

mean that the case can be discarded only on the ground of non-examination of independent witnesses of the locality.

10. The Trial Court considered the application of Section 148

IPC elaborately and held:

“With regard to participation of A1, A3, A5 to A7, PW1, PW2 who are the eye witness who actually witnessed the incident specifically stated that A1 and A3, A5 to A7, formed into an unlawful assembly to commit rioting and A1 stabbed Ayyanna on his back with a dagger at first place of occurrence itself. The medical evidence of PW10 who conducted P.M. examination over the dead body of deceased also shows that he found an incised wound on the back of left upper arm near the shoulder 4 x 1 ½ cms muscle deep in size under injury No. 1. So, the injury No. 7 mentioned in Ex. P14 P.M.report is the injury said to have caused on the back of deceased by A1 with dagger. Therefore, the medical evidence is totally corroborating the ocular testimony PW1, PW2 with regard to stab injury caused on the back of deceased by A1 in front of the house of Ediga Anjhaneyulu Goud. In Ex.P1 complaint also, PW1/complainant specifically mentioned, that A1 stabbed the deceased on back with a dagger pushing him aside and his mother (PW2) aside. Therefore, basing on the consistent evidence of PW1, PW2 coupled with medical evidence of PW10 and Ex. P14 it

can safely be held that A1, A3, A5 to A7 formed into an unlawful assembly to commit rioting against Ayyanna, in prosecution of common object, A1 stabbed Ayyanna (deceased) thereby A1, A3, A5 to A7 committed the offence punishable under Sec. 148 of IPC. Accordingly, they are liable to be convicted.

Regarding 2nd incident of murderous assault against Ayyanna (deceased) PW1, PW2 specifically deposed that all the accused stabbed Ayyanna (deceased) indiscriminately. In such case, it is very difficult to attribute any specific overt acts against any of the accused. The overt acts theory cannot be applied, when more number of persons stabbed a single individual indiscriminately. The medical evidence under Ex.P14 and oral evidence of PW10 also lending support to the ocular testimony of PW1, PW2. The P.M. Doctor PW10 found as many as 13 injuries, out of the said injuries, injury No. 2 to 7 and 9 to 13 are stab and incised wound with similar measurements. Therefore, all the above injuries 2 to 7 and 9 to 13 could have been caused with same type of weapon and said fact was spoken by PW10 in his evidence.”

Thus, the case to the extent that the appellants stabbed the deceased with dagger and knife stood proved.

11. The High Court considered the issue of application of Section 148 IPC and observed:

“The first issue that arises for consideration is whether the offence under Section 148 IPC is made out against the accused. The evidence of PWs. 1 and 2 clearly establishes that the accused, who were in inimical terms with the deceased and PW.1, were all at the scene on the night of the incident and they have virtually encircled them duly armed with daggers and stick. It is also the evidence of PWs 1 and 2 in categorical terms that the accused even gave blow with the daggers on the back of the deceased and thereafter they lifted the deceased bodily and took him near the mosque by which time on account of the cries of PWs. 1 and 2, PWs. 3 to 5 came at the scene. Under those circumstances the finding of the learned Ist Additional District and Sessions Judge, Kurnool that the offence under Section 148 IPC established, cannot be found fault with.”

12. We have been taken through the evidence of Harijana Ramakrishna (PW.1) and Harijana Ayyamma (PW.2) and they had been consistent that the accused were armed with daggers and knives. They encircled the deceased and Harijana Ramakrishna (PW.1) and caused injuries to the deceased. Their version stands fully corroborated by the medical evidence. Thus, we do not find any cogent reason to interfere with the concurrent findings of fact on this issue. The Submission made by Shri Sundaravaradan, learned senior counsel, has no merit and thus not worth acceptance.

On other issues both the courts below have considered the submissions made by the defence and rejected them. We are in full agreement with the said findings of fact.

13. In view of the above, we are of the considered opinion that the present case does not warrant any review of the judgments and orders of the courts below. The appeal lacks merit and is accordingly dismissed.

.....J.
(P. SATHASIVAM)

New Delhi,
August 16, 2010

.....J.
(Dr. B.S. CHAUHAN)