

CASE NO.:  
Appeal (crl.) 1193 of 1995

PETITIONER:  
Pamula Saraswathi

RESPONDENT:  
The State of Andhra Pradesh & Others

DATE OF JUDGMENT: 18/02/2003

BENCH:  
S.N. Variava & Arun Kumar

JUDGMENT:  
J U D G M E N T

Variava, J.

This appeal is against the judgment dated 8th October, 1993.

Briefly stated the facts are as follows:

The case of the prosecution was that on 21st September, 1991, 10 persons (who were arraigned as accused before the trial Court), formed an unlawful assembly and committed murder of one Pamula Narayan. It is the case of the prosecution that they committed theft of Rs.8,000/- from the person of the deceased and also attacked and caused injuries to the wife of the deceased and committed theft of ear-studs of the wife of the deceased. The 10 accused were therefore charged for offences under Section 148, 324, 326, 379 and 302 IPC. Unfortunately no charge was framed either under Section 34 or 149 IPC.

The only eye-witness account was that wife of the deceased. She was examined as PW.1. She deposes that Accused No.1 (who is Respondent No.1 here) hacked the deceased on the left side of the fore-head and below the left knee-joint. She deposes that Accused No.2 (who is Respondent No.3 here) hacked the deceased on the right side fore-head and on right shoulder. She deposes that Accused No.6 (who is Respondent No.4 herein) hacked the deceased on the head and left side of the fore-head. She deposes that Accused No.3 hit the deceased with an axe on the right side ribs. Thus she attributes overt acts to each of these four persons. She specifies the injuries caused by each one of them.

The Doctor who conducted the post-mortem was examined as PW.10. The post-mortem report shows the following injuries:

"External injuries:

1. Incised injury 2x1/2x1/2 inches over left parietal region.
2. Incised injury 1/2x1/4x1/4 inches over right side of fore head.
3. Skin contusion red, 1x1/4" over left side of the forehead.
4. Skin contusion 1x1 inches over left shoulder,
5. Two skin contusions red in colour each 2"x1" over lumbar vertebra.
6. Skin contusion 1x1 inches over posterior border of left axilla.
7. Skin contusion 1x1 inches over middle 1/3rd of posterior aspect of left arm red in colour.
8. Multiple small abrasions over lower 1/3rd of right side of chest.

9. Abrasion 1/2" long just below posterior aspect of right elbow.
10. Skin contusion 1/2 x 1/2 inches red in colour over lateral aspect of lower 1/3rd of right fore arm.
11. Laceration 1/2 x 1/4 inches x 1/2 inches over posterior aspect of left elbow.
12. Skin contusion, red 1/2x1/2 inches over posterior aspect of left elbow.
13. Skin contusion red in colour 1/2 x 1/2 inches over lateral aspect of upper 1/3rd of left thigh.
14. Three skin contusions red in colour each 1/2x1/2 inches over lateral aspect of left knee.
15. Abrasion 3" long over upper 1/3rd of on front of right thigh.
16. Skin contusion 1x1 inch red over right knee
17. Skin contusion red 2x2 inches over lateral aspect of lower part of right side of chest
18. Skin contusion red 1x1 inches with multiple small abrasions over posterior part of middle 1/3rd of right side of chest.

Internal appearances:-

12th rib is fractured over right side with injury to IVC. (inferior Vena Cava). Blood clots and blood are found in abdominal cavity volume about 3 litres. Stomach is empty. Other internal organs like heart, lungs, liver, spleen, kidneys and intestines are normal. Brain is normal."

The Doctor opined that the death was due to acute haemorrhage and shock due to injury to the inferior vena cava. The Doctor does not depose, and there is no evidence, that any of the other injuries and particularly injuries No.1 and 2 were such that in the normal course would have resulted in death. As noted above in the opinion of the Doctor death was a result of the blow to the rib of the deceased. That blow, according to the deposition of PW.1, was given by Accused No.3.

The trial Court acquitted all except A-1, A-2 and A-6, (i.e., three Respondents before this Court). We have read the judgment of the trial Court. The trial Court has believed the evidence of PW.1 i.e. the eye-witness. We cannot fathom how A-3 was still acquitted by the trial Court. We also find that the trial Court has convicted these three Respondents under Section 302 simplicitor i.e. without the aid of Section 34 or 149 IPC. The trial Court also convicted them under Sections 324 and 379 IPC also.

The State filed no appeal against the acquittal of the other accused persons. The Appellant also did not file any Appeal. The Respondents (herein) filed an Appeal against their conviction. The High Court also believed the evidence of PW.1. The High Court then held as follows:

"Most of the injuries found are on non-vital parts of the deceased and they are simple. As such we find that they cannot be said to have intended to cause the death or would have had the knowledge that the injuries caused by them would result in the death of the deceased. We, therefore, find the appellants guilty of offence under Sec.324 IPC."

The High Court then set aside the conviction under Section 302 but maintained sentence under Section 324 and sentenced them for a period of two years. The High Court also maintained the sentence under Section 379 and sentenced them for a period of two years.

The State has not filed any Appeal. However, the Appellants have come to this Court against the judgment of the High Court. As noted above, the overt act, which resulted in death, was attributed to Accused No.3. He has been acquitted. No Appeal was filed against that acquittal. This Court, cannot, at this stage interfere with that acquittal. The Respondents (herein) were not charged under Section 302 read with Section 34 or Section 149 IPC. The High Court was thus right in setting aside their conviction under Section 302 IPC. The High Court is obviously referring to injuries other than the one on the rib when it states that they are on non-vital parts. By terming the other injuries as simple the High Court is obviously meaning that they are not grievous as defined in Section 320 IPC. Also the High Court has obviously kept in mind the fact that there is no evidence on record that any of the other injuries were such as would, in the ordinary course, have resulted in death. Thus, we see no reason to interfere with the conviction. However, in our view, this is a fit case where the High Court should have imposed fine upon the Respondents and should have invoked the provision of Section 357 of the Code of Criminal Procedure. It is proved that Respondents were responsible for theft of Rs.8,000/- and ear studs of PW.1. PW.1 has also lost her husband who was the main earning member. Therefore, over and above the sentence imposed by the High Court, we also impose fine on each of the Respondents in a sum of Rs.10,000/- (ten thousand) each. In default of payment of fine they shall undergo a further period of one year each. In case the fine or any part thereof is recovered, the same shall be paid over to PW.1

The Appeal stands disposed off accordingly.