

CASE NO.:
Appeal (crl.) 249 of 2001
Appeal (crl.) 742 of 2002

PETITIONER:
MOHD. YAKUB @ PEDDA YAKUB

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 30/07/2002

BENCH:
R.C. LAHOTI & BRIJESH KUMAR

JUDGMENT:

R.C. Lahoti, J.

Leave granted in SLP(Crl.) No.2899/01.

Mohd. Yakub @ Pedda Yakub (accused no.4) and Nelluri Kondalu @ Maliyadri (accused no.6) have both been held guilty of the offence punishable under Section 302 IPC as also under Section 148 IPC. Each of them has been sentenced to imprisonment for life under Section 302 IPC and rigorous imprisonment for one year under Section 148 IPC. The two accused have preferred two appeals by special leave.

There were eight accused persons before the Sessions Court tried on charges under Sections 302, 147 and 148 IPC. Accused nos.7 and 8 were charged under Section 304-II/149 IPC. During the trial accused nos.2 and 5 died and the trial proceeded against six accused persons only. Four accused other than the two before us, have not challenged the judgment of the High Court. We are therefore concerned with dealing the cases of two accused persons only.

The deceased and the accused persons were friends. The deceased and Mohd. Ghouse, the accused No.1 - both had illicit intimacy with a lady Home Guard whose brother is PW1. This led to relations between the deceased and the accused no.1 becoming strained. On 14.10.1993 shortly after the mid-day PW1, PW2, PW4 and two others including the deceased had gone to theatre to see a matinee show. When they came out, accused no.1 dealt a blow on the forehead of the deceased with an iron rod. The deceased started running for his life towards police club. Accused nos.2 to 8 who were lying in wait chased the deceased and attacked him. The accused persons were differently armed. The deceased sustained several injuries. As the post-mortem report reveals there were six lacerated wounds, one contusion and 10 incised wounds spread over different parts of the body of the deceased. Out of these injuries an incised wound 3" x 2" x 1" was situated over left side of the chest and an incised wound 11/2" x 1/4" x 1/4" was situated over left upper part of the abdomen. Both the injuries were caused by sharp objects. Each of the two accused-appellants before us was armed with a knife which was used by him. The injury on left side of the chest of the deceased is attributed to accused 6 while the injury on left upper part of the abdomen of the deceased is attributed to accused - 4. The medical evidence is that the death of the victim was caused on account of injury to vital organs, i.e., heart and lung which injuries were sufficient in the ordinary course of nature to cause death.

It is not necessary for us to deal with evidence in details inasmuch as there are four eye-witnesses to the incident whose testimony has been examined in very many details by the Sessions Judge as also by the High Court and both the Courts have found proved beyond any reasonable doubt the participation of all the accused persons in the incident and the two accused-appellants before us having caused the two injuries attributed to them. Though the learned counsel for the two appellants have read the evidence of the eye-witnesses and offered

d some criticism thereof, however, in spite of giving our anxious consideration to the submissions made by the learned counsel for the two appellants we are satisfied that no fault can be found with the finding arrived at by the Sessions Court and upheld by the High Court. The participation of all the accused persons, including the two appellants before us, in the incident is amply proved. All the accused persons had formed an unlawful assembly, the members whereof were armed with deadly weapons. The two accused appellants had aimed at vital organs of the body of the deceased while inflicting injuries and the injuries caused by them have proved to be fatal. The attack by the accused persons was indiscriminate and they were determined to kill the deceased. While inflicting injuries they chased the deceased and did not allow him to escape and they continued to assault him even after he had fallen on the ground. In this background alternative submission of the learned counsel for the appellants that the conviction of the two accused-appellants should have been under Section 304 Part II of the IPC as they have been found to have inflicted only one injury each while the deceased has died on account of multiple injuries suffered by him, cannot be accepted. However, in our opinion the accused appellants should have been convicted more appropriately under Section 302 read with 149 IPC rather than under Section 302 IPC alone.

For the foregoing reasons the conviction of the accused appellants under Section 302 IPC is altered to one under Section 302/149 IPC and except for this variation the appeals are dismissed. The sentences passed on the two accused-appellants are maintained.