

CASE NO.:
Appeal (crl.) 603 of 2002

PETITIONER:
Vajrapu Sambayya Naidu & Ors.

RESPONDENT:
Vs.
State of A. P. & Ors.

DATE OF JUDGMENT: 02/09/2003

BENCH:
N. Santosh Hegde & B. P. Singh.

JUDGMENT:
JUDGMENT

B.P. SINGH, J.

In this appeal by special leave, the appellants have impugned the judgment and order of the High Court of Judicature, Andhra Pradesh at Hyderabad dated 28th September, 2001 in Criminal Appeal No. 650 of 1995. They have challenged their convictions under Sections 304 Part-I, 324 and 148 IPC. The appellants herein were accused Nos. 2, 3, 5, 6, 7, 8, 9, 10 and 12 before the trial court. All of them have been sentenced to undergo one year rigorous imprisonment under Section 148 IPC. A-2, A-3, and A-7 have been sentenced by the High Court to undergo three years rigorous imprisonment under Section 304 Part-I IPC. A-7 and A-10 have been sentenced to undergo one year rigorous imprisonment under Section 324 IPC. All of them have also been sentenced to pay fines under different counts and to undergo imprisonment in default. As many as 21 persons were put up for trial before the III Additional District & Sessions Judge, Visakhapatnam in Sessions Case No. 25 of 1993. Pending the trial, accused No. 13 died and therefore the trial as against him abated. Accused A-11 and A-14 to A-21 were acquitted of the charges levelled against them. Thus, 11 persons were convicted by the trial court, who preferred an appeal before the High Court which was dismissed subject to modification of sentence under Section 304 Part-I IPC which was reduced by the High Court from seven years rigorous imprisonment to three years rigorous imprisonment. A-1 and A-4 though convicted by the High Court have not preferred appeals to this Court and only the remaining nine accused have preferred this appeal.

The case of the prosecution is that at about 11.30 a.m. on 23rd July, 1992 an incident took place in village Ponnayolu in which deceased Lanka Gangaraju lost his life and PWs. 1 to 6 were injured. The accused numbering 21 had formed themselves into an unlawful assembly and assaulted the deceased and other members of the prosecution party, namely, PWs. 1 to 6. It is not in dispute that the deceased had purchased 2.50 Acres of land from one Satyalingam, the brother of Suribabu. Adjacent to the lands purchased by the deceased, Suribabu owned 2.50 acres of land which he had sold to A-13. The case of the prosecution is that even the lands sold to A-13 were in the cultivating possession of the deceased as a lessee despite the sale of the land in favour of A-13. There was pending litigation between the parties relating to the purchase of the land by A-13. The deceased had raised chilli crop in one portion of that land while other crops had been raised in the remaining portion of the land in dispute. The case of the prosecution is that at about 11.00 a.m. on 23rd July, 1992 the deceased along with his son-in-law, PW-1, his grand son,

PW-2, and his daughter, PW-3 was carrying out the weeding operations on the portion of the land where chilli crop had been raised. PWs. 5 and 6 had also come to collect grass. Soon thereafter, the accused numbering about 20 came there with a ram and packets of arrack. They kept the ram in the shed of A-13 which was at a distance of about 100 yards away from their field. The accused thereafter came to the hut of the deceased near the land on which chilli crop had been grown. They were drunk and also armed with knives and sticks. A-1 and A-4 (not appellants herein) questioned the deceased alleging that they had purchased the land from A-13 and they would take possession of the land by use of force. A-1 and A-4, who were armed with knives, caused injuries to the deceased on his head as a result of which he fell down. Thereafter, A-2, A-3, A-7 and A-12 assaulted the deceased on his hands, legs and other parts of the body with sticks. PW-1 attempted to run away from the place of occurrence but A-1 chased him and assaulted him with a knife on his hands as a result of which he fell down. Thereafter, A-2, A-4, A-7 and A-12 assaulted him with sticks. When PW-3, wife of PW-1 attempted to save her husband, A-2, A-3, A-7 and A-12 beat her with sticks while A-5 kicked her on her abdomen. A-1 to A-4, A-6 and A-8 assaulted PW-4 with sticks. In the incident, PWs. 1 to 6 received injuries.

At about 2.00 p.m. the injured were taken to the Kothakota Police Station from where they were taken to the Government hospital for treatment. PW-14, the Head Constable, who was then Incharge of the Police Station, recorded the statements of PW-1 in the hospital and on the basis of report registered Crime No. 20 of 1992 under Sections 147, 148, 302, 307, 326 and 324 r/w Section 149 IPC.

On returning to the Police Station, he found that some members of the defence party had also come to the Police Station and of them A-1, A-9 and A-12 were injured. They were taken by him to the hospital and on the basis of the statement of A-1 he registered Crime No. 21 of 1992 under Sections 147, 148, 324 r/w Section 149 IPC.

PW-15, the Inspector of Police, Itchapuram, took over investigation of the case and proceeded to the hospital where he examined PWs. 1 to 6 and seized their blood stained clothes. He also recorded the statements of the injured accused namely A-1, A-9 and A-12. He took further steps in the course of investigation.

The body of deceased, Gangaraju, was sent to the Government hospital Narsipatnam for post mortem examination which was conducted by PW-12. The post mortem report was marked as Ex. P-11. The injured witnesses were also examined by PW-11 at Government dispensary, Kothakota. The same doctor also examined the injuries of A-1, A-9 and A-12. Ultimately, the accused were arrested and put up for trial before the III Additional District & Sessions Judge, Visakhapatnam in Sessions Case No. 25 of 1993.

As many as 18 charges were framed against the 21 accused persons under Sections 148, 447, 302, 302 r/w 149, 307, 307 r/w 149, 324 and 427 IPC. As earlier noticed, the trial court acquitted 9 of the accused persons of all the charges leveled against them. A-13 died during the pendency of the trial and therefore the trial as against him abated. A-1 to A-10 and A-12 were convicted by the trial court under different sections of the IPC, as noticed earlier. A-1 and A-4 have not preferred appeals before this Court.

Shorn of unnecessary details, the defence case was that the land in dispute originally belonged to Suribabu which was purchased by A-13 who later sold it to A-4. The deceased was in cultivating possession of the said land and therefore A-13 initiated a proceeding for his eviction from the land in question before the Court of Principal District Munsif being A.T.C. No. 3 of 1985. The said proceeding

resulted in an order of eviction against the deceased. A-13 pursued the matter further in execution and on 13th May, 1992 actual delivery of possession was effected by the Amin in E.P. No. 37 of 1992. After delivery of possession, A-13 came in actual possession of the lands in question which remained under his occupation thereafter. The case of the defence further is that apprehending disturbance at the hands of the deceased a proceeding under Section 144 Cr. P.C. was initiated being M.C. No. 3 of 1992 against the deceased and members of his party. On 18th June, 1992 an order was passed in the 144 Cr. P.C. proceeding against the deceased and members of his party.

The defence case is that on the date of occurrence the deceased attempted to forcibly occupy the land of which possession had been delivered to A-13 through process of court. When A-13 and others protested against the high handedness of the deceased, they were assaulted by the members of the prosecution party with sharp cutting weapons as a result of which A-1, A-9 and A-12 suffered injuries. The prosecution party was the aggressor, and when the members of the defence party sought to exercise their right of private defence of property, they were attacked by them as a result of which they were compelled to defend themselves. It was, in these circumstances, that the occurrence took place. In this way, the accused claimed right of private defence of property as well as right of private defence of person.

The post mortem report discloses that deceased, Gangaraju, had suffered 12 injuries, which in the opinion of the doctor were cumulatively sufficient to cause death in ordinary course of nature. Two of the injuries on the right and left fore arm were caused by sharp cutting weapon while the lacerated injuries could have been caused by sticks. There was no fracture of the skull though there were 4 lacerations on the skull region, as noticed in the post mortem report. It is not the case of the prosecution that any one of the injuries was sufficient in the ordinary course of nature to cause death. Apart from the 4 injuries on the skull region, the remaining 8 injuries were on non vital parts of the body, primarily on the limbs. Two of the injuries, namely, injury Nos. 4 and 6 were stab injuries on the right and left forearm. The trial court, on perusal of the evidence on record, came to the conclusion that apart from injuries 4 and 6, which could have been caused by a sharp cutting weapon, the other injuries were only lacerated injuries which could not have been caused by a knife or any other sharp edged weapon, and apparently were caused by sticks.

So far as injuries on A-2, A-9 and A-12 are concerned, the doctor, PW-11, found that A-2 had injury on the thigh over lateral aspect above the knee joint and A-9 had also suffered 2 incised injuries.

The trial court considering the charge under Section 447 IPC held that A-13 had purchased the disputed land from Suribabu. After the purchase, he filed an eviction case against the deceased under the Andhra Tenancy Act being A.T.C. No. 3 of 1985. The said proceeding resulted in favour of A-13 and an order of eviction was passed against the deceased. Thereafter, A-13 executed the order in E.P. No. 37 of 1992. The delivery of possession was effected on 13th May, 1992. The court recorded a categorical finding that actual delivery of possession of the land was effected on 13th May, 1992 as there was overwhelming evidence, including documentary evidence, which established beyond doubt that actual delivery of possession took place on 13th May, 1992. The court referred to the proceeding recorded by the Amin showing actual delivery of possession in the said proceeding. It, therefore, held that the case set up by the prosecution party that it was in possession of the land in question was doubtful, while on the other hand, there was positive evidence with regard to possession of A-13 over the disputed property. Thus, it could not be said that the members of the defence party including

A-13 committed trespass punishable under Section 447 IPC since the land in question was in their actual possession. The court accordingly held that the charge under Section 447 was not proved and the accused persons were entitled to be acquitted under that charge.

The trial court then considered the charge under Section 148 IPC. On the basis of the evidence on record it came to the conclusion that A-1 to A-10 and A-12 were the persons whose presence was established and who had taken part in the assault on the prosecution party. It then observed that though at the time of coming to the field they did not have any mens rea to commit an offence, their subsequent acts clearly brought them under the Explanation to Section 141 IPC, meaning thereby, though the assembly was not unlawful at its inception, it subsequently became an unlawful assembly. It was further held that these accused persons did not intend to cause the death of Gangaraju and their only object to begin with was to preserve possession of the property which was under the control of A-13. However, since A-1 and A-4 were armed with knives and A-2, A-3, A-5, A-6, A-7, A-8, A-9, A-10 and A-12 were armed with sticks which are weapons of offence and which were used in the course of the incident resulting in the death of Gangaraju, these accused persons were guilty of an offence under Section 148 IPC. The finding recorded by the trial judge is not very clear but on a fair reading of the judgment, it appears that in his view, the common object of the assembly to begin with was to defend the possession of A-13, which was not unlawful, but when they used their weapons and assaulted the members of the prosecution party resulting in the death of one person, the assembly which was at its inception lawful had become unlawful because their common object then was one "of excluding the intervention of Gangaraju and if necessary by use of force". One may infer from the finding of the trial court that in its opinion the assembly had not become unlawful as long as they did not use force to defend the possession of A-13, but once they started using force and indulged in assault on the members of the prosecution party, the assembly became unlawful. On this reasoning, the trial court found the aforesaid accused persons guilty of the offence under Section 148 IPC.

Considering the charge under Section 302 IPC, framed against Accused 1 to 4, 7 and 12, and under Section 302 read with Section 149 as against the other accused, the trial court considered the injuries suffered by the deceased. It found that the injuries suffered on the head were not caused by a sharp cutting weapon while injuries 4 and 6 were stab wounds caused on the right and left fore arm of the deceased which could have been caused by sharp cutting weapon. Apart from these two injuries, the other injuries were in the nature of abrasions or lacerations which could be caused by a hard blunt substance. It also noticed the opinion of the doctor that the injuries cumulatively were sufficient to cause death in the ordinary course of nature. No injury by itself was sufficient to cause death in the ordinary course of nature. Considering the question, as to which of the accused had caused which particular injury, after going through the evidence of eye witnesses, it came to the conclusion that though their evidence was not consistent, it certainly revealed that accused 1 to 4 and 7 had participated in causing injuries to the deceased. The participation of accused No. 12 was somewhat doubtful. The remaining accused were entitled to the benefit of doubt. It noticed the submission urged on behalf of the accused that even accused Nos. 2, 9 and 12 had suffered several injuries, though simple in nature, but caused by a sharp cutting weapon and the prosecution had not offered any explanation as to how those injuries were caused. It came to the conclusion that no specific injury could be attributed to any particular accused. The medical evidence disclosed that injuries 4 and 6 were caused by a sharp cutting weapon and the injuries on the parietal

region and other parts of the head were only lacerated injuries which could not be caused by a sharp cutting weapon. Yet the eye witnesses had attributed the head injuries to accused 1 and 4, who are said to have been armed with knives such as M.O. 3. It concluded that when so many persons surrounded the deceased and assaulted him, it would be futile to contend that any of the witnesses could have noticed which specific injury was caused by which particular accused. It did not therefore accept the evidence of the witnesses with regard to the causing of specific injuries by any particular accused. Moreover, the medical evidence on record was to the effect that the deceased died not on account of any particular injury, but on account of the cumulative effect of all injuries. In the opinion of the trial court, death resulted on account of excessive loss of blood. Having recorded these findings and keeping in mind its earlier finding that the accused were not guilty of the offence under Section 447 IPC, the trial court concluded that the accused had the right of private defence of property, namely, to defend their possession so that the deceased and his party men did not interfere with their possession. It, however, went on to hold that while exercising their right of private defence of property they exceeded their right by causing the death of the deceased by assaulting him. Therefore, while giving to the remaining accused the benefit of doubt, the trial court found accused 1 to 4 and 7 guilty of the offence under Section 304 Part I IPC, instead of Section 302 IPC.

After examining the role played by the different accused persons the trial court also found A-1, A-7 and A-10 guilty of the offence under Section 324 IPC.

The appellants herein as well as A-1 and A-4 preferred an appeal before the High Court of Judicature, Andhra Pradesh at Hyderabad being Criminal Appeal No. 650 of 1995. The High Court after noticing the evidence on record and the plea of accused and the findings recorded by the trial court held that though the land in question had been purchased by A-13, the same was under the cultivation of the deceased. Even if A-13 obtained an order for the eviction of the deceased in E.P. No. 37 of 1992, that was mere paper delivery of possession and on that basis it could not be said that A-13 was in actual physical possession of the land which was under the cultivation of the deceased and his family members. As regards the order passed under Section 144 Cr. P.C., the High Court observed that even though such an order was obtained only a day before the occurrence, that did not show that the land was under the cultivation of either A-13, A-1 or A-4. The High Court concluded by observing: "Though there is much to say that even after the defeat in the legal battle, the deceased himself was in actual possession, I am not inclined to reopen the charges on which the accused are acquitted." The High Court, therefore, proceeded on the basis that the deceased and his family members were cultivating the disputed land and they had raised the chilly crop therein and it was the defence party led by A-13, A-1 and A-4 which went to the land in question, armed with weapons, and attacked the victims. Though, A-13 was the lawful owner of the land, he could not be permitted to take actual physical possession of the land by taking the law into his own hands. Therefore, the aggression committed by him and his party members was not justified. In this view of the matter, the High Court upheld the conviction of the appellants under Section 304 Part I IPC, but in the facts of the case, reduced the sentence under Section 304 Part I IPC from seven years rigorous imprisonment to three years rigorous imprisonment, while maintaining the sentence of fine and sentence in default of payment of fine.

The judgment and order passed by the High Court has been challenged by the appellants herein. A-1 and A-4, who were appellants before the High Court, have not preferred appeals before

this Court, as earlier noticed.

The crucial question which arose for determination in the case was one relating to the possession of the land in question. The trial court found that the appellants were not guilty of trespass punishable under Section 447 IPC on a finding that A-13, A-1 and A-4 were in actual physical possession of the land in question. The High Court has not set aside this finding, but has, all the same, doubted the correctness of this finding and proceeded on that basis. In our view, the High Court was not justified in doing so. The trial court noticed the evidence on record which conclusively established that A-13 had purchased the land in question from Suribabu. The land was then in possession of the deceased. A-13, therefore, initiated a proceeding for the eviction of the deceased and in that proceeding an order of eviction was passed. If nothing further happened, one can find justification for the finding of the High Court that A-13 was only the legal owner of the property in question, though not in actual possession thereof, and possession was still with the deceased. A-13, however, was not content merely with obtaining an order of eviction. The order was sought to be executed in E.P. No. 37 of 1992 and pursuant to the proceeding of the Court of Principal District Munsif in execution and the report of the Amin in the delivery of possession proceeding, on 13th May, 1992 actual delivery of possession took place. This evidence has been accepted by the trial court and we find no fault with the finding of the trial court. The evidence on record is of unimpeachable character and clearly established that the order of eviction was followed by execution proceeding in which actual delivery of possession was effected and A-13 came in possession of the land which is evidenced by the report of the Amin. Therefore, the High Court fell into an error in proceeding on the assumption that the possession given to A-13 was mere paper possession. Not only this, there was even an order passed by the Magistrate under Section 144 of the Code of Criminal Procedure against the deceased. We, therefore, hold that on the basis of the material on record the trial court was justified in recording the finding that A-13, A-1 and A-4 were in actual physical possession of the land in question. The High Court was not justified in setting aside this finding in view of the unimpeachable evidence on record.

Once it is held that it was the defence party which was in possession of the land in question, the complexion of the entire case changes because in such event the appellants cannot be held to be the aggressors. In fact, the trial court also found that the appellants were only defending their possession against the deceased and his family members. The defence case is, therefore, probalised, that they were defending their possession when members of the prosecution party sought to dispossess them by use of force. It was not disputed before us, and it cannot be disputed in view of the clear evidence on record, that three of the appellants, namely, A-2, A-9 and A-12 also received injuries in the same incident and they were also got medically examined by the investigating officer the same day. It was found that they had also suffered several injuries caused by sharp cutting weapons. These injuries have not been explained by the prosecution, which further probalises the case of the defence that the prosecution party was the aggressor. If the defence party was in possession of the land in question, there was really no reason for it to commit the aggression, and if at all it was the prosecution party which could have attempted to dispossess the appellants herein by use of force.

The trial court came to the conclusion that the members of the defence party though they had a right of private defence of property, had exceeded that right by causing injuries which ultimately resulted in the death of one of the members of the prosecution party. This was on the assumption that the members of the defence party had only a right of private defence of property, which did not entitle them to

cause the death of any person in the exercise of that right. But the facts of this case disclose that when they sought to exercise their right of private defence of property, they were attacked by the members of the prosecution party and three of them suffered incised wounds. The case of the defence in this regard appears to be probable and therefore though initially the appellants had only the right of private defence of property, once the members of the prosecution party started an assault on them with sharp cutting weapons, that gave rise to the right of private defence of person as well. Since in the circumstances, they must have apprehended that atleast grievous injury may be caused to them, if not death, they were certainly entitled to use reasonable force to resist the members of the prosecution party and their right of private defence extended to causing death of any of the aggressors if that became necessary. Unfortunately, the courts below have not viewed the case from this angle. We are of the view that the appellants were entitled to exercise their right of private defence of property as well as of person in the facts and circumstances of the case.

Even assuming that the right of private defence of persons did not accrue to the appellants and that, in fact, they exceeded their right of private defence of property, it has to be seen as to which of the accused exceeded that right. It is well settled that in a case where the court comes to the conclusion that the members of the defence party exceeded the right of private defence, the court must identify and punish only those who have exceeded the right. Section 34/149 IPC will not be applicable in the case of persons exercising their right of private defence. [See : State of Bihar v. Mathu Pandey 1970 (1) SCR 358 and Subramani v. State of Tamil Nadu 2002 (7) SCC 210]. For the same reason, the appellants cannot be held guilty of the offence under Section 148 IPC, because nothing is an offence which is done in the exercise of the right of private defence.

In the instant case, the trial court clearly recorded a finding that it was not possible to find as to which accused caused which injury to the deceased. The trial court did not accept the evidence of the prosecution witnesses in this regard, which in any event, was not consistent. The medical evidence on record is to the effect that the death was the result of the cumulative effect of all the injuries, consequently no single injury caused the death of the deceased. In the exercise of right of private defence of property, the appellants were certainly entitled to use such force as was necessary, but without causing death. In this state of the evidence on record it is not possible to record a definite finding as to which of the appellants, if at all, exceeded their right of private defence, and therefore the benefit of doubt must go to all the appellants.

In this view of the matter, this appeal succeeds and the appellants are acquitted of all the charges levelled against them. We notice that the cases of accused No. 1 and accused No. 4, namely, Thammireddy Apparao and Lanka Tatayyalu, stand on the same footing as that of the appellants. For some reason they have not preferred appeals before this Court, but we feel that in the interest of justice they are also entitled to the benefit of this judgment. We, therefore, order their acquittal as well. The appellants herein as well as accused Nos. 1 and 4, namely, Thammireddy Apparao and Lanka Tatayyalu, if in custody, shall be released forthwith, if not required in connection with any other case. This appeal is accordingly allowed.