
(2004) 10 AP CK 0002

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 809 of 1999

Batta Venkata Subbaiah and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 304, 324

Citation : (2005) 3 ALT(Cri) 492

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Additional Public Prosecutor, for the Respondent

Judgement

P.S. Narayana, J.—The Inspector of Police, Sullurpet, filed charge sheet against the appellants-A1 to A5 in Crime No.36 of 1992 for the offences under Sections 148, 302, 34 r/w section 149 IPC.

2. The case of the prosecution is that on 11-8-1992, at about 1:00 P.M., near Ratchabanda (Tella Banda) in Palchuru village within the limits of Pellakur Police Station, all the accused formed themselves into an unlawful assembly armed with deadly weapons and in furtherance of common object of such assembly, A1 committed murder of the deceased- Yeddala Mohan Reddy, (herein after referred to as "the deceased") son of Vasu Deva Reddy, by stabbing him with a knife on his left side chest and in the same process, A1 caused stab injury to Kuchivada Dasaradharamireddy on the back of his left shoulder and also caused injury to Kattamreddy Rajareddy on his right little finger and thus, all the accused committed offences punishable under sections referred to supra.

3. The defence is one of total denial. The prosecution examined P.Ws 1 to 15 and marked Exs.P1 to P8 and M.Os 1 to 6. On behalf of accused, the wife of A5 was examined as D.W.1 and Exs.D1 to D3 were marked.

4. On appreciation of the evidence available on record, the learned Judge,

ultimately, found A1 to A5 guilty u/s 148 IPC and A1 was found guilty u/s 304 IPC and A2 to A5 were found guilty u/s 304 r/w 149 IPC and A1 was further found guilty u/s 324 IPC on two distinct counts for causing hurt to P.Ws 1 and 2 with dangerous weapons and A2 to A5 were found guilty u/s 324 r/w 149 IPC for causing hurt to P.Ws 1 and 2. Hence, the criminal appeal.

5. Heard Sri C. Padmanabha Reddy, learned counsel representing the appellants, who pointed out that even as per the evidence available on record, it is evident that suddenly A1 takes out a knife and stabs the deceased and as such, the conviction and sentenced imposed against A2 to A5, who were the members of unlawful assembly, cannot be held to be liable and sustained. The learned counsel also would submit that to attract the offence u/s 148 or 149 IPC there should be some evidence available on record relating to the meeting of the minds or a common intention to proceed with a particular act by constituting unlawful assembly. In view of the evidence available on record, it is definitely highly doubtful whether A2 to A5 could have participated with A1 on an idea of taking out the knife suddenly and perpetrating the offence as against the deceased.

6. Per contra, Sri Mohd. Osman Saheed, learned Additional Public Prosecutor, had taken the Court through the findings recorded by the learned Judge and would contend that in the facts and circumstances of the case, the same have to be confirmed.

Heard both the counsel.

7. The accused and the deceased-Yeddala Mohan Reddy and the injured P.Ws 1 and 2 are residents of Palchuru village. On 8-8-1992, A5 left one Naguraiah in the house of Boddu Masthanaiah-P.W.4 for sleeping. On the same night two pitchers were stolen from the house of P.W.4 by some unknown offenders. P.W.4 noticed that Naguraiah absconded from his house on that night and suspected that A5 and Naguraiah were responsible for the theft. It was also the case of the prosecution that on 9.8.1992, Sapa Nagesaiah detected two pitchers in the village tank while he was fishing with a net, and on request of A5 to P.W.4 not to lodge complaint with the police, P.W.4 requested the village elders to conduct arbitration to settle the matter. P.Ws 1,2,6,7,8,9, L.Ws 9,11,14 and 14 called for A5 for arbitration on 9.8.1992 and as it was rainy on that day, the mediation was postponed to 10-8-1992 and the mediators instructed P.W.10 to produce A5 on 10-8-1992. When the mediators assembled on 10-8-1992, P.W.10 failed to produce A5 stating that he absconded from the village and requested the elders for time to produce A5. On 11.8.1992, the elders again assembled and after coming to know that A5 was in the village, they asked P.W.10 to produce A5 before them. Then P.W.10 went and returned back saying that A5 was not willing to attend before the elders. Then, the elders went to the house of A5 to call him for mediation and on seeing them, A5 ran away towards tank bund. Then, the deceased, P.W.1, P.W.8 and some others ran after A5 and caught hold of him and brought him to the village and when questioned by the elders, A5 admitted his guilt and agreed that he would abide by the decision of the elders. The elders

found A5 guilty of the theft and imposed a fine of Rs.1500/-. A5 sent his wife-D.W.1 to bring the fine amount. At that time, Maddala Jayaramami Reddy of Palchuru village came from Naidupet and while passing through Tellabanda to his house, he questioned the elders as to why they convened a meeting in his absence and saying so, he went away to his house. Then, D.W.1 returned to Tellabanda and told A5 that he was called by Jayaramireddy. Both of them went to his house. It is stated that the elders also went to the house of M. Jayaramireddy for discussion, as he happened to be one of the mediators. Then M. Jayaramireddy again questioned the elders as to why they convened a meeting and imposed fine in his absence and he advised A5 to file a case against the elders with the allegation that they illegally imposed fine on him. On his advice, A5 challenged the elders and went away. It is also the case of the prosecution that all the accused formed themselves into an unlawful assembly and came to Tellabanda and questioned the propriety of elders to impose fine and abused them in vulgar language. The deceased went forward and questioned the accused as to why they were abusing the elders. Then, immediately, A1 removed a knife from his waist and stabbed the deceased on the left side of his chest and when P.W.1 tried to catch hold of A1, A1 stabbed P.W.1 on the back of his left shoulder with knife and when P.W.2 tried to wrest the knife, he was also injured on his right little finger. Then, P.W.4 could wrest the knife. The accused then fled away. The deceased fell down on the ground and succumbed to injuries on the way to hospital, Naidupet. On the report given by the Village Administrative Officer of Palchuru village, P.W.13 registered a case in Crime No.36 of 1992 and P.W.14 had taken up the investigation, held inquest over the dead body of the deceased, send the dead body for post-mortem examination, examined the witnesses and seized M.O.1 knife and after receiving post-mortem certificate and after completion of the investigation, the charge sheet was filed.

8. D.W.1 was examined to speak about the facts of P.W.1 visiting their house on the date of the incident, A5 chastising him and P.W.1 getting offended and going away and that after an hour also his coming back along with his men to their house and about the subsequent galata at the tank bund and other aspects.

9. The learned Judge, on appreciation of the evidence available on record, recorded conviction and imposed sentence as referred to supra. The learned Judge recorded clear findings as against A1 and also held that A2 to A5 are liable for punishment under Sections 148, 304 r/w 149 IPC.

10. P.W.1 deposed about all the details of the incident. This witness also further deposed about the events in seriatim. This witness further deposed that Jayaramireddy questioned L.W.7 to L.W.9 as to why they convened meeting and imposed fine on A5 in his absence. They replied that at the instance of L.W.5 only, they convened the meeting and if M. Jayaramireddy does not like it they would convene the meeting again on the next day. Saying so, the above elders went away to attend the marriage function. M. Jayaramireddy advised A5 to file a complaint against the elders for their imposing fine on him and also with an

allegation that they assaulted him. On his advice, A5 challenged the elders to impose fine if they can and if so, he will see the end. Saying so, he went away to his house along with his wife. It may be mentioned here that the wife of A5 was examined as D.W.1. P.W.1 also further specifically deposed that after the remaining elders returned to Tellabanda, at that time, A1 to A5 came to Tellabanda abusing all the elders and they questioned the elders that the family members of accused are 40 in number and how the elders could impose fine on A5 without summoning and hearing rest of them. A1 to A5 saying so abused the elders in vulgar language. Then the deceased went forward questioning the accused as to why they were abusing the elders. Then, immediately, A1 removed the knife from his waist and stabbed the deceased on the left side of his chest. On seeing it, P.W.1 tried to catch hold of A1, but A1 stabbed him on the back of his left shoulder with the same knife. Then, Kattamreddy Raja Reddy tried to wrest the knife from the hands of A1 and in that process, he received an injury on his right little finger. Thereafter, Sivadi Radhakrishnareddy was able to wrest the knife from the hands of A1. After receiving injury, the deceased fell down and the persons, who were present there, cried that he died. On hearing the cries, all the accused fled away. Thereafter, two tractors were brought and the deceased was laid in one tractor and P.W.1 was laid the other tractor to take them to the Government Hospital, Naidupeta. On the way, at the outskirts of the village, the deceased succumbed to the injuries. No doubt, this witness also deposed about M.O.1 and all other details and this witness was cross-examined at length.

11. Virtually, the same episode was deposed by P.Ws 2, 3, 6 to 9. P.W.4 deposed that two of his pitchers were found missing and in relation to which, the subsequent events were happened. This witness also deposed about A1 taking a knife from his waist and stabbing the deceased on the left side of his chest. P.W.5 deposed about handing over of the two pitchers to one Devatha Venkataswamy to produce them before the village elders. P.W.10 deposed about the theft of pitchers that occurred in the house of Masthanaiah and about the mediation and other details. P.W.11 deposed about the seizure of M.Os 2 to 5 and also P.W.3 producing a knife before the police stating that he wrested the same from the accused. This witness identified his signatures both on Ex.P1-scene of offence of observation report and Ex.P2- inquest report. This witness also deposed about Ex.P3-seizure report in respect of M.O.1. This witness further deposed about the seizure of waist rope from the waist of the deceased and deposed about drafting of Exs.P1 to P3 and also about the material objects-M.Os 2 to 6 in his presence.

12. P.W.12 is the doctor, who had conducted autopsy over the dead body of the deceased and found the following injuries;

"A stabbing injury of 1 inch x 1 inch x 5 inches depth on the left of his chest, 5 inches below the clavical.

Scalp: normal, skull: normal, brain and cerebral vessels: normal, mouth, teeth and tongue normal and pharynx normal, larynx, thyroid, hyoid and other neck structures are normal .

Chest: Chest wall and breast:-stabbing injury of 1"x1"x5" depth on the front of the left side of the chest below the clavical is present.

Diaphragm: Normal, mediastinum and thymus: normal.

Oesophagus : normal, trachea and bronchi: normal, pleural cavities, one litre of blood present on the left pleural cavity. Right: normal.

Lungs: Penetrated wound of 1"x1" on the middle of the left lung present.

Right lung: Normal.

Heart and Pericardial sac:penetrating injury of 1"x1" on the large blood vessels: normal.

Abdomine: Abdominal wall distended.

Peritoneal cavity: normal.

Stomach and contents: normal.

Small intestine: normal

Large intestine: Vermiform appendix and mesentery: normal.

Liver gall bladder: normal.

Pancreas: normal.

Spleen: normal

Kidney: both kidneys are normal.

Genetal organs: normal.

Spinal column and spinal card: normal.

Additional observations: nil."

13. Ex.P4 is the post-mortem certificate. P.W.12 opined that the injuries on the deceased could have been caused by M.O.1.

14. P.W.13 is the retired Sub-Inspector of Police. P.W.14 is the Inspector of Police, who deposed about the details of investigation into the case. P.W.15 simply deposed that he knows the deceased and the accused, and near his house, normally mediations would take place and he further deposed about the deceased and other particulars. The wife of A5 was examined as D.W.1.

15. On a careful scrutiny of the evidence available on record and also taking into consideration of the medical evidence, it is evident that A1 alone was the person, who had perpetrated the offence as against the deceased and also the injured by suddenly taking out a knife from his waist. It was a sudden happening and absolutely, there is no evidence that either A2 to A5 had asserted or had knowledge about what is going to be done by A1 at the relevant point of time on

the fateful day. Hence, it cannot be said that the ingredients of Sections 148 and 149 IPC would be attracted in such a case so as to constitute unlawful assembly. In the gathering, most probably along with A1 his supporters i.e., A2 to A5 were also present and at any stretch of imagination, it cannot be said that they had also the requisite intention or knowledge to be fastened with the liability for the overt acts committed by A1. Hence, this court is of the considered opinion that accepting the findings recorded by the learned Judge, on appreciation of evidence, even if to be accepted, there is no legally acceptable evidence so as to fasten the liability as against A2 to A5 and hence, they are entitled for acquittal and accordingly, the conviction and sentence recorded as against A2 to A5 are hereby set aside.

16. As far as the conviction and sentence imposed as against A1 is concerned, the conviction u/s 304 IPC is hereby confirmed. But, however, in the facts and circumstances of the case, rigorous imprisonment of ten years imposed against A1 is hereby reduced to a period of five years and A1 is also liable to be convicted and sentenced u/s 324 IPC for causing injuries to P.Ws 1 and 2 and accordingly, A1 is sentenced to undergo rigorous imprisonment for a period of one year, and both the sentences shall run concurrently.

17. Accordingly, the Criminal Appeal is partly allowed as follows;

(i) The conviction and the sentence imposed against A2 to A5 in Sessions Case No.140 of 1994 dated 30-4-1999 is hereby set aside.

(ii) The conviction and the sentence imposed against A1 for the offence u/s 304 IPC is hereby confirmed. But, however, in the facts and circumstances of the case, the rigorous imprisonment of ten years imposed against A1 for the said offence is hereby reduced to a period of five years.

(iii) A1 is also convicted and sentenced u/s 324 IPC for causing injuries to P.Ws 1 and 2 and accordingly, A1 is sentenced to undergo rigorous imprisonment for a period of one year.

(iv) Both the above sentences imposed against A1 shall run concurrently.