
(2015) 02 SC CK 0150

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 289, 290, 291 and 292 of 2010

Burujukadi Laxmappa and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 324

Citation : (2015) ALLMR(Cri) 4132 : (2015) 3 RCR(Criminal) 966

Hon'ble Judges : S.J. Mukhopadhaya, J;N.V. Ramana, J

Bench : Division Bench

Advocate : V. Sridhar Reddy and V.N. Raghupathy, for the Appellant; S. Udaya Kumar Sagar, Krishna Kumar Singh and D. Mahesh Babu, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. These appeals have been preferred by the Appellants against the judgment dated 1st May, 2009 passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1494 of 2006 and 167 of 2007. By the impugned Judgment, the High Court acquitted some of the accused but affirmed the conviction of Appellants for the offence Under Section 302 read with Section 34 of Indian Penal Code (for short "IPC") in the following terms:

"1. The conviction and sentence recorded against Appellant Nos. 1 and 2/A-1, A-2 in Criminal Appeal No. 1494/2006 and Appellant No. 1/A-9 in Criminal Appeal No. 167/2007 for the offence Under Section 302 read with Section 34 Indian Penal Code for causing the death of D-1 and the conviction and sentence recorded against Appellant Nos. 3 and 4/A-3 and A-4 in Criminal Appeal No. 1494/2006 for the offence Under Section 302 r/w Section 34 for causing the death of D-2 are confirmed.

2. The conviction and sentences recorded against Appellant Nos. 1 and 2/A-1, A-2 in Criminal Appeal No. 1494/2006 and Appellant No. 1/A-9 in Criminal

Appeal No. 167/2007 for the offences Under Sections 324 and 148 Indian Penal Code are set aside and conviction and sentences recorded against Appellant Nos. 3 and 4/A-3 and A-4 in Criminal Appeal No. 1494/2006 for the offences Under Sections 324 and 148 Indian Penal Code are set-aside;

3. The conviction and sentence recorded against appellant No. 8/A-8 in Criminal Appeal No. 1494/2006 for the offence Under Sections 302, 148 and 324 Indian Penal Code are set - aside, instead he is convicted for the offence Under Section 324 Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of two (2) years.

4. The conviction and sentences recorded against Appellant Nos. 5, 6, 7, 9, 10, 11, 12, 13, 14, 15/A-5, A-6, A-7, A-10, A-11, A-13 to A-17 in Criminal Appeal No. 1494/2006 and Appellant No. 2/A-18 in Criminal Appeal No. 167/2007 for the offences Under Sections 302, 148 and 324 Indian Penal Code are set-aside and they are acquitted of the charges levelled against them. They shall be set at liberty forthwith, if they are not required in any other crime."

The Appellants were the accused Nos. 1, 2, 3, 4 and 9.

2. The substance of the charge against the accused is that on 27.5.2001 at about 11 A.M. near Anjaneya Swamy Temple at Udmuligidda Village, all the accused gathered into an unlawful assembly, armed with deadly weapons and in furtherance of their common object to cause the death of Kalludukanamkadi Gopal (hereinafter referred to as "D-1") and Kalludukanamkadi Laxmappa (hereinafter referred to as "D-2") and during the course of the same transaction, they further caused injuries to K. Hanumanthu (P.W. 11) and P. Bheemappa (P.W. 13).

3. The facts of the occurrence, as alleged by the prosecution are thus:

"K. Bheemappa (P.W.1), Kalludukanamkadi Hanumanthu (P.W. 11) and D-1 are the brothers and sons of D-2. Bheemappa (P.W. 13) is the brother of D-2. Puliumamidi Ashamma (P.W. 5) is the wife of P.W. 13 and Pulimamidi Golla Narasappa (P.W. 12) is their son. A-2, A-3 and A-4 are the brothers. A-1 and A-6 are brothers. A-9 and A-12 are the sons of A-11. A-8 is the brother-in-law of A-7. A-18 is the son-in-law of A-1. A-14 is the wife of A-1. A-15 is the wife of A-3. A-16 is the wife of A-10 and A-17 is the wife of A-8. There were long standing land disputes between the accused and the deceased family. The son of A-1 was murdered in the year 2000, in which case D-1, D-2, P.W. 1, P.W. 11 to 13 were shown as accused and since then the accused bore grudge against the deceased family.

On 27.5.2001 at about 10.30 A.M., while D-1, D-2, P. Ws. 1, 3, 5, 11, 12 and 13 were loading manure in the tractor in the outskirts of Udmuligidda Village, A-1, A-2 and other accused assaulted them. On seeing them, D-1 tried to run away. D-1 rushed into the house of P.W. 2(declared hostile) and tried to hide himself there. The accused chased him and both A-1 and A-2 forcibly opened the door

and dragged D-1 out of the house and assaulted him indiscriminately with sticks hitting on his hip and buttocks. A-9 assaulted him with an axe blow on the back of his neck. Meanwhile, Lalappa (A-3) and Venkatappa (A-4) assaulted D-2 by hitting him with sticks on his face and left temporal region and caused him bleeding injuries. G. Narasimhulu (A-5) and G. Thippanna (A-6) assaulted D-1 by hitting with sticks on his back side. A-4, A-15, A-16 and A-17 threw stones on the heads of D-1 and D-2. The remaining accused A-7 and A-8 assaulted P.W. 1 by throwing stones on the left side of his head. A-10 and A-11 assaulted Ashamma (P.W.5) by throwing stones. A-12 and A-13 assaulted Narsimhulu with stones and kicked him with legs. A-18 assaulted Bheemappa (P.W. 13) by throwing stones on his head and other parts of body. Due to the injuries sustained, D-1 died on the spot. While shifting D-2 and the other injured persons to Narayanpet Hospital, D-2 died on the way, due to the injuries sustained. On the next day at about 14.00 hours, P.W.I lodged an FIR Ex. P-1 before Damarigidda Police Station. On the basis of Ex. P-1, P.W. 16 the then Head Constable registered the case as Crime No. 9/2001 and issued FIR covered under Ex. A-27. P.W. 17, the then Inspector of Police took up investigation."

4. After investigation, the charge sheet against the accused were framed for the offence Under Sections 148, 302 read with 149 (two counts) and 324 read with 149 Indian Penal Code (two counts) and the accused pleaded not guilty and claimed to be tried. Thereafter, the case has been transferred to the IV Additional Sessions Judge (FTC), Mahabubnagar. On behalf of the prosecution, 17 witnesses were examined and other evidences were led. On appreciation of evidence, the Trial Court convicted the accused Nos. 1 to 11 and 13 to 18 for the offences punishable Under Sections 302, 148, 324 read with Section 149 Indian Penal Code and sentenced them to undergo imprisonment for life for the offence Under Section 302 Indian Penal Code and six months rigorous imprisonment for each of the offence punishable Under Sections 148 and 324 Indian Penal Code respectively. All sentences were directed to run concurrently.

5. A-12 was a minor, whose matter was referred to Juvenile Justice Board. The case of A-12 was separated.

6. On challenge, the High Court by the impugned judgment, as noticed above acquitted Appellant Nos. 5, 6, 7, 9, 10, 11, 12, 13, 14, 15/A-5, A-6, A-7. A-10, A-11, A-13 to A-17 in Criminal Appeal No. 1494/2006 and Appellant No. 2/A-18 in Criminal Appeal No. 167/2007 from all the charges levelled against them.

7. Aggrieved by the impugned judgment passed by the High Court, the Appellants have challenged the impugned judgment mainly on the ground that there is discrepancy between the statements made by witnesses and the medical evidence.

8. PW-1 who lodged FIR EX.P-1 deposed in tune with the contents of FIR that around 10.30 A.M. on 27.05.2001 while they were loading manure in the tractor-trolley on the Chandruka road side situated on the outskirts of the village, he

along with his father(D-2), his brother(D-1) and another brother (P.W.11) were present. His agnate Laxmappa(A-1) and other accused assaulted them with sticks, axes and stones. When they started running into the house of P.W. 2, A-1 and A-2 dragged D-1 out of the house and assaulted him with sticks hitting on his back and buttocks. A-9 struck D-1 with an axe on the back side of his neck. A-14 to A-17 assaulted D-1 with stones. His brother(D-1) fell down in front of the house of P.W. 2 and died due to the injuries sustained. In the meanwhile, his father(D-2) came there. Then A-3 and A-4 attacked D-2 with sticks hitting his face and left parietal region while A-5 and A-6 attacked him with sticks hitting on his back and buttocks. The remaining accused assaulted his senior paternal uncle, Bheemappa (P.W.13) and another brother Hanumanthu (P.W. 11). A-14 to A-17 threw stones at D-1 and D-2 when they fell down, but they could not tell on which parts of their body the injury occurred. He admitted that he was saying for the first time before the Court that after his brother Gopal (D-1) got beaten up, his father(D-2) came to the spot, and he was too beaten up by A-3 and A-4 on his mouth, parietal region and back.

9. In the cross examination, he admitted that Hanumanthu (P.W. 11), Bhumappa (P.W.13), Narsappa (P.W.12) and Golla Bheemappa were convicted in a murder case of A-1 's son in which, D-1 and D-2 were also involved. His cousins Rajendrappa and Venkatappa who are the son of his senior paternal uncle Bheemappa were also involved in that case.

10. P.W. 3 deposed that A-1 and A-2 dragged D-1 in front of the house of P.W. 2 and assaulted him by hitting on his back and buttocks. A-9 struck D-1 with an axe on the back portion of his neck. When D-1 fell down, A-14, A-15 threw stones on the body of D-1. In the meanwhile, the father(D-2) of D-1 came there and A-3 and A-4 attacked him injuring his face and left parietal region. D-2 fell down. A-5 and A-6 started beating him with sticks on his back and buttocks. A-14 and A-15 threw stones on the body of D-2. A-7 and A-8 assaulted P.W. 11 with sticks hitting on his head, also A-18 assaulted P.W. 13 with stones hitting on his head. A-18 also assaulted P.W. 11. Then the group of A-1 left that place.

11. P.W. 4 corroborated the evidence of P. Ws. 1 and 3 stating that A-1 and A-2 dragged D-1 to the front yard of the house of P.W. 2 and assaulted him hitting on his trunk and buttocks with sticks and A-9 assaulted D-1 with an axe blew on his neck. A-14 to A-17 threw stones at D-1.

12. P.W. 5 made similar statement consistent with the evidence of P. Ws. 1, 3 and 4 about A-1 and A-2 dragging D-2 and hitting his back and buttocks with sticks and A-9 causing axe blow on D-1 at the back portion of his neck and A-14 to A-17 throwing stones on his head. P.W. 5 admitted in her cross-examination that her two sons and her husband were convicted in the murder case of A-1's son.

13. Almost similar was the statement of P.W. 11 who has stated that A-1 and A-2 went inside the house of P.W. 2 and dragged his brother D-1 and assaulted him

with sticks hitting on his back and buttocks. A-9 caused axe blow on his brother D-1 on his neck and when he fell down with bleeding injuries, A-14 to A-17 took stones and threw at his head. A-3 and A-4 assaulted his father D-2 by hitting on his face while A-5 and A-6 assaulted him with sticks on his back. When he fell down, A-1 to A-17 threw stones at him. Later A-7 and A-8 assaulted him with sticks hitting him on his face.

Similar was the statement of P.W. 12 who has also deposed that A-1 and A-2 dragged D-1 to the front yard of P.W. 2's house. A-9 gave an axe blow on the back portion of the neck of D-1. When D-1 fell down, A-14 to A-17 threw stones at his head. P.W. 13 also stated about A-1 and A-2 dragging D-1 from the house of P.W. 2 and A-9 giving an axe blow on his neck.

14. It is relevant to notice the post-mortem report and the statement of Doctor-P.W.14 who conducted post-mortem examination over the dead body of D-1 and found the following injuries:

"1. Multiple fracture of the skull. They may be caused by hard blunt object or stone.

2. Fracture of the sixth right rib. It may be caused by any hard blunt weapon or stone."

15. P.W. 14 also conducted autopsy over the dead body of D-2 and found the following injuries:

"1. Lacerated wound on occipital area 3 inches x 2 inches into deep. It might have been caused due to any hard weapon or stone.

2. Fracture of the base of the skull 2 inches x = inch. It may be caused due to any hard blunt weapon or stone."

16. The post-mortem certificate of D-1 is covered under Ex. P-23, which being relevant, such portion of it is extracted herein below:

"Government of Andhra Pradesh Report of Post Mortem Examination Institution: Civil Hospital, Narayanpet.

Dated 28/5/01

Post Mortem No.

Cr. No. 9/01 Under Section 147, 148, 324, 307, 302 r/w 149 Indian Penal Code, dated 28/5/01 of Narayanpet Police Station, Mahabubnagar District.

Body sent by PC 1370 P.S. Narayanpet, Dist. Mahabubnagar.

Body brought by PC 1370 P.S. Narayanpet, Dist. Mahabubnagar.

Date and hour of receipt of requisition 28/5/01 at 10 AM.

Body identified by PC No. 1370 of P.S. Narayanpet.

Date and time of commencement of autopsy: 28/5/01 at 10-30 AM.

SCHEDULE of OBSERVATIONS

A-GENERAL

1. Multiple fracture of skull-Skull- by any hard, blunt object or stone-antemortem.
2. Fracture of 6th right rib 1" x 1/2" 6th right rib any hard blunt weapon or stone, antemortem.

The post-mortem certificate of D-2 is Ex. P-24 and being important, relevant portion of the same is extracted herein below:

"Government of Andhra Pradesh Report of Post Mortem Examination Institution: civil Hospital, Narayanpet

Dated 28/5/01

Post Mortem No.

Cr. No. 9/01 Under Section 147, 148, 324, 307, 302 r/w 149 Indian Penal Code, dated 28/5/01 of Narayanpet Police Station, Mahabubnagar District.

Body sent by PC 1370 P.S. Narayanpet,

Body brought by PC 1370 P.S. Narayanpet.

Date and hour of receipt of requisition 11 AM dt. 28/5/01

Body identified by PC No. 1370 of P.S. Narayanpet.

Date and time of commencement of autopsy: 28/5/01 at 11-30AM.

SCHEDULE of OBSERVATIONS

A-GENERAL

1. Lacerated wound on occipital area size 3 x 1/2 inch depth occipital area, any hard, blunt weapon or stone, antemortem.
2. Fracture of the base of skull 2 1/2 inches base of skull any hard blunt weapon or stone, antemortem.

17. All the eye-witnesses, P.W. 1, P.W. 3, P.W. 4, P.W. 5, P.W. 11, P.W. 12 and P.W. 13 made similar statements and deposed that A-1 and A-2 dragged D-1 in front of the house of P.W. 2. Then A-1 and A-2 assaulted D-1 hitting him on his back and buttocks. A-9 gave an axe blow on the back portion of the neck of D-1 and he fell down. Allegation against A-3 is that he and A-4 assaulted the father (D-2) of P.W. 11 on his face. There is no allegation against any of the accused, A-1, A-2, A-3, A-4 or A-9 with respect to giving blow on the scalp of the right rib of D-1. P.W.1 and P.W. 2 stated that they have given sticks blow on the back and buttocks of D-1. The prosecution has miserably failed to explain as to how the scalp/skull of D-1 was fractured. Not only there is a fractured scalp with

lacerated wound on the occipital bone and multiple fracture of the skull, but the brain and meninges were also damaged. All structures of mouth, teeth, tongue and pharynx were intact but right eye was completely damaged and on the right 6th rib fracture was detected while the other ribs were intact. If the accused had given blow by stick on the back or buttocks of D-1 or one of the accused has given axe blow on the back portion of the neck, it cannot cause multiple fracture of skull with lacerated wound nor meninges will come out. The damage of right eye has also not been explained.

18. Similarly, if the post-mortem report Ex. P-24 of D-2 is accepted then we find that there are lacerated wound on the scalp and skull at many places. The brain and meninges were completely damaged. The prosecution has failed to explain as to who gave the blow on the scalp and skull of D-2 causing complete damage to brain and meninges. The cause of death is due to lacerated wound on the scalp and skull due to which brain and meninges were completely damaged.

19. We find that none of the prosecution witnesses could connect A-1, A-2, A-3, A-4 and A-9 with any of the injuries caused to D-1 and D-2 to come to a definite conclusion that the Appellants caused murder of D-1 or D-2. There being doubt with regard to the veracity of the statements of eye- witnesses, P.W.1, P.W. 3, P.W. 4, P.W. 11, P.W. 12 and P.W. 13, we are of the view that this is a fit case to give benefit of doubt in favour of the Appellants. We, accordingly, set aside the judgment of conviction and sentence passed by the Trial Court as affirmed by the High Court by the impugned judgment dated 01.05.2009 in so far as it relates to Appellants - Burujukadi Laxmappa (A-1), Burjukadi Malkappa (A-2), Burjukadi Lalappa (A-3), Burjukadi Venkatappa (A-4) and Guttakindi Ramyulu (A-9). They are acquitted of the offence Under Section 302 read with Section 34 Indian Penal Code and be set at liberty forthwith if they are not required in any other crime.

Their bail bonds stand discharged.

The appeals are allowed.