

(1977) 07 SC CK 0006

In the Supreme Court Of India

Case No : Criminal Appeal No. 301 of 1974

Chilamakur Nagireddy and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 22-07-1977

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 302, 326, 34

Citation : (1977) ACR 20 : AIR 1977 SC 1998 : (1977) CriLJ 1602 : (1977) 3 SCC 560 : (1977) 9 UJ 525

Hon'ble Judges : S. Murtaza Fazal Ali, J;N. L. Untwalia, J

Bench : Division Bench

Advocate : A. Venkata Raman, K. Rajendra Choudhary, P. Venkata Subbayya and Veena Devo, for the Appellant; P. Parmeswara Rao and G.N. Rao, for the Respondent

Final Decision : dismissed

Judgement

N.L. Untwalia, J.—In relation to a land dispute appertaining to the field locally called Rambhatla Chenu in survey number 324 within the limits of P. Kottalapalli hamlet of Penakalapadu Goory taluk of Anantapur District in the State of Andhra Pradesh, a rioting took place and in the occurrence one Manchi Tirupala Reddy was killed. Some others were also injured. Ten persons were put on trial and were convicted for the various offences under the Penal Code by the Trial Judge. Two separate appeals were filed before the High Court—one by accused numbers 2, 3, 4, 5, 7, 8 and 10 and the other by accused numbers 1, 6 and 9. The High Court allowed the appeals in part and modified the convictions of and the sentences imposed upon the appellants before it. All the ten accused filed a petition for special leave to appeal to this Court. This Court granted special leave to appeal in respect of accused numbers 1, 6 and 9 only, respectively, named Chilamakur Nagireddi, Chilamakur Obulapathi and Boppala Ramireddi (who were petitioners 8, 9 and 10 in the special leave application), and that also limited "to the question of nature of the offences committed by them," and dismissed the SLP of the other accused. We, are, therefore, concerned with the limited question

concerning only the three appellants before us. Their conviction u/s 302 of the Penal Code simpliciter was under challenge in this appeal.

2. We may state and refer to the necessary and bare facts and the relevant evidence for disposal of the short point in this appeal. Accused number 1 has been found to have caused external injury number 1 with a spear on the person of the deceased, the corresponding internal injury being number 3 as deposed to by the Doctor who held the post-mortem examination over the dead body. Accused number 9 caused external injury number 2 with a bana stick the corresponding internal injury being injury No. 1 and accused number 6 is the author of external injury number 3 caused by a spear resulting in internal injuries numbers 2 and 4. The conviction of none of the appellant for the murder of the deceased has been recorded either with the aid of Section 34 or Section 149 of the Penal Code. As already stated each of them has been convicted u/s 302 simpliciter. The question for consideration is whether such a conviction of any of the appellants is sustainable.

3. The High Court in its judgment referred to the evidence of the Doctor and said that the said evidence establishes-"that the fatal injuries ascribed to A-1, A-6 and A-9 by the eye-witnesses resulted in the death of the deceased Tirupala Reddy. External injury No. 1, "a piercing wound conical in shape of 1 1/2" long from above downwards and 2" deep/cutting open the abdomen" was ascribed to A-1 by the eye witnesses; external injury No. 2 "a contusion of 3" x 1" across the left temple with left black eye and swelling of eye-lids" was attributed to A-9 and external injury No. 3 "a piercing wound of 1 1/2" long from above downwards 2" deep from back to front and medical side cutting open into the abdomen over right lower back" was ascribed to A 6. Each of these injuries, in the opinion of the Medical Officer, was fatal by itself. Therefore, there can be no doubt that A 1, A-6 and A-9 are guilty for their individual acts u/s 302 I.P.C and they are, therefore, convicted u/s 302 I.P.C and each of them is sentenced to imprisonment for life."

4. There seems to be some error in the reading of the Doctor's evidence by the High Court. We may now refer to it. Dr. Basheer Khan, PW 8 is the Doctor concerned. He gave the following description of the relevant external and internal injuries.

External Injury No. 1

Piercing wound conical in shape of 1 1/2" long from above downwards and 2" deep cutting open the abdomen, piercing into the abdominal cavity from front to backwards and medical-wards with bloody fluid oozing out on the left side of the abdomen in midaxillary line at umbilical level;

Corresponding Internal Injury No. 3

Incised wound of descending aorta in front of vertebra 1" long from above downwards with bleeding of about 500 C Cs, of free blood in abdominal cavity and blood clots adherent to small intestines, corresponding to external injury No.

1.

External Injury No. 2

Contusion of 3" x 1" across the left temple with left black eye and swelling of eye lids;

Corresponding Internal Injury No. 2

Fracture of left temporal bone 3" long across with blood clot under the bone and over the brain of about 3" x 3" size corresponding to external injury No. 2;

External Injury No. 3

Piercing wound of 1 1/2 " long from above downwards 2" deep from back to front and medical side cutting open in to the abdomen over right lower back;

Corresponding Internal Injury Nos. 2 & 4

Incised wound of right lobe of liver 1" x 1" down with haemorrhage and blood clot around corresponding to external injury No. 3;

"Incised wound of I" from above downwards of the ascending colour with blood clot corresponding to external injury No. 3;

5. The Doctor further said "I am of the opinion that the deceased would appear to have died of shock due to fractures of temporal skull bone injury to descending aorta, injury to liver and large intestines ascending colon and haemorrhage." In this passage the Doctor seems to have opined as to the cumulative effect of all the injuries. He did not say separately the nature and effect of each injury caused by the individual accused numbers 1, 9 and 6. But later he said "External injury No. 1 and injury No. 2 corresponding to internal injuries No. 1 and 3 are fatal each by itself." (There is some mistake in the typed paper book. We have extracted this passage after verifying from the original deposition). On the Doctor's evidence, therefore, the injuries caused by accused number I with a spear and accused number 9 with a bana stick were such that each of them was sufficient in the ordinary course of nature to cause death. The conviction of accused numbers 1 and 9, therefore, u/s 302 of the Penal Code simpliciter was justified. But in regard to accused number 6 of the position was different. The Doctor did not say that the injury caused by this accused on the person of the deceased by itself was fatal or sufficient in the ordinary course of nature to cause his death. Counsel for the State and avowed to persuade us to hold that it was so on appreciating the nature of the injury ourselves. In absence of the specific and definite opinion of the Doctor in that regard we did not consider it safe to form our own opinion as it was difficult to say that the external or the internal injuries caused by accused number 6 with a spear were such that one could say with certainty that they were also fatal by themselves. In that view of the matter we do not think that the conviction of accused No. 6 u/s 302 is sustainable. The injury caused by him, however, was grievous in nature. He is, therefore, guilty of an offence u/s 326 of the Penal Code.

6. In the result we dismiss the appeal of accused number 1 and 9 namely Chilamakur Nagireddi and Boppala Ramireddy, uphold their convictions and sentences u/s 302 of the Penal Code, allow the appeal of accused No. 6 Chilamakur Obulapathi in part, set aside his conviction u/s 302 and instead convict him u/s 326 of the Penal Code and sentence him to undergo rigorous imprisonment for a period seven years only. This sentence is to run concurrently with the other sentences passed against him.