

(2011) 11 AP CK 0081

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 1679 of 2005

Duvvur Narayana and 3 others

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 307, 323, 324, 325, 326

Citation : (2012) 1 ALT(Cri) 247

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : Barkha, for the Appellant;

Judgement

K.G. Shankar

1. As many as four accused in S.C.No.248 of 1998 on the file of the Assistant Sessions Judge, Kadapa are the revision petitioners. Five accused faced trial before the trial Court. They were charged for the offences under Sections 324, 326, 323, 307 and 307 read with Section 34 of the Indian Penal Code (IPC, for short). The learned trial Judge found A.1 to A.4 guilty of the offence u/s. 324 IPC. He also found A.1 guilty of the offence u/s. 326 IPC. A.5 was completely acquitted. A.1 to A.4 were sentenced to rigorous imprisonment for a period of three years for the offence u/s. 324 IPC. A.1 was sentenced to rigorous imprisonment for a period of five years for the offence u/s. 326 IPC. A.1 was further sentenced to a fine of Rs. 200/-with appropriate default sentence. The sentences imposed against A.1 were directed to run concurrently.

2. The convicted accused preferred appeal before the Sessions Court. The learned II Additional Sessions Judge, Kadapa, through judgment in Criminal Appeal No.247 of 2002 confirmed the conviction. He reduced the sentence of rigorous imprisonment from three years to one year against A.1 to A.4 for the offence u/s. 324 IPC . He also reduced the sentence of A.1 from five years to two years for the offence u/s. 326 IPC. The fine recorded by the trial Court was

maintained in the appeal. Challenging the same, the present revision is laid.

3. Smt. Barkha, learned counsel for the accused-revision petitioners contended that the prosecution failed to prove that the accused used deadly weapons and that A.1, therefore, could be convicted for the offence u/s. 325 IPC and not for the offence u/s. 326 IPC. She further alleged that A.1 to A.4 could have been convicted for the offence u/s. 323 IPC and not for the offence u/s. 324 IPC. Smt. Y. Ratna Prabha, learned Additional Public Prosecutor contended that the prosecution established its case beyond reasonable doubt and that the conviction recorded deserves to be maintained.

4. PW.1 is the victim in this case. He originally belonged to Sambatur village. He migrated to Sivalapalli village of Chennur Mandal. The accused belong to Sambatur village. One Ramakrishnaiah of Sambatur village requested PW.1 to act as an elder in the disputes in the Harijanavada of Sambatur village. The attempts of PW.1 to settle the dispute proved futile. PW.1 took rest in the house of Ramakrishnaiah at Sambatur village itself on the date on which he attempted mediation.

5. On the next day morning which was the date of the offence, while PW.1 was in front of the house of Ramakrishnaiah, the accused came to him in consortium. The accused were in possession of bombs. They pelted stones at the house of Ramakrishnaiah. When Ramakrishnaiah escaped from the scene, the accused went upon PW.1 on the ground that PW.1, who was an outsider, was participating in the mediation of the disputes of the villagers.

6. Frightened, PW.1 boarded a bus, which was proceeding towards Kamalapuram. Chasing PW.1, the accused boarded the bus. A.1 administered a blow with a stick on the head of PW.1 causing injury to the occipital region. A.2 beat PW.1 with a rod on the backside of PW.1. A.5 instigated others to kill PW.1. He kicked PW.1. When PW.1 fell down, the accused beat him indiscriminately. The accused then got down from the bus and went away. PW.1 proceeded in the same bus to Kamalapuram and lodged a police complaint in Ex.P.1. He was later treated by the Doctor.

7. PW.1 originally belonged to Sambatur village. He migrated to Sivalapalli. Ramakrishnaiah, who is now no more, is son-in-law of the younger brother of PW.2's father-in-law. At about 7 a.m., PW.2 was inside the house. When she heard cries, which was the alarm by PW.1, she went outside the house and noticed A.1 to A.4 chasing PW.1 and Ramakrishnaiah. The accused were pelting stones at them. When the accused noticed PW.2, the accused hurled a stone at PW.2 declaring that she belonged to the group of Ramakrishanaiah. The stone hit the left wrist of PW.2 resulting in a fracture. A.2 then hurled a stone causing injury on the left fore arm of PW.2. A.3 beat her with an iron rod on the left side of her back. A.4 beat her with an iron rod on her right thigh. PW.2 rushed into the house and closed the doors from inside so as to escape further attack.

8. When PW.1 lodged a compliant with Kamalapuram Police Station, police went

to Sambatur village. Police admitted PW.2 as well as PW.1 in the Government Hospital, Kamalapuram for treatment. The doctors found simple injuries upon PW.1, but grievous injury in the shape of fracture and other simple injuries upon PW.2. This is the prosecution version.

9. The most important aspect of the case is the weapon used by the accused. It is the case of the prosecution that iron rods and stones were used in causing hurt to PWs.1 and 2. It may be noticed that the fracture caused to the left arm of PW.2 was not with an iron rod, but with the help of a stone. Police, however, neither seized the stones nor the iron rods used by the accused as weapons. In respect of stones, Smt. Barkha placed reliance upon *Pandurang Dadu Patil v. The State of Maharashtra* 1997 Cri.L.J. 3827 . It was observed in that case:

14-A. A perusal of S. 326, IPC would show that stone would only fall within its ambit if it is of a size and weight that if "used as a weapon of offence is likely to cause death". In the instant case, there is no evidence to indicate that the stones used were so big and heavy that they were likely to cause death.

10. Thus, it is her claim that unless the prosecution produces the stones and establishes that the stones are so deadly as to constitute a deadly weapon, the offence u/s. 326 IPC could not be made out. Admittedly, neither the stones nor the iron rods were seized by police. I, therefore, have no hesitation to agree with the contention of the learned counsel for the accused that the prosecution failed to establish that the accused used deadly weapons in causing injuries.

11. Once deadly weapons are ruled out, the accused cannot be convicted for the offence under Sections 324 and 326 IPC. If the offences against the accused are established, they would become offences under Sections 323 and 325 IPC only. As rightly submitted by the learned Additional Public Prosecutor, the evidence of the prosecution witnesses is watertight and corroborates each other. She submitted that Sambatur village is a faction-ridden village and that it was not possible to procure independent evidence. She submitted that the prosecution examined all possible witnesses to prove the case.

12. I am in agreement with the contention of the learned Additional Public Prosecutor. The two victims and the two Doctors who treated the victims were examined by the prosecution. Ramakrishaniah could not be examined by the prosecution because Ramakrishaniah is no more. The prosecution also examined a resident of Harijanavada, who witnessed the incident as PW.3. He was an eyewitness for the attack against PW.1. As rightly submitted by the learned Public Prosecutor, the evidence of these witnesses is highly corroborative of each other. The evidence of the witnesses does not suffer from any infirmity and inconsistency. The prosecution thus clearly established the incident. The only inconsistency is that the prosecution failed to produce the weapons including stones, so much so, the conviction deserves to be under Sections 323 and 325 IPC and not under Sections 324 and 326 IPC, as the prosecution failed to establish that the deadly weapons were used in attacking PWs.1 and 2. The

conviction recorded by the trial Court and confirmed by the appellate Court consequently deserves to be modified as conviction under Sections 323 and 325 IPC.

13. The learned counsel for the accused submitted that imposition of rigorous imprisonment for a period of one year for the offence u/s. 323 IPC and two years for the offence u/s. 325 IPC is severe and deserves to be modified for the offence u/s. 323 IPC. I consider that fine instead of imprisonment would meet the ends of justice. I, therefore, deem it appropriate to impose fine of Rs. 500/- against each of the four accused for the offence u/s. 323 IPC, instead of rigorous imprisonment for a period of one year, as recorded by the appellate Court. I also consider that rigorous imprisonment for a period of six months would meet the ends of justice for the offence u/s. 325 IPC subject to the condition that it should be accompanied by a fine of Rs. 500/-.

14. Therefore, the conviction recorded by the trial Court and confirmed by the appellate Court is modified to conviction against A.1 to A.4 for the offence u/s. 323 IPC and against A.1 for the offence u/s. 325 IPC. A.1 to A.4 are sentenced to a fine of Rs. 500/- each, in default of payment of which, to undergo simple imprisonment for a period of one month each. A.1 is found guilty of the offence u/s. 325 IPC and sentenced to rigorous imprisonment for a period of six months and fine of Rs. 500/-, in default of payment of which, to undergo simple imprisonment for further period of one month. The period of imprisonment already undergone by A.1 shall be set off u/s. 428 Cr.P.C. The fine amount shall be paid by the accused before the trial Court within 15 days from the date of receipt of a copy of the judgment by the trial Court. A.1 shall surrender before the trial Court to undergo remaining part of the sentence, if he has not undergone the sentence of imprisonment of six months period. The bail bonds of A.2 to A.4 stand cancelled.

15. The Criminal Revision Case is disposed of accordingly.