
(2008) 02 AP CK 0026

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 281 of 2006

Golla Sankaraiah and Others

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 34

Citation : (2008) 1 ALD(Cri) 830 : (2008) 2 ALT(Cri) 39

Hon'ble Judges : L. Narasimha Reddy, J;B. Prakash Rao, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—A1 to A13 were tried by the Court of the I Additional Sessions Judge, Nellore, in Sessions Case No. 113 of 2000 on several charges. The case against A3 and A10 abated on account of their death, during the pendency of the case. First charge was against accused Nos. 1, 2, 4 to 13 for the offence punishable u/s 148 of the Indian Penal Code (IPC). Accused Nos. 1, 2, 4 to 9 and 11 were found guilty of the said charge and they were sentenced to rigorous imprisonment for one year. Accused Nos. 12 and 13 were acquitted of that charge. Second charge was against accused Nos. 1, 2, 4 to 13 for the offence punishable u/s 307 read with 149 IPC for attempting to cause the death of P.W.1. In the same charge, accused Nos. 2 to 5, 7, 8, 11 and 12 were accused of causing hurt to P.W.2. The trial Court found the said accused guilty of the offence punishable u/s 324 IPC and imposed sentence of rigorous imprisonment for one year. The third and grave charge was against accused Nos. 7, 8 and 11 for the offence punishable u/s 302 IPC. They were alleged to have caused the death of Golla Subbaramaiah-the deceased. The trial Court convicted and sentenced them to undergo imprisonment for life and to pay fine of Rs. 1,000/- each, in default, to suffer rigorous imprisonment for three months. The

sentences were directed to run concurrently. The appellants herein, who figured as accused Nos. 1, 2, 4 to 9 and 11, filed this appeal against the judgment of the trial Court dated 17.02.2006.

2. P.Ws.1 and 2 and the deceased are brothers. P.W.3 is their nephew. Accused Nos. 1 to 4 are brothers. There existed some disputes between the two parties as regards access to the agricultural fields and residential houses. Representations were submitted to the revenue authorities in this regard and suggestions were said to have been given to the parties in the matter of exercising their rights.

3. On 11.06.1998, P.W.1 is said to have demanded A13 to pay Rs. 10,000/-, which was due to him. The latter is said to have asked the former to come to his house on the next day to collect the same. P.W.1 is said to have called A13 at 9.30 a.m. on 12.06.1998. Accused Nos. 1 to 4 and 6 to 9 were said to have come out of the house armed with weapons and when A1 tried to attack P.W.1, he tried to ward-off and in the process, received blood injury in the lower lip. Accused Nos. 2, 3, 6 and 10 are said to have beaten him on the head with rods. On hearing the cries of P.W.1, his brothers P.W.2 and the deceased are said to have rushed to the scene. Then, A8 is said to have given a blow with an iron rod on the head of the deceased and when he fell down, accused Nos. 6, 7 and 11 dealt further blows. Accused Nos. 7 and 11 are said to have attacked P.W.2 and caused injuries on the right shoulder and head. Accused Nos. 6 and 12 are said to have pelted stones against P.Ws.1, 2 and the deceased. All of them were shifted to the Government Hospital at Naidupet.

4. The police reached the scene of occurrence at about 11 a.m. on that day on receiving information through V.H.F. set. The complaint about the incident was submitted by P.W.1 to the S.I. of Police, Pellakur. F.I.R. was registered in crime No. 29 of 1998 on the basis of the same. The injured persons were treated in the hospital. The deceased died three days after the incident, while undergoing treatment. The provision in the F.I.R. was altered on account of the death of the deceased. Inquest and post mortem on the dead body were conducted and further investigation was taken up. Charges as mentioned above were framed. All the accused pleaded not guilty. The trial Court rendered its judgment, finding that the various accused are guilty of different offences, and imposed corresponding sentences.

5. Sri C.Padmanabha Reddy, learned Senior Counsel, submits that admittedly an altercation has taken place between the party of the deceased on the one hand, and that of accused Nos. 1 to 4 on the other hand, on 12.06.1998, and even a case and a counter case in the form of crime Nos. 28 and 29 of 1998 were registered by the police. He submits that the prosecution did not render proper assistance to the trial Court inasmuch as no steps were taken to get both the cases tried together. According to the learned Senior Counsel, a serious inconsistency came into existence in the form of the judgment rendered by the Judicial First Class Magistrate, Sullurpet in C.C. No. 271 of 1998 dated

16.09.2002 marked as Ex.D4, virtually, belying the charges in the initial case. According to him, the victims in one case were treated as accused in the other, on the same set of facts. It is pointed out that the deceased in this case figured as A2, in C.C. No. 271 of 1998. He submits that it is just impossible to reconcile these conflicting versions presented by the prosecution. It is also urged that the evidence of P.Ws.1 and 2 is totally untrustworthy, in view of the fact that he feigned total ignorance about the incident that gave rise to C.C. No. 271 of 1998. He contend, that the facts mentioned in Ex.P1 are totally at variance with the evidence on record and even the investigating officers have admitted that there are some inconsistencies. Learned Senior Counsel further urges that in a case of a free for all fight, the question of invoking Sections 148, 149 or 34 IPC does not arise.

6. Learned Additional Public Prosecutor, on the other hand, submits that the mere fact that two different cases came to be registered in relation to the same incident does not by itself render the judgment of the trial Court in this case untenable, in any way. He submits that while the charge in C.C. No. 271 of 1998 is the one u/s 324 IPC, the charges in S.C. No. 113 of 2000 ranges from Sections 324 to 302 IPC.

7. It has already been pointed out that P.Ws.1 and 2 are the brothers and P.W.3 is the nephew of the deceased. P.W.4 is the Panchayat Secretary in whose presence certain arrangement was said to have been made between the parties, by the revenue officials. He stated that himself and the Sub Inspector of Police, Pellakur, went to the place and came to know about the disputes between both the parties about a path way and money. He is a witness to the scene of offence panchanama, marked as Ex.P3. In cross examination of this witness, it was elicited that the date on Ex.P3 was altered from 16.06.1998 to 12.06.1998. P.W.5 is the doctor, who conducted post mortem of the deceased and the post mortem certificate was marked as Ex.P9. He noticed fourteen injuries on the body of the deceased and opined that the death was due to injury No. 1. P.W.6 is the Head Constable, who received intimation about the death of the deceased and P.W.7 is the constable, who received the dead body and later, handed over the same to the blood relations of the deceased. P.W.8 is the Civil Assistant Surgeon in the Area Hospital, who treated P.Ws.1 and 2 and issued wound certificates-Exs.P11 and P12. The Causality Medical Officer of Sri Venkateswara Institute of Medical Sciences, Tirupati was examined as P.W.9. The Sub Inspector of Police, who received the information about the incident, was examined as P.W.10. P.W.11 is the Inspector of Police, who conducted investigation.

8. From the submissions made by the learned Additional Public Prosecutor, we are of the view that the following questions arise for consideration.

1. Whether the same incident gave rise to a case, and counter case and if so, whether the procedure adopted by the prosecution has resulted in any anomalous situation.

2. Whether the evidence on record is sufficient to sustain the conviction against the appellants herein.

9. The police swung into action in relation to this case on receiving information through the V.H.F. set. The clear facts about the tussle or quarrel between the parties were not known from the information. P.W.1 submitted a complaint-Ex.P1, stating that there existed some disputes between his family and that of A1, leading to submissions of representations to the revenue authorities. He alleged that on 11.06.1998, he requested A13 to return the amount due to him and thereupon, he was asked to come on the next day. He further stated that when he went to the house of A13 on the next day, he was attacked by several accused and on hearing his cries; his brothers, P.W.2 and the deceased have come to his rescue. The accused are said to have attacked P.W.1 and his brothers. Shorn of further details, this is the summary of the complaint submitted by P.W.1. Ex.P1 does not contain the time at which it was received by the police. A close scrutiny of the evidence of P.W.1 discloses that he was not certain about the time of the occurrence or as to when he has submitted Ex.P1 to the police. When specific questions were put to him as to his involvement in a case registered at the instance of A1, he pretended total ignorance.

10. In the complaint, apart from the names of A1 to A9 and A13, names of four women were also mentioned. In his cross examination, P.W.1 stated as under.

I did not give the names of three ladies at the time of recording my report (Ex.P1). I do not know at whose instance, the names of Penchamma, Ramanamma and Karnati Kondamma recorded in Ex.P1. The three women mentioned above are the wives of accused Nos. 1, 6 and 13 respectively.

11. He has also stated that he does not know whether he has mentioned the name of A13 in Ex.P1. Some of inconsistency about the alleged involvement of accused Nos. 6, 7 and 11 was also elicited. It was suggested to him that Ex.P1 was prepared during night at Tirupati after prolonged discussions. The record discloses that a serious incident of quarrel between two parties has taken place in the village at 9.30 a.m. on 12.06.1998. A1 herein submitted a complaint to the police, stating that he was attacked by P.Ws.1 to 3 and the deceased in this case. F.I.R was registered for the offence u/s 324 IPC in crime No. 28 of 1998 in the same Police Station. Sometime thereafter, Ex.P1 herein was submitted and on the basis of the same, crime No. 29 of 1998 was registered. While crime No. 28 of 1998 gave rise to C.C. No. 271 of 1998 on the file of the Judicial First Class Magistrate, Sullurpet, crime No. 29 of 1998 resulted in S.C. No. 113 of 2000 on the file of the I Additional Sessions Judge, Nellore. Though P.W.1 pleaded ignorance about his figuring as accused in C.C. No. 271 of 1998, the judgment rendered in that case marked as Ex.D4 clearly discloses that he did not speak truth. Further, certain important information was elicited through P.W.11, the Investigating Officer. It is relevant to extract the same.

Crime Nos. 28 and 29 of 1998 of Pellakur P.S. are cases and counters. The

present case relates to crime No. 29 of 1998. A1 herein is complainant in crime No. 28 of 1998. Case and counter case means regarding one incident two reports are given with two different versions. The accused in 28 of 1998 are witnesses in crime No. 29 of 1998 (S.C. No. 113 of 2000) and the accused in crime No. 28 of 1998 are witnesses in crime No. 29 of 1998. The incident in both the cases had taken place on 12.06.1998 at the same place and time. If the investigation officer comes to a conclusion, it is a free fight between both the parties, then in a case and a counter case both the parties will be charge sheeted.

12. From this, it becomes clear that the same incident gave rise to crime Nos. 28 and 29 of 1998 of Pellakur Police Station. The inescapable conclusion is that both of them constitute a case and counter case.

13. The desirability of deciding the case and counter case by one and the same Court was emphasized by the Supreme Court in its judgment in *Sudhir v. State of M.P.* 1 2001 (2) ALT (Cri.) 79 The following observation of the Supreme Court underlines the importance of the case and the counter case being tried together.

It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same Court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter case" by some High Courts as "cross cases" by some other High Courts. Way back in nineteen hundred and twenties a Division Bench of Madras High Court (Waller and Cornish, JJ.) made a suggestion (*In Re Goriparthi Krishtamma* 1929 Mad 881) that "a case and counter case arising out of the same affair should always, if practicable, be tried by the same Court; and each party would represent themselves as having been the innocent victims of the aggression of the other.

14. The principle underlying such a requirement is not difficult to discern. It needs to be noted that when a case and a counter case are filed in relation to an incident, same individuals answer the description of victims in one case, and of accused, in another case. Whatever be the permissibility of the same individual playing the role of a plaintiff and defendant in the suits filed in relation to the same subject matter, almost irreconcilable situations emerge when they figure as victims and culprits, in relation to one and the same incident, in two different cases.

15. The necessity to try such cases together is so imminent that any lapse in this regard is likely to give rise to disastrous results. In C.C. No. 271 of 1998, the Court of the Judicial First Class Magistrate, Sullurpet, P.Ws.1, 2 and the deceased herein figured as accused, and A1 herein as the complainant. Specific finding was recorded to the effect that P.W.1 herein is guilty of the offence punishable u/s 324 IPC for inflicting injuries on A1 herein. In relation to the same incident, the Sessions Court proceeded with the trial in S.C. No. 113 of 2000 and recorded exactly the opposite findings. A serious lapse has taken place on the part of the prosecution, if not, the Courts referred to above, in not ensuring that both the

cases are tried together. We find ourselves in a precarious condition on the one hand, we cannot ignore the findings recorded in Ex.D4 in this case i.e., judgment in C.C. No. 271 of 1998, and on the other hand, cannot put a seal of approval on the findings recorded by the Court of Sessions in S.C. No. 113 of 2000. Inasmuch as the judgment in C.C. No. 271 of 1998 has become final, there is no way, we can ignore the findings therein whereas the findings in S.C. No. 113 of 2000, are at large.

16. Now comes the second question. Notwithstanding the typical situation referred to above, there must not be any difficulty in sustaining conviction if the evidence on record in this case warrants it. In this regard, our discussion needs to be focused on two different aspects namely, the one in relation to the offence punishable u/s 302 IPC and the other in relation to those under Sections 148 and 324 IPC. Taking the second thing first, it may be noted that when admittedly, it was a free for all fight between two groups, as is evident from the information elicited through P.W.11, there was no basis for invoking Section 148 IPC at all. Reference in this context can be made to the judgments in *Puran Vs. State of Rajasthan*, and *State of Haryana v. Chandvir and Ors.* 1996 SCC 728. While the first charge is exclusively for the offence punishable u/s 148 IPC, the second one is for the offence u/s 307 read with 149 IPC. To that extent, both the charges become untenable. Now it remains to be seen as to how far the prosecution has proved the third charge in relation to Section 302 IPC.

17. There is serious dispute as to the very place of occurrence. While P.W.1 stated that the entire occurrence took in the house of A13, the evidence on record, including that of P.W.11, coupled with the scene of offence panchanama marked as Ex.P18 discloses that the dead body was found almost in front of the house of the deceased. A clear finding was recorded in Ex.D4 that the entire quarrel took place in front of the house of the deceased in this case. Further, a serious discrepancy exists as to who attacked the deceased. The evidence of P.W.1 is wavering. In addition to that, the deceased himself was accused of attacking A1, and but for the fact that he died, he would have been open to the Court of Judicial First Class Magistrate, Sullurpet to decide about his involvement also. Another important aspect to be noted is that it was alleged that accused Nos. 6, 7 and 11 dealt blows on the deceased with iron rods whereas, the post mortem report disclosed only two serious injuries. Under these circumstances, it cannot be said that the prosecution has proved its case that the deceased was murdered by accused Nos. 6, 7 and 11.

18. For the foregoing reasons, the Criminal Appeal is allowed. The conviction and sentence recorded in S.C. No. 113 of 2000 on the file of the I Additional Sessions Judge, Nellore, dated 17.02.2006, against the appellants-Golla Sankaraiah (A1) S/o.Kalappa, Golla Penchalaiah (A2) S/o. Kalappa, Golla Ravi (A4), S/o. Kalappa, Karnati Ravi (A5) S/o. Venkatamuni, Nalliboina Raghavaiah (A6), S/o. Veeraswami, Nalliboina Hari (A7) S/o. Raghavaiah, Golla Chandraiah (A8) S/o. Polaiah, Golla Polaiah A(9) S/o. Nallaiah, Golla Subrahmanyam (A11) S/o.

Bathaiah, are set aside. They shall be released forthwith, unless their presence is required in any other case.