
(2011) 08 AP CK 0028

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 932 of 2004

Nallajarla Krishnarao and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 20-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 149, 300, 302, 304

Citation : (2011) 08 AP CK 0028

Hon'ble Judges : P. Durga Prasad, J

Bench : Single Bench

Advocate : K. Srinivas, for the Appellant;

Final Decision : Allowed

Judgement

P. Durga Prasad, J.—This appeal is directed against the conviction and sentence passed by the VI Additional Sessions Judge, Guntur in S.C. No. 576 of 1999 on 20.04.2004.

2. The Appellants herein were prosecuted for the offences under Sections 302 and 324 read with 34 Indian Penal Code alleging that the accused and deceased are residents of Govindapuram village. On 24.11.1998 some buffaloes of unknown person grazed hay heap of accused No. 1 and that on 25.11.1998 at about 6.30 A.M. while accused No. 1 was abusing, the deceased intervened and questioned as to why he was abusing. P. Ws.2 and 3 intervened and pacified them and sent them away. Again at 9.00 A.M. on 25.11.1998 while the deceased was taking food in his house accused No. 1 along with accused Nos. 2 to 6 went in front of the house of deceased and started abusing him and while the deceased came out of the house, accused Nos. 1 to 6 caught hold of him and accused No. 1 took knife from his waist and stabbed the deceased on his left side abdomen and caused bleeding injury. When P.W. 1 intervened, accused No. 2 beat her with a stick on her right side fingers. Thereafter, the accused ran away from the spot. P. Ws.1, 2 and 4 brought the deceased to Government Hospital, Chilakaluripet in a tractor and where he was advised to go to Government

General Hospital, Guntur, but they have gone to private nursing home and when the condition was became serious, the deceased was removed to Government General Hospital, on 27.11.1998 he succumbed to injuries while undergoing treatment. After completion of investigation, charge sheet was filed by the police against all the accused.

3. The learned Sessions Judge has framed the charges u/s 302 Indian Penal Code against accused No. 1, Section 302 read with 34 Indian Penal Code against accused Nos. 2 to 6, Section 324 Indian Penal Code against accused No. 2, Section 324 read with 34 Indian Penal Code against accused No. 1, 3 to 6. All the accused pleaded not guilty for the said charges.

4. In order to establish the said charges, the prosecution examined P. Ws.1 to 18 and got marked Exs.P.1 to P.15 and M.O.1. No oral and documentary evidence was adduced on behalf of the accused.

5. The learned Sessions Judge by taking into consideration of the said oral and documentary evidence found accused No. 1 guilty for the offence u/s 304 Part-II Indian Penal Code, convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and also to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for a period 6 months. Accused Nos. 2 to 6 were found guilty for the offence u/s 304 Part II read with 109 Indian Penal Code and convicted and sentenced to undergo rigorous imprisonment for a period of 10 years each and also to pay a fine of Rs. 5,000/- each in default to undergo simple imprisonment for 6 months. All the accused are found not guilty for the charge u/s 302 read with 34 Indian Penal Code.

6. Aggrieved by the said conviction and sentence, the present appeal is filed by the Appellants/accused Nos. 1 to 6.

7. During the pendency of the appeal, the Appellant No. 1, who is the accused No. 1 reported to have been died on 27.12.2009 and filed his death certificate, as such the appeal against accused No. 1 was abated. Now, the appeal filed by Appellant Nos. 2 to 6/accused Nos. 2 to 6 has came up for consideration.

8. Now, the point that arises for consideration is:

Whether the prosecution could able to establish the charge u/s 304 Part-II read with 109 Indian Penal Code against accused Nos. 2 to 6 beyond reasonable doubt? PO I NT:

Learned Counsel for Appellant Nos. 2 to 6 has pleaded that accused Nos. 2 to 6 were convicted for the offence u/s 304 Part-II read with 109 Indian Penal Code even though the charge framed against them is u/s 302 read with 34 Indian Penal Code and as no separate charge is framed u/s 304 Part-II read with 109 Indian Penal Code against accused Nos. 2 to 6, they cannot be convicted for the said offence.

9. In "Wakil Yadav and Anr. v. State of Bihar 2001 SCC (Cri) 1499" the Apex

Court held that the offence u/s 109 is a distinct offence, for which a charge must be framed. Where the Appellant was charged and convicted for the offence u/s 302 read with 149 Indian Penal Code, the High Court has erred in convicting the Appellant for the offence u/s 302 read with 109 Indian Penal Code, as such the error committed by the High Court necessitated the Appellant's acquittal.

10. In *Sohal Lal @ Sohan Singh and Others Vs. State of Punjab*, the Apex Court held that the offence u/s 109 is substantive offence, failure to frame a charge u/s 109 Indian Penal Code causes prejudice to the accused as the accused has been charged only u/s 304-B, his conviction under Sections 300 and 109 Indian Penal Code are liable to be set aside.

11. In the present case, admittedly the charge is framed u/s 302 read with 34 Indian Penal Code against accused Nos. 2 to 6. The learned Sessions Judge has observed that there is no evidence before the Court about the prior meeting of minds of accused Nos. 1 to 6 in attacking the deceased; as such they cannot be convicted for the offence u/s 302 read with 34 Indian Penal Code. He further observed that the evidence clearly shows that accused Nos. 2 to 6 clearly abetted accused No. 1 in inflicting injury to the deceased. Therefore, the learned Sessions Judge came to the conclusion that accused Nos. 2 to 6 abetted the accused No. 1 by facilitating him to cause injury to the deceased.

12. In view of the above said decision, when no charge is framed u/s 109 Indian Penal Code against the Appellant Nos. 2 to 6, the conviction u/s 304 Part-II read with 109 Indian Penal Code cannot be sustained. The Appellants were not given any opportunity to face such charge during the course of trial. Therefore, in view of the error committed by the learned Sessions Judge, the Appellant Nos. 2 to 6 are entitled for acquittal without going into the merits of the case.

13. In the result, the appeal is allowed. The conviction and sentence passed by the learned VI Additional Sessions Judge, Guntur in S.C. No. 576 of 1999 dated 20.04.2004 is hereby set aside and the accused Nos. 2 to 6 are acquitted for the offence u/s 304 Part II read with 109 Indian Penal Code.