
(2000) 07 AP CK 0026
In the Andhra Pradesh High Court
Case No : Criminal A No. 1016 of 1998

Talari Rajanna and others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 104, 148, 149, 302, 304

Citation : (2000) 6 ALD 185 : (2000) 2 ALD(Cri) 501

Hon'ble Judges : Ramesh Madhav Bapat, J;D.S.R. Varma, J

Bench : Division Bench

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

Judgement

Ramesh Madhav Bapat, J.—The accused Nos.1 to 7 in Sessions Case No.434 of 1996, which was decided by the Additional Sessions Judge, Adilabad are appellants herein. The accused-appellants are tried for five charges.

2. The first charge against accused Nos.1 to 7 was u/s 148 IPC. The learned Judge found them guilty, and therefore, they were convicted and sentenced to suffer rigorous imprisonment for two years, and to pay fine of Rs.100/-, in default to suffer rigorous imprisonment for three months. The second charge against accused Nos.1 to 4 was u/s 302 IPC simplicitor. The learned Judge did not record any conviction against them. The third charge against accused Nos.1, 3 and 4 was u/s 307 IPC for attempting to cause the death of PW1. The learned Judge found them guilty of an offence punishable u/s 324 read with 149 IPC and sentenced them to suffer rigorous imprisonment for two years and to pay fine of Rs.100/- each, in default to suffer rigorous imprisonment for three months. The fourth charge against accused Nos.4 to 7 was u/s 324 IPC for beating PWs.2 and 3. They were found guilty and the learned Judge convicted and sentenced them to suffer rigorous imprisonment for two years and to pay fine of Rs.100/-, in default to suffer rigorous imprisonment for three months. The fifth charge against Accused Nos.1 to 7 was u/s 302 read with 149 IPC. The learned Judge

found all of them guilty of the said charge, and therefore, convicted and sentenced them to suffer imprisonment for life and to pay fine of Rs.100/- each, in default to suffer rigorous imprisonment for three months.

3. The substance of the charge against the accused was that on 19-10-1994 at 20.00 hours in the land bearing Survey No.97, situated in the village fields of New Pochampad, the accused alleged to have formed themselves into an unlawful assembly and caused the death of one Goli Poshetty.

4. The prosecution case can be briefly narrated as follows:

The prosecution witnesses and the accused are the residents of New Pochampad village. The deceased was also a resident of the same village. PW1 happened to be the brother of the deceased and PW2 is the mother of the deceased. PW4 is the wife of the deceased and PW3 is the wife of PW1. The land in which the incident had taken place was purchased by PW1 and the deceased from Thodugudla Poshetty and Gangamma about 27 years ago. Since then PW 1 and the deceased were in possession and enjoyment of the said land. About six months prior to the incident accused No.1 approached PW10, Village Administrative Officer stating that he had obtained registered sale deed for the land in the name of his son and asked PW10 to enter the same in the village records in the name of his son. PW10 replied to A1 that PW1, the deceased and A5 have also purchased that land and he would make enquiry and inform the latter about registration of land and so saying, he returned the application to A1.

5. On 19-10-1994 at about 7.00 p.m. the accused Nos.1 to 6 and two others came to the land of PW1 and the deceased and questioned PW1, PW4 and the deceased as to why they were preparing the bundles of paddy in the field. PWs.5, 6 and one Shekanna, Bhumanna, and Ganapathi were also present at that time. PW1 and the deceased replied that they were preparing bundles of their paddy. The accused threatened PW1 and others that they would report the matter to police and see that PW1 and others are arrested. The labourers engaged by PW1 and the deceased i.e., PWs.5 and 6 and others who were doing coolly work in the field, ran away from the field when the accused threatened to report the matter to police.

6. It is said that A1 was armed with an iron rod and he beat the deceased on his forehead, accused No.3 was armed with a cart peg, accused No.4 armed with an iron pipe. They attacked the deceased and beat him on his head, chest, and near the left eye. When PW1 intervened and came to the rescue of the deceased, A1, A2 and A4 beat him. A4 beat PW1 with an iron rod on his right leg, below left eye and on left cheek. A1 beat him on his right leg. A2 beat PW1 with a cart peg on his right hand. PW1 fell down. The deceased also fell down and became unconscious. When PW3 intervened, accused No.1 beat her with a cart peg on her head. A5 beat PW2 with a stout stick on left side of waist and head.

7. It is further stated by the prosecution that PW2 on the date of incident at about 7 to 8.00 p.m., was at the land near Pochamma temple. The deceased,

PW1, PW4 and PW5 and other elders of Bhagyanagar have gone to the land in the night and were preparing paddy bundles. While they were preparing paddy bundles, all the accused and another came to that place and scolded them. Bhagyanagar people have gone to a side. All the accused came there armed with knives, sickles and cart pegs and attacked them. Accused No.1 beat the deceased with a stick on his head, chest and on all over the body. A2 attacked the deceased with a knife. A2 also attacked PW2 with a knife and A5 beat PW2 with a cart peg. A4, A6 and A7 beat PW3 with a cart peg. A1 and A3 attacked and beat PW1 with a cart peg.

8. On 20-10-1994 at about 1.15 a.m. in the midnight PW1 along with eight others went to Nirmal Police Station and narrated the incident to PW13 Sub-Inspector of Police. PW13 recorded the statement of PW1, which is now produced on record as Ex.P8. On the strength of Ex.P8, PW13 registered a case in Crime No.38/94 against the accused under Sections 148, 324, 307 read with 149 IPC and despatched copies of FIR to all concerned. PW13 examined PWs.1 to 4 and others. PW 13 referred PWs.1 to 3 to Government Hospital, Nirmal for treatment.

9. On 20-10-1994 at about 2.00 a.m. on a requisition given by PW13, PW11 Deputy Civil Surgeon, Government Hospital, Nirmal, examined PWs.1 to 3. PW11 referred the injured (deceased) to District Headquarters Hospital, Nizamabad on the same day. Ex.P6 is the injury certificate issued by PW11 in respect of the injuries found on the person of the deceased. Then PW11 treated PWs.1 to 3. Ex.P7 is the certificate in respect of PW1. Ex.P8 is the injury certificate in respect of PW2 and Ex.P9 is the injury certificate in respect of PW3.

10. On 20-10-1994 at about 6.45 a.m. PW12 Civil Assistant Surgeon Government Hospital, Nizamabad examined the deceased who was referred from Government Hospital, Nirmal. After examining the deceased, PW12 found the deceased in a semiconscious state. The deceased while undergoing treatment expired at 7.15a.m. Ex.P10 is the case sheet of the deceased.

11. On 20-10-1994 PW15 Circle Inspector of Police, Nirmal received information from PW13 as to the death of the deceased while undergoing treatment in Headquarters Hospital, Nizamabad. Immediately PW15 rushed to Headquarters Hospital along with PW13. PW15 verified the investigation done by PW13 and found it on correct lines. PW15 held inquest over the dead body of the deceased in the presence of PW10. Ex.P14 is the inquest report. PW15 seized MOs.6 to 8 at the time of inquest. PW15 also recorded the statement of PW5. Thereafter the dead body was sent for post-mortem examination.

12. On 20-10-1994 at about 7.30 a.m. PW13 visited the scene of offence and prepared panchanama of the scene of offence under Ex.P5. From the scene of offence PW13 seized blood stained earth and control earth under Ex.P5 panchanama. MOs.3 and 4 are the control earth. MO5 is a pair of Chappals seized from the scene of offence. Afterwards, PW13 returned to the police station at 10.30 a.m. PW13 received a message through VHP set about the death of the

deceased from the Headquarters Hospital, Nirmal. Then he issued alteration memo altering the section of law from Sections 148, 324, 307 read with 149 IPC to one under Sections 148, 324, 302 and 302 read with 149 IPC.

13. On 21-10-1994 on a requisition from RMO Headquarters Hospital, Nizamabad, PW14, Civil Assistant Surgeon, Government Headquarters Hospital, conducted autopsy over the dead body of the deceased. According to him the cause of death was due to head injury because of intra cerebral haematoma. Ex.P13 is the post mortem certificate.

14. On 21-10-1994 PW15 examined PW6 and recorded his statement. On 24-10-1994 PW15 also examined PW10 and recorded his statement. On 4-11-1994 accused were arrested. It is alleged that when they were in police custody, they expressed their willingness to discover certain articles. Their statements were recorded and some articles were recovered from their possession. Thus, on completion of investigation, PW15 filed the charge-sheet.

15. In order to connect the accused with the crime, prosecution led the evidence of PWs.1 to 15. They also produced certain documents. They were marked as Exs.P1 to P22. M.Os.1 to 18 were also produced on behalf of prosecution.

16. PWs.4 and 9 did not support the prosecution, and therefore, they were declared hostile.

17. In order to prove the fact that the deceased died homicidal death, the prosecution relied upon the evidence of PW15, who conducted inquest over the dead body of the deceased in the presence of PW10. Ex.P14 is the inquest report. After inquest panchanama was over, PW15 made arrangements to send the dead body to PW14 for conducting autopsy over the dead body of the deceased. PW14, who was working as Civil Assistant Surgeon, on receipt of requisition from police on 20-10-1994, conducted autopsy over the dead body of the deceased and noticed the following external injuries.

"1. Sutured lacerated wound left side of lower lip measuring 2" x 1/4".

2. Sutured wound (lacerated) on right side of nose 1" x 1/8".

3. Lacerated sutured wound on forehead 2"x1/4".

4. Lacerated sutured wound on left parietal region of scalp 2" x 1/8".

5. Lacerated sutured wound on left leg 2" x 1/8".

18. On internal examination, he noticed the following internal injuries :

"Scalp : Haematoma present over scalp on forehead 2" x 1/2".

Haematoma present over left occipital area of scalp 4" x 2 1/2". Intra cerebral haematoma 4"x 1 1/2" over left side of occipital of the brain."

19. According to the Doctor, all injuries are ante mortem, and they could have

been caused with a blunt object. The Doctor further opined that the deceased died due to head injury because of intra cerebral haematoma. Ex.P13 is the post mortem certificate issued by PW14.

20. Considering the evidence led by the prosecution on the point of homicidal death, we hold that the prosecution was able to prove that the deceased died homicidal death.

21. In order to prove the fact that the accused are responsible for causing the death of the deceased, the prosecution relied upon the evidence of PWs.1, 2, 3 and 5, who are said to be eye-witnesses to the incident.

22. It is not in dispute that the incident in question had taken place on 19-10-1994 at about 8.00 p.m., in the disputed field. According to the version of PW1, the said field belongs to him. According to his version they had started cutting paddy and they were bundling the crop. PW1 further states in his evidence that the accused came to the scene of offence and they questioned as to why they were bundling the paddy crop. Thereupon, the deceased alleged to have told them that the paddy crop belongs to them. Then the accused alleged to have threatened them to report the matter to police. Thereupon the deceased told the accused to do whatever they like. Thereupon accused No.1 alleged to have beat the deceased on his fore head with an iron rod. Accused No.3 alleged to have beat the deceased with a cart peg. Accused No.4 beat the deceased with an iron pipe on his head, chest and near the left eye. PW1 further states that he tried to intervene and rescue his deceased brother. He was also beaten by A1, A2 and A4. The evidence of PW1 further discloses that the deceased on receipt of injuries fell down on the spot and became unconscious. Thereafter all of them left the scene of offence.

23. Ex.P1 is the first information report given by PW1 immediately after commission of the offence, on the strength of which, the offence came to be registered by police.

24. The evidence of PW2 further discloses that on the date of incident, he along with his deceased brother, PWs.1, 3, 5 and few more coolies had gone to the field for bundling paddy crop. The accused appeared at the scene of offence and questioned them as to why they were bundling the paddy crop. Then there took place an altercation between A1 and the deceased. Accused No.1 alleged to have told the deceased that he would report the matter to police. Thereupon accused No.1 beat the deceased with a stick on his chest and all over the body. Accused No.2 attacked the deceased with a knife and A2 also attacked PW2 with a knife. Accused No.5 beat PW2 with a cart peg, A4, A6 and A7 beat his daughter-in-law Mutharmma with cart pegs. A1 and A3 attacked PW1 with cart pegs. The evidence of PW2 further discloses that on getting the hit on the head, the deceased became unconscious and fell down.

25. The evidence of PW3, who is also an eye-witness to the incident, and who also happened to be the wife of PW1, is also on the same lines. According to her

AI attacked PW1 with a cart peg, A4 beat PW1 with a knife and thereafter A5 beat her with a knife on centre of her head. She further states that AI attacked the deceased with a knife. Further she states that A2 also attacked the deceased with a cart peg and A2 and A6 beat PW2 on her head. Thereafter the deceased who was in unconscious state and the witnesses who received injuries were admitted in Nirmal Government Hospital. The deceased was shifted to Headquarters Hospital, Nizamabad and he subsequently died in the same Hospital while undergoing treatment.

26. PW4 though said to be an eyewitness to the incident did not support the prosecution, and therefore, he was declared hostile.

27. PW5 is one of the coolies who were engaged by the deceased for purpose of bundling the paddy crop, is also said to be an eye-witness. According to him accused Nos.1 and 3 made attack on the deceased causing head injury. This is the main evidence, which the prosecution could lead.

28. While commenting upon this part of evidence, the learned Counsel, Mr. C. Padmanabha Reddy, appearing on behalf of defence submitted at the bar that there is clear variation among the evidence of the eyewitnesses. It is submitted by the learned Counsel that according to the version of PW1, the deceased was attacked by AI, A3 and A4 with iron rods, whereas the second eye-witness, PW2, who happened to be the mother of the deceased, stated that accused Nos.1 and 2 attacked the deceased with a stick and knife respectively. PW3 happened to be the wife of PW1. She deposed that the deceased was attacked by AI with a knife and A2 with a cart peg. PW5, who also happened to be another eye-witness to the incident, stated that A1 and A3 beat the deceased with sticks, and therefore, the learned Counsel submitted at the bar that there has been discrepancy while describing the nature of weapons used by the accused for attacking the deceased, and therefore their evidence is highly doubtful.

29. We are not in agreement with the submission made by the learned Counsel. Admittedly the incident had occurred during night time. Therefore, there would be some confusion in the mind of the witnesses and they cannot be expected to say mechanically as to how the incident had happened. Moreover, when human element is introduced, some error is bound to occur. With some error occurring in their evidence, the evidentiary value of the eye-witnesses will not diminish in any manner.

30. The learned Counsel further pointing out the evidence on record submitted at the bar that accused No.1 had filed an injunction suit against the deceased and others in District Munsif Court, Nirmal and obtained an injunction order in the said suit, restraining the deceased and others from interfering with his possession over the disputed land. Thus, it is submitted by the learned Counsel that when accused No.1 had obtained injunction, he has every right to defend his possession. It is also brought to our notice by the learned Counsel that PW15, who is the Investigating Officer in this case has also admitted in his evidence

that by the date of incident, there was an injunction order against the deceased and other prosecution witnesses. PW1 further admitted in his cross-examination that on the date of incident they were preparing bundles of paddy crop raised by accused No.1 in that land. He further admits that on that day in the daytime all the accused worked in that land and harvested the paddy crop and put the crop in heaps. When such evidence was brought on record, it is contended by the learned Counsel that the accused were justified in defending their possession, when trespass was being committed by the prosecution party.

31. Our attention was also invited by the learned Counsel to the provision u/s 104 of the Indian Penal Code, which read as follows:

"104. When such right extends to causing any harm other than death :--If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in Section 99, to the voluntary causing to the wrongdoer of any harm other than death."

32. With this legal position, it was submitted by the learned Counsel at the Bar that once it is accepted that the accused had exercised the right of defending their property, the law permits them to cause harm to the persons committing the offence against property, except causing their death.

33. In the present case, it is not only admitted, but also proved from the evidence placed on record that the injunction granted by civil Court is in operation against the deceased person and the prosecution witnesses. In spite of this admitted position, the deceased and others were trying to lift the paddy crop, which was raised by the accused. Under these circumstances, we have no hesitation in holding that the accused have got right to defend their property.

34. Once it is accepted that the accused have got right to defend their property, they can cause harm to the wrongdoer, except causing death. Therefore, the charges framed against Accused Nos. 1 to 7 of the offence punishable u/s 148 IPC cannot be sustained.

35. Their Lordships of the Supreme Court in State of Bihar Vs. Nathu Pandey and Others, at Paragraph 10 were pleased to observe as under:

"In a case where the accused person could invoke the right of private defence it is manifest that no charge of rioting u/s 147 or Section 148, Indian Penal Code can be established for the common object to commit an offence attributed in the charge u/s 147 or Section 148, Indian Penal Code is not made out. If any accused person had exceeded the right of private defence in causing the death of Chitanu Rai or in injuring Gorakh Prasad it is open to the prosecution to prove the individual assault and the particular accused person concerned may be convicted for the individual assault either u/s 304, Indian Penal Code or of the

lesser offence u/s 326, Indian Penal Code. The difficulty in the present case is that the High Court has not analysed the evidence given by the parties and given a finding whether any or which of the appellants are guilty of causing the death of Chitanu Rai or of assaulting Gorakh Prasad. As we have already said, none of the appellants can be convicted of the charge of rioting u/s 148 or of the constructive offence u/s 326/149, Indian Penal Code".

36. Therefore, we are of the considered view that the order of conviction and sentence recorded against accused-appellants of an offence punishable u/s 148 IPC cannot be sustained.

37. Now, once it is held that the other accused caused injury while defending their property, they were justified as per the provisions contained u/s 104 IPC.

38. As far as accused No. 1 is concerned, there is consistent evidence that accused No. 1 hit the deceased on his head with an iron rod or with a stick causing his death. As per the medical evidence of PW14, the cause of death was due to head injury, because of intra cerebral haematoma. This injury is attributed to accused No.1 alone. Therefore, we have no hesitation in holding that accused No.1 alone exceeded the right conferred on him u/s 104 IPC. Therefore, he alone has to be held guilty of the offence punishable u/s 304, Part-I IPC.

39. Therefore, the order of conviction and sentence recorded against accused Nos.2 to 7 of all charges are directed to be set aside, and they be set at liberty forthwith, if not required in any other case, whereas Accused No.1 is convicted for an offence punishable u/s 304, Part 1 IPC and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.100/-, in default to suffer rigorous imprisonment for three months. The fine if paid by the other accused be refunded to them.

40. The criminal appeal is allowed in part.