

STATE OF ANDHRA PRADESH
v.
VEDDULA VEERA REDDY AND ORS. ETC.

FEBRUARY 19, 1998

[M.K. MUKHERJEE, S.P. KURDUKAR AND K.T. THOMAS, JJ.]

Indian Penal Code, 1860 : Sections 149, 302, 304 Part I and 326—Murder—Accused entering into the room of deceased with deadly weapons at the dead hours of night—Assaulted the deceased causing his instant death—Evidence of eye witnesses—Corroboration by medical evidence—Conviction and sentence by Trial Court—On appeal, High Court altered the conviction on the ground that prosecution had failed to prove the common intention of the accused—Validity of—Held, accused were members of unlawful assembly sharing common object to assault the deceased—Identified by all the eye witnesses—Evidence of eye witness suffers from no infirmity—Thus High Court not justified in acquitting the accused of the offences punishable under section 302/149 and convicting them under section 304/326—Trial Courts order of conviction and sentence restored.

Respondent A-1 to A-5 were prosecuted for an offence under section 302/ 149 IPC. The prosecution case was that 'C' and A-1 were brothers. There father, before his death divided the property amongst his sons, daughters and wife. 'C' went to Iran and during his absence his share of property was looked after by A-1. On his return back, he took the management of his property and asked A-1 to furnish the accounts. This caused enmity between the brothers. On the fateful day 'C' along with his wife PW-3 came to the village and after taking dinner went to sleep in their room. PW-2, the mother and PW-1 the sister also went to sleep in another room. At the dead hours of night A-1 along with five associates armed with deadly weapons entered the room and started attacking 'C'. PW-3 raised alarm and hearing her cries PW-1 and PW-2 came to the room. When they tried to interfere, they were also assaulted by the accused. 'C' succumbed to his injuries. Charges were framed against the accused. The prosecution examined 19 witnesses including three eye witnesses.

The Trial Court convicted A-1 to A-5 and sentenced them to undergo imprisonment for life. However, on appeal the High Court on the ground that the prosecution had failed to prove the common intention of the accused,

A acquitted them of the offences punishable under section 302/149 IPC and instead convicted them under section 304/326 IPC. Aggrieved by the order of the High Court, the present appeals were filed.

Allowing the appeals, this Court

B **HELD : 1.1.** The evidence of the eye witnesses suffers from no infirmity whatsoever and the trial court had committed no error in convicting A-1 to A-5 under Section 302/149 IPC and also on other counts. The High Court was totally unjustified in altering the conviction from one under section 302/149 IPC to that under section 304 Part-I and 326 IPC. [1016-B; 1013-A]

C 1.2. The evidence of PW-1 and PW-2 the sister and the mother of A-1 respectively, unmistakably proves that A-1 to A-5 trespassed into the room at 2 A.M. with deadly weapons where 'C' was sleeping with his wife. The actual assault was witnessed by his wife PW-3 and she has stated all necessary details about the assault caused by A-1 to A-5. Her evidence was supported
D by mother and sister of A-1. The evidence of these three witnesses unmistakably indicates that 'C' died on the spot because of several injuries caused by A-1 to A-5. This evidence finds support from the medical evidence of PW-15 who performed the autopsy on the dead body. In the teeth of this conclusive evidence, the High Court was totally unjustified in altering the nature of offence and convicting A-1 for an offence punishable under Section
E 304 part-I. [1013-C-E]

2. The findings of the High Court that the prosecution failed to establish common intention on the part of A-1 to A-5 to commit the murder is totally unsustainable. High Court lost sight of fact that at the dead hours of night
F A-1 to A-5 trespassed into the room with deadly weapons where 'C' was sleeping. It can be inferred with absolute certainty that they were members of an unlawful assembly who came together at the dead hours of the night with deadly weapons, shared a common object to assault 'C' and in pursuance thereof assaulted him resulting into his instantaneous death. A-1 to A-5
G were identified not only by PW-3 but also by PW-2 and PW-1, mother and sister respectively of A-1. Despite their convincing, consent and satisfactory evidence on record, the High Court held that the prosecution has failed to establish a common intention on the part of A-1 to A-5 to commit the murder of 'C'. The High Court has totally overlooked the evidence of eye witnesses
H which has proved the common object of the unlawful assembly of A-1 of A-

5 attracting the provisions of section 149 IPC.

[1016-B-C; 1014-H; 1015-A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1631-31 of 1996 ETC.

From the Judgement and Order dated 22.11.95 of the Andhra Pradesh High Court in CrI. A. Nos. 290 and 332 of 1995.

G. Prabhakar for the Appellant.

G. Prakash Reddy and G. Narasimhulu for the Respondents.

The Judgment of the Court was delivered by

S.P. KURDUKAR, J. Cherukuri Sambaiah was an affluent person having lands and house at village Pedda Makkana in Guntur District. He had left behind three sons, two daughters and a widow. Cherukuri Seetharamaswamy (A-1) is his third son whereas Cherukuri Kalidas (since deceased) was his second son. Appasani Vasumathi Devi (P.W.1) is one of the daughters of Cherukuri Sambaiah who was married to Nageswara Rao of village Takkellapadu. After the death of her husband she has been residing at her parents house at Pedda Makkana. Cherukuri Sambaiah during his life-time divided his properties amongst his sons, daughters and his wife Cherukuri Saraswathamma (P.W.2). Cherukuri Kalidas (since deceased) was a doctor having two wives, namely, Pushpavani and Tripuranani Hemalatha (P.W.3) who are sisters. Cherukuri Kalidas and his two wives went to Iran and stayed there for about ten years. During his absence the property allotted to his share was looked after by A-1. Cherukuri Kalidas returned to Guntur from Iran five years before the incident that took place on 24.6.1991 and opened his clinic at Guntur. Cherukuri Kalidas on his return used to go to his village Pedda Makanna occasionally and took over the management of his property from A-1. The mother of Cherukuri Kalidas and A-1 were residing together in the village Pedda Makanna and her share comprising of ten acres of land was also looked after by him. Cherukuri Kalidas asked A-1 to furnish the account of his properties in his possession during his stay at Iran. This caused an ill-feeling between Cherukuri Kalidas and A-1. The dispute between the two brothers was sought to be resolved by the villagers but their efforts failed and because of this the people of the said village were divided into two groups. This acrimony also resulted into some incidents between these two groups including the incidents of throwing of bombs on each others which

A gave rise to the registration of crimes against them as also proceedings under Section 107 Cr.P.C.

B 2. On or about in the month of May 19, 1991, a month prior to the incident in question one Rangavali who was running a private school died of heart attack and in that connection Mr. Boddu Sambasivarao, the sympathiser of the said lady teacher filed report against A-1 alleging that he caused her death by administering the poison. A-1 believed that he was involved falsely in the said crime at the instance of Cherukuri Kalidas and it was this belief that led to further strained relation between them.

C 3. It is alleged by the prosecution that on 25.6.1991 at about 6 p.m. Cherukuri Kalidas along with his wife Tripuranani Hemalatha (P.W.3) came to Pedda Makkana on the scooter. After taking dinner they went to sleep in their room. Cherukuri Saraswathamma (P.W.2) the mother and Appasani Vasumathi Devi (P.W. 1) the sister also went to sleep in another room. A-1 was having his house adjacent to the house of Cherukuri Kalidas. It is alleged by the D prosecution that during that night at about 2 a.m. A-1 and his five associate armed with deadly weapons entered into the room where Cherukuri Kalidas was sleeping with his wife Tripuranani Hemalatha (P.W.3). During the night an electric bulb was also burning in the house. A-1 and his five associates started attacking Cherukuri Kalidas with deadly weapons. When Tripuranani Hemalatha (P.W.3) got up, she raised an alarm and tried to intervene but in E vain. A-1 and his associated also caused injuries to her. His sister Appasani Vasumathi Devi (P.W.1) and Cherukuri Saraswathamma (P.W.2), the mother, after hearing the cries of Cherukuri Kalidas came to the room and found that A-1 and his five associates were assaulting Cherukuri Kalidas and when they F tries to intervene they were also assaulted by these assailants. P.W.1 and P.W.3 sustained bleeding injuries whereas Dr. Kalidas was found lying dead on the floor. The deceased and the injured were thereafter removed to the general hospital, Guntur for medical treatment. Cherukuri Kalidas was declared dead and other injured persons were referred to the experts for better treatment. Dr. D. Veeraraju (P.W.16) sent an intimation to the IVth Additional Munsif G Magistrate. Guntur who came and recorded the dying declaration (Exb. P-1) of Tripuranani Hemalatha (P.W.3). V. Anjaneyulu (P.W.9), the Head Constable attached to the Government General Hospital received an intimation about the incident along with the copy of the dying declaration which he forwarded to Kothapet Police Station. Samasivrao, the Head Constable (P.W.10) registered the crime under Sections 147, 148, 324, 307 and 302 read with Section 149 IPC H at about 12 noon on 26.6.91 and transferred the same to SHO, Sattenapalli

Rural Police Station for investigation since the jurisdiction vested in that police station. The crime came to be registered accordingly at Sattenpalli Police Station and the copies of the FIR were forwarded to the concerned Magistrate and other police officers. S.A. Rahaman (P.W.17), the Sub-Inspector of Police commenced the investigation. A-4 to A-6 came to be arrested on 9.7.1991 whereas A-1 to A-3 were apprehended on 27.7.1991. After completing the necessary investigation a charge-sheet against the necessary investigation a charge-sheet against these accused persons came to be filed before the Magistrate at Guntur who committed the case to the Court of Sessions at Guntur for trial.

4. The Learned Sessions Judge framed charges against A-1 to A-6 under Sections 120-B, 449, 148, 302, 307/149, 324/149 IPC. All the accused denied the charges levelled against them and claimed to be tried. They pleaded that they were innocent and they had been falsely implicated in the present crime. To prove its case the prosecution examined as many as 19 witnesses of whom Appasani Vasumathi Devi (P.W.1), Cherukuri Saraswathamma (P.W.2), and Tripuranani Hemalatha (P.W.3) were the eye witnesses. Apart from the ocular evidence of these witnesses the prosecution also relied upon documentary evidence including the post-mortem examination report in respect of Cherukuri Kalidas (deceased) and the injury certificates in respect of C. Saraswathamma (P.W.2) and T. Hemalatha (P.W.3) issued by the doctors. Certain other circumstances which were pointer to the guilt of the accused were also relied upon by the prosecution. A-1 to A-6, however did not lead any evidence and test contended on their statements recorded under Section 313 Cr.P.C..

5. The learned trial judge after very careful scrutiny of the oral and documentary evidence on record by his judgment and order dated 5.4.1995 held that the prosecution failed to prove beyond reasonable doubt the complicity of A-6 and accordingly acquitted him of all the charges. The learned trial judge, however found the prosecution evidence acceptable against A-1 to A-5 and accordingly convicted them under Sections 449, 302/149 and 326/149 IPC. A-1 was also convicted under Section 324 IPC for causing hurt to Appasani Vasumathi Devi (P.W.1) and Cherukuri Saraswathamma (P.W.2) with a knife. Having recorded the above convictions the learned trial judge sentenced A-1 to A-5 to suffer imprisonment for life for the offence punishable under Section 302/149 IPC and also sentenced each one of them to various terms of imprisonment on other counts. All substantive sentences were ordered to run concurrently.

A 6. Being aggrieved by the order of conviction and sentence passed by the trial court Vaddula Veera Reddy (A-2) and Vaddula Vema Reddy (A-3) preferred Criminal Appeal No.290/95 whereas Cherukuri Seetharamaswamy (A-1) and Ramasani Hari Babu (A-4) and Ramasani Sankrarao (A-5) preferred Criminal Appeal No.332 of 1995 to the High Court of Andhra Pradesh at Hyderabad. Since both the appeals arose out of a common judgment, the High Court heard them together, and vide its common judgment and order dated November 22, 1995 allowed the appeals partly. While setting aside the order of conviction of A-1 under Section 302/149 IPC it convicted him for an offence punishable under Section 304 Part-I IPC simpliciter and sentenced him to suffer RI for eight years. In upholding the conviction of A-1 under Sections C 449 and 324 IPC the High Court sentenced him to suffer RI for two years and one year respectively. As far as A-3 and A-4 are concerned their conviction and sentence under Section 302/149 IPC were set aside and in its place they were convicted under Section 326/149 IPC and sentenced each one of them to undergo RI for four years. While upholding the conviction of these two accused under Section 449 and 324 IPC the High Court sentenced both of D them to undergo RI for two years and one year respectively. The High Court found A-2 and A-5 not guilty of any offence and accordingly acquitted them of all the charges. The substantive sentences awarded to A-1, A-3 and A-4 were ordered to run concurrently.

E 7. The State of Andhra Pradesh aggrieved by the judgment and order passed by the High Court filed Criminal Appeal Nos. 1631-32/92 by Special Leave. Criminal Appeal Nos.1633-34/96 by Special Leave are filed by Cherukuri Seetharamaswamy (A-1), Vaddula Vema Reddy (A-2) whereas Ramasani Hari Babu (A-4) filed Criminal Appeal No. 324 of 1997 in this Court by Special Leave challenging their order of conviction and sentence passed by the High F Court.

G 8. It may be stated that the State of Andhra Pradesh did not challenge the order of acquittal of Sanikommu Sambhi Reddy (A-6) passed by the trial court and, therefore, the said order of acquittal has become final. Since these appeals arise out of a common judgment rendered by the High Court they are being disposed of by this judgment.

H 9. We may first deal with the appeals filed by the State of A.P. which would decide the fate of other two sets of Criminal Appeals filed by the accused/appellants. We have very carefully gone through the judgments of the courts below as well as the oral and documentary evidence on record. We

have heard the learned counsel for the parties at great length and in our considered opinion the High Court has committed a serious error while acquitting A-1 to A- of the offence punishable under Section 302/149 IPC and convicting A-1 under Section 304 Part -I IPC and A-3 and A-4 under Section 326 IPC. A

10. We may presently point out how the High Court has recorded inconsistent and unsustainable findings. At the outset it needs to be stated that there was no challenge to the fact that Cherukuri Kalidas died a homicidal death as a result of several injuries sustained by him during the incident in question. He died on the spot. The evidence of Appasani Vasumathi Devi (P.W.1) and Cherukuri Saraswathamma (P.W.2) the sister and the mother of A-1 respectively. Unmistakably proves that A-1 to A-5 trespassed into the room at 2.00 a.m. on 26.6.1991 with deadly weapons where Cherukuri Kalidas was sleeping with his wife. The actual assault was witnessed by his wife Tripuranani Hemalatha (P.W.3) and she has stated all necessary details about the assault caused by A-1 to A-5. Her evidence was supported by mother and sister of A-1. The evidence of these three witnesses unmistakably indicates that Cherukuri Kalidas died on the spot because of several injuries caused by A-1 to A-5. This evidence finds support from the medical evidence of Dr. K. Mahipal Reddy (P.W.15) who performed the autopsy on the dead body. In the teeth of this conclusive evidence in our view the High Court was totally unjustified in altering the nature of offence and convicting A-1 for an offence punishable under Section 304 Part - I. The reasons recorded by the High Court in its judgment in this behalf are as under: B C D E

“To connect a person to the offence alleged, the nature of evidence should be clear, cogent and convincing free from doubts, inconsistencies and improbabilities. As far as the part played by A-1 is concerned, we have to agree with the finding of the learned Sessions Judge that he was responsible for causing death of the deceased. But the point is whether his role to be brought within the ambit of Section 302 I.P.C. or any other Section. The part played by him as per the evidence of the witnesses comes within the ambit of Section 304 (1) of I.P.C. As far as the part played by A-3 and A-4 are concerned, since the findings are that their role resulted in grievous hurt on the body of the deceased and simple injuries on other witnesses i.e. P.W.1 to 3. But the same does not disclose any common intention along with A-1. Hence they are not liable to be punished under Section 302 I.P.C. or Section 304-I of IPC, but under Section 326 F G H

A of I.P.C.

Since, we have reached the above conclusion, the conviction and order passed by the learned Sessions Judge against accused 1 to 5 deserves to be set-aside. Hence, the same is set aside and in their placed the following order is passed:

B The Criminal Appeals are allowed. So far as A-1 is concerned, the conviction and sentence passed by the learned Sessions Judge, Guntur are set aside and he is convicted for an offence punishable under Section 304 Part-I of I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of eight years. He is also convicted for an offence punishable under Section 450 of I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of two years. He is also convicted for an offence punishable under Section 324 IPC and sentenced to undergo Rigorous Imprisonment for a period of one year. It is ordered that these sentences shall run concurrently.

D So far A-3 and A-4 are concerned, the conviction and sentence passed by the learned Sessions Judge, Guntur the same are set aside and in its placed they are convicted for an offence punishable under Section 326 of I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of four years. They are also convicted for an offence punishable under Section 450 of IPC and sentenced to undergo Rigorous Imprisonment for a period of two years. Further, they are also convicted for an offence punishable under Section 324 of I.P.C. and sentenced to under go Rigorous Imprisonment for a period of one year. It is ordered that these sentences shall run concurrently”.

F 11. In the preceding paragraph of its judgment the High Court has referred to the evidence of eye witnesses and curiously observed that assuming if their evidence is acceptable it would only show that A-1, A-3 and A-4 have caused injuries on various parts of the body of Cherukuri Kalidas (deceased) but they had no common intention to cause injuries which would result into his death. The entire premiss of the discussion of the evidence of Appasani Vasumathi Devi (P.W. 1) Cherukuri Saraswathamma (P.W. 2) and Tripuraneni Hemalatha (P.W.3) made by the High Court was totally contrary to the evidence of these eye witnesses. The most important circumstance which the High Court lost sight of was that at the dead hours of the night A-1 to A-5 trespassed into the room with deadly weapons where Cherukuri Kalidas was sleeping. What could be their common object ? Can it not be with absolute

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certainty inferred from the proved facts that they (accused) were members of an unlawful assembly who came together at the dead hours of the night with the deadly weapons, shared a common object to assault Cherukuri Kalidas and in pursuance thereof assaulted him resulting into his instantaneous death ? Answer has to be in the affirmative. A-1 to A-5 were identified not only by Tripuranani Hemalatha (P.W. 3) but also by Cherukuri Saraswathamma (P.W. 2) and Appasani Vasumathi Devi (P.W.1) mother and sister respectively of A-1. Despite such convincing, cogent and satisfactory evidence on record the High Court held that the prosecution has failed to establish a common intention on the part of A-1 to A-5 to commit the murder of Cherukuri Kalidas and also to cause injuries to Cherukuri Saraswathamma (P.W.2) and Tripuranani Hemalatha (P.W.3). The finding of the High Court in this behalf is beyond the comprehension of a prudent man. The further finding that A-1 to A-5 did not share common intention while causing a murderous assault on Cherukuri Kalidas is equally wrong. The High Court has totally overlooked the evidence of eye witnesses which has proved the common object of the unlawful assembly of which A-1 to A-5 were members, attracting the provisions of Section 149 IPC and in pursuance thereof committed the murder of Cherukuri Kalidas. As against this the learned trial judge in its exhaustive and well reasoned judgment had very carefully scrutinized the evidence of Appasani Vasumathi Devi (P.W.1), Cherukuri Saraswathamma (P.W.2) and Tripuranani Hemalatha (P.W.3) in a proper perspective and had rightly concluded that A-1 to A-5 shared a common object while committing the trespass into the room of Cherukuri Kalidas to assault him with the deadly weapons which common object they (accused) carried out. Cherukuri Saraswathamma (P.W.2) and Teripurani Hemalatha (P.W.3) are the injured witnesses of whom the former is the mother and latter the wife. They tried to intervene during the assault on Cherukuri Kalidas but they were also not spared by A-1 to A-5 who caused serious injuries to them as would be evident from the medical evidence on record. On the face of such conclusive material on record we are surprised that the High Court observed that the prosecution has failed to establish a common intention to commit the murder of Cherukuri Kalidas. The finding of the High Court in this behalf to say the least is totally unsustainable.

12. The learned counsel for the accused vehemently urged that the alleged incident took place during the night and it was impossible for any of the eye witnesses to identify the accused/appellants. The eye witnesses have roped in the accused/appellants because of the enmity. Moreover these eye witnesses are the close relatives of the deceased and, therefore, it would not be safe to accept their evidence on the issue of identity of A-1 to A-5. We

- A see no substance in any of these contentions. In the absence of any material on record it is difficult to reject or to discount in any manner the evidence of Tripuranani Hemalatha (P.W.3). Cherukuri Saraswathamma (P.W.2) is the mother of A-1 and she had no axe to grind against her own son (A-1) and other accused. After going through the evidence of there three witnesses we are satisfied that their evidence suffers from no infirmity whatsoever and the trial court had committed no error in convicting A-1 to A-5 under Section 302/149 IPC and also on other counts. The High Court in a very perfunctory manner has considered the evidence of the eye witnesses and thereby committed a gross error in acquitting A-1 to A-5 of the offence punishable under Section 302,149 IPC. The judgment of the High Court is thus unsustainable and stands set aside.
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13. In the result Criminal Appeal Nos. 1631-32 of 1996 filed by the State of A.P. are allowed. Criminal Appeal Nos. 1633-34 of 1996 and 324 of 1997 filed by A-1, A-3 and A-4 are dismissed. The judgment and order dated 5.4.95 passed by the Additional Sessions Judge, Guntur is restored. If any of the accused is on bail he shall surrender to his bail bond forthwith to serve but the remainder of his sentence.

D

S.V.K.I.

C.A. Nos. 1631-32/96 allowed.

C.A. Nos. 1633-34/96 and 324/97 dismissed.