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PARA SEENAI AH & ANR.

v.

STATE OF ANDHRA PRADESH & ANR.

(Criminal Appeal No. 802 of 2012 etc.)

MAY 10, 2012

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[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

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Penal Code, 1860 - ss. 324 and 326 - Assault - Subsequent death - Four witnesses to the incident - The deceased in his statement to police implicating the accused - Medical evidence proving injuries on the deceased - Charge u/ss. 147, 148, 324, 307, 341, 302 r/w. s. 149 IPC - Trial court acquitting the accused persons of all the said charges but convicting A-1, A-2 and A-4 u/s. 326 - High Court affirming conviction of A-2 and A-4, but altering the conviction of A-1 to u/s. 324 and reducing the sentence - On appeal, held: Though the injuries on the deceased not proved to be cause of death, prosecution case cannot be rejected in toto - Prosecution case supported by the evidence of four witnesses, statement of the deceased and the medical evidence - Conviction and sentence as ordered by High Court, justified.

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Appellants-accused were charged for offences u/ss. 147, 148, 324, 307, 341 r/w s. 149 and s. 302 r/w s. 149 IPC for having caused death of one person. Prosecution case was that the accused and the complainant party formed two factions in the village and were having strained relationship and enmity. In order to avenge the attack on the life of son of A-3, the accused assaulted the deceased. The incident was seen by PWs 1 to 4. The deceased also made a statement to the Investigating Officer (Ex. P-25) implicating the accused persons.

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Trial court acquitted all the accused of all the charges, but convicted A-1, A-2 and A-4 for offences

punishable u/s. 326 IPC and sentenced them to R1 for three years and fine of Rs. 500/-. Accused, State and also the complainant challenged the order of the trial court. High Court affirmed the conviction of A-2 and A-4 u/s. 326 IPC and the sentence, but altered the conviction of A-1 to u/s. 324 IPC and sentenced him to R1 for one year and a fine of Rs. 1000/-. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1. There is no infirmity or irregularity in the view taken by the High Court that the statement of the deceased made to the Investigating Officer (Ex.P-25) is corroborated by the evidence of PW 1 to 4 about the truthfulness of the overt acts attributed to A-1, A-2 and A-4. The fact that the witnesses had seen the initial attack on the deceased and returned to the scene of occurrence after the accused had made their escape good, to enquire from him as to what had happened is not unnatural in the facts and circumstances of the case. In the absence of any compelling reason to the contrary there is no reason to interfere with the findings recorded by the High Court, as to the genesis of the incident and the persons responsible for the same. The prosecution has failed to establish that the deceased eventually died on account of injuries sustained by him resulting in the acquittal of accused persons u/s. 302 IPC, but that part of the order passed by the courts below does not warrant rejection of the prosecution case in toto. There is sufficient medical evidence on record, especially in the form of depositions of the doctor (PW18) and the doctor (PW19) who conducted the autopsy over the dead-body of the deceased. There is, thus, ample medical evidence to support the prosecution case that the deceased had sustained injuries, no matter the same had not been proved to be the cause of his death a week later. [Paras 12 and 13] [950-B-E; 951-D]

A 2. Even on the question of sentence awarded to the appellants, there is no reason, much less a cogent one to interfere. The conviction of A2 and A4 under Section 326 with a sentence of three years and fine with a default sentence awarded by the trial court as also the conviction
B of A1 under Section 324 and sentence of one year with a fine of Rs.1,000/- and in default imprisonment for three months in the circumstances of the case is perfectly justified. [Para 14] [951-E-F]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 802 of 2012 etc.

From the Judgment & Order dated 28.12.2010 of the High Court of Judicature Andhra Pradesh, Hyderabad in Criminal Appeal No. 2241 of 2004.

D WITH
Crl. A. Nos. 804-805 & 806 of 2012.

E K.T.S. Tulsi, Chava Badrai Nath Babu, G.V. Rayudu, C.M. Angadi, Rameshwar Prasad Goyal, Priyanka Agarwal for the Appellants.

V. Sridhar Reddy, Ch. Leela Sarveshwar (for V.N. Raghupathy), D. Mahesh Babu, Rameshwar Prasad for the Respondents.

F The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Leave granted.

G 2. This is yet another case in which degenerate village politics has turned violent to claim a valuable human life. The prosecution story is that out of two factions in village Nagulavellatur one was led by Para Braimaiah (A-3) while the other was championed by Bodduluru Rathanam. In the election for the post of Sarpanch of Nagulavellatur village, Smt. Mahalakshamma mother of Bodduluru Rathanam contested
H against Smt. Karnam Lalithamma who was supported by the

accused persons. Smt. Karnam Lalithamma won the said election in the process embittering the relationship between the two groups. It is also the case of the prosecution that complaints and counter-complaints by the members of the two factions were being made against each other before the police and other authorities in relation to different issues to wreak revenge against each other. The strained relationship and enmity between the two factions led to an incident in which the deceased is alleged to have made an attempt on the life of one Para Yandaiah, son of accused No.3 on 6th April, 1996; resulting in the registration of FIR No.17/96 against the former. As an act of reappraisal accused Nos. 1 to 6, 8 to 10 and 18 are alleged to have attacked one Bathala Hajarathaiyah and one Thalluru Chinnaiah on 30th May, 1996 resulting in the registration of Crime No.28/1996 against them. On the same date at about 12.00 noon all the accused persons are alleged to have formed themselves into an unlawful assembly armed with deadly weapons like cart pegs and rods with the common object of killing the deceased left Nagulavellatur village in a tractor and trailer belonging to A-1 for Yerraballi village which is situate at some distance on the north eastern side of Nagulavellatur. The prosecution case is that the accused found the deceased coming along the garden of one Pendem Venugopal, got down from the tractor and attacked him. The deceased is alleged to have run for his life towards the West but the accused persons overpowered him and caused multiple injuries including fractures on his forearm and legs. The incident is alleged to have been seen by PWs 1 and 4 who informed PWs. 5 and 6 about the same. PW6 rushed to the scene of occurrence where he found the deceased lying in an injured condition. On inquiry the deceased told him about the incident and the fact that the accused had attacked and injured him using cart pegs and rods. The deceased was shifted to Chejarla Police Station in a tractor where his statement was recorded by Sub-Inspector of Police. The police then shifted the injured to the hospital at Nellore and registered Crime No.27 of 1996 for offences under Sections 147, 148, 324, 307, 341

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A read with Section 149 IPC. In the course of investigation the police claimed to have seized nine cart pegs and one 'Bitchuva' on the disclosure made by the accused. The deceased eventually died on 7th June, 1996 that resulted in the addition of Sections 148 and 302 read with Section 149 IPC to the case already registered. The Court of Judicial First Class Magistrate, committed the case to the Court of Additional Sessions Judge, Fast Track Court at Nellore where the accused pleaded not guilty and claimed a trial.

C 3. In support of its case the prosecution examined as many as 23 witnesses while the accused led no evidence in defence. The Trial Court eventually came to the conclusion that the prosecution had failed to prove the charge of murder against the accused persons and accordingly acquitted all the accused persons of the said charges. The Court, however, convicted A-1, A-2 and A-4 for offences punishable under Section 326 IPC and sentenced them to undergo RI for a period of three years and a fine of Rs.500/- each, in default to further undergo SI for a period of three months each.

E 4. Aggrieved by the judgment and order passed by the Trial Court the appellants filed Criminal Appeal No.2241 of 2004 while the State of Andhra Pradesh filed Criminal Appeal No.839 of 2007 against all the accused persons questioning their acquittal for offences with which they were charged at the trial. Criminal Revision No.138 of 2005 was filed by the complainant against the order of acquittal of accused persons.

G 5. By the judgment and order under challenge in this appeal, the High Court has, while dismissing the acquittal Appeal and the criminal revision mentioned above, affirmed the conviction of A-2 and A-4 for the offence punishable under Section 326 IPC and the sentence of imprisonment for a period of three years awarded to them. In so far as A-1 is concerned, the High Court has set aside the conviction of the said accused and instead convicted him for an offence punishable under H Section 324 IPC and sentenced him to undergo rigorous

imprisonment for a period of one year and a fine of Rs.1,000/
- and in default to undergo further imprisonment for a period of
three months. A

6. We have heard Mr. K.T.S. Tulsi, learned senior counsel
for the appellant and Mr. V. Sridhar Reddy, counsel for the
respondent-State who have taken us through the relevant
portions of the two judgments of the Courts below and the
evidence adduced at the trial. B

7. The prosecution case rests primarily on the depositions
of PWs 1 to 3, 4, 6, 11 and 12, apart from the statement of Dr.
Krishnaiah (PW18) who happened to be the Civil Surgeon
posted at the relevant time at Government Hospital at Nellore
and Dr. C. Manohar (PW19) who conducted the post-mortem
examination of the dead-body of the deceased. C

8. The Trial Court has upon appreciation of the depositions
of PWs 1 to 4 observed: D

"As seen from the evidence of P.Ws. 1, 2, 3 and 4
who claimed themselves as eye witnesses to the incident
it is clear that even though they depose that they actually
witnessed all accused attacking the deceased it is clear
from their evidence itself that when once the attack on the
deceased by accused commences all these 4 (four)
witnesses left that place out of fear. E

P.W.1 at para 2 made it clear that after seeing the
accused making an attempt to attack the deceased he
was frightened and on hearing the cries of Chowdary,
P.W.2, P.W.3 and P.W.4 came there and he started
running P.W.3 and P.W.2 started running towards southern
side and P.W.4 ran towards northern side of the main road. F

In the evidence of P.W.2 (1st page last line and 2nd
page 5th line) it is said that P.W.2 out of fear ran away
from the place. G

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A In the evidence of P.W.3 (page 2 to 15 lines) he deposed that due to fear of accused he did not go to rescue Demineni Chowdary and out of fear he (P.W. 3), P.W.1, P.W.3 went to the village Yerraballi and informed about the incident to the villagers of Yerraballi.

B In the evidence of P.W.4 (page 2, 15 to 19 lines) she deposed that due to fear she ran towards main road running from Chejerla to Kambampadu and in the village she found K. Penchalaiah (P.W.9) and narrated the incident to him."

C 9. After discussing the evidence, the trial court concluded that PWs 1 to 4 were witnesses only to the initial attack made on the deceased and that the prosecution case mainly rested on the dying declaration made by the deceased before the D Investigating Officer. The Court observed:

E "It is said in the earlier part of the judgment that when the eye witnesses, P.W.1 to 4 are treated as the persons who had only a chance to witnessing the initial attack made on the deceased by accused and immediately thereafter all these 4 (four) witnesses leaving that place out of fear. The case of prosecution depends upon the statement of the deceased given to P.W. 22 under Ex.P.25 and since Chowdary is no more, the said statement can be used as a dying declaration given to P.W.22."

F 10. The Court also recorded a finding that since the accused had caused injury only on the non-vital part of body of the deceased, there was no intention to do away with his life. The Court accordingly acquitted the accused of the charge of G murder but convicted them for the offence punishable under Section 326 IPC while acquitting them of other charges framed against them.

H 11. The High Court has, upon reappraisal of the evidence, affirmed the above finding and observed:

"It is true that learned Sessions Judge found that the evidence of P.Ws. 1 to 4 as to the actual attack on the deceased cannot be considered for the reasons from their own evidence. They have left the scene after seeing the accused chasing the deceased and they came only after the attack on the deceased. The positive evidence of the witnesses P.Ws. 1 to 4 is that they have enquired with the deceased and the deceased has given a statement to them as to the assailants on him. So far as the overtacts attributed by the deceased in Ex.P25 is concerned, there is no variation in the statements of P.Ws. 1 to 4 about the attack on him by A1, A2 and A4. Therefore, if Ex.P25 is to be considered as a document pressed into service, the evidence of P.Ws. 1 to 4, who have immediately gone to the scene after the injured received the injuries in the attack, have clearly stated that they have made enquiries. Apart from it even if their evidence as to actual attack is not believed by the lower court, the fact remains that they were near the scene before attack cannot be excluded because all of them have stated that they have seen the accused going in the tractor and the deceased being present near the scene. In a factious village naturally when such an attack is likely to take place most of the persons who are disinterested will be withdrawing from the scene and going away for their own safety and therefore, there is no unnaturality in P.Ws. 1 to 4 withdrawing from the scene and going to the village and thereafter returning only after the attack on the deceased. The conduct of P.Ws. 1 to 4 cannot be said to be unnatural and there is no reason to discard their evidence about the information given by the deceased to them immediately after the attack and within a short time and without there being any influence on the deceased to implicate the accused. Therefore, though there are some shortcomings in recording of Ex.P25 since we find corroboration from the evidence of P.Ws. 1 to 4 about the truthfulness over the overtacts attributed to A1, A2 and A4 which are relied on by the

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A lower court from the evidence of P.Ws. 1 to 4, we find that no appreciation of evidence was done by the lower court and the lower court has rightly accepted the statement of the deceased Ex.P.25, which is corroborated by the evidence of P.Ws. 1 to 4."

B 12. We do not see any infirmity or irregularity in the view taken by the High Court in adopting the above line of reasoning. The fact that the witnesses had seen the initial attack on the deceased and returned to the scene of occurrence after the accused had made their escape good, to enquire from him as to what had happened is not unnatural in the facts and circumstances of the case. In the absence of any compelling reason to the contrary we do not see any reason to interfere with the findings recorded by the High Court, as to the genesis of the incident and the persons responsible for the same. The prosecution has indeed failed to establish that the deceased eventually died on account of injuries sustained by him resulting in the acquittal of accused persons under Section 302 IPC, but that part of the order passed by the Courts below does not warrant rejection of the prosecution case in toto. There is sufficient medical evidence on record, especially in the form of depositions of Dr. Krishnaiah (PW18) who noticed and certified the following injuries on the person of the deceased when he was brought to the hospital on 13th May, 1996 at 6.45 p.m.:

- F "1. Patient semi conscious. Responding to deep stimulus only.
2. Deformity and generalized tenderness of left fore arm at its middle.
- G 3. 2" long x 1" wide muscle deep lacerated wound on lower 1/3rd of the left leg. Bleeding present.
4. 1" diameter punctured wound x 1/2" deep on middle of left leg. Bleeding present.
- H 5. Diffused swelling of both ankle joints.

6. Semi lunar lacerated injury on sole of left big toe. 2 ½" long x ½" wide muscle deep. Bleeding present. A
7. 3" long x ½" wide muscle deep lacerated wound in the web between right thumb and index finger. Bleeding present. B
8. 3" long x 2" wide reddish contusion over left buttock.

13. Even Dr. C. Manohar (PW19) who conducted the autopsy over the dead-body of the deceased has noticed the fracture of lower end of both tibia and fibula on both sides with bruising in the surrounding soft tissue and fracture of lower end of left fore arm bones with bruising in the left soft tissue. There is, thus, ample medical evidence to support the prosecution case that the deceased had sustained injuries no matter the same had not been proved to be the cause of his death a week later. C D

14. Even on the question of sentence awarded to the appellants, we see no reason, much less a cogent one to interfere. In our view the conviction of A2 and A4 under Section 326 with a sentence of three years and fine with a default sentence awarded by the Trial Court as also the conviction of A1 under Section 324 and sentence of one year with a fine of Rs.1,000/- and in default imprisonment for three months in the circumstances of the case is perfectly justified. E F

15. In the circumstances these appeals fail and are hereby dismissed.

K.K.T.

Appeals dismissed.