

Chilamakur Nagireddy and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 301 of 1974

(N. L. Untwalia, Syed M. Fazal Ali JJ)

22.07.1977

JUDGMENT

UNTWALIA, J. –

1. In relation to a land dispute appertaining to the field locally called Rambhatla chenu in survey number 324 within the limits of P. Kottalapalli hamlet of Penakalapadu Gooty taluk of Anantapur District in the State of Andhra Pradesh, a rioting took place and in the occurrence one Manchi Tirupala Reddy was killed. Some others were also injured. Ten persons were put on trial and were convicted for the various offences under the Penal Code by the trial Judge. Two separate appeals were filed before the High Court - one by accused numbers 2, 3, 4, 5, 7, 8, and 10 and the other by accused numbers 1, 6 and 9. The High Court allowed the appeals in part and modified the convictions of and the sentences imposed upon the appellants before it. All the ten accused filed a petition for special leave to appeal to this Court. This Court granted special leave to appeal in respect of accused numbers 1, 6 and 9 only, respectively, named Chilamakur Nagireddi, Chilamakur Obulapathi and Boppala Ramireddi (who were petitioners 8, 9 and 10 in the special leave application), and that also limited "to the question of nature of the offences committed by them", and dismissed the special leave petition of the other accused. We, are, therefore, concerned with the limited question concerning only the three appellants before us. Their conviction under Section 302 of the Penal Code simpliciter was under challenge in this appeal.

2. We may state and refer to the necessary and bare facts and the relevant evidence for disposal of the short point in this appeal. Accused 1 has been found to have caused external injury number 1 with a spear on the person of the deceased, the corresponding internal injury being number 3 as deposed to by the Doctor who held the post-mortem examination over the dead body. Accused 9 caused external injury number 2 with a bans-stick the corresponding internal injury being injury number 1 and accused 6 is the author of external injury number 3 caused by a spear resulting in internal injuries numbers 2 and 4. The conviction of none of the appellants for the murder of the deceased has been recorded either with the aid of Section 34 or Section 149 of the Penal Code. As already stated each of them has been convicted under Section 302 simpliciter. The question for consideration is whether such a conviction of any of the appellants is sustainable.

2. The High Court in its judgment referred to the evidence of the Doctor and said that the said evidence establishes - "that the fatal injuries ascribed to A-1, A-6 and A-9 by the eye-witnesses resulted in the death of the deceased Tirupala Reddy. External injury number 1, 'a piercing wound conical in shape of 1 1/2" long from above downwards and 2" deep cutting open the abdomen' was ascribed to A-1 by the eye-witnesses; external injury number 2 'a contusion of 3" x 1" across the left temple with left black eye and swelling of eyelids' was attributed to A-9 and external injury number

3 'a piercing wound of 1 1/2" long from above downwards 2" deep from back to front and medial side cutting open into the abdomen over right lower back' was ascribed to A-6. Each of these injuries, in the opinion of the Medical Officer was fatal by itself. Therefore, there can be no doubt that A-1, A-6 and A-9 are guilty for their individual acts under Section 302, I.P.C. and they are, therefore, convicted under Section 302, I.P.C. and each of them is sentenced to imprisonment for life".

4. There seems to be some error in the reading of the Doctor's evidence by the High Court. We may now refer to it. Dr. Basheer Khan, PW 8 is the Doctor concerned. He gave the following description of the relevant external and internal injuries :

External Injury No. 1

Piercing wound conical in shape of 1 1/2" long from above downwards and 2" deep cutting open the abdomen, piercing into the abdominal cavity from front to backwards and medial-wards with bloody fluid oozing out on the left side of the abdomen in midaxillary line at umbilical level;

Corresponding Internal Injury No. 3

Incised wound of descending aorta in front of vertebra 1" long from above downwards with bleeding of about 500 C. Cs., of free blood in abdominal cavity and blood clots adherent to small intestines, corresponding to external injury No. 1.

External Injury No. 2

Constitution of 3" x 1" across the left temple with left black eye and swelling of eyelids;

Corresponding Internal Injury No. 1

Fracture of left temporal bone 3" long across with blood clot under the bone and over the brain of about 3" x 3" size corresponding to external injury No. 2

External Injury No. 3

Piercing wound of 1 1/2" long from above downwards 2" deep from back to front and medial side cutting open into the abdomen over right lower back;

Corresponding Internal Injuries Nos. 2 and 4

Incised wound of right lobe of liver 1" x 1" down with haemorrhage and blood clot around corresponding to external injury No. 3;

Incised wound of 1" from above downwards of the ascending colon with blood clot corresponding to external injury No. 3.

5. The Doctor further said "I am of the opinion that the deceased would appear to have died of shock due to fracture of temporal skull bone, injury to descending aorta, injury to liver and large intestines ascending colon and haemorrhage". In this passage the Doctor seems to have opined as the cumulative effect of all the injuries. He did not say separately the nature and effect of each injury

caused by the individual accused numbers 1, 9 and 6. But later he said "External injury No. 1 and injury Nos. 2 corresponding to internal injuries Nos. 1 and 3 are fatal each by itself". (There is some mistake in the typed paper book. We have extracted this passage after verifying from the original deposition). On the Doctor's evidence, therefore, the injuries caused by accused 1 with a spear and accused 9 with a bans-stick were such that each of them was sufficient in the ordinary course of nature to cause his death. Counsel for the State endeavoured to persuade us to hold that it was so on appreciating the nature of the injury ourselves. In absence of the specific and definite opinion of the Doctor in that regard, we did not consider it safe to form our own opinion as it was difficult to say that the external or the internal injuries caused by accused 6 with a spear were such that one could say with certainty that they were also fatal by themselves. In that view of the matter we do not think that the conviction of accused 6 under Section 302 is sustainable. The injury accused by him, however was grievous in nature. He, is, therefore, guilty of an offence under Section 326 of the Penal Code.

6. In the result we dismiss the appeal of accused numbers 1 and 9 namely Chilamakur Nagireddi and Boppala Ramireddi, uphold their convictions and sentences under Section 302 of the Penal Code, allow the appeal of accused 6 Chilamakur Obulapathi in part, set aside his conviction and sentence under Section 302 and instead convict him under Section 326 of the Penal Code and sentence him to undergo rigorous imprisonment for a period of seven years only. This sentence is to run concurrently with the other sentences passed against him.

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