SUPREME COURT OF INDIA

State of A.P.

Vs.

Naragudem Papireddy

Crl.A.No.966 of 1997

(B.P.Singh and N.Santosh Hegde JJ.)

25.02.2004

JUDGMENT

1. The short question which arises for our consideration in this appeal is whether the High Court was justified in concluding that the convicted appellants before it were not under Section 302 I.P.C. as has been held by the trial court and holding the said appellants guilty of a lesser offence punishable under sections 324 and 325 I.P.C. ? For the purpose of deciding this question, we will deal with only such facts as are necessary for disposal of this appeal.

2. In view of the findings of the trial court as affirmed by the High Court against which there is no appeal by the convicted accused, the fact that in the incident as alleged by the prosecution on 8.4.1989 at 4.45 a.m. PWs. 2 and 3 suffered injuries as also the fact that in the second incident which took place at 5.15 a.m. the mother and brother of PWs. 2 and 3 were injured and because of the injuries so suffered one of the victims Narsimha Reddy died on 13.4.1989 is not disputed. Therefore, the incidents as found by the trial court and the High Court against the appellants has become final. In that background, the trial court convicted A-1, A-2, A-5 to A-8 of the offence under section 324 I.P.C. It convicted A-3 and A-4 of an offence under section 324 read with 149 I.P.C.

> "A-1 to A-5 and A-8 were convicted for offence under section 324 I.P.C. for causing hurt to PW-3.
>
> A-6 and A-7 were found guilty of offence under section 324 read with section 149 I.P.C.
>
> A-1 to A-5 and A-7 were found guilty of offence punishable under section 302 I.P.C.
>
> A-3, A-4 and A-8 were found guilty under Section 302 read with section 149. A-1 to A-9 and A-10 were acquitted of the charge under section 323 I.P.C. It awarded a sentence of 1 year to all the convicted accused under section 148 and those convicted accused under section 148 and those convicted under section 324 read with 149 I.P.C.

and awarded imprisonment for life to those convicted under section 302 read with section 149 I.P.C."

3. In an appeal filed against the said judgment to the High Court of Judicature, Andhra Pradesh, the High Court allowed the said appeal in part and convicted A-1, A-6 and A-7 for an offence punishable under section 325 read with 34 I.P.C. and sentenced them to undergo RI for 6 months. They were further convicted for an offence punishable under section 324 read with section 34 I.P.C. and sentenced to undergo RI for 6 months each. Both the sentences were directed to run concurrently.

4. The High Court convicted accused 2, 5 and 8 for an offence under section 324 read with 34 I.P.C. and the High Court held that the sentence already undergone would suffice for the said offence. However, they were imposed a fine of Rs. 1, 000 said offence. However, they were imposed a fine of Rs. 1, 000 each, in default to undergo RI for a period of 3 months each. A-1, A-2 and A-5 to A-8 were acquitted of the charges framed against them.

5. In this appeal the State of Andhra Pradesh contends that the High Court was in error in coming to the conclusion that the acts of the accused which caused the death of Narsimha Reddy would not amount to an offence punishable under section 302 I.P.C. Learned Additional Solicitor General appearing for the State submitted the High Court having accepted the finding of facts of courts below and having noticed the fact that nearly 8 persons armed with deadly weapons had assaulted 4 persons, out of which to the deceased, they caused such grievous injuries knowing very well that the said injuries would in the normal course cause the death of the victim, it could not have found them guilty of offence under section 325 only. He also submitted from the material on record it is clear that all those persons who assaulted the deceased, had also the intention to kill the deceased.

6. Learned counsel for the respondents, of course, has justified the judgment of the High Court.

7. The point to be considered by us in this appeal, therefore is whether the respondents before us did cause the injury to deceased Narsimha Reddy with an intention of causing his death or caused the same with an intention of causing grievous hurt only. This we can primarily gather from the injuries suffered by the deceased and from the medical evidence in this regard.

8. PW-14 the doctor who was then In-charge of the Orthopedic Department, Osmania General Hospital, Hyderabad, examined the deceased on 8.4.1989 at about 10.40 a.m. and he found the following injuries on his person :

1. Fracture of right ulna;

2. Fracture of left ulna;

3. Fracture of right fibula;

4. Fracture of 2nd, 3rd, 4th and 5th metacarpals left.

9. He noticed that the patient was conscious at the time of examination and there was no injury on any vital part of the body. PW-16 who after seeing the post mortem report given by Dr. Smt. Rajagopalan with whose handwriting he was familiar, stated in his evidence that which is in conformity with the post mortem report. In the said report, it is noted that corresponding to the external injuries the following internal injuries were found:

Internal injuries :

1. Fracture of right ulna - lower 1/4th

2. Fracture of left ulna - lower 1/4th

3. Fracture of right fibula - lower 1/3rd

4. Fracture of 2nd, 3rd, 4th and 5th metacarpals bone.

10. In the post mortem report the cause of death is noted as multiple fracture. We have also noticed the fact that the deceased in this case suffered these injuries on 8.4.1989 and died about 5 days later on 13.4.1989. A perusal of the injuries as stated by the doctor PW-14 who first saw the victim as also the post mortem report commented upon by PW-16, we notice the assailants i.e. the respondents herein, caused injuries which led to the fracture of the two hands and the right fibula along with fracture of the two hands and the right fibula along with fracture of 4 metacarpal bones. Keeping in mind the fact that these injuries had been caused had been caused by lathis and the assailants have not used any sharp-edged weapon nor have they attacked the victim on any vital part of the body like head or chest leading to injuries to the internal organs or to haemorrhage, merely from the injuries noted hereinabove, it is extremely difficult for us to accept the argument of the State that the High Court was not justified in coming to the conclusion that the injuries caused to the deceased would not be one attracting the provision of the under Section 302 I.P.C. Learned counsel for the State then argued that these injuries cannot be read in isolation but will have to be appreciated or noticed in the background of the evidence led by the prosecution though eye-witnesses including injured eye-witnesses. According to the learned counsel, it is clear from the evidence of these witnesses that all the accused person who were armed with deadly weapons came with one and the only intention of causing the death of not only the deceased but also PWs. 2 and 3 because of the enmity they entertained with the deceased and his family.

11. Herein it should be noted that the family of the deceased and that of the accused are closely related descending from a common ancestor. The victim's father and some of the assailants are direct brothers. Between them, there was some dispute with regard to their ancestral property which was pending in a civil court. That is stated to be the motive. PWs. 2 and 3 stated in their evidence that in the morning of 8.4.1989 at about 4.15 a.m. all the accused persons came and beat them mercilessly all over the body with sticks, iron rods and

knives, but a perusal of their injury does not support their case at all because all that is suffered by these witnesses are minor injuries which are mostly in the nature of abrasions. There are no incised injuries corresponding to the use of a sharp-edged weapon. If really the intention of the assailants was to murder these victims, it will be very difficult to comprehend that they would come armed only with lathis and assault the victims only on non-vital parts of body that too in case of PWs. 2 and 3 causing minor injuries. In regard to the assault on the victim it is to be seen that the very same group moved thereafter to the house of mother of PWs. 2 and 3 where the deceased was residing, called him out and assaulted him, causing the abovenoted 4 grievous injuries. It is to be noted herein also that if really the intention was to cause the death of this victim we fail to understand why at least one of the assailants did not wield his weapon so as to attack the victim on a vital part of the body. The nature of injuries and the manner of attack as stated by the victims themselves indicates that the respondents did not have either the intention to cause the death of Narsimha Reddy, or to cause injuries which they knew to be so imminently dangerous as would case his death in all probability.

12. Learned counsel then relied upon a judgment of this Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr., to substantiate his argument that even attach by lathis causing fracture which leads to death, could be construed as an act of murder punishable under section 302 I.P.C. We have no doubt that there may be causes like in the case of Rayavarapu (supra) where from the material on record the intention of the parties would be clear that they intended to cause the death or had the knowledge that their acts would cause death of the victim. In the said case it is to be noted that the assailants went on pounding on the legs of the victim who was quite old which indicated the intention of the assailants; whereas in the instant case as noted above, we do not find any such material on record to come to a similar conclusion.

13. For the reasons stated above, we find no merit in this appeal. The appeal fails and the same is hereby dismissed.