

# SUPREME COURT OF INDIA

Nagalla Mukha Lingam

Vs.

State of A.P.

CrI.A.No.1374 of 1999

(B.P.Singh and Arun Kumar JJ.)

26.04.2005

## JUDGMENT

### **B. P. Singh, J.**

1. We have heard counsel for the parties.
2. The appellant herein along with 40 others was put up for trial before the Additional District & Sessions Judge, Srikakulam charged variously under Sections 302/149/324/329 read with Section 149 and Section 148 etc. of the *Indian Penal Code* (I.P.C.). The Trial Court by its judgment and order dated 17th April, 1997 found the appellant herein guilty of the offence under Section 302 IPC and sentenced him to life imprisonment. He was also found guilty of the offence under Sections 148 and 324 IPC. Three other accused namely A2 to A4 were found guilty of the offence under Section 302/149 IPC. Out of the remaining some were convicted for minor offences and some were acquitted. It is not necessary to give those details.
3. The matter came up in appeal before the High Court and the High Court while affirming the conviction of the appellant under Section 302 IPC acquitted him of the charges under Sections 324 and 148 IPC. So far as A2 to A4 are concerned, they were also acquitted of the charge under Section 302 read with Section 149 IPC but were found guilty of the offence under Sections 323 and 324 IPC and sentenced to the period already undergone. The remaining accused were acquitted.
4. The sole appellant before us has been convicted under Section 302 IPC. The occurrence giving rise to the incident took place on 11th June, 1990 at about 7.00 A.M. The prosecution case was that all the accused armed with sticks, spears, knives and kattuvvas came in front of the house of PW1 where they found Pws.1, 2 and 4 chatting with each other. A4 assaulted the deceased with a stick on his left shoulder while A3 assaulted him with a knife on the left temple region near the eye. A2 assaulted the deceased with a kattuva. When the deceased fell on the ground, A1 pierced him with his spear at the centre of his abdomen. The prosecution

also alleges overt acts against the other accused persons which we do not consider necessary to discuss in view of their acquittal.

5. The prosecution case rests on the six eye witnesses namely PW1 to PW6. Of them PW1, 2, 3 and 6 are injured witnesses. The plea of the accused was that in fact it was the prosecution party which was the aggressor and that they had assaulted members of the defence party of whom at least 12 persons were injured including A1. The occurrence took place near the house of one Mallesu which was near the house of A1. The report said to have been lodged by A-36 on the same day was investigated but no charge sheet was submitted on the basis thereof.

6. The Trial Court, as earlier noticed, convicted many of the accused including A1 who was found guilty of offence under Section 302 IPC. The High Court has affirmed his conviction.

7. It was argued before us that the prosecution has failed to explain the injuries suffered by several members of the defence party. In our view, in view of the finding recorded by the High Court that there was a free fight in which large number of persons participated, there is a reasonable explanation for the injuries suffered by some of the members of the defence party.

8. It was also submitted that the place of occurrence has been shifted. It is, no doubt, true that according to the prosecution, the occurrence took place in front of the house of PW1 but the High Court held that the real occurrence took place in front of the house of Mallesu inasmuch as blood was found in front of the house of Mallesu. However, the High Court accepted the testimony of PWs 1 to 6 who have consistently deposed implicating the appellant in the murder of the deceased.

9. Even assuming that the place of occurrence is ultimately found to be somewhere near the house of Mallesu, in the facts of this case that may not adversely affect the prosecution case. A finding has been recorded by the High Court that there was a free fight between the parties and a large number of persons were involved. In such a fight it is usual for the parties to change their position. We are told that the house of Mallesu was only at a distance of 200 yards from the house of PW1 though in the adjacent lane. Ultimately the case rests on the testimony of the eye witnesses.

10. Counsel for the Appellant submitted that all the eye witnesses are not reliable and in particular, he attacked the testimony of PWs. 2 and 3 whose presence was doubted by the Trial Court. The High Court has considered their evidence and acted on their evidence. We notice that Pws.1, 2, 3 and 6 are injured witnesses. In the counter case lodged by accused No.36, PWs. 2, 3 and 4 have been mentioned as the assailants. It will thus, appear that even the defence did not dispute the presence of PWs. 2, 3 and 4 in the occurrence. Moreover, PWs. 2 and 3 being injured witnesses it will be difficult to hold that they were not present when the occurrence took place.

11. Same is the case with PWs. 1 and 6. So far as PW5 is concerned, she happens to be the

wife of the deceased. Her version is that she was working inside the house and after hearing alarm being raised, she came out and witnessed the occurrence. Counsel for the appellant submitted that she has not been named in the first information report as a witness nor have the other witnesses such as PW.1, 2, 3 and 4 mentioned about her presence even in their deposition before the Court.

12. The F.I.R. does not mention the names of eye witnesses but only mentions the names of the participants in the occurrence and those injured in the occurrence or present in the Company of PW1. Moreover, in such a large crowd the witnesses may not have noticed the presence of PW5. However, without casting a reflection on the veracity of this witness, we may, by way of abundant caution keep her evidence out of consideration. Even so, we are left with five eye witnesses of whom four are injured eye witnesses. We find no reason to disbelieve them. We find that the conviction of the appellant on the basis of their evidence is well merited and does not call for interference by this Court.

This appeal is, therefore, dismissed.