



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.2120 OF 2017

**THE STATE OF ANDHRA PRADESH
HOME DEPARTMENT**

APPELLANT

VERSUS

**PONTHATI SIVA RAMI REDDY AND
OTHERS**

RESPONDENTS

J U D G M E N T

ATUL S. CHANDURKAR, J

1. The State of Andhra Pradesh through its Home Department is aggrieved by the judgment of the High Court of Andhra Pradesh¹ in Criminal Appeal No.1640 of 2009 dated 07.03.2014. By the said judgment, the conviction of the respondents under Section 302 read with Section 34 of the Indian Penal Code, 1860² resulting in a sentence of life imprisonment as rendered by the Sessions Court came to be altered to one under Section 304 Part II of the Penal Code with a sentence of rigorous imprisonment for a period of six years and fine of ₹5,000/- each.

¹ For short, 'the High Court'

² For short, 'the Penal Code'

2. As per the case of the prosecution, there were differences between Atla Siva Govinda Reddy³ and Ponthati Siva Rami Reddy since many years. The father of Atla Rama Pulla Reddy was stated to have been murdered by the father of Ponthati Siva Rami Reddy in 1997. There was also previous enmity between the family of the victim and Ponthati Siva Rami Reddy and his brother Ponthati Dasthagiri Reddy. It was alleged that on the intervening night of 08/09.03.2006, the victim was accompanied by PW1 as they proceeded for watering their crops. The respondents⁴, who were armed with deadly weapons, attacked the victim with sickles and iron pipes. As a result of this assault, the victim suffered serious injuries as he lay at the spot. PW1 proceeded to inform the family members of the victim, who thereafter shifted him to a Government Hospital. The statement of the injured victim came to be recorded in the morning of 09.03.2006 between 06.45 a.m. to 07.30 a.m. by the Medical Officer⁵. Shortly thereafter, the victim succumbed to his injuries at 07.30 a.m. The Investigating Officer⁶ undertook investigation of the crime and on completion thereof, filed the

³ For short, 'the victim'

⁴ For short, 'A1 to A4'

⁵ For short, 'the MO'

⁶ For short, 'the IO'

charge sheet.

3. The prosecution examined seventeen witnesses in support of the charge. At the conclusion of trial, the learned II Additional Sessions Judge, Kadapa recorded a finding that A1 to A4 were guilty of assaulting the victim, which resulted in his death. They were, accordingly, convicted for the offence punishable under Section 302 read with Section 34 of the Penal Code. They were sentenced to life imprisonment and were also directed to pay fine of ₹5,000/- each.

A1 to A4 challenged their conviction by preferring an appeal before the High Court. The Division Bench of the High Court was of the view that there were various discrepancies in the prosecution evidence brought on record. It, however, noted that there was a long standing feud between the group of the victim and A1 to A4. The Division Bench then proceeded to observe that it was quite unlikely that four armed persons having attacked the victim with the object of killing him would have left the spot without ensuring whether he had died or not. On that premise, the Division Bench proceeded to hold that it was a case for conviction under Section 304 Part II of the Penal Code inasmuch as though A1 to

A4 knew about the likely result of the blows dealt by them, they did not entertain the idea of killing the victim. The order of conviction rendered by the Sessions Court was, accordingly, modified and the sentence was reduced to rigorous imprisonment for a period of six years with fine of ₹5,000/- each. The State of Andhra Pradesh has, thus, assailed the aforesaid judgment.

4. Ms. Prerna Singh, learned counsel for the appellant submitted that the High Court committed an error in interfering with the well reasoned judgment of the Sessions Court and altering the conviction from one under Section 302 read with Section 34 of the Penal Code to Section 304 Part II of the Penal Code. In that process, material evidence was overlooked by the High Court, especially the statement of the victim recorded by PW10. The said statement was made voluntarily by the victim describing the manner in which he was assaulted by A1 to A4, which assault ultimately led to his death. PW8, the MO who had treated the victim prior to his death had stated in clear terms that when such statement was recorded, the victim was conscious, coherent and mentally fit to depose. Considering the brutality of the attack carried out by A1 to A4, the injuries sustained by the victim to

which he ultimately succumbed as well as the post-mortem report, it was clear that the conviction of A1 to A4 under Section 302 read with Section 34 of the Penal Code did not warrant any modification whatsoever at the hands of the High Court. The observations made in the impugned judgment on the basis of which the conviction was altered were not supported by any evidence on record. It was, thus, submitted that on a proper appreciation of the entire evidence on record, the only conclusion that could be drawn was the guilt of A1 to A4 as rightly recorded by the Sessions Court. It was urged that the judgment of the High Court be set aside and that of the Sessions Court be restored.

5. On the other hand, Mr. A. Sirajuddin, learned Senior Advocate for the respondents at the outset submitted that A1 to A4 had suffered the sentence of rigorous imprisonment for a period of six years as directed by the High Court. A1 to A4 had intended to challenge their conviction that was maintained by the High Court but as they were incarcerated, they failed to do so. According to him, the conviction of A1 to A4 was in fact not liable to be maintained and they were entitled to acquittal. Referring to evidence on record, he submitted that though PW1 was cited as an

eye-witness, he had turned hostile. Thus, there was no other eye-witness as claimed by the prosecution. Referring to the injuries sustained by the victim that ultimately led to his death along with the post-mortem report, it was submitted that recording of his statement vide Exhibit P10 on the morning of 09.03.2006 was highly doubtful. The necessary endorsements by the MO were absent on the said statement, Exhibit P10. The overwriting as to the time of recording of the said statement was also not explained by the IO, PW17. He, thus, submitted that only on the basis of the purported last statement of the victim, A1 to A4 had been convicted. He, therefore, submitted that A1 to A4 having already suffered the sentence of rigorous imprisonment of six years as imposed by the High Court, no interference at this stage was called for. He, thus, prayed for dismissal of the appeal.

6. The learned counsel for the parties have been heard at length. The records of the case have also been perused.

7. A1 to A4 were convicted by the Sessions Court under Section 302 read with Section 34 of the Penal Code. They were sentenced to suffer life imprisonment. In the appeal preferred by them before the High Court, their conviction was altered to one under Section

304 Part II of the Penal Code and they were sentenced to rigorous imprisonment for a period of six years with fine of ₹5,000/- each. The State of Andhra Pradesh seeks restoration of the judgment of the Sessions Court while A1 to A4 urge that they having served the sentence imposed by the High Court, no interference be caused in the same.

8. For the purpose of appreciating the rival contentions, it would be necessary to refer to the relevant evidence brought on record by the prosecution. PW1 was cited as an eye-witness by the prosecution. According to him, on the night when the victim was attacked, he along with the victim had been to their agricultural fields for watering the same. While he was at some distance from the victim, he heard the cries of the victim. When he reached the spot, he found the victim lying down on the ground. He stated that he carried him from the fields to a nearby graveyard and laid him down on the tomb. After he shouted, Chinna Koulai had come there. They carried the victim till his house and handed him over to his relatives. This witness was, thereafter, declared hostile. In his cross-examination, he stated that the distance between the graveyard and the house of the victim was about 0.75 kilometers.

The distance between the scene of occurrence and the graveyard was less than a furlong.

It is to be noted that the prosecution did not examine Chinna Koulai who according to PW1 had arrived at the site after hearing his shouts.

9. PW2 was declared hostile after he stated that he did not know anything about the case. However, in his cross-examination, he stated that on hearing some cries, he had gone to the graveyard. There he saw PW1 as well as the victim, who was found lying at the graveyard. According to him, the victim was taken to his residence by him along with PW1. PW3, the brother of the victim, stated that on the date of the incident, his brother had gone to his fields for watering them. On being informed by PW1 that A1 to A4 had attacked the victim with weapons at the graveyard, he along with Nagasudha, Prasad Reddy and Lakshmiddevamma, his wife rushed to the graveyard. There they saw A1 to A4 escaping from the site while holding sickles and iron rods. He further stated that his injured brother told him that A1 to A4 had attacked him with sickles and iron rods and the place of the occurrence was stated to be the graveyard. Thereafter, a jeep was brought to the

graveyard and the victim was shifted to the Government Hospital in that jeep. In his cross-examination, he stated that he did not make any effort to inform the police about the incident nor did he make any telephonic call in that regard. He also did not make any written complaint. He further stated that while going to the graveyard, he had not intimated this fact to any villager so as to accompany him to the graveyard.

10. PW4 is the widow of the victim. She stated that after her husband had gone to the fields for watering the crops, PW1 had come to the house of the victim and informed her that A1 to A4 had attacked her husband at the graveyard. She along with PW3 and two others rushed to the spot where they saw A1 and A2 who were armed with sickles and A3 and A4 who were armed with iron pipes. She further stated that the victim also told her that he was attacked by A1 to A4. In her cross-examination, she denied the suggestion that PW1 and PW2 had carried the victim to her house after the incident.

11. These are the material witnesses who according to the prosecution had either witnessed the incident or had immediately come to the site on getting information of the attack on the victim.

It is seen that insofar as the site of the occurrence is concerned, PW1 had categorically stated that the victim was assaulted in his fields. PW1 had, thereafter, carried him to the graveyard and laid him on the tomb. It was thereafter that Chinna Koulai had come at that place and both of them had carried the victim to his residence. Insofar as PW2 is concerned, his presence is not acknowledged by PW1 despite the fact that PW2 states that he and PW1 had shifted the victim to his house. PW3, the brother of the victim claims to have seen A1 to A4 escaping from the site of the incident after the assault. He further states that the assault took place at the graveyard. He further states that a jeep was brought to the graveyard from where the victim was shifted to the hospital. This version is completely belied by the depositions of PW1 and PW2 inasmuch as they do not refer to the presence of PW3 at the site. On the contrary, they state that they carried the victim from the graveyard to his house. They also do not refer to any jeep being brought at the graveyard to carry the victim to the hospital. A doubt is, thus, created with regard to the site of occurrence of the attack on the victim as well as the actual presence of A1 to A4 immediately thereafter. There is also inconsistency as to whether

the victim was taken to his residence as per PW1 and PW2 or whether he was taken to the Government Hospital in a jeep as per PW3 and PW4.

12. PW8 is the Civil Assistant Surgeon at the Government Hospital, who stated that he examined the victim at 05.30 a.m. on 09.03.2006. He further stated that he had given an intimation to the police at 05.30 a.m. as per the document at Exhibit P6. He further stated that the victim expired at 07.30 a.m. and an intimation in that regard was given to the police as per Exhibit P7. He stated that the victim was coherent, conscious and mentally fit to give his statement that was recorded by the police at about 06.45 a.m. He further stated that he had signed the said statement of the victim at 06.45 a.m. and the document was at Exhibit P8. In his cross-examination, he accepted the suggestion that if a patient suffered severe injuries, then tranquilizers would be administered to the patient. He further stated that a patient having a head injury may not be continuously conscious. He admitted that his presence before 06.45 a.m. when the statement of the victim was recorded had not been stated by him. He admitted that there was a correction made with regard to the time mentioned in

the statement, Exhibit P8.

13. PW9 is the Doctor, who conducted the Post-Mortem Examination of the victim. The report at Exhibit 9 indicates twenty-two injuries on the body of the victim. Four injuries were caused by a sharp edged weapon while the others were caused by a blunt object like an iron rod. This witness accepted the suggestion that on receiving such injuries, the patient could lose consciousness and loss of memory. Speech was also likely to be slurred. PW10 is the police officer, who received the medical intimation from the Government Hospital. He stated that he recorded the statement of the victim from 06.00 a.m. to 06.45 a.m. The same was certified by the doctor on duty, PW8. The statement is at Exhibit P10. While answering questions put by the Court, he stated that the statement of the victim was recorded between 06.00 a.m. to 06.45 a.m. He admitted that there was a correction in the time as regards receipt of the medical intimation from the Government Hospital, vide Exhibit P6. Originally, the time written was '06.50 a.m.' which was later on corrected as '05.50 a.m.' There was an overwriting of figures '6' and '5'.

14. When the depositions of PW8, PW9 and PW10 along with the

relevant exhibited documents are considered, it is seen that while PW8 stated that he had given intimation to the police at 05.30 a.m., PW10 who acted on the said intimation, stated that the time mentioned of receiving the intimation at Exhibit P6 was originally written as 06.50 a.m., which was then corrected to 05.50 a.m. There is a doubt created with regard to the time when such intimation was actually given by PW8 and received by PW10. The overwriting on Exhibit P6 at the instance of PW10 further enhances such doubt. Further, if the statement of the victim at Exhibit 10 is perused, it is seen that the same is in great detail. It narrates the previous history as well as enmity between the victim and A1 to A4. The said statement runs into a page and a half. It is in fact a 'blow by blow' account given by the victim vividly describing the attack in detail. Considering the nature of injuries suffered by the victim, which were twenty-two in number with many of them being grievous, such detailed narration by a seriously injured victim does raise a serious doubt. The victim was under treatment for serious injuries suffered by him and as suggested to the Doctor on duty, the likelihood of the effect of tranquilizers on the victim cannot be ruled out.

15. Coming to the deposition of PW17, the IO, it is seen that he failed to explain the absence of any reference to the bloodstains of the victim on the clothes of PW1 or PW2 or other witnesses, who claimed to have brought the victim to the hospital. He further stated that he did not make any enquiry as to who brought the victim from the scene of occurrence to the Government Hospital. He admitted that PW3 and PW4 did not state to him that they had gone to the graveyard with a torchlight, nor did he state that he was informed by PW1 about the attack by A1 to A4. Numerous omissions in this regard have been brought on record in his cross-examination.

16. The High Court on re-consideration of the evidence on record proceeded to modify the conviction of A1 to A4 from one under Section 302 to Section 304 Part II of the Penal Code. On re-appreciation of the entire evidence led by the prosecution, we do notice that there are material inconsistencies in the case of the prosecution that impel us not to restore the conviction of A1 to A4 under Section 302 read with Section 34 of the Penal Code as urged on behalf of the appellant. We do not find any sufficient ground raised in the appeal in that regard. In the absence of any challenge

being raised by A1 to A4 to their conviction under Section 304 Part II of the Penal Code, we are inclined to dismiss the criminal appeal.

17. Before parting, we state that the following observations of the High Court in the impugned judgment do not meet our approval.

The said observations read as under:

“Though no witness spoke on these lines, what appears to this Court is that, on the eventful night, the farmers went to the field for irrigating their crops, may be on account of shortage of power or water; and in a scuffle, the deceased received serious injuries in the hands of the accused. Had there been a clear intention, or plan for the accused to kill the deceased, there would not be an occasion for the deceased being shifted to the hospital, and is being in a position to speak. If four persons, armed with deadly weapons, attack an individual, with an objective of killing him, normally, they would leave the spot, only after confirming that the attacked person breathed his last.”

The High Court having itself noted that no witness had deposed on the aforesaid lines, there was no reason at all for it to comment further on the matter. The aforesaid observations are based purely on surmises and conjectures. The order of conviction under Section 302 read with Section 34 of the Penal Code has been modified by the High Court to one under Section 304 Part II of the Penal Code on this basis. Though the learned counsel for the

appellant argued vehemently against the reasonings given by the High Court, the evidence on record is, however, not sufficient to restore the conviction under Section 302 read with Section 34 of the Penal Code. On the other hand, A1 to A4 having suffered the sentence as imposed by the High Court and the modified conviction having not been challenged by them, in our view, the matter deserves a quietus.

18. As a result, the Criminal Appeal stands dismissed.

.....**J.**
[**UJJAL BHUYAN**]

.....**J.**
[**ATUL S. CHANDURKAR**]

NEW DELHI,
AUGUST 10, 2026.