

Gaddam Brahmama Alias Chinna Vs. the State and anr.

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Court : Andhra Pradesh

Decided On : Dec-08-1995

Reported in : 1996(1)ALD826; 1996(1)ALD(Cri)463; 1996(2)ALT(Cri)8; 1996CriLJ2037; 1996(1)LS195

Judge : B.K. Somasekhara and ;K.M. Agarwal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 302, 304, 307, 324 and 326

Appeal No. : Criminal Appeal No. 1220 of 1994

Appellant : Gaddam Brahmama Alias Chinna

Respondent : The State and anr.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : B. Rajendra, Adv.

Judgement :

K.M. Agarwal, J.

1. The appellant was tried for offences under Ss. 307 and 302. IPC, found guilty and accordingly convicted and sentenced to undergo R.I. for 5, years and pay a fine of Rs. 500/- for an offence under S. 307, IPC and further to life imprisonment and fine of Rs. 1,000/- for an offence under S. 302, IPC in Sessions Case No. 58

of 1994, decided on 12-9-1994 by the Third Additional Sessions Judge, East Godavari Division, Kakinada. Being aggrieved, he has preferred this Criminal Appeal.

2. The victim Janakamma alias Janaki (P.W. 1) was the wife of the appellant's younger brother, Geddam Eswara Rao (P.W. 7) and the daughter of the deceased Gubbala Seethamma. They were residents of village Nadakuduru. It was alleged that earlier the appellant and his brother Geddam Eswara Rao used to reside in different portions of one and the same house belonging to them. Subsequently, Geddam Eswara Rao and his wife Janakamma went to reside with the deceased Gubbala Seethamma with the result that the appellant could get no monetary help from them. While so residing separately, the appellant sold two wooden door planks of his brother's portion of the house to one Penkey Raju for Rs. 250/-, When Janakamma (P.W. 1) came to know this fact, she went to the appellant on 27-9-1993 at about 1-30 p.m. along with her mother to lodge her protest, which was to the annoyance of the appellant. The appellant, thereupon, was alleged to have brought a knife from inside the house and then to have caused knife injuries on the left shoulder, on the head and on the fingers of both hands of P.W. 1 Janakamma. When the deceased Gubbala Seethamma tried to intervene, she was also assaulted by knife on her left hand and left leg below the knee joint. The injuries caused her death on the spot. Hearing the hue and cry, the people were attracted towards the scene of occurrence and, therefore, the appellant was alleged to have run away from the spot. A report of the incident was lodged, investigation carried out and then the appellant was prosecuted for the said offences, which resulted in his convictions and sentences as aforesaid, giving cause to this Criminal Appeal.

3. The prosecution evidence is so clinching and convincing that the learned counsel for the appellant did not make any serious attempt to show the innocence of the appellant, or to make any prayer for his acquittal. His entire attempt and concentration was to establish that the offences made out against the appellant were under Ss. 324 and 304 Part II, IPC and not those for which he was convicted and sentenced. We, therefore, proceed to examine the case from this limited angle.

4. There is no material on record to warrant any conclusion that the appellant intended to kill his sister-in-law, i.e., P.W. 1 Janakamma, or made an attempt at her life. As the evidence discloses, he lost his temper to find his sister-in-law objecting to the sale of wooden planks to Penkey Raju by him and, therefore, in a state of fury he went inside the house, brought a knife and started hurling knife blows to her on shoulder, head and fingers of hands. These injuries were 4 in number and consisted of 3 lacerated wounds and one contusion on right parietal region as per Dr. M. S. Gopalam (P.W. 14) and the Wound Certificate (Ex. P.23). All the injuries, except-injury No. 2, were simple in nature. Injury No. 2, lacerated wound in the left hand, on X-ray with wrist disclosed 'fracture terminal phalynx of the thumb' and, therefore, opined to be grievous in nature. We are, therefore, of the view that the offence made out against the appellant in relation to P.W. 1 is neither under S. 307, nor under S. 324. IPC, but under S. 326, IPC, because the grievous hurt was caused by means of a knife, which cannot be denied to be an instrument of cutting and further because the offence under S. 326, IPC consists of voluntarily causing grievous hurt by dangerous weapons or means, like that of a knife. Accordingly we are of the view that the conviction and sentence of the appellant for an offence under S. 307, IPC deserve to be altered into one under S. 326. IPC.

5. As for the conviction under S. 302. IPC, it has to be remembered that the deceased Gubbala Seethamma had gone to the appellant along with her daughter P.W. 1. She was not touched till she did not go to the rescue of her daughter. When she ran to her rescue, then the accused was said to have made criminal assault with knife on her by saying that she was the root cause of the dispute between him and his brother and brother's wife P.W. 1. The injuries caused by him to her were two chop wounds, one over the left calf muscle below the knee joint and the other over the outer aspect of top of left shoulder, making an inverted U appearance. Dr. M. Nagaraja Rao (P.W. 15) opined about the cumulative effect of both the injuries that 'the death can be caused instantaneously in the ordinary course of nature'. The cause of death was said to be 'due to shock and haemorrhage resulting from chop wounds'. We are, therefore, of the view that it was not a case of murder, but of culpable homicide as defined in S. 299, IPC, which is made punishable under S. 304, IPC.

6. Section 304, IPC consists of two parts; one, culpable homicide not amounting to murder, where the act by which the death is caused is done with the intention of causing death, or causing such bodily injury as is likely to cause death; and the second; culpable homicide not amounting to murder, where the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. The first part of S. 304, IPC is more onerous than its second part. It, therefore, becomes necessary to see, if the appellant is guilty of an offence under S. 304, Part I, IPC, or guilty of an offence under S. 304, Part II, IPC.

7. For an offence under Part I of S. 304, IPC, intention of the accused, as distinguished from knowledge, about the consequence of his act, according to us, is the determining factor. Examined from this angle and on the facts and circumstances of the case it does not appear possible to infer that the accused intended to kill the deceased. He was annoyed by her intervention and, therefore, to frustrate her attempts to save her daughter from his assaults and with a view to teach her a lesson (as he thought, she was the root cause of estranging his brother from him), he gave such severe knife blows on her hand and leg, though not the vital parts of her body, that her limbs were virtually severed. Under these circumstances, he can be inferred of having had the knowledge that his act was likely to cause the death of the deceased and for this reason, we are of the view that the appellant can only be said to be guilty of an offence under S. 304, Part II, IPC and accordingly liable to be convicted and sentenced.

8. For the foregoing reasons, we are of the view that the conviction of the accused for an offence under S. 307, IPC vis-a-vis P.W. 1 deserves to be altered into his conviction for an offence under S. 326, IPC. Similarly, his conviction for an offence under S. 302, IPC vis-a-vis the deceased deserves to be altered into his conviction for an offence under S. 304, Part II, IPC. Accordingly, the sentences awarded to him for the said offences also deserve to be modified. According to us, 3 years R.I. with a fine of Rs. 300/-, or in default S.I. for 3 months for an offence under S. 326, IPC; and 7 years R.I. with a fine of Rs. 1,000/-, or in default S.I. for 6 months, for an offence under S. 304, Part II, IPC would meet the ends of justice.

9. In the result, this appeal partly succeeds and it is hereby partly allowed. The convictions of the appellant for offences under Ss. 307 and 302, IPC are altered into his convictions for offences under Ss. 326 and 304, Part II, IPC respectively and accordingly the sentences are reduced to 3 years R.I. with fine of Rs. 300/-, or in default R.I. for 3 months, for an offence under S. 326, IPC and to 7 years R.I. with fine of Rs. 1,000/-, or in default R.I. for 6 months, for an offence under S. 304, Part II, CPC.

10. Fine if paid in excess of the modified sentences of fine, shall be refunded to the appellant.

11. Appeal partly allowed.

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