

APHC010113412009



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3474]

MONDAY, THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL NO: 380/2009

Between:

Gokeda Pydithalli (A-1) & 2 Others and Others **...APPELLANT(S)**

AND

State Of A P

...RESPONDENT

Counsel for the Appellant(S):

- 1.AKULA SRI KRISHNA SAI BHARGAV
- 2.AKULA SRI KRISHNA SAI BHARGAV

Counsel for the Respondent:

- 1.PUBLIC PROSECUTOR (AP)
- 2.A BHASKARA CHARY

The Court made the following:

APHC010346702010



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3474]

MONDAY, THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL REVISION CASE NO: 733/2010

Between:

Sanapathi Tata @ Sanapathi Chellam Naidu, ...**PETITIONER(S)**
Vzngm., & Anr. and Others

AND

The State Of A P Hyderabad 4 Otrs and Others ...**RESPONDENT(S)**

Counsel for the Petitioner(S):

1.A BHASKARA CHARY

Counsel for the Respondent(S):

1.PUBLIC PROSECUTOR (AP)

2.00

3.AKULA SRI KRISHNA SAI BHARGAV

4.AKULA SRI KRISHNA SAI BHARGAV

5.AKULA SRI KRISHNA SAI BHARGAVAKULA SRI KRISHNA SAI BHARGAV

The Court made the following:

**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)**

**MONDAY, THIS THE TWENTY SECOND DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR**

SPECIAL DIVISION BENCH

PRESENT

HON'BLE SRI JUSTICE K.SURESH REDDY

AND

HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CRIMINAL APPEAL No.380 OF 2009

AND

CRIMINAL REVISION CASE No.733 OF 2010

CRIMINAL APPEAL No.380 OF 2009

Between:

1. Gokeda Pydithalli (A-1),
S/o.Late Appalanaidu, Aged 55 years.
- * 2. Gokeda Appa Rao (A-2) (died)
3. Gokeda Chinnam Naidu (A-3),
S/o.Appalanaidu, Aged 42 years.

All are R/o.Veeluparti Village.

..... Appellants/Accused

A N D

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court at Hyderabad.

..... Respondent/Complainant

COMMON JUDGMENT:

(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

1. The appeal assails the judgment dated 31.03.2009 passed by the learned II Additional District and Sessions Judge (Fast Track Court), Vizianagaram at Parvathipuram, in Sessions Case No.71 of 2005. During the pendency of the appeal, A-2 died on 07.05.2021 and as such, appeal filed for the A-2 has abated vide this Court's order dated 06.10.2023.
2. The accused No.1 and 2 were tried for the offence U/s.302 of Indian Penal Code, 1860 (hereinafter referred to as ('I.P.C.)) for causing the death of one Smt.Senapathi Demudamma (hereinafter referred to as deceased) on 12.10.2004 at about 09.00 p.m. in Veeluparthi Village, near the house of Senapathi Tata (P.W-1). The accused A-3 along with A-4 were tried for the offence U/s.302 r/w.34 of I.P.C. for causing death of Smt.S.Demudamma. A-1 was also tried for the offence U/s.324 I.P.C. for voluntarily causing simple hurt to Gokeda Somulamma (P.W-4) on or about the same day, time and place mentioned above. A-2 and A-3 along with A-4 were tried for the offence U/s.324 r/w.34 of I.P.C. for voluntarily causing simple hurt to Smt.G.Somulamma (P.W-4) on or about the same day, time and place mentioned above. A-1 and A-2 were further tried for the offence U/s.323 I.P.C. for voluntarily causing hurt to S.Tata (P.W-1),

S.Chellam Naidu (P.W-2), S.Appala Ramana (P.W-3), G.Satyanarayana (P.W-5) and G.Kannayya (P.W-6) on or about the same day, time and place mentioned above.A-3 along with A-4 were further tried for the offence U/s.323 r/w.34 I.P.C. for voluntarily causing hurt to the above persons on the same day, time and place mentioned above.

3. The learned II Additional District & Sessions Judge (Fast Track Court), Vizianagaram at Parvathipuram, vide judgment dated 31.03.2009 convicted A-1 and A-2 for the offence U/s.304-I, 324 and 323 r/w.34 of I.P.C., A-3 was convicted for the offence U/s.324 and 323 of I.P.C. Accordingly, sentenced A-1 and A-2 to undergo rigorous imprisonment for 10 years each, and also to pay fine of Rs.1,000/- each, in default of payment of fine, to undergo simple imprisonment for a period of six (06) months each for the offence U/s.304-I I.P.C; Sentenced A-1 to undergo rigorous imprisonment for a period of two years and also to pay fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for a period of three (03) months for the offence U/s.324I.P.C; Sentenced A-1 to undergo simple imprisonment for a period of three months and also to pay fine of Rs.100/-, in default of payment of fine, to undergo simple imprisonment for a period of 15 days for the offence U/s.323 I.P.C.

4. The learned II Addl.District & Sessions Judge (Fast Track Court), Vizianagaram at Parvathipuram, convicted and sentenced A-2 to undergo rigorous imprisonment for a period of two years and also to pay fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for a period of three (03) months for the offence U/s.324 I.P.C; Further convicted and sentenced A-3 to undergo rigorous imprisonment for a period of two years and also to pay fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for a period of three (03) months for the offence U/s.324 I.P.C; Also sentenced A-3 to undergo simple imprisonment for a period of three months and also to pay fine of Rs.100/-, in default of payment of fine, to undergo simple imprisonment for a period of 15 days for the offence U/s.323 I.P.C; The learned II Addl.District & Sessions Judge (Fast Track Court), Vizianagaram at Parvathipuram, acquitted A-4 on all charges. Challenging the said conviction and sentence, the accused No.1 to 3 filed the present appeal U/s.374(2) of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.').

5. The defacto-complainants i.e., S.Tata (P.W-1) and S.Appala Ramana (P.W-3) filed Criminal Revision Case No.733/2010 U/s.379 and 402 of Cr.P.C., challenging the impugned judgment, contending that the learned II Addl.District & Sessions Judge (Fast Track Court),

Vizianagaram at Parvathipuram, ought to have convicted the accused U/s.302 I.P.C., instead of 304-I, 324 and 323 I.P.C. They also contended that the learned II Addl.District &Sessions Judge (Fast Track Court), Vizianagaram at Parvathipuram erroneously acquitted the accused A-4.

6. The prosecution story, in brief, as could be gathered from the material placed on record, is thus:

(i) Senapathi Appala Ramana (P.W-3) is the son of Senapathi Tata (P.W-1) and Senapathi Demudamma (deceased). P.W-3 married the daughter of A-1; P.W-3 was residing at Visakhapatnam and doing masonry work at the material point in time i.e., at the time of offence; On 12.10.2004 at about 09.00 p.m. P.W-3 went to the house of A-1 to see his wife and daughter; dispute aroused between P.W-3 and A-1 about family affairs of P.W-3; P.W-3 returned back to the house of P.W-1; later, went to the thrashing floor of P.W-1 (scene of offence); A-1 to A-4 armed with stout sticks followed P.W-3.

(ii) A-1 beat P.W-3 on the head with a stout stick; A-2 also beat P.W-3 on the head; on seeing the same, P.W-1 and the deceased went to the rescue of P.W-3; P.W-1 tried to ward off the injuries with hands; A-1 beat P.W-1 on his right wrist and left palm

with a stick; A-1 beat the deceased on the right side of cheek and right eye; A-2 beat the deceased on the head with a stick; she fell on the floor; A-3 and A-4 beat her with hands and kicked her; meanwhile, G.Somulamma (P.W-4) daughter of P.W-1 and G.Suryanarayana (P.W-5) son of P.W-4 came to the scene of offence; A-2 beat P.W-4 with a stick on her right wrist; A-2 beat P.W-5 with a stick on the head; A-3 beat P.W-4 with a stick on her right forehead and also on her right shoulder; A-4 beat P.W-4 on her left shoulder; A-3 and A-4 beat P.W-5 with a stick on his right hand, right thigh and below right knee; in the meantime, P.W-6, who is son-in-law of P.W-1 came to the scene of offence to save P.Ws-1 to 5; then A-2 beat P.W-6 with a stick on his head.

(iii) Thereafter, P.Ws-1 to 6 went to Vallampudi Police Station; On the basis of written report (Ex.P-1), SI of Police/P.W-13 registered FIR (Ex.P-18). SI of Police/P.W-13 conducted initial investigation. Later, S.Demudamma died in the hospital on the night of 15.10.2004. S.Chellam Naidu/P.W-2 presented Ex.P-2 report on 16.10.2004. Subsequently, Ex.P-21 altered FIR came to be registered.

(iv) On the basis of altered FIR, Inspector of Police/P.W-14 conducted investigation. After conclusion of investigation, a charge

sheet came to be filed against the four accused persons before the Judl.Magistrate of the First Class, Kothavalasa. Since, the case was exclusively triable by the Sessions Judge, the case was committed to the Sessions Court.

7. During trial, the prosecution examined P.Ws-1 to 14 and got marked Exs.P-1 to P-22, besides M.Os-1 and 2. Exs.D-1 to D-8 were marked on behalf of the defence.

8. The accused were examined U/s.313 Cr.P.C. regarding the incriminating circumstances appearing from the evidence for the prosecution. They denied the same as false, but no defence evidence came to be placed on record.

9. The learned II Additional District & Sessions Judge, Vizianagaram at Parvathipuram, vide judgment dated 31.03.2009, convicted the A-1 to A-3 as stated supra, and acquitted A-4. Challenging the same, Crl.Appeal No.380/2009 was filed before this Court by A-1 to A-3. The defacto-complainants i.e., P.W-1 and P.W-3 filed Crl.Revision Case No.733/2010. During pendency of the appeal, A-2 died on 07.05.2021, and as such appeal filed for A-2 has abated vide this Court's order dated 06.10.2023.

10. Sri Akula Sri Krishna Sai Bhargav, learned counsel for the appellants/A-1 and A-3 strenuously argued that the evidence on record undisputedly disclose that A-2 and A-3 also suffered injuries in the same incident, A-1 to A-3 visited police station and presented a report to SI of Police/P.W-13, and he registered the same as a case in Cr.No.38/2004. Later A-2 and A-3, were referred to the hospital for treatment. They were treated by the Civil Assistant Surgeon, Community Health Centre, S.Kota on the same day at about 02.00 a.m., issued wound certificates (Exs.D-6 & D-7) opining that the injuries would have caused by blunt object 4-6 hours prior to the examination. The prosecution did not explain the injuries found on the body of A-2 and A-3. Suppressed the fact that accused also presented a report to SI of Police/P.W-13. Police investigated the same and also laid police report (charge sheet) against P.W-1, P.W-2 and others, for causing hurt to A-2 and A-3. This circumstance creates doubt about the genesis of the incident deposed by the prosecution witnesses. The prosecution witnesses (P.Ws-1 to 6) did not disclose the truth about the way in which the incident was occurred. They deposed a coloured version to implicate the accused in the case. Therefore, they are not reliable and trustworthy witnesses. No conviction can be based on their evidence, in a case

containing serious charges, though they are the injured witnesses and they cannot be placed on a high pedestal.

11. He would further submit that the evidence on record would establish that the accused party presented report to SI of Police/P.W-13. He registered a FIR as a case in Cr.No.38/2004, it was investigated by the police, and they laid police report (charge sheet) against P.W-1, P.W-2 and others for the offence U/s.324 and 323 I.P.C. But the prosecution/Investigating Agency suppressing that it is a case and counter case, intentionally proceeded with trial before the Magistrate. After disposal of the case filed by the accused, by the Magistrate, the prosecution/Investigating Agency, proceeded with the present case filed by the prosecution party before the Sessions Judge causing great prejudice to the defence of the accused.

12. He would also submit that Ex.P-1 i.e., FIR was presented by P.W-1 on 12.10.2004 at about 11.00 p.m. after four hours of the alleged incident implicating all the family members of the A1. P.W-1 admitted that Ex.P-1 discloses that the incident was occurred at the house of P.W-1. SI of Police/P.W-13 also admitted that as per Ex.P-1, the scene of offence was located at the house of P.W-1. But later it was strategically changed as thrashing floor of P.W1, located

at a far of place, to avoid examining independent witnesses. The learned Sessions Judge ignored these vital facts and erroneously believed the version of the prosecution witnesses.

13. He would further submit that the evidence of P.Ws-1 to 6 and P.Ws-13 and 14 establish that the statements made by P.Ws-1 to 6 before the Court with about the overt acts committed by the accused are full of embellishments and improvements. They improved the version before the Court to implicate the accused to get a conviction, suppressing truth about the incident. The learned Sessions Judge did not consider this important fact also.

14. He also submitted that the evidence on record would disclose that P.Ws-1 to 6 are close relatives and they are interested in the result of the case. Their intention is to get conviction, to settle the issues between P.W-3 and his wife i.e., daughter of A-1, and to grab the property of A-1. The trial Court ignored this fact also, and erroneously believed the version of the prosecution witnesses. In the light of above facts and circumstances, the conviction and sentence imposed by the learned trial Court is not sustainable either on facts or in law.

15. The learned counsel for appellants in support of his arguments, relied on the judgment of the Hon'ble Apex Court in the

case of **Nand Lal and Others Vs. The State of Chattisgarh**¹, regarding the principle of non-explanation of injuries received by the accused and its effect on the credibility of the evidence of prosecution witnesses

16. He also relied upon the judgment of the Hon'ble Apex Court in the cases of **Khema @ Kheem Chandra Etc., Vs. State of Uttar Pradesh**², on the principle of law that the Court is concerned with the quality and not with the quantity of the evidence, necessary for proving or disproving a fact and classification of oral testimony of the witnesses into three categories, (1) Wholly reliable, (2) Wholly unreliable and, (3) Neither wholly reliable nor wholly unreliable, and requirement of corroboration.

17. He also relied on the judgment of the Division Bench of High Court of Andhra Pradesh in the case of **State of A.P. Vs. Mittapalli Sudhakar Reddy and others**³, on the legal principles to be followed in the trial of a case and counter case, and element of prejudice caused to the accused on failure to follow the law.

¹ 2023 LiveLaw (SC) 186

² 2022 LiveLaw (SC) 689

³ MANU/AP/0904/2022

18. Per contra, Sri S.Dushyantha Reddy, learned Additional Public Prosecutor, appearing for the respondent/State, would submit that no prejudice was shown by the accused on account of the trial of case and counter case by different Courts. He would further submit that the evidence of P.Ws-1 to 6 would show that A-1 and A-2 caused grievous injuries to the deceased, are sufficient to cause death in ordinary course. The evidence of P.Ws-1 to 6 further establish that A-1 to A-4 beat P.Ws-1 to 6 also, and caused injuries to them. The evidence of doctor/P.W-11 would establish that they suffered injuries as referred in the wound certificates, and therefore, there is no reason to disbelieve their testimony.

19. He would further submit that they are all rustic witnesses, and therefore, minor discrepancies are natural. Basing on the minor discrepancies, their evidence cannot be brushed aside. There is no delay in presenting FIR to the police. No independent witnesses came forward to support the prosecution case. Therefore, they were not examined by the prosecution. The evidence of P.Ws-1 to 6 is sufficient to prove case of the prosecution. There are no grounds to interfere with the conviction and sentence imposed by the trial Court.

20. Sri A.Bhaskara Chary, learned counsel for Revision Petitioners would submit that the evidence of P.Ws-1 to 6 establish

that A-1 to A-4 caused injuries to the deceased, and on account of said injuries, she died. The evidence on record would establish that the accused caused injuries with an intention to cause death of deceased. Therefore, the trial Court ought to have convicted A-1 to A-4 for the offence U/s.302 r/w.34 I.P.C. He would further submit that the evidence of P.Ws-1 to 6 would establish that A-4 also involved in the offence. He also beat the deceased. In that view of the matter, acquittal of A-4 is erroneous and liable to be set aside.

21. We have examined the evidence and other material placed on record with the assistance of respective learned counsel for the parties.

22. The evidence of doctor (P.W-10) would establish that the death of deceased Senapathi Demudamma is homicidal. The evidence of another doctor (P.W-11) would establish that P.Ws-1 to 6 sustained injuries. The medical evidence i.e., evidence of P.W-11 would further establish that A-2 and A-3 also sustained injuries.

23. The evidence of prosecution witnesses would show that the incident was occurred on 12.10.2004. The incident took place in two parts. The first part is about visit of P.W-3 to the house of A-1 i.e., his father-in-law. From the evidence, it cannot be disputed that P.W-2 and P.W-3 are the sons of P.W-1. The deceased is wife of

P.W-1.P.W-4 is daughter of P.W-1. P.W-5 is son of P.W-4. P.W-6 is the younger son-in-law of P.W-1. A-1 is father-in-law of P.W-3.A-2 to A-4 are the brothers of A-1. From the evidence, it cannot be disputed that P.W-3 and his wife were not living together at the material point in time, and there were some disputes between the family of P.W-1 and A-1 regarding conjugal life of P.W-3 and his wife i.e., daughter of A-1.

24. From the evidence, it can also be seen that on 12.10.2004 P.W-3 went to the house of A-1 and asked his wife to join him. She refused the request of P.W-3. Some verbal altercation took place between P.W-3, his wife and A-1. Thereafter, P.W-3 returned to home i.e., house of P.W-1.

25. The case of the prosecution is that P.W-3 went to the thrashing floor of P.W-1; A-1 to A-4 armed with sticks followed him; A-1 and A-2 beat P.W-3. Noticing the incident, P.W-1, the deceased went to there; The accused beat P.W-1; The deceased went to the rescue of her husband; A-1 beat her on the face; A-2 beat her with stick on the head, she fell down P.Ws-4 to 6 went to there to rescue P.Ws-1 to 3; The accused also beat No.1 to 4.

26. As rightly contended by the learned counsel for the appellants, first information report i.e., Ex.P-1 presented to the police by P.W-1 show that the accused followed P.W-3 to the house of P.W-1, and later the incident happened at the house of P.W-1. It is pertinent to note down that P.W-1 in the cross-examination, admitted that the contents of Ex.P-1 report are true. SI of Police/P.W-13, who registered FIR basing on Ex.P-1 report, in the cross-examination, admitted that in Ex.P-1 report, the place of offence is mentioned as the house of P.W-1.

27. P.W-3 in the cross-examination admitted that he filed a case against the accused and others before the Revenue Divisional Officer, Vizianagaram in M.C.6/2005, subsequent to the incident in the case; he gave instructions to the counsel for preparing the petition in that case; he was confronted with Ex.D-8 i.e., copy of petition filed by him in M.C.6/2005 on the file of Revenue Divisional Officer, Vizianagaram; He admitted that it contains his signature and the contents of Ex.D-8 are true and correct.

28. Perusal of Ex.D-8 would disclose that the scene of offence is at the house of P.W-1. Therefore, from the evidence of prosecution witnesses, it is established that the scene of offence is the house of P.W-1 located in Peda Veedhi of Veeluparthi Village. The evidence

on record would show that several people gathered at the time of incident. P.W-3 admitted five or six people gathered at the time of incident. They are Gokeda Srinu, Gokeda Demullu (L.W-9), Gokeda Sanyasi Rao (L.W-8), Gokeda Ramakrishna (L.W-11) and Gokeda Satyam Naidu (P.W-7). P.W-6 admitted that nearly 100 persons gathered at the time of incident. Therefore, evidence on record show that independent witnesses were present. The prosecution examined only one person as independent witness i.e., P.W-7. He did not support the case of the prosecution. The prosecution though cited Gokeda Demullu (L.W-9), Gokeda Sanyasi Rao (L.W-8) and Gokeda Ramakrishna (L.W-11) etc., did not choose to examine them. No reason was assigned for their non-examination. The evidence on record undisputedly would disclose that the thrashing floor of P.W-1 is located at some distance away from his house. Considering these circumstance, we are of the opinion that the scene of offence was conveniently shifted to the thrashing floor of P.W-1 at a later point in time from the house of P.W-1, later during investigation, only to say no independent witnesses present as it is an isolated place, and to confine the case to the evidence of P.Ws-1 to 6, for the reasons best known to the prosecution party. Unfortunately the trial Court ignored this fact.

29. The evidence on record undisputedly would establish that A-2 and A-3 also suffered injuries in the incident. The medical evidence on record would show that the accused A-2 suffered lacerated wound on right parietal region. He also suffered an abrasion over left shoulder. He suffered another abrasion over right forearm. The accused A-3 suffered a lacerated wound over right parietal scalp. The doctor is of the opinion that age of the injuries was 4-6 hours prior to his examination, conducted at 02.00 a.m. on 12/13.10.2004. It would establish that A-2 and A-3 also suffered injuries in the same incident.

30. SI of Police/P.W-13 and Investigation Officer/P.W-14 evidence would establish that the accused party also presented a report, and it was registered as a case in Cr.No.38/2004 of Vallampudi Police Station. They investigated the same, laid police report (charge sheet) against P.W-1, P.W-2, P.W-6 and others for the offence U/s.324, 323 I.P.C. From the evidence, it also established that police filed charge sheet before the Magistrate. Prosecution/Investigating Agency allowed it to be disposed of by the Magistrate, though case and counter case are filed. Later, proceeded with the trial in the case filed by the prosecution party before the Sessions Court. The prosecution/Investigating Agency ought to have taken steps to

transfer the case filed by the accused party, to the Court of Sessions, for disposal of both cases by the Sessions Court. Surprisingly, no such steps were taken by the prosecution/Investigating Agency. The trial Court ignored this important fact.

31. The Division Bench of High Court of Andhra Pradesh in the case of **State of A.P. Vs. MittapalliSudhakara Reddy and others**, referred the case of Nathi Lal Vs. State of U.P., of the Hon'ble Apex Court on the principles dealing with the issue relating to the case and cross case. The fair procedure to adopt in a case and counter case, is to direct that the same Judge must try both the cross cases one after the other. After recording of the evidence in one case is completed, he must hear the arguments, but he must reserve the judgment. Thereafter, he must proceed to hear the cross case and after recording all the evidence, he must hear the arguments, but reserve the judgment in that case. The same Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the

evidence, which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same Judge one after the other.

32. In the case on hand, it is regrettable that the learned Sessions Judge failed to notice the two important circumstances i.e., change of scene of offence, at a later point in time with an intention to avoid independent witnesses. Failure of the prosecution agency to take steps for trial and disposal of case and counter case by the same Judge, for the reasons best known to it.

33. The necessity to try case and counter case together is so eminent. Otherwise it is likely to give rise to disastrous results. From the judgment of the High Court of Andhra Pradesh referred above, it is clear that in a case and counter case, both the cases should be tried together by same Court irrespective of nature of offence involved and they should be tried simultaneously one after the other. The learned Public Prosecutor in one case shall not act as a Public Prosecutor in the counter case. The evidence in one case cannot be looked into in the counter case, and judgment in both the cases shall be pronounced on the same day. The ratio behind is to avoid conflicting judgments, which may lead to disastrous results at times.

34. Now the question is whether any prejudice is caused to the accused as case and counter case are tried by different Courts?. The evidence on record would establish that A-2 and A-3 also sustained injuries in the same incident. In the present case, the prosecution did not explain the injuries sustained by the accused. On the other hand, the prosecution tried to suppress the same. It came on record only during the cross-examination of the witnesses for the prosecution party. It also came on record that several independent witnesses present at the house of P.W-1, when the prosecution party and the accused party were quarrelling each other, due to the disputes between P.W-3 and his wife i.e., daughter of A-1.

35. The Hon'ble Apex Court in the case of **Nand Lal Vs. State of Chattisgarh** held that "*the omission on the part of the prosecution to explain the injuries on the accused would assume greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one*".

36. The Hon'ble Apex Court in the case of **Lakshmi Singh and Others Vs. State of Bihar**⁴, on non-explanation of injuries sustained by accused, held that "*in a murder case, the non-explanation of the*

⁴ AIR 1976 SC 2263

injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstances from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) That the witnesses, who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable.

(3) That in case there is a defence version, which explains the injuries on the person of the accused, it is rendered probable so as to throw doubt on the prosecution case'.

37. In the case on hand, the prosecution did not explain the injuries sustained by the accused at the time of occurrence or in the course of altercation. P.Ws-1 to 6 made an attempt to suppress the injuries sustained by the accused in the same incident. Therefore, we are of the opinion that an inference can be drawn that the prosecution suppressed the genesis and origin of the occurrence, and thus not presented the true version. The prosecution witnesses are lying on many material points. The above facts creating a reasonable doubt that they suppressed the truth about the genesis of

the incident, and came with a coloured version to implicate all the family members of the accused No.1.

38. The Hon'ble Apex Court in the case of **Vadivelu Thevar Vs. State of Madras**⁵; **Khema @ Khem Chandra Etc., Vs. State of Uttar Pradesh; Parshuram Vs. State of M.P.**⁶ and **Nand Lal and Others Vs. The State of Chattisgarh** held that it is sound and well established rule of law that the Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories i.e., (1) wholly reliable, (2) wholly unreliable and (3) Neither wholly reliable nor wholly unreliable.

39. Undisputedly, in the present case, P.Ws-1 to 6 are the injured witnesses. Their presence cannot be disputed. However, as already observed herein above, there was a previous enmity between the prosecution party and the accused party on account of the issues between P.W-3 and his wife, who is daughter of A-1. Therefore, a possibility of false implication cannot be ruled out. The accused No.1 and his three brothers were roped in. The evidence of

⁵ 1957 AIR 614

⁶ 2023 SCC Online SC 1416

P.W-14/Investigation Officer would show that his investigation disclosed that A-4 was not present at the time of incident. The learned Sessions Judge basing on the said evidence, acquitted A-4. As already discussed above, it is established that the scene of offence was shifted to thrashing floor from the house of P.W-1, to avoid independent witnesses, though several people witnessed the incident. The evidence came on record would disclose that both parties quarrelled and beat each other.

40. On reading the evidence of P.Ws-1 to 6 with the evidence of both Investigation Officers i.e., P.Ws-13 and 14, we have no hesitation to say that P.Ws-1 to 6 improved a lot in their statements made before the Court about overt acts of the accused, from their earlier statements made before the police. In such cases, the Court is required to be circumspect, separate the chaff from the grain and seek further corroboration from reliable testimony, direct or circumstantial.

41. As already discussed herein above, P.W-7 did not support the case of the prosecution. The independent witnesses cited by the prosecution were not examined without any valid reason. Taking into the above circumstances, we are of the opinion that possibility of accused being falsely implicated cannot be ruled out. In our view, the

conviction of accused purely on the basis of oral testimony of P.W-1 to P.W-6, without sufficient corroboration, would not be safe. We therefore, of the considered view that the appellants/A-1 and A-3 are entitled to benefit of doubt.

42. In the result, the Criminal Appeal No.380/2009 is allowed. The conviction and sentence recorded by the learned II Addl.District & Sessions Judge (Fast Track Court), Vizianagaram at Parvathipuram, vide judgment dated 31.03.2009 in S.C.71/2005 against the appellants/A-1 and A-3 for the offence U/s.304-I, 324 and 323 I.P.C. is set aside. A-1 and A-3 are acquitted U/s.235(1) Cr.P.C. The fine amount, if any, paid by the appellants/A-1 and A-3 shall be refunded to them. The bail bonds of A-1 and A-3 shall stand cancelled. Consequently, the CrI.R.C.No.733/2010 shall stand dismissed.

As a sequel, miscellaneous petitions pending, if any, in the Criminal Appeal and Criminal Revision Case shall stand closed.

JUSTICE K.SURESH REDDY

JUSTICE B.V.L.N. CHAKRAVARTHI

Note: L.R. Copy is to be marked.

B/o. psk.

Date: 22.04.2024

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HON'BLE SRI JUSTICE K.SURESH REDDY
AND
HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

CRIMINAL APPEAL No.380 OF 2009 &
CRIMINAL REVISION CASE No.733 OF 2010
(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

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Date: 22.04.2024

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