

GOURA VENKATA REDDY
v
STATE OF ANDHRA PRADESH

NOVEMBER 19, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Penal Code, 1860 :

Section 302—Application of—Accused persons threw one stone each at the deceased—Trial court convicted accused persons under S. 302—High Court upheld the conviction—Correctness of—Held: S. 302 not ruled out if one stone caused injuries resulting in death—But the accused persons could be attributed with the intention of causing death—Hence, conviction altered to one under S. 304 Part I.

Words and Phrases :

“Instigate”—Meaning of—In the context of S. 107 of the Penal Code, 1860.

The appellant-accused (A-1) was convicted by the trial court under Section 302 read with Section 109 of the Penal Code, 1860 and the appellants-accused (A-2 to A-8) were convicted for offences under Sections 302 and 147 IPC. The High Court affirmed the conviction. Hence the appeal.

On behalf of the appellants, it was contended that each accused person had thrown only one stone at the deceased persons causing injuries and, therefore, Section 302 IPC had no application.

Allowing the appeal in part, the Court

HELD : 1.1. It cannot be said as a rule of universal application that if one stone is thrown causing injuries, Section 302 of the Penal Code, 1860 is ruled out. [818-A-B]

1.2. No general rule can be laid down that a small stone cannot cause any injury leading to death punishable under Section 302 IPC. It would depend upon the facts of each case. [818-B-C]

A 2. In the present case, it cannot be said that any particular injury was intended which would result in death. But the accused persons can certainly be attributed with the intention of causing death or causing such bodily injury as is likely to cause death. Therefore, instead of conviction under Section 302 IPC, the proper conviction would be under Section 304 Part I for the accused-appellants. [818-C-D]

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3.1. The word “instigate” occurring in Section 107 IPC literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. [818-G-H; 819-A]

C

3.2. The offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. In the instant case, the abetted persons have been convicted for commission of offence punishable under Section 304. Therefore, in the case of A-1 it is Section 304 Part I read with Section 109 IPC that is attracted. [819-A-B]

D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.519-521 of 2003.

From the Judgment and Order dated 19.11.2002 of the Andhra Pradesh High Court in Crl. A.No. 148/2002, Crl.M.P.No.6406/2002 in Crl.A.S.R.No.16462/2002 and Crl.A.No.1289 of 2002.

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WITH

Crl. A. No. 672-674 of 2003.

F

Sushil Kumar, V.R. Avula, C..Prakash Reddy, Sanjay Jain, Adolf Mathew and D. Mahesh Babu for the Appellant.

Mrs. K. Amreswari, B. Ramana Murthy, Ms. T. Anamika and Mrs. Swarupa Reddy for Guntur Prabhakar for the Respondent.

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The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Different political ideologies may be followed in a democratic set up; that is but natural. But when differences become physical and lead to loss of life by violent acts it reflected sadly on the political maturity of people and the citizens at large. The present case, as the prosecution version shows, is one of those large number of instances where physical

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violence has led to loss of lives of two persons.

The appellants who faced trial along with 11 others and two deceased persons, and the prosecution witnesses belong to different political parties. The difference between them is said to be long-standing on account of political rivalry, and it reached its crescendo on 18th October, 1995 and 19th October, 1995. On the first of the dates, relative of one political leader was allegedly kidnapped and his dead body was found later on the next day i.e. 19th October, 1995 to which the present case relates. The two deceased persons, namely, Ambi Reddy and Chinna Ramasubbaiah (hereinafter referred to as D-1 and D-2) along with PWs 1 to 4 and two others were travelling by four motorcycle with two occupants in each. As the prosecution version shows the 20 persons way laid them. D-1 and D-2 were dragged out of the motorcycle and at the instigation of A-1 Goura Venkata Reddy and one M. Venkateswara Reddy others picked up stones from the way side and threw them causing grievous injuries. After causing injuries, assailants-accused persons went away. The occurrence took place at 11.45 a.m. The accused persons were travelling in a Jeep and two lorries. The injured persons were taken to the hospital; one of them (D-2) was declared dead at the first hospital where he was taken. The doctor, however, advised the relative to take the other deceased D-1 to another hospital for better treatment. At the said hospital in spite of the best efforts his life could not be saved. The first information report was lodged around 1.00 p.m. Investigation was undertaken and on completion thereof, the charge sheet was placed. It is to be noted that during investigation the name of M. Venkateswara Reddy was deleted pursuant to the directions of the Sub Divisional Police Officer. As such in total 19 accused persons were charge sheeted. However, the case of one was separated and 18 accused persons were tried. Out of them A-1 to A-8 were convicted, and the rest were acquitted. A-1 was convicted for offence punishable under Section 302 read with Section 109 of Indian Penal Code, 1860 (for short the 'IPC'). A-2 to A-8 were convicted for offences punishable under Sections 302 and 147. A-1 was sentenced to undergo imprisonment for life, while A-2 to A-8 were similarly sentenced for the offence punishable under Section 302 and two years for offence punishable under Section 147. The State preferred an appeal before the High Court of Andhra Pradesh questioning the acquittal of the 10 persons and for non-conviction of A-1 under Section 147 and for such non-conviction under Section 148 in relation to A-2 to A-8. The convicted persons also questioned correctness of the their conviction. The High Court by the impugned order upheld the acquittal of the 10 accused persons. Appeal relating to non-conviction under Section 148 so far as A-2 to A-8 are

A concerned was also dismissed. In case of A-1 conviction was made under Section 147 and by a modified order sentence of two years was imposed. The convicted accused persons have preferred these appeals questioning the common judgment rendered by the Division Bench of the Andhra Pradesh High Court. As the appeals related to the same judgment, they are taken up together for disposal.

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According to Mr. Sushil Kumar, learned senior counsel appearing for the appellants, the judgments of the trial Court as well as of the High Court cannot be maintained on more grounds than one. There was delay in lodging the complaint. In the first information report only 7 names were given out of which name of M. Venkateswara Reddy against whom specific overt acts were attributed by the assailants was deleted from the accused persons. PWs 1 to 4 did not suffer any injuries, which is unnatural. There was no pre-meditation to commit any offence; as is evident from the fact that none of the accused persons were armed. In respect of accused Jaidip the alibi was accepted. Only partisan related and interested witnesses have been examined. It was stated in the first information report that 7 named persons and others whose names were not indicated were the assailants. In respect of A-6 it was stated that his presence came to be known. Obviously, PW-1 who was an eyewitness included his name in array of other accused persons. Though his claim in Court is to have seen the occurrence, in the first information report a different picture was given and this renders his presence improbable. There were serious laches in investigation and 19 stones pieces were collected as if only 19 stones were lying. This was obviously cooked up to be in line with 19 injuries found on the bodies of the two deceased persons. The medical evidence i.e. the post mortem report shows that at the time of post mortem it was noticed that the stomach of each of the deceased was empty. It is improbable that their stomach would be empty at the point of time the occurrence is claimed to have taken place. It is the defence version that two dead bodies were found on the way, it was not known who were the assailants and because of hostility the names of the appellants have been incorporated. The evidence of PW-1 to PW-4 is highly unreliable and is contradictory in terms. It was further submitted that there was a police station nearby at which report could have been given by those who had not accompanied the injured persons to the hospital. The trial Court and the High Court have not considered the case of the accused in the proper perspective. In any event Section 302 IPC has no application.

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In response, Mrs. K. Amreshwari, learned senior counsel, appearing for

the State submitted that concurrent findings of fact have been recorded by the trial Court and the High Court. After lengthy cross-examination in great detail, nothing infirm has been pointed out by the accused persons. Merely because one stone each was thrown, that cannot rule out application of 302 IPC, as was submitted by learned counsel for the appellants. A-1 is liable to be convicted under Section 109 also because at his instigation the other assailants' acts were done thereof. There was no delay in lodging the first information report. The occurrence, according to prosecution, took place at 10.45 a.m. The immediate reaction of the witnesses who were present would be to save the lives of the injured persons. It is clear from evidence that they were not dead immediately. Therefore, their conduct in trying to shift the injured persons to the hospital for treatment is natural and normal. It is pointed out that everybody's mind would be focussed on how best treatment can be provided to save the lives. The death of one of the deceased persons was around 12.00 noon. High Court had rightly noted that the witnesses would have taken sometime to regain composure and to prepare first information report. When these normal circumstances are taken note of, it cannot be said that there was any delay in lodging the first information report. So far as absence of injury on the witness is concerned it has come in evidence that A-1 instigated the accused persons to assault the witnesses who were present and then they ran away. In this background the absence of injury on them cannot be a suspicious circumstance. Merely because the name of M. Venkateswara Reddy has been deleted, that cannot be a ground to give benefit to the accused persons. Even though the manner in which the name of said person was deleted raises the eyebrows, some explanation has been offered with the acceptability of which we are not concerned in the present appeals.

That brings us to the other crucial aspect i.e. whether the presence of A-6 at the time of occurrence is made out and whether the case falls under Section 302 IPC in the factual ground indicated. So far as A-6 is concerned, in the first information report the PW-1 has stated as follows:

“.....One Raghu Ramaiah of Cherukucherla was also known to have participated in the occurrence along with Goura Venkata Reddy.”

Clarificatory statement accompanied the first information report which was lodged at 1.00 p.m. goes to show that PW-1 was not sure of the presence of A-6. But in the FIR and statements of other witnesses, name of A-6 clearly finds place. PW-1 has explained how the confusion has arisen and Courts below have accepted it. There were twenty assailants. Merely because one

- A witness has entertained some doubt and was not sure of his presence and has heard about it, same cannot be a ground to doubt veracity of evidence tendered by PWs 2 to 4.

Though it cannot be said as a rule of universal application that if one stone is thrown causing injuries, Section 302 IPC is ruled out, we find from the doctor's evidence that all injuries found on the bodies of the two deceased persons individually were not held to be fatal. As the prosecution version goes to show 19 persons including the 10 who were acquitted had thrown stones. Looking to the size of the stone as described in the documents on record, they do not appear very big. Here again, no general rule can be laid that small stone cannot cause any injury leading to death punishable under Section 302 IPC. It would depend upon the facts of each case. In the case at hand it cannot be said that any particular injury was intended which would result in death. But the accused persons can certainly be attributed with the intention of causing death or causing such bodily injury as is likely to cause death. Therefore, instead of conviction under Section 302 IPC, the proper conviction would be under Section 304 Part I for accused-appellants. Though names of A-7 and A-8 do not appear in the first information report, but in the statements of witnesses recorded immediately after occurrence their names were indicated. In the first information report and the clarificatory statement appended thereto, some names were given and it was clearly stated that some other persons were also the assailants. This being the position mere absence of names of A-7 and A-8 would not make any difference. Merely because the names were not specifically mentioned but were spoken by the witnesses immediately thereafter that cannot be sufficient by itself to create suspicion. So far as A-1 is concerned, his conviction has to be under Section 304 read with Section 109 IPC. Learned counsel for the respondent submitted that instigation was cause of murder and merely because the conviction is altered, that cannot be ground for non-application of Section 302 read with Section 109 IPC.

Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word 'instigate' literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy

or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. 'Act abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.' In the instant case, the abetted persons have been convicted for commission of offence punishable under Section 304. So in the case of A-1 it is Section 304 read with Section 109 IPC, that is attracted.

In the ultimate analysis, conviction of the appellants is altered to Section 304 IPC, except in case of A-1 where the conviction is under Section 304 read with Section 109 IPC. In each of the cases, the sentence will be 10 years rigorous imprisonment. The conviction and sentence in respect of other offences, will stand and the sentence therefor shall run concurrently, as ordered by the High Court.

The appeals are allowed to the extent indicated.

V.S.S.

Appeals partly allowed.